

SECTION 00020 – ADVERTISEMENT FOR BIDS

ADVERTISEMENT FOR BIDS Tulare County Sheriff and Fire Dispatch Center 5300 W Tulare Avenue, Visalia CA 93277

NOTICE IS HEREBY GIVEN that individually sealed bids for the **Sheriff and Fire Dispatch Center (“Project”), 5300 W Tulare Avenue, Visalia, CA 93277** will be accepted by the Clerk of the Board of Supervisors, County of Tulare, Administration Building, 2800 W. Burrel Avenue, Visalia, California until **2:00 p.m. on Thursday, January 7, 2021**.

Project Description: The Project consists of furnishing of all labor, materials, and equipment necessary for exterior and interior renovation and improvements to an existing office building and related site in order to develop the new Dispatch Center. The project includes, but is not limited to, select partial demolition, site improvements, concrete, rough carpentry, architectural woodwork, metal stud walls and partitions, laminate-faced doors, hollow metal doors and frames, storefront, glass and glazing, sealants, finishes, raised access flooring, plumbing, mechanical and electrical work.

A pre-bid conference will be held at the Project site located at, 5300 W Tulare Avenue, Visalia, CA 93277 at **10:00 AM on December 3, 2020**. The pre-bid conference is not mandatory, but Bidders that attend shall sign the pre-bid conference attendance roster. However, the scheduled conference will be the only opportunity to visit the site prior to the bid.

Bids shall be in accordance with the drawings and specifications which are on file with, and may be obtained from the Capital Projects Division of the Tulare County General Services Agency, 2637 W. Burrel Ave., Suite 200, Visalia, California 93291, (559) 205-1100, Monday thru Thursday between 7:30 AM and 5:30 PM and Friday between 8:00 AM and 12:00 PM. A non-refundable fee of **\$50.00** will be charged for each set of printed Plans and Specifications, and **\$5.00** for each set of digital Plans and Specifications. Each bid shall be submitted individually on Bid Forms provided by Capital Projects along with accompanying documents and a Cashier's Check or Bid Bond for not less than ten percent (10%) of the total amount of the bid, sealed in an envelope marked with the bidder's name and business address, Project title and the scheduled time and date of the bid opening.

The bids will be opened, examined and declared by a Deputy Clerk of the Board of Supervisors at the time and on the date above written. The bid opening will be open to the public and held in the Conference Room of the Board of Supervisors in the Tulare County Administration Building, County Civic Center, 2800 W. Burrel Avenue, Visalia, California. Alternatively, if COVID-19 pandemic conditions warrant, the bid opening may be conducted remotely and interested bidders and members of the public may attend and participate through Zoom or other electronic means to be announced by the County. The results of the Bidding shall be reported to the Board of Supervisors at their next regular meeting thereafter.

The contract will be awarded to the responsible bidder submitting the lowest cost responsive bid.

TIME OF COMPLETION: The Project is to be completed within **120** calendar days from the date to be established in the "NOTICE TO PROCEED". The Agreement includes provisions for Liquidated Damages if the Project is not timely completed.

The successful Bidder shall possess a Class **“B”** California Contractor's License at the time the bid is submitted and maintain that license until the Project is completed.

The successful Bidder shall furnish the bonds, insurance policies and certificates, specified in the Instructions to Bidders and General Conditions.

The successful Bidder will be entitled to establish an Escrow in lieu of withheld payments pursuant to California Public Contract Code Section 22300, and the General Conditions.

Any Contractor to whom a contract is awarded and any subcontractor under the Contractor shall pay all workers employed on the work not less than the prevailing wage rates determined by the Director of the California Department of Industrial Relations ("DIR") and shall comply with all laws and regulations relating to the employment of apprentices. Said wage rates pursuant to Section 1773.2 of the Labor Code are on file with the Tulare County General Services Agency, 2637 W. Burrel Avenue Suite 200, Visalia, California and will be made available to any interested person on request.

All contractors and subcontractors performing public works, before bidding or accepting any public works contract, must register within the statutory timelines and meet requirements using the DIR's online application at: <https://efiling.dir.ca.gov/PWCR/ActionServlet?action=displayPWCRegistrationForm>

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

No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Contractor shall comply with Title VI of the Civil Rights Act of 1964, and in accordance with said Act, no person on the grounds of race, color, sex or national origin, shall be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any service or activity in connection with the Project.

Contractor shall comply with Title VII of the Civil Rights Act of 1964, which prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex or national origin.

After the time set for opening of bids, no bid may be withdrawn for a period of sixty (60) days.

The Board of Supervisors reserves the right to deem a bid non-responsive for any information crossed out from the bid packet including information completed by a manufacturer.

The Board of Supervisors reserves the right to reject any or all bids, and/or waive any informality in any bid, and/or determine in its discretion the responsibility of any bidder.

The Board of Supervisors further reserves all rights to use County Forces, or to negotiate contracts, or both, to the extent authorized by the Public Contract Code.

Date 11/20/20 & 11/27/20

By Order of the Board of
Supervisors of the County of
Tulare, State of California

Jason T. Britt
County Administrative Officer/Clerk
Board of Supervisors, County of Tulare

By _____
CAO

END OF SECTION 00020

SECTION 00100 - INSTRUCTIONS TO BIDDERS

To be considered, Bids must comply with these Instructions to Bidders.

DOCUMENTS:

Bidders may obtain copies of the Plans and Specifications and related documents from the Capital Projects Division of the Tulare County General Services Agency, 2637 W. Burrel Ave., Suite 200, Visalia, California 93291, (559) 205-1100, Monday thru Thursday between 7:30 AM and 5:30 PM and Friday between 8:00 AM and 12:00 PM. A non-refundable fee of **\$50.00** will be charged for each printed set of Plans and Specifications, and **\$5.00** for each set of digital Plans and Specifications (CD). A maximum of two sets will be available to each contractor until after the pre-bid conference, but after that time a contractor may obtain additional sets.

EXAMINATION:

Before submitting a bid, bidders shall carefully examine the Plans and Specifications, and related documents, visit the site of the work and fully inform themselves as to all existing conditions and limitations, and shall include in the bid a sum to cover the cost of all items included in the work.

A pre-bid conference will be held at the Project site located at, **5300 W Tulare Avenue, Visalia, CA 93277 at 10:00 AM on December 3, 2020**. The pre-bid conference is not mandatory. However, this will be the only available time for all potential bidders to view the Project site with the County and Project Consultant. Bidders that attend shall sign the pre-bid conference attendance roster.

INTERPRETATIONS, ADDENDA:

- A. Should a bidder find discrepancies, inconsistencies or omissions from the Drawings, Specifications and Related Documents, or should a bidder be in doubt as to their meaning, they shall at once notify the County by email: KMTaylor@co.tulare.ca.us. Any such item not brought to the County's attention by **12:00 p.m., December 18, 2020** shall be done in accordance with the County's interpretation for the good of the work in accordance with the intent and meaning of the Contract Documents. Neither County nor County's Representative will be responsible for oral instructions or information. Questions received by **12:00 p.m., December 18, 2020** will be answered by a written Addendum directed to all bidders.
- B. Any Addenda issued by the County or County's Representative during the time of bidding are to be considered in the Bid, and will become a part of the Agreement between Contractor and County. Bidders shall acknowledge receipt of all Addenda on the Bid Form in the space provided.

SUBSTITUTION OF MATERIALS:

Materials, other than those specified, must be approved by Addenda issued by the County or County's Representative prior to bid opening, **otherwise** if the bidder submits non-approved materials with the bid, the bidder assumes the risk the bid may be deemed nonresponsive because the County may not approve the desired substitution. See Article 15.1 of GENERAL CONDITIONS for detailed requirements regarding post-Bid substitution requests.

BIDS:

- A. Bids must be made on the "Bid Form" included in these Specifications, or a copy thereof, all blank spaces filled, the signature shall be in longhand, and the completed form shall be without alterations or erasures. All amounts must be in words as well as in figures. Any discrepancy between the words and figures shall be resolved using the amount stated in words. The "Bid Form" must be filled out in ink or be typewritten. Where the bidder is a corporation, the "Bid Form" must be signed using the name of the corporation followed by the name of state of incorporation and the signatures of an officer authorized to bind the corporation to a Contract. A bid which is incomplete, incorrect or non-conforming, may be disregarded, in the sole discretion of the Board of Supervisors.
- B. Bids shall be addressed and delivered to:

Clerk of the Board of Supervisors
County of Tulare
Administration Building
2800 W. Burrel Avenue
Visalia, CA 93291
- C. Each bid shall be delivered in separate opaque sealed envelope bearing on the outside, the name of the bidder, the bidder's business address, the name of the Project, and the scheduled date and time for the bid opening. Bids will be accepted until the date and time stated in the Advertisement for Bids. Also, to be included in each envelope shall be:
 - 1. A certified Bid Bond or cashier's check for 10% of the bid amount referring to the Bid Package bid upon.
 - 2. No bid will be valid without the complete listing of subcontractors performing more than one-half (½) of one (1%) of total contract **with the signature of the contractor submitting the bid in the space indicated.**
 - 3. A completed, Non-Collusion Declaration referring to the Bid Package bid upon.

4. County reserves the right to deem the bid non-responsive for any information crossed out from the bid packet including information completed by a manufacturer.
- D. All bids shall remain firm for a period of sixty (60) calendar days after the date of bid opening.
- E. Bids may not be modified after the designated time for bid opening. Upon presentation of satisfactory identification, bidders may withdraw and resubmit bids at any time prior to bid opening. No bid may be withdrawn until sixty (60) calendar days after the bid opening.
- F. The responsibility of bidders and of their proposed Subcontractors will be considered in making the award.
- G. County will determine, at its own discretion, whether a bidder is responsible.
- H. The award of the contract, if awarded, will be to the lowest responsible bidder whose proposal complies with all the requirements presented.
- I. County reserves the sole discretion to reject any or all bids or to waive informalities and irregularities in the Bid Form or the Bid process.
- J. Bids expressing exceptions or qualifications on Technical Specifications may be disregarded in the sole discretion of the Board of Supervisors.
- K. In accordance with the General Conditions, include in the Bid all costs for full performance of the work.
- L. The following failures are not waivable and will cause a bid to be considered nonresponsive:
 - Failure to sign the bid;
 - Failure to furnish the required bid bond on the County form provided, or a cashier's check equal to 10% of the Base Bid;
 - Failure to include a total amount of the bid.
- M. The decision of the County regarding the amount of a bid, or existence or treatment of a discrepancy in a bid will be final.

BID PROTESTS:

Any bid protest must be in writing and filed with Kyle Taylor, Capital Projects Coordinator III, at KMTaylor@co.tulare.ca.us or General Services Agency/Capital Projects Division 2637 W. Burrell Ave., Suite 200, Visalia, California 93291 before 5:00 p.m. no later than two working days following bid opening (the "Bid Protest Deadline") and must comply with the following requirements:

- A. General. Only a bidder who has actually submitted a Bid Proposal is eligible to submit a bid protest against another bidder. Subcontractors and material suppliers are not eligible to submit bid protests. A bidder may not rely on the bid protest submitted by another bidder, but must timely pursue its own protest. For purposes of this Bid Protest Procedure, a “working day” means a day that County is open for normal business, and excludes weekends and holidays observed by County.
- B. Protest Contents. The bid protest must contain a complete statement of the basis for the protest and all supporting documentation. Material submitted after the Bid Protest Deadline will not be considered. The protest must refer to the specific portion or portions of the Contract Documents upon which the protest is based. The protest must include the name, address, email address, and telephone number of the person representing the protesting bidder if different from the protesting bidder.
- C. Copy to Protested Bidder. A copy of the protest and all supporting documents must be concurrently transmitted by fax or by email, by or before the Bid Protest Deadline, to the protested bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.
- D. Response to Protest. The protested bidder may submit a written response to the protest, provided the response is received by County before 5:00 p.m., within two working days after the Bid Protest Deadline or after actual receipt of the bid protest, whichever is sooner (the “Response Deadline”). The response must include all supporting documentation. Material submitted after the Response Deadline will not be considered. The response must include the name, address, email address, and telephone number of the person representing the protested bidder if different from the protested bidder.
- E. Copy to Protesting Bidder. A copy of the response and all supporting documents must be concurrently transmitted by fax or by email, by or before the Bid Protest Deadline, to the protesting bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.
- F. Exclusive Remedy. The procedure and time limits set forth in this section are mandatory and are the bidder’s sole and exclusive remedy in the event of bid protest. A bidder’s failure to comply with these procedures will constitute a waiver of any right to further pursue a bid protest, including filing a Government Code Claim or initiation of legal proceedings.
- G. Right to Award. The County Board of Supervisors reserves the right to award the Contract to the bidder it has determined to be the responsible bidder submitting the lowest cost responsive bid, and to issue a notice to proceed with the Work notwithstanding any pending or continuing challenge to its determination.

BID SECURITY:

Each bidder shall submit, with its bid, a cashier's check upon a solvent bank or a Bid Bond in an amount equal to 10% of the Base Bid made payable to County. This bid security shall be given as a guarantee that the bidder will enter into the Agreement if awarded to the bidder and will produce the required bonds, certificates and insurance coverage, and **shall be retained as liquidated damages if the bidder refuses to enter into said Agreement** upon request to do so by County. Bid security will be returned to all unsuccessful bidders, and to each successful bidder upon the County's receipt of a satisfactory Performance Bond, Payment Bond, Policy of Insurance, Worker's Compensation Insurance Certificate, executed Agreement and any other document required by the Contract Documents prior to the execution of the Agreement by the County. Bid Bonds shall be executed on the form included in these specifications or a facsimile thereof.

NON-COLLUSION DECLARATION:

Each bidder shall submit to County, with its bid, a Non-Collusion Declaration covering the bidder and all sub-contractors. The Non-Collusion Declaration shall be executed on the form included in these Specifications or a facsimile thereof.

FORM OF AGREEMENT:

The Contractor is required to sign and submit to the County three (3) originals of the Agreement with the County, in the form shown in these Specifications.

PERFORMANCE BOND AND PAYMENT BOND:

The successful bidder shall file with County a Performance Bond and a Payment Bond. **The Payment and Performance Bonds required by these specifications will neither be accepted nor approved by the County unless the bonds are underwritten by a California admitted surety, and the requirements of California Code of Civil Procedure Section 995.630 are met.** Bonds shall be executed in three (3) original counterparts on the forms included in these Specifications or facsimile thereof.

CONTRACTOR'S LICENSE:

At the time the bid is submitted, the bidder shall possess a valid and current Contractor's License, classification **"B"** issued by the State of California in order to perform the work described in the Contract Documents. Required licensing shall be maintained until the completion of the Project.

CONTRACTOR'S INSURANCE:

Coverage: Contractor shall maintain, for the duration of the work and warranty period required under the Agreement, all Insurance in the minimum amounts required by the "GENERAL CONDITIONS."

Prior to approval of the Agreement by the County, Contractor shall file with the Clerk of the Board of Supervisors, evidence of the insurance in accordance with Article 11 of the General Conditions, which outlines the minimum scope, specifications and limits of insurance required for the Project. Additional insured endorsements required as outlined in Article 11 shall not be used to reduce limits available to County as an additional insured from the Contractor's full policy limits. Insurance policies shall not be used to limit liability or to limit the indemnification provisions and requirements of the Agreement or act in any way to reduce the policy coverage and limits available from the insurer (s). Failure to maintain or renew coverage, or to provide evidence of renewal, may be considered a material breach of the Agreement.

Department of Industrial Relations Requirements:

Contractor and any subcontractor under it shall pay all workers employed on the work not less than the prevailing wage rates determined by the Director of the Department of Industrial Relations and shall comply with all laws and regulations relating to the employment of apprentices. Said wage rates pursuant to Section 1773.2 of the Labor Code are on file with the Tulare County General Services Agency, 2637 W. Burrell Avenue Suite 200, Visalia, California and will be made available to any interested person on request.

No contractor or subcontractor may work on this public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Contractor shall comply with Title VI of the Civil Rights Act of 1964, and in accordance with said Act, no person on the grounds of race, color, sex or national origin, shall be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any service or activity in connection with the Project.

Contractor shall comply with Title VII of the Civil Rights Act of 1964, which prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex or national origin.

END OF SECTION 00100

SECTION 00310 - BID FORM

County: Board of Supervisors
County of Tulare
Administration Building
2800 W. Burrel Avenue
Visalia, CA 93291

County's
Representative: Capital Projects
Kyle Taylor, Capital Projects Coordinator III
County of Tulare
2637 W. Burrel Ave., Suite 200
Visalia, Ca. 93277
559-205-1100 - Phone

Project Consultant:
Chas Rhoads
Chas Rhoads Architects
128 Katherine Street
Hanford, CA 93230
559-584-3371- Phone
chasrhoads@sbcglobal.net

Bid For: Tulare County – **Sheriff and Fire Dispatch Center**, 5300 W. Tulare
Avenue, Visalia, CA 93277

1. We, the undersigned, having attended the pre-bid conference, and having familiarized ourselves with the local conditions, the Advertisement for Bids, Instructions to Bidders, General Conditions, Bid Form, Supplement to Bid Form, Agreement between County and Contractor, the Drawings and Specifications and Addenda issued by the County or County's Representative, do hereby propose to furnish all labor, materials, necessary tools, expendables, equipment, utility and transportation services necessary to complete the Work required for the above Bid Package in strict accordance with the contract documents, including all Addenda.
2. Undersigned declares that the cost of a Performance Bond in the full amount of the Agreement, and a Labor and Material Payment Bond of 100% of the amount of the Agreement is included in this bid.
3. Undersigned agrees to enter into and execute an Agreement, if awarded on the basis of this Bid, **and to furnish Bonds and Insurance in accordance with Contract Documents within seven (7) calendar days after date of receipt of Notice of Intent to Award.**
4. **Liquidated Damages for Failure to Enter into the Agreement:**

Enclosed herewith is Cashiers Check or Bid Bond, made payable to the County,

which is not less than 10% of the total amount of the Bid. Should Contractor's bid be accepted and Contractor thereafter fail to enter into the Agreement on the basis of this bid, IT IS HEREBY UNDERSTOOD AND AGREED by County and Contractor that it is, and will be, extremely difficult or impracticable to determine the actual damages which County will sustain in the event of, and by reason of, such failure to enter into the Agreement and that the aforesaid amounts are reasonable estimates of and reasonable sums for such damages. Undersigned further agrees that said check or Bid Bond shall be forfeited as liquidated damages (not as a penalty), if undersigned fails to enter into an Agreement on the basis of this bid.

5. Undersigned acknowledges receipt of the following Addenda:

Addendum No. _____ Dated _____ Addendum No. _____ Dated _____
Addendum No. _____ Dated _____ Addendum No. _____ Dated _____

6. This Bid is valid for sixty (60) calendar days following the date for receiving Bids.

7. Undersigned proposes to enter into a contract for the following amounts:

Lump Sum Bid for work included in this Contract necessary to complete the work for the **Tulare County – Sheriff and Fire Dispatch Center, 5300 W Tulare Avenue, Visalia, COUNTY OF TULARE, CALIFORNIA** as shown in the drawings and specifications. The Project shall be completed within **120** calendar days from the date to be established in the Notice to Proceed. The Agreement includes provisions for Liquidated Damages if the Project is not completed within the agreed time of completion

_____	\$ _____
Amount in Words	Numbers

In the event of discrepancy between the words and numbers of the Lump Sum Bid the words shall prevail.

8. Contractor's License:

The undersigned further states that it is a duly licensed contractor, for the type of work proposed, in the **State of California**, and that all fees, permits, etc., pursuant to submitting this proposal have been paid in full.

9. Registration With Department of Industrial Relations:

The undersigned further states that it is currently registered as a public works contractor with the California Department of Industrial Relations pursuant to California Labor Code section 1725.5 and qualified to perform public work projects.

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Type of Organization _____
(Individual, Partnership, Corporation, Etc.)

Company's Name _____
(Type or Print)

Partner's Names _____
(If Partnership) _____

Seal (If Corporation)

Date: _____

By: _____
(Signature of Contractor)

(Type Name of Contractor)

Address: _____

Telephone: _____

Contractor License:

Class: _____

Numbers: _____

Expiration Dates: _____

Department of Industrial Relations Registration:

DIR Registration No. _____

Attachments:

- ____ Bid Security
- ____ Sub-contractor List
- ____ Non-Collusion Declaration
- ____ Corporate Resolution authorizing Signature of Document, if Corporation

END OF SECTION 00310

SECTION 00311 - SUBCONTRACTOR LIST FORM

This attachment to the Bid shall be submitted with the Bid. If no subcontractors are to be involved and work is to be performed solely by the Contractor, so state.

Pursuant to the provision of Section 4100 to 4113, inclusive, of the Public Contract Code of the State of California, the Contractor shall set forth the type of work to be performed, name, location of the place of business, contractor's state license number ("CSLB #"), and Department of Industrial Relations Registration Number ("DIR #") of each subcontractor who will perform work or labor in or about the construction of the work of improvement (the "Work") in an amount in excess of one-half (1/2) of one percent (1%) of the Contractor's total bid.

Failure to submit a properly completed Subcontractor List form results in a nonresponsive bid. Note: (1) pursuant to Public Contract Code Section 4104(a)(2), an inadvertent error in listing the California contractor license number provided pursuant to this paragraph shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive if the corrected contractor's license number is submitted to the County by the prime contractor within 24 hours after the bid opening and provided the corrected contractor's license number corresponds to the submitted name and location for that subcontractor; (2) pursuant to Labor Code Section 1771.1(c), an inadvertent error in listing a subcontractor who is not registered with the DIR in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

- (1) The subcontractor is registered prior to the bid opening.
- (2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Labor Code Section 1725.5 if required to do so.

The General Contractor to whom the contract is awarded will not be permitted, without the written consent of the Tulare County General Services Agency Director or designee, to substitute any person as subcontractor in place of the subcontractor designated in the original bid, or to permit any subcontract to be assigned or transferred, or to allow it to be performed by anyone other than the original subcontractor. Consent to the substitution of another person as subcontractor shall only be permitted in accordance with Public Contract Code Section 4107.

If the Contractor fails to specify a subcontractor for any portion of the Work in excess of one-half (1/2) of one percent (1%) of the Contractor's total bid, then the Contractor agrees that the Contractor will perform that portion of the Work itself. The subletting or subcontracting of work for which no subcontractor was designated in the original bid and which is in excess of one-half of one percent of the total contract price, will be allowed only in accordance with Public Contract Code Section 4109.

The following is the required list of subcontractors:

CONTRACTOR'S LIST OF SUBCONTRACTORS
(Use other side & extra sheets if necessary)

Type of Work	Name of Subcontractor	Address of Subcontractor	CSLB #	DIR #

Date

Contractor's Signature

(Continue list on page 2)

(Subcontractor List continued)

Type of Work	Name of Subcontractor	Address of Subcontractor	CSLB #	DIR #

END OF SECTION 00311

SECTION 00312 – NON COLLUSION DECLARATION

NONCOLLUSION DECLARATION TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

(Public Contract Code section 7106)

The undersigned declares:

I am the _____ of _____, the party
making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid.

The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on

_____ [date], at _____ [city],
_____ [state].

(signature)

(Print name and Title)

END OF SECTION 00312

SECTION 00501 - BID BOND

COUNTY OF TULARE
STATE OF CALIFORNIA

BIDDER'S BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, _____
_____ as PRINCIPAL, and

_____ as SURETY, are held and firmly bound unto the County of Tulare, hereinafter called the Obligee, in the sum of TEN PERCENT (10%) OF THE TOTAL AMOUNT OF THE BID of the Principal above named, submitted by said Principal to the Board of Supervisors, County of Tulare, for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. In no case shall the liability of the surety hereunder exceed the sum of \$_____.

THE CONDITION OF THIS OBLIGATION IS SUCH that, whereas, the Principal has submitted the above-mentioned bid to the Board of Supervisors, County of Tulare, for certain construction specifically described as follows, for which bids are to be opened at Visalia, California, on Thursday, **January 07, 2021**, for construction on the Tulare County – **Sheriff and Fire Dispatch Center at 5300 W Tulare Avenue, Visalia, CA 93277**.

NOW, THEREFORE, if the aforesaid Principal is awarded the Contract, given the required notice of award and presented with the County-Contractor Agreement for signature, and, within the time and manner required under the Specifications, executes and files it with the Clerk of the Board of Supervisors in the prescribed form and in accordance with the bid, together with all insurance certificates, bonds, powers of attorney, certificates of authority and financial statements, proofs of licensing, and any other documents required by the Specifications to be filed with the executed Agreement, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

In the event suit is brought upon this bond by the Obligee and judgement is recovered, the surety shall pay all costs incurred by the Obligee in such suit, including a reasonable attorney's fee to be fixed by the Court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this _____ day of _____, 2020.

Principal

Surety

Note: Signature of those executing for the surety must be properly acknowledged or notarized.

END OF SECTION 00501

SECTION 00502 – STATUTORY PERFORMANCE BOND

STATUTORY PERFORMANCE BOND PURSUANT TO

California Public Contract Code

Section 20129

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (Hereinafter called the Principal), as Principal and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____, (hereinafter called the Surety), as Surety, are held and firmly bound unto the **COUNTY OF TULARE**, (hereinafter called the Obligee) in the amount of _____ Dollars (\$_____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Agreement with the Obligee, dated the _____ day of _____, to _____, which Agreement is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THE OBLIGATION IS SUCH, that if said Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, and conditions of said Agreement during the original term of the Agreement and any extension thereof, with or without notice to the Surety, and during the life of any guarantee required under the Agreement, and shall also perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized extensions or modifications of said Agreement that may hereafter be made, notice of said extensions or modifications to the Surety being hereby waived, and will indemnify, defend, and save harmless the Obligee, its governing board, officers, agents, and employees as required by the Agreement; then the above obligation shall be void. Otherwise, said obligation shall remain in full force and effect.

Whenever Obligee declares Principal to be in default under the Agreement, then the Surety will remedy the default pursuant to the Agreement, or will promptly do one of the following, at the Obligee's option:

- (1) Undertake through its agents or independent contractors, reasonably acceptable to the Obligee, to complete the Project in accordance with all terms and conditions in the Agreement, including without limitation, all obligations with respect to payments, warranties, guarantees, and liquidated damages, and with no requirement for a "take-over" or similar agreement; or
- (2) Permit the Obligee to complete the Project in any manner consistent with California law and reimburse the Obligee for all costs it incurs in completing the Project, and in correcting, repairing or replacing any defects in materials, equipment or workmanship, which do not conform to the Agreement.

Surety expressly agrees that the Obligee may reject any contractor or subcontractor that Surety may propose in fulfillment of its obligations in the event of default by the Principal. Surety will not utilize Principal in completing the Project or accept a bid from the Principal for completion of the Work if the Obligee, when declaring the Principal in default, notifies Surety of the Obligee's objection to Principal's further participation in the completion of the Project.

Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the construction work on this Project, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing the Obligee's rights against the others.

No right of action will accrue on this bond to or for the use of any person or corporation other than the Obligee or its successors or assigns. If Obligee sues upon this bond, then Surety will pay reasonable attorney's fees and costs incurred by the Obligee in such suit, irrespective of the penal amount of this bond.

Witness our hands this _____ day of _____.

Principal Seal

By

Surety Seal

By

Agency of Record

Note: Bond surety must be admitted to transact surety insurance in the State of California

End of Section 00502

SECTION 00503 – STATUTORY PAYMENT BOND

STATUTORY PAYMENT BOND PURSUANT TO

California Civil Code
Sections 9550 through 9566

KNOW ALL THESE MEN BY THESE PRESENTS:

That, _____ (hereinafter called the Principal), as Principal, and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____, (hereinafter called the Surety), as Surety, are held and firmly bound unto the **COUNTY OF TULARE** (hereinafter called the Obligee), in the amount of _____ Dollars (\$ _____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Agreement with the Obligee, dated the _____ day of _____, to _____ which Agreement is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, its heirs, executors, administrators, successors, or assigns, or subcontractor, shall fail to pay any person or persons named in Civil Code Section 9100; or fail to pay for any materials, provisions, 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 Code, with respect to work or labor thereon of any kind; or shall fail to deduct, withhold, and pay over to the Employment Development Department, any amounts required to be deducted, withheld, and paid over by Unemployment Insurance Code Section 13020 with respect to work and labor thereon of any kind, then said Surety will pay for the same, in an amount not exceeding the amount herein above set forth, and in the event suit is brought upon this bond, also will pay such reasonable attorneys' fees as shall be fixed by the court, awarded and taxed as provided in California Civil Code Section 9550 et. seq.

This bond shall inure to the benefit of any person named in California Civil Code Section 9100 giving such person or his/her assigns a right of action in any suit brought upon this bond.

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, or specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described; or pertaining or relating to the furnishing of labor, materials, or equipment therefor; nor by any change or modification of any terms of payment or extension of time for payment pertaining or relating to any scheme or work of improvement herein above described; nor by any rescission or attempted rescission of the contract, agreement or bond; nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond; nor by any fraud practiced by any person other than the claimant seeking to recover on the bond; and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given; and under no circumstances shall the Surety be released from liability to those for whose benefit such bond has been given, by reason of any

breach of contract between the Obligee and the Principal or on the part of any obligee named in such bond; that the sole condition of recovery shall be that the claimant is a person described in California Civil Code Section 9100, and who has not been paid the full amount of his or her claim; and that the Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

Witness our hands this _____ day of _____

Principal Seal

By

Surety Seal

By

Agency of Record

Agency Address

Note: Bond surety must be admitted to transact surety insurance in the State of California.

End of Section 00503

SECTION 00504 - CERTIFICATION CONCERNING WORKER'S COMPENSATION

STATE OF CALIFORNIA)
) SS.
COUNTY OF TULARE)

The undersigned is aware of the provisions of Section 3700 of the Labor Code of the State of California which require every employer to be insured against liability of worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and the undersigned will comply with such provisions, and will require all subcontractors to comply with such provisions, before commencing the performance of the work of this Contract.

Date _____

Contractor's Signature

END OF SECTION 00504

SECTION 00506 - AGREEMENT BETWEEN COUNTY AND CONTRACTOR

AGREEMENT

BETWEEN

COUNTY AND CONTRACTOR

AGREEMENT

Made as of the ____ day of _____ in the year of Two Thousand and Twenty-One.

BETWEEN the County: **COUNTY OF TULARE, STATE OF CALIFORNIA**

and the Contractor:

The Project: Tulare County – Sheriff and Fire Dispatch Center, 5300 W Tulare Avenue, Visalia, CA 93277

The County's Representative: Kyle Taylor – Capital Projects - County of Tulare

The Project Consultant: Chas Rhoads Architecture

The County and the Contractor agree as set forth below.

ARTICLE 1

THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, the General Conditions and those documents enumerated in Sub-paragraph 1.1.1 of the General Conditions, which documents are hereby incorporated into this Agreement and made a part hereof.

ARTICLE 2

THE WORK

The Contractor shall perform all the Work required by the Contract Documents for the **Tulare County – Sheriff and Fire Dispatch Center, 5300 W Tulare Avenue, Visalia, CA 93277**.

ARTICLE 3

TIME OF COMMENCEMENT AND COMPLETION

The Work to be performed under this Contract shall be commenced within Ten (10) calendar days after the date the Notice to Proceed is received by the Contractor and, subject to authorized adjustments, Completion of the Work shall be achieved for The Project within **120** calendar days from the date to be established in the "NOTICE TO PROCEED". The Agreement includes provisions for Liquidated Damages if the Project is not completed within the agreed time of completion. If Contractor fails to complete the Work within the Contract Time, Contractor shall pay to County, as liquidated damages and not as a penalty, the sum of **\$750.00** for each day after the expiration of the Contract Time that the Work remains incomplete. County and Contractor agree that if the

Work is not completed within the Contract Time, County's damages would be extremely difficult or impracticable to determine and that the aforesaid amounts are reasonable estimates of and reasonable sums for such damages. County may deduct any liquidated damages due from Contractor from any amounts otherwise due to Contractor under the Contract Documents. This provision shall not limit any right or remedy of County in the event of any other default of Contractor other than failing to complete the Work within the Contract Time.

ARTICLE 4

CONTRACT SUM

The County shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order or as otherwise provided in the Contract Documents, the Sum of \$_____.

ARTICLE 5

PROGRESS PAYMENTS

Based upon Applications for Payment submitted to the County by the Contractor and Project Certificates for Payment issued by the County's Representative, the County shall make progress payments on account of the Contract Sum to the Contractor as provided in the Contract Documents as follows:

Progress Payments: The Contractor shall, on or before the first day of each month, make an estimate of the work performed during the preceding month and submit same to the County's Representative for checking and approval. On or about the 20th day of the month, following the month in which the work was performed, the County shall pay to the Contractor ninety-five (95%) percent of the value of said work in place, as checked and approved by the County's Representative. The balance of five (5%) percent of the estimate shall be retained by the County until the time of final acceptance of said work.

ARTICLE 6

FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the County to the Contractor when the Work has been completed; the Contract fully performed, the County's Representative has issued a Project Certificate for Payment, which approves the final payment due the Contractor and the Board of Supervisors of Tulare County has formally accepted the project as complete by Resolution.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 Terms used in this Agreement, which are defined in the "GENERAL CONDITIONS" of the contract shall have the meanings designated in those Conditions.

7.2 Notices shall be addressed as follow:

COUNTY

Board of Supervisors
County of Tulare
County Civic Center
2800 W. Burrel Avenue
Visalia, CA 93291
(559) 636-5000

CONTRACTOR

COUNTYS REPRESENTATIVE

Kyle Taylor
County of Tulare
General Services Agency
Capital Projects
2637 W. Burrel Ave.
Visalia, CA 93291
(559)205 -1100 – Phone

SURETY

- 7.3 **PREVAILING WAGES.** The Contractor agrees that State Prevailing Wages apply to this Project, and that the Contractor will pay the rates for each trade or craft and shall require the subcontractors on the project to pay the rates for each trade and craft. The State Wage Determinations are on file with the Tulare County General Services Agency, 2637 W. Burrel Avenue Suite 200, Visalia, California, and will be made available to any interested person on request; and the Payroll Submittal Information attached hereto as Section 00508 are incorporated herein as if set forth in full and are a part of this Contract. The Contractor agrees to repay the County any and all amounts paid to any subcontractor in violation of Public Contract Code Section 6109.
- 7.4 **COMPLIANCE WITH LAW:** CONTRACTOR shall provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to CONTRACTOR'S employees, CONTRACTOR shall comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.
- 7.5 **RECORDS AND AUDIT:** CONTRACTOR shall maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, CONTRACTOR shall maintain complete and accurate records with respect to any payments to employees or subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, CONTRACTOR shall make such records available within Tulare County to the Auditor of Tulare County and to his agents and representatives, for the purpose of auditing and/or copying such records for a period of five (5) years from the date of final payment under this Agreement.
- 7.6 **INDEPENDENT CONTRACTOR STATUS:**
a. This Agreement is entered into by both parties with the express understanding that CONTRACTOR will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement shall be construed to constitute the

CONTRACTOR or any of its agents, employees or officers as an agent, employee or officer of COUNTY.

b. CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, CONTRACTOR shall be solely responsible for determining the means and methods of performing the specified services and COUNTY shall have no right to control or exercise any supervision over CONTRACTOR as to how the services will be performed. As CONTRACTOR is not COUNTY'S employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular, COUNTY will not:

- i. Withhold FICA (Social Security) from CONTRACTOR'S payments.
- ii. Make state or federal unemployment insurance contributions on CONTRACTOR'S behalf.
- iii. Withhold state or federal income tax from payments to CONTRACTOR.
- iv. Make disability insurance contributions on behalf of CONTRACTOR.
- v. Obtain unemployment compensation insurance on behalf of CONTRACTOR.

c. Notwithstanding this independent contractor relationship, COUNTY shall have the right to monitor and evaluate the performance of CONTRACTOR to assure compliance with this Agreement.

7.7 INDEMNIFICATION AND DEFENSE: CONTRACTOR shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees in accordance with paragraph 4.17 of the General Conditions. This indemnification specifically includes any claims that may be made against COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against COUNTY alleging civil rights violations by CONTRACTOR under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on COUNTY for CONTRACTORS failure to provide form DE-542, when applicable. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

The absence of insurance or insufficient insurance limits will not eliminate the obligation to indemnify and defend hereunder.

7.8 CONFLICT OF INTEREST:

a. CONTRACTOR agrees at all times in performance of this Agreement to comply with the law of the State of California regarding conflicts of interests or appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONTRACTOR for this purpose, from the making of any decision on behalf of COUNTY in which such officer, employee or consultant has a direct or indirect financial interest. A violation can occur if

the public officer, employee or consultant participates in or influences any COUNTY decision which has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest, with certain narrow exceptions.

b. CONTRACTOR agrees that if any facts come to its attention which raise any questions as to the applicability of conflicts of interests' laws, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of this question.

- 7.9 **ENTIRE AGREEMENT REPRESENTED:** This Agreement represents the entire agreement between CONTRACTOR and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.
- 7.10 **HEADINGS:** Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.
- 7.11 **CONSTRUCTION:** This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any uncertainty.
- 7.12 **NO THIRD PARTY BENEFICIARIES INTENDED:** Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.
- 7.13 **GOVERNING LAW:** This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Tulare County California.
- 7.14 **WAIVERS:** The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.
- 7.15 **EXHIBITS AND RECITALS:** The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.
- 7.16 **CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY:** This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.
- 7.17 **FURTHER ASSURANCES:** Each party will execute any additional documents and perform any further acts which may be reasonably required to effect the purposes of this Agreement.
- 7.18 **ASSURANCES OF NON-DISCRIMINATION:** CONTRACTOR shall not discriminate in

employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

- 7.19 **ASSIGNMENT/SUBCONTRACTING:** Unless otherwise provided in this Agreement, COUNTY is relying on the personal skill, expertise, training and experience of CONTRACTOR and CONTRACTOR'S employees and no part of this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of COUNTY.
- 7.20 **7.20 DISPUTES AND DISPUTE RESOLUTION:** The Parties shall continue to perform their responsibilities under this Agreement during any dispute arising out of or relating to this Agreement or the breach thereof. If such a dispute arises between the Parties and if said dispute cannot be settled through negotiation, then the Parties agree first to try in good faith to settle the dispute by nonbinding mediation before resorting to litigation or some other dispute resolution procedure, unless the Parties mutually agree otherwise. The mediator shall be mutually selected by the Parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each Party. All costs and fees required by the mediator shall be split equally by the Parties; otherwise, each Party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, or such other timeframe as the Parties may agree, then either Party may pursue litigation to resolve the dispute. The provisions of section 7.8 of the General Conditions shall apply to the resolution of disputes under this Agreement.
- 7.21 **UNEMPLOYMENT INSURANCE COMPLIANCE:** CONTRACTOR acknowledges that this Agreement is subject to filing obligations pursuant to Unemployment Insurance Code Section 1088.8. Accordingly, COUNTY has an obligation to file a report with the Employment Development Department, which report will include the CONTRACTOR'S full name, social security number, address, the date this contract was executed, the total amount of the contract, the contract's expiration date or whether it is ongoing. CONTRACTOR agrees to cooperate with COUNTY to make such information available and to complete DE Form 542. Failure to provide the required information may, at COUNTY'S option, prevent approval of this Agreement, or be grounds for termination by COUNTY.
- 7.22 **REDUCTION IN FUNDING:** Contractor expressly understands and agrees that COUNTY is dependent upon certain Federal and/or State and/or local funding to pay the services provided in this contract. If such Federal and/or State and/or local funding is discontinued or reduced, County shall have the right to terminate the contract. In either event County shall provide CONTRACTOR with at least 30 days prior written notice of such termination.
- 7.23 **ORDER OF PRECEDENCE:** In the event of a conflict between or among the Contract Documents, the order of precedence shall be first the provisions of the main body of this Agreement, i.e., those provisions set forth in the Articles of the Agreement, and then General Conditions, followed by the other documents described in Sub-paragraph 1.1.1 of the General Conditions.
- 7.24 **AUTHORITY:** Each Party represents and warrants to the other that the individual(s) signing this Agreement on its behalf are duly authorized and have legal capacity to sign this Agreement and bind them to its terms. Each Party acknowledges that the other Party has relied upon this representation and warranty in entering into this Agreement.
- 7.25 **COUNTERPARTS:** The Parties may sign this Agreement in counterparts, each of which is an original and all of which taken together form one single document. The counterparts of this

[illegible]

This Agreement entered into as of the day and year first written above.

COUNTY

CONTRACTOR

CHAIRMAN, BOARD OF SUPERVISORS

Signature

Typed Name

Signature

Typed Name

COUNTY OF TULARE
Civic Center
Visalia, CA 93291

Address

ATTEST: Jason T. Britt
County Administrative Officer/Clerk of
The Board of Supervisors of the
County of Tulare

BY: _____

APPROVED AS TO FORM

County Counsel Matter No. _____

END OF SECTION 00506

SECTION 00507 - STATE WAGE DETERMINATION

1.1 INSTRUCTIONS:

- 1.1.1 THE GENERAL CONTRACTOR IS REQUIRED TO POST ALL APPLICABLE STATE WAGE DETERMINATIONS/PREVAILING WAGE RATES ON THE JOB SITE FOR THE PROJECT IN A CONSPICUOUS LOCATION AVAILABLE TO EACH TRADE WORKING ON THE PROJECT.

END OF SECTION 00507

SECTION 00508 - PAYROLL SUBMITTAL INFORMATION

1.1 INSTRUCTIONS FOR PAYROLL SUBMITTALS

1.1.1 The Contractor will submit payroll records to the California Department of Industrial Relations per their submittal requirements. The County of Tulare does not maintain Certified Payroll Records. Those requesting certified payroll records may obtain them from the Department of Industrial Relations via their website <https://www.dir.ca.gov/>.

END OF SECTION 00508

CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT
(Civil Code section 8132)

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant: _____

Name of Customer: County of Tulare

Job Location: _____

Owner: County of Tulare

Through Date: _____

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: County of Tulare

Amount of Check: \$ _____

Check Payable to: _____

Exceptions

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:

Date(s) of waiver and release: _____

Amount(s) of unpaid progress payment(s): \$ _____

- (4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT
(Civil Code section 8134)

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: _____

Name of Customer: County of Tulare

Job Location: _____

Owner: County of Tulare

Through Date: _____

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment: \$ _____

Exceptions

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT
(Civil Code section 8136)

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant: _____

Name of Customer: County of Tulare _____

Job Location: _____

Owner: County of Tulare _____

Through Date: _____

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: County of Tulare _____

Amount of Check: \$ _____

Check Payable to: _____

Exceptions

This document does not affect any of the following:

Disputed claims for extras in the amount of: \$ _____

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT
(Civil Code section 8138)

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: _____

Name of Customer: County of Tulare _____

Job Location: _____

Owner: County of Tulare _____

Through Date: _____

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full.

Exceptions

This document does not affect any of the following:

Disputed claims for extras in the amount of: \$ _____

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

END OF SECTION 00509

SECTION 00700 - GENERAL CONDITIONS

TABLE OF ARTICLES

1. CONTRACT DOCUMENTS
2. ADMINISTRATION OF THE CONTRACT
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4. CONTRACTOR
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13. UNCOVERING AND CORRECTION OF WORK
14. TERMINATION OF THE CONTRACT
15. ADDITIONAL INSTRUCTIONS
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ARTICLE 1

CONTRACT DOCUMENTS

1.1 DEFINITIONS

Whenever the following terms, titles, or phrases are used in the Contract Documents, the intent and meaning thereof shall be as defined in this article.

Addendum/Addenda.

"Addendum" or "Addenda" are written documents furnished by the County before award of the Contract, interpreting or modifying plans and specifications or answering questions of intended bidders, and shall be incorporated in and are a part of the Contract Documents.

Alternate.

The "Alternate" is the sum to be added to or deducted from the Base Bid if the change in scope of work as described in Alternates is accepted by the County.

ASTM.

"ASTM" shall mean the organization known as "ASTM International," formerly known as the American Society for Testing and Materials.

Bid.

"Bid" shall mean the offer of the bidder to do the Work, when submitted on the prescribed bid form, properly executed and bonded, at the designated time and location.

Change Order.

"Change Order" shall mean a written order to the Contractor, issued after execution of the Contract, authorizing a change in the Work and/or an adjustment in the Contract Sum and/or the Contract Time.

Closeout Documents.

Documents as required to meet the requirements of final completion.

Contract.

The legally binding agreement between the County and the Contractor wherein the Contractor agrees to furnish the labor, materials, equipment, plant and appurtenances required to perform the work described in the Contract Documents and the County agrees to pay the Contractor for such work.

Construction Manager.

"Construction Manager" shall mean the firm or County employee engaged by the County as an agent to perform all functions delegated to the Construction Manager by the Contract Documents. The Construction Manager will be the Contractor's primary contact during construction of the Project.

Construction Schedule.

The "Construction Schedule" is the schedule produced by the Contractor in response to the requirements shown in the Preliminary Bid Schedule.

Construction Administrative Procedures Manual.

The "Construction Administrative Procedures Manual" is the manual produced by the Construction Manager to describe the administrative procedures which will be used on the job-site during construction. This manual outlines administrative procedures which are described in detail in these General Conditions, as well as describing other administrative procedures which may be specific to the Project.

Contract Documents.

The "Contract Documents" shall include the Advertisement for Bids, the Instructions for Bidders, the Proposal Form, the Agreement between County and Contractor, the Bid Bond, the Performance Bond, the Payment Bond, these General Conditions, the Special Provisions, the General Requirements, Exhibits, the Technical Specifications, the contract drawings and plans, all duly issued Addenda, Modifications, Interpretations, and Change Orders, Supplemental Drawings, the Contractor's Guarantee and Bond, the Construction Administrative Procedures Manual, the Subcontractor Listing, Preliminary Construction Schedule and the Construction Schedule in its most recently updated and accepted version. A modification is a written amendment to the agreement signed by both parties.

Contract Drawings or Plans.

The "Contract Drawings" (sometimes referred to as "drawings" or "plans") are the plans and working drawings which show the location, character, dimensions and details of the Work to be performed, and all supplemental drawings issued by the County. Once approved, all such supplemental drawings are incorporated into and become a part of the Contract Documents.

Contract Sum.

"Contract Sum" is the total amount payable by the County to the Contractor for the performance of the Work under the Contract Documents. The Contract Sum is the amount stated in the Agreement for Construction, including authorized adjustments thereto.

Contract Time.

"Contract Time" shall mean the period specified for completion of the Work, as set forth in the Agreement for Construction and adjusted by any change order issued pursuant to the Contract Documents.

Contractor

"The Contractor" shall mean the person or persons, partnership, or corporation, who have entered into the Agreement with the County or its legal representatives, or successors, assigns, executors, or heirs. The Contractor is required by law to be licensed as and will perform work or render services as a prime contractor.

Date of Commencement.

"Date of Commencement" is the date established in the Notice to Proceed. If there is no Notice to Proceed, it shall be the date of the Agreement for Construction or such other date as may be established therein.

Date of Completion.

The "Date of Completion" is the date certified by the Construction Manager when construction of the Work is 100% complete including acceptance by the Project Consultant of all punch list corrections. .

Day.

Unless otherwise expressly defined, a "day" shall mean a calendar day of 24 hours, including each and every day of the year.

Equal (as in "or equal").

"Equal" shall mean a system, product or material which is similar in all respects to that shown or specified but produced by a manufacturer not listed in the specification. See also: Substitution.

Equipment.

"Equipment" shall mean all pre-manufactured or partially preassembled products or components, assembled or partially assembled before delivery to the Site.

First Line Supervision.

"First Line Supervision" shall mean a working foreman or lead craft worker other than the project superintendent.

Inspector.

The "Inspector" shall mean the person or persons employed or engaged as (an) independent contractor(s) by the County to inspect the performance of the Work by the Contractor for compliance with the Contract Documents. The County Inspector is hereby designated as an agent of the County for such purpose and no other. The County Inspector is supervised by, and reports to, the County. The authority of the County Inspector to monitor the Work shall be strictly limited to that authority specified herein and in Title 24, California Code of Regulations, and no additional authority has been granted nor shall be inferred. The Project Consultant may be designated as the County Inspector, in which case the Project Consultant shall perform the function and have the authority of both positions.

Interpretations.

"Interpretations" are all clarifications, additional instructions, and explanations issued by the Project Consultant after award of the Contract.

Materials.

"Materials" is a generic term which shall include all building materials, articles, supplies, and equipment delivered to the project for incorporation in the Work. "Materials" includes everything incorporated into the Work except labor, unless otherwise noted.

Milestone Completion Date.

The "Milestone Completion Date" is the date certified by the Construction Manager when construction of the Work of any phase is 100% complete including acceptance by the Project Consultant of all punch list corrections.

Modification.

A "Modification" is a written amendment to the Agreement between the County and Contractor signed by both Parties.

Notice of Intent to Award.

The "Notice of Intent to Award" is issued following County approval of bids. It authorizes the Contractor to obtain required bonds and insurance and to procure all materials and equipment necessary to fulfill its contract within the time shown in the schedule.

Notice to Proceed.

"Notice to Proceed" is the notice given to the Contractor following execution of the Agreement for Construction and receipt of all required preconstruction submittals as itemized in the Notice of Intent to Award, which establishes the start of the Work and authorizes the Contractor to begin construction.

Owner.

"Owner" shall mean the County of Tulare, a political subdivision of the State of California.

Owner's Representative.

"Owner's Representative" shall mean Capital Projects Coordinator Kyle Taylor, or such other person or entity as may be so designated by the Owner from time-to-time. The Owner shall provide written notice to the Contractor of any change in the designation or identity of the Owner's Representative.

Product Data.

"Product Data" shall mean illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for

some portion of the Work.

Project.

"Project" shall mean the complete work of improvement referenced in the Contract Documents, of which the Work may be only a portion.

Project Consultant

The "Project Consultant" is the consulting firm engaged as an agent by the County to perform the services set forth in the Contract Documents. The Project Consultant is designated by the Board of Supervisors as the County's agent to perform all functions delegated to the Project Consultant by the Contract Documents.

Project Consultant's Instruction Bulletin

"Project Consultant's Instruction Bulletins" are supplemental drawings or instructions which may be issued as necessary from time to time to make clear or define in greater detail the intent of the Contract Drawings and Specifications. There may be a change in Contract Sum or Contract Time involved with the work shown in the Bulletin.

Project Manual.

"Project Manual" is the Introductory Information (Division 0), the General Requirements (Division 1) and the Project Specifications.

Proposed Change Order (PCO).

A "Proposed Change Order (PCO)" is the name given to a document issued by the Construction Manager authorizing work to proceed on a change in anticipation of approval and issuance by the County of a Change Order.

Provide.

"Provide" shall mean to furnish, install, and connect complete and ready for use.

Reference to Codes.

Unless otherwise noted, all references to statutes are to the laws of the State of California as codified in the various specified codes.

Request for Proposal (RFP).

A "Request for Proposal" is the name given to a document issued by the Construction Manager requesting pricing information for a described scope of work.

Samples.

"Samples" shall mean physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

Shop Drawings.

"Shop Drawings" shall mean drawings, diagrams, schedules and other data specifically prepared by the Contractor or any subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

Site.

"Site" is the area within which the Project is to be constructed.

Special Inspector.

The "Special Inspector" shall mean the person or persons employed or engaged as (an) independent contractor(s) by the County to inspect the performance of specific aspects of the work as required by Title 24, California Code of Regulations.

Special Provisions.

The "Special Provisions" are specific clauses setting forth conditions or requirements peculiar to the Work, and supplementary to the General Conditions and Technical Specifications.

Specifications.

"Specifications" include the special provisions, general conditions, general requirements, and technical specifications applicable to the Work, all duly executed and issued addenda and interpretations, and all modifications approved by the County pursuant to a change order.

Subcontractor.

"Subcontractor" shall mean each person or firm who is required by law to be and who is licensed to and will perform work, labor, or render services to the Contractor in or about the construction of the Work, or who, under subcontract to the Contractor, fabricates and installs a portion of the work or improvement.

"Subcontractor" shall include all persons or firms within the authority of the Subletting and Subcontracting Fair Practices Act, Chapter 2 of Division 5, Title I of the Public Contract Code, commencing with Section 4100.

Substitution.

"Substitution" shall mean a system, process, product or material similar in form or function and equal in quality and performance to that shown or specified, but differing in some essential element, e.g., chemical composition, mechanism of action, surface finish, dimensions, durability, electrical or mechanical or plumbing requirements. See also: Equal.

Supply.

"Supply" shall mean to furnish only, complete and ready for installation, including shipping, delivery, protection, and any assembly required prior to installation.

Work.

The "Work" shall mean that scope of work included in this Contract.

1.1.1 THE CONTRACT DOCUMENTS

The "Contract Documents" shall include the Advertisement for Bids, the Instructions to Bidders, the Proposal Form, the Agreement between the County and Contractor, the Bid Bond, the Performance Bond, the Payment Bond, these General Conditions, the Special Provisions, the General Requirements, Exhibits, the Technical Specifications, the contract drawings and plans, all duly issued Addenda, Modifications, Interpretations, and Change Orders, Supplemental Drawings, the Contractor's Guarantee and Bond, the Construction Administrative Procedures Manual, the Subcontractor Listing, Preliminary Construction Schedule and the Construction Schedule in its most recently updated and accepted version.

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1. The Contract Documents shall not be construed to create any contractual relationship of any kind between the Construction Manager and the Contractor, but the Construction Manager shall be entitled to performance of the obligations of the Contractor intended for their benefit and to enforcement thereof. Nothing contained in the Contract Documents shall create any contractual relationship between the County, the Construction Manager and any Subcontractor or Sub-subcontractor.

1.1.3 THE WORK

The Work comprises the completed construction required of the Contractor by the Contract Documents, and includes all labor, materials, equipment and services necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction for the Tulare County – **Sheriff and Fire Dispatch Center, 5300 W Tulare Avenue, Visalia, CA 93277**

1.1.4 THE PROJECT

The Project, as defined in the County-Contractor Agreement, is the total construction of which the Work performed under the Contract Documents is a part.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.0 Award of Contract – The County reserves the right to reject any or all proposals, or waive any discrepancy in a proposal. The decision of the County regarding the amount of a bid, or existence or treatment of a discrepancy in a bid will be final. The award of a contract, if it is awarded, will be to the lowest responsible bidder whose proposal complies with all the requirements prescribed. Such award, if made, will be made within 60 days after the opening of proposals. This period may be subject to an extension for such further period as may be agreed upon in writing by County and the bidder concerned. The following failures are not waivable and will cause the bid to be considered nonresponsive:

- a. Failure to sign the bid
- b. Failure to furnish the required bid bond on the provided County form, or a cashier's check in an amount equal to 10% of the base bid
- c. Failure to include a total amount of the bid
- d. Failure to attend the mandatory pre-bid conference and/or sign the pre-bid conference attendance roster if the pre-bid conference is advertised as mandatory
- e. Failure to submit a completed addenda certification statement

The above list is not inclusive of all failures that the Tulare County Board of Supervisors will consider nonresponsive. However, the Tulare County Board of Supervisors reserves the right to waive other types of discrepancies or failures. The Tulare County Board of Supervisor's decision or treatment regarding a bid will be final.

The Contract shall be signed by the successful bidder and returned within 7 calendar days, not including Tulare County legal holidays, after the bidder has received notice that the Contract has been awarded.

The Contractor shall file with the signed contract two bonds. These bonds shall be in the amount and for the purposes specified below. They shall be surety bonds and shall be issued by corporations duly and legally licensed to transact business in the State of California. They shall be maintained by the Contractor, at its expense, during the entire term of the Contract.

A Performance Bond shall be furnished in the amount of one hundred percent (100%) of the contract sum, and shall guarantee faithful performance of the Contract and shall insure the County during the life of the Contract and for the term of 1 year from the date of acceptance of the work against faulty or improper materials or workmanship that may be discovered during that time.

A Payment Bond shall be furnished in an amount not less than one hundred percent (100%) of

the contract sum and shall guarantee the payment in full of all claims for labor and material in accordance with the provisions of Sections 9550-9566 of the Civil Code of the State of California. The life of the Payment Bond shall extend to 30 days after notice of completion is recorded.

All bonds required, whether Bid Bonds, Performance, Payment or other Bonds, shall be issued by an admitted surety insurer. The Bid Bond, Performance Bond and Payment Bond must be issued by the same admitted surety insurer. The Payment and Performance Bonds required by these specifications will neither be accepted nor approved by the County unless bonds are in the forms shown in Sections 502 and 503 of the specifications and are underwritten by an admitted surety. The County further reserves the right to satisfy itself as to the acceptability of the surety and the form of bond. The Bidder may be required to submit the following documents:

1. The original, or a certified copy, of the unrevoked appointment, power of attorney, bylaws, or other instrument authorizing the person who executed the bond to do so.
2. A certified copy of the certificate of authority of the insurer issued by the California Insurance Commissioner.
3. A certificate from the County Clerk that the certificate of authority has not been surrendered, revoked, canceled, annulled, or suspended, or in the event that it has, that renewed authority has been granted.
4. A financial statement of the assets and liabilities of the insurer to the end of the quarter calendar year prior to 30 days next preceding the date of the execution of the bond, in the form of an officers' next preceding the date of the execution of the bond, in the form of an officers' certificate as defined in Corporations Code section 173.

- 1.2.1 The Contract Documents shall be signed in not less than three (3) original copies by the County and the Contractor.
- 1.2.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with the local conditions under which the Work is to be performed, and has correlated personal observations with the requirements of the Contract Documents.
- 1.2.3 Subject to Article 12, the Contract Documents, including the specifications and plans and drawings, are complementary and what is called for by any one shall be as binding as if called for by all. In case of conflict, large scale (detail) drawings shall govern over small-scale drawings, the specifications shall govern over both the construction administrative procedures manual and the Contract Drawings except as noted below, special provisions shall govern over both the contract drawings and the general conditions, and subsequent addenda, interpretations, or change orders shall govern over the original documents, unless a different order of precedence is noted elsewhere in conjunction with a specific portion of the documents.
- 1.2.4 Subject to Article 15.10.1, in cases of discrepancy concerning dimension, quantity and location, the Specifications shall take precedence over the Drawings. Explanatory notes on the Drawings shall take precedence over conflicting drawn indications. Large Scale details shall take precedence over smaller scale details and figured dimensions shall take precedence over scaled measurement. Where figures are not shown, scale measurements shall be followed but shall in all cases be verified by measuring actual conditions of Work already in place. In cases of discrepancy concerning quality and application of materials and non-technical requirements over materials, the specifications shall take precedence over Drawings. In the case of discrepancy between the General Conditions and the General Requirements, the General Requirements shall take precedence.

- 1.2.5 Where on any Drawing a portion of the Work is drawn out and the remainder is indicated in outline, the drawn-out parts shall apply to all other like portions of the Work. Where ornament or other detail is indicated as starting, such detail shall be continued throughout the courses or parts in which it occurs and shall also apply to other similar parts in the Work, unless otherwise indicated.
- 1.2.6 Scale drawings, full-size details, and specifications are intended to be fully coordinated and to agree. Where not specifically stated otherwise, all work and materials necessary for each unit of construction, even though only briefly mentioned or indicated, shall be furnished and installed fully and completely, including, but not limited to, the manufacturer's instructions and/or recommendations, as part of this Contract.
- 1.2.7 Any material specified by reference to the number, symbol, or title of a specified standard such as a Commercial Standard, a Federal Specification, a trade association standard, or other similar standards, shall comply with the requirements in the latest approved revision thereof and any amendments or supplements thereto in effect on the date of Advertisement for Bids, except as limited to type, class, or grade, or modified in such reference. The standards referred to, except as modified in the Specifications, shall have full force and effect as though printed in these Specifications.
- 1.2.8 Diagrammatic Drawings: Drawings showing the locations of equipment, wiring, piping, etc., unless dimensioned, are diagrammatic, and conditions will not always permit their installation in the exact location shown. In such event, the Contractor shall notify the Construction Manager and obtain an interpretation before proceeding with the work in question. Unless site conditions are significantly different than could have been reasonably anticipated, installation as specified in the interpretation shall be without any additional compensation to the Contractor.
- 1.2.9 Project Consultant's Instruction Bulletins and Drawings.
In addition to the Drawings incorporated in the Contract Documents, the Project Consultant, through the Construction Manager, may furnish such supplemental drawings or instructions from time to time as may be necessary to make clear or to define in greater detail the intent of the Contract Drawings and Specifications. In furnishing additional drawings or instructions, the Project Consultant shall have the authority to make minor changes in the Work, not involving any extra cost, and not inconsistent with the overall design of the Project. If extra cost is known to be involved, these instructions will be accompanied by a PCO/RFP. These supplemental drawings and instructions shall be signed and returned by the Contractor within five (5) days and shall become a part of the Contract Documents; the Contractor shall make its work conform to them.
- 1.2.10 If the Contractor observes any errors, discrepancies or omissions in the Contract Documents, it shall promptly notify the Construction Manager requesting clarification. If the Contractor proceeds with work affected by such errors, discrepancies or omissions, without having received such clarification, it does so at its own risk. Any adjustments involving such circumstances made by the Contractor, prior to approval by the Construction Manager, shall be at the Contractor's risk and the settlement of any complications or disputes arising there from shall be at the Contractor's sole expense and Contractor shall indemnify, hold harmless and defend County, and Construction Manager from any liability or loss with respect to said adjustments.
- 1.2.11 When the Contractor does not agree that work due to an interpretation or supplemental drawing or instruction is within the scope of the Contract Documents, the Contractor shall nevertheless perform such work without delay as directed in writing by the Construction Manager. Within seven (7) days after receipt of the interpretation or instruction, the Contractor shall submit a change order request to the Construction Manager specifying in detail in what particulars the Contract requirements were exceeded and the change in cost resulting there from. The Construction Manager shall then determine whether a Change Order shall be issued

in accordance with Article 12 of these General Conditions.

- 1.2.12 The time during which the protest is pending shall not affect the Contract Time. Contract time extensions shall be based solely on extra time required for work performed.
- 1.2.13 All work and material shall be the best of the respective kinds specified or indicated. Should any workmanship or materials be required, which are not directly or indirectly called for in the Specifications and/or shown on the Drawings, but which are necessary for proper fulfillment of the obvious intent thereof, said workmanship or materials shall be the same for similar parts that are detailed, indicated or specified, and the Contractor shall understand the same to be implied and provide for it in its tender as if it were particularly described or delineated.

1.3 OWNERSHIP AND USE OF DOCUMENTS

- 1.3.1 All Drawings, Specifications and copies thereof furnished are and shall remain the property of the County. With the exception of one Contract set for each party to the Contract, such documents are to be returned by Contractor or suitably accounted for to the County on request at the completion of the Work. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Project Consultant's common law copyright or other reserved rights. The County's use of the documents will not increase the Project Consultant's design liability beyond the Project and the site for which the design was originally intended.

ARTICLE 2 **ADMINISTRATION OF THE CONTRACT**

2.1 THE PROJECT CONSULTANT

- 2.1.1 The PROJECT CONSULTANT is the person lawfully licensed to practice architecture or design services, or an entity lawfully practicing architecture or design services, identified as such in the County-Contractor Agreement. The term Project Consultant means the Consultant or the Consultant's authorized representative.
- 2.1.2 The Project Consultant is the Project Consultant or firm engaged as an independent Contractor by the County to design the Project, and all subconsultants or joint venturers of the Project Consultant. The authority of the Project Consultant to bind the County is limited to that authority specified in the Contract Documents, and no additional authority has been granted, nor shall be inferred.
- 2.1.3 The Project Consultant advises the Construction Manager in all aspects of the construction phase of the Project. Its functions include advice and assistance to the Construction Manager in the correct interpretation and application of the Contract Documents. However, the Construction Manager is the County's representative on the Project, not the Project Consultant.
- 2.1.4 The Contractor shall deliver all correspondence relating to the proper execution of the Work to the Construction Manager, with a copy delivered to the Project Consultant. The Construction Manager reserves the right to consult with the Project Consultant prior to responding to the Contractor's correspondence.
- 2.1.5 When discussions between the Contractor and the Construction Manager occur either on the site or elsewhere, but the Project Consultant is not present, the Construction Manager reserves the right to consult with the Project Consultant prior to issuing his/her final decision or instructions.

- 2.1.6 The Project Consultant will review or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and the information given in the Contract Documents. Such action shall be taken within ten (10) working days so as to cause no delay. The Project Consultant's review of a specific item shall not indicate approval of an assembly of which the item is a component.
- 2.2 **THE CONSTRUCTION MANAGER**
- 2.2.1 The "Construction Manager" is the County's designated representative in all aspects of administering the construction Contract on behalf of the County. All communications from the Contractor will be channeled through the Construction Manager. **However, the Construction Manager does not have the authority to bind the County in matters affecting adjustments to the time or cost of project as defined in Agreement for Construction.**
- 2.2.2 The Construction Manager will be the County's representative during construction and until final payment to all contractors is due. The Construction Manager will advise and consult with the County. All instructions to the Contractor shall be forwarded through the Construction Manager. The Construction Manager will have authority to act on behalf of the County only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with Subparagraph 2.2.17.
- 2.2.3 The Construction Manager will determine in general that the Work of the Contractor is being performed in accordance with the Contract Documents, and will endeavor to guard the County against defects and deficiencies in the Work of the Contractor.
- 2.2.4 The Construction Manager will be on-site for the duration of the construction process and will administer the Contractor's Contract and observe and report on the progress of the Work. The Construction Manager will review the progress and quality of the Work and determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of on-site observations and communication with the Contractor, the Construction Manager will keep the County informed of the progress of the Work, and will endeavor to guard the County against defects and deficiencies in the Work of the Contractor.
- 2.2.5 The Construction Manager shall at all times have access to the Work wherever it is, in preparation and progress. The Contractor shall provide facilities for such access so that the Construction Manager may perform their functions under the Contract Documents.
- 2.2.6 Based on the Construction Manager's observations, and an evaluation of the Contractor's Application for Payment, the Construction Manager will determine the amount owing to the Contractor and will issue to the County Certificates for Payment incorporating such amount, as provided in Paragraph 9.4.
- 2.2.7 The Construction Manager will be the initial interpreter of the requirements of the Contract Documents and the initial judge of the performance thereunder by the Contractor.
- 2.2.8 The Construction Manager will render interpretations necessary for the proper execution or progress of the Work, with reasonable promptness and in accordance with agreed upon time limits. Either party to the Contract may make written request to the Construction Manager for such interpretations.
- 2.2.9 Claims, disputes and other matters in question between the Contractor and the Construction Manager relating to the execution or progress of the Work or the interpretation of the Contract

Documents shall be referred to the County Administrative Officer of Tulare County or (his/her designee).

- 2.2.10 All interpretations and decisions of the Construction Manager shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in graphic form.
- 2.2.11 The County's decisions in matters relating to artistic effect will be final.
- 2.2.12 The Construction Manager will have the authority to reject or recommend to the County the rejection of work, materials, or workmanship which does not conform to the Contract Documents. Whenever, in the Construction Manager's opinion, it is considered necessary or advisable for the implementation of the intent of the Contract Documents, the Construction Manager will have authority to require special inspection or testing of the Work in accordance with Subparagraph 7.7.1 whether or not such Work be then fabricated, installed or completed.
- 2.2.13 The Construction Manager receives from the Contractor and reviews in conjunction with the Project Consultant all Shop Drawings, Product Data and Samples.
- 2.2.14 The Construction Manager will forward Contractor's submittals such as Shop Drawings, Product Data and Samples, to the Project Consultant for review and approve or for other appropriate action. The Project Consultant's action is only for conformance with the design concept of the Work and the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Project Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- 2.2.15 Following consultation with the County, the Construction Manger will take appropriate action on Change Orders in accordance with Article 12, and will have authority to order minor changes in the Work as provided in Subparagraph 12.4.1.
- 2.2.16 The Construction Manager, in conjunction with the Project Consultant, will conduct inspections to determine the date of final completion, and will receive and forward to the County for the County's review written warranties and related documents required by the Contract and assembled by the Contractor. The Construction Manager will issue a final Project Certificate for Payment upon compliance with the requirements of Paragraph 9.8.
- 2.2.17 The duties, responsibilities and limitations of authority of the Construction Manager as the County's representative during construction as set forth in the Contract Documents, will not be modified or extended without written consent of the County, and the Construction Manager, which consent shall not be unreasonably withheld.
- 2.2.18 In case of the termination of the employment of the Construction Manager, the County shall appoint a Construction Manager, whose status under the Contract Documents shall be that of the former Construction Manager, respectively.

ARTICLE 3 **COUNTY**

3.1 DEFINITION

- 3.1.1 The County is the person or entity identified as such in the County-Contractor Agreement. The term County means the County or the County's authorized representative for this project.

3.2 INFORMATION AND SERVICES REQUIRED OF THE COUNTY

- 3.2.1 Except as provided in Subparagraph 4.7.1, the County shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 3.2.2 Information or services under the County's control shall be furnished by the County with reasonable promptness to avoid delay in the orderly progress of the Work.
- 3.2.3 The Contractor will be furnished not more than ten (10) copies of the Drawings and Project Manual, free of charge. Additional copies over this number may be obtained by the Contractor, at the cost of reproduction.
- 3.2.4 The County shall forward all instructions to the Contractor through the Construction Manager.
- 3.2.5 The foregoing are in addition to other duties and responsibilities of the County enumerated herein and especially those in respect to Work By County or By Separate Contractors, Payments and Completion, and Insurance in Articles 6, 9 and 11, respectively.
- 3.3 **COUNTY'S RIGHT TO STOP THE WORK**
- 3.3.1 If the Contractor fails to correct defective Work as required by Paragraph 13.2, or persistently fails to carry out the Work in accordance with the Contract Documents, the County, by a written order signed personally or by an agent specifically so empowered by the County in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the County to stop the Work shall not give rise to any duty on the part of the County to exercise this right for the benefit of any Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.
- 3.4 **COUNTY'S RIGHT TO CARRY OUT THE WORK**
- 3.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within three (3) days after receipt of written notice from the County to correct such default or neglect with diligence and promptness, the County may, after an additional written notice and without prejudice to any other remedy the County may have, make good such deficiencies, and may further elect to complete that portion of the Work through such means as the County may select, including the use of a new contractor. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the additional services of the Construction Manager, Project Consultant or other Professionals made necessary by such default, neglect or failure. Such action by the County and the amount charged to the Contractor are both subject to review by the Construction Manager. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the County.

ARTICLE 4

CONTRACTOR

- 4.1 **DEFINITION**
- 4.1.1 The Contractor is the person or entity identified as such in the County-Contractor Agreement. The term Contractor means the Contractor or the Contractor's authorized representative.
- 4.2 **REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS**

- 4.2.1 The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Construction Manager any error, inconsistency or omission that may be discovered. The Contractor shall not be liable to the County or the Construction Manager for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistencies or omissions and knowingly failed to report it to the Construction Manager. The Contractor shall perform no portion of the Work at any time unless authorized by the Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.
- 4.2.2 Neither the County nor the Construction Manager nor Project Consultant assume any responsibility for an understanding or representation made by any of their agents or representatives prior to the execution of the Agreement unless (1) such understanding or representations are expressly stated in the Agreement, and (2) the Agreement expressly provides that responsibility therefore is assumed by the County.
- 4.2.3 Failure by the Contractor to acquaint himself with all available information will not relieve it from responsibility for estimating properly the difficulty or cost of successfully performing the Work.
- 4.2.4 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Construction Manager at once.
- 4.2.5 Before submitting any Request for Information (RFI), or other Contractor-initiated request for information the Contractor shall determine that the information requested is not clearly provided in the Contract Documents. RFI submittals shall be submitted to the Construction Manager only from the Contractor, or County, and not from any subcontractor, supplier or other vendor, and shall be on a form approved by the Construction Manager and County. The Contractor shall provide a revised and updated RFI Priority Schedule on not less than a weekly basis. The RFI Priority Schedule shall rank RFI's in order of priority and include a brief statement of reason for priority. County-initiated RFI's will not be listed on the Contractor's RFI Priority Schedule. The County will provide the Construction Manager a separate list of County initiated RFI's upon request of the Construction Manager. The Construction Manager will endeavor to respect the order of priorities as requested by the Contractor or County for the overall benefit of the Project. The RFI process is for information and clarification only and may not be utilized to obtain approval for changes in the Work.

4.3 **SUPERVISION AND CONSTRUCTION PROCEDURES**

- 4.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences, procedures, or safety procedures at the project site; and shall coordinate all portions of the Work under the Contract.
- 4.3.2 The Contractor shall be responsible to the County for the acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and any other persons performing any of the Work under a contract with the Contractor.
- 4.3.3 The Contractor shall not be relieved from the Contractor's obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Construction Manager in their administration of the Contract, or by inspections, tests or approvals required or performed under Article 7 by persons other than the Contractor.
- 4.3.4 The County, Construction Manager, and Project Consultant will deal only with the Contractor,

and not through subcontractors. The Contractor shall be responsible for the proper execution of the Work. Any and all discussions between any subcontractor and supplier and the County, Construction Manager or the Project Consultant shall be initiated through the Contractor or its representative.

- 4.3.5 The Contractor is to provide training to its employees as needed to insure that proper safety procedures are followed when working with asbestos containing materials. All applicable OSHA standards are to be followed and the Contractor is responsible for proper handling and disposal of asbestos containing materials as a result of its work.

4.4 **LABOR AND MATERIALS**

- 4.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- 4.4.2 The Contractor shall at all times enforce strict discipline and good order among the Contractor's employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned them.
- 4.4.3 The Contractor shall deliver to the Construction Manager, prior to final acceptance of the Work as a whole, signed certificates from suppliers of materials and manufactured items stating that such items conform to the Contract Documents.
- 4.4.4 The Contractor, immediately upon Notice to Proceed (or where shop drawings, samples, etc., are required, immediately upon receipt of approval thereof) shall place orders for all materials, work fabrication, and/or equipment to be employed by it in that portion of the Work contracted for. The Contractor shall keep all materials, work fabrications and/or equipment specified and shall advise the Construction Manager promptly, in writing, of all orders placed and of such materials, work fabrications and/or equipment which may not be available in a timely manner for the purposes of the Contract.
- 4.4.5 Workers whose work is unsatisfactory to the County or the Construction Manager, or are considered by the County or Construction Manager to be careless, incompetent, unskilled or otherwise unfit shall be dismissed from work under the Contract upon written request to the Contractor from the County or the Construction Manager. Any costs associated with dismissal are the responsibility of the Contractor. Any termination of a subcontractor pursuant to this Section shall be in strict conformity with the requirements of the Subletting and Subcontracting Fair Practices Act, Part 1 of Division 2 of the Public Contract Code, commencing with Section 4100.
- 4.4.6 In the event that the Contractor furnishes a material, product, process, or article better than that specified in the Contract Documents, the difference in cost of that material, product, process, or article shall be borne by the Contractor.
- 4.4.7 Prior to the Notice to Proceed, Contractor shall submit a list of all subcontractors and material suppliers including company name, address, business and emergency telephone numbers, and contact person.

4.5 **WARRANTY**

- 4.5.1 The Contractor warrants to the County that all materials and equipment furnished under this

Contract will be new unless otherwise specified and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. The Contractor warrants to the County that to the best of the Contractor's knowledge, no installed materials or equipment contain asbestos. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Construction Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Paragraph 13.2. Contractor shall guarantee all work required under the Agreement against faulty materials or poor workmanship during the construction period and for **1 year** after the date of completion and acceptance of the Work.

4.6 **TAXES**

- 4.6.1 The Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time bids are opened, whether or not yet effective.

4.7 **PERMITS, FEES AND NOTICES**

- 4.7.1 Unless otherwise provided in the Contract Documents, the County shall secure and pay for the building permit and permanent utility connection fees. The Contractor shall secure and pay for temporary construction utilities, and all other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required at the time bids are opened.
- 4.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.
- 4.7.3 If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, the Contractor shall promptly notify the County in writing, and any necessary changes shall be accomplished by appropriate modification.
- 4.7.4 If the Contractor performs any Work contrary to any laws, ordinances, rules and regulations, without notice to the Construction Manager, the Contractor shall assume full responsibility therefore and shall bear all costs attributable thereto.
- 4.7.5 Any reference in the Project Manual text to codes, standard specifications or manufacturer's instructions shall mean the latest printed edition of each in effect at the Contract date.

4.8 **ALLOWANCES**

- 4.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by such persons as the Construction Manager may direct, but the Contractor will not be required to employ persons against whom the Contractor makes a reasonable objection.
- 4.8.2 Unless otherwise provided in the Contract Documents:
- .1 These allowances shall cover the cost to the Contractor, less any applicable trade discount, of the materials and equipment required by the allowance, delivered at the site, and all applicable taxes;
 - .2 The Contractor's costs for unloading and handling on the site, labor, installation costs,

overhead, profit and other expenses contemplated for the original allowance shall be included in the Contract Sum and not in the allowance; and

- .3 Whenever the cost is more or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize changes, if any, in handling costs on the site, labor, installation costs, overhead, profit and other expenses.

4.9 SUPERINTENDENT

- 4.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The Contractor shall provide résumés for all of the Contractor's supervisory employees to be assigned to the Project for County review, and the County may reject any supervisory employees not deemed to be qualified at the sole discretion of the County. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed upon written request in each case.

- 4.9.2 The Superintendent who begins the Project shall remain on the Project until the Project is completed, as long as that person is employed by the Contractor. The Superintendent shall not be replaced without the approval of the County.

If Contractor fails to provide a qualified full-time superintendent on the site on any given day when Work is being performed, then Contractor shall pay to County, as liquidated damages and not as a penalty, the sum of **\$750.00** per day for each such day. County and Contractor agree that County's damages for such failure would be extremely difficult or impracticable to determine and that the aforesaid amounts are reasonable estimates of and reasonable sums for such damages. County may deduct any liquidated damages due from Contractor from any amounts otherwise due to Contractor under the Contract Documents. This provision shall not limit any right or remedy of County in the event of any other default of Contractor.

4.10 CONTRACTOR'S CONSTRUCTION SCHEDULE

4.10.1 Contract Schedule Development

Within 10 days after receiving the Notice to Proceed, the Contractor shall submit a detailed proposed Contract Schedule presenting an orderly and realistic plan for completion of the Work, in conformance with the requirements of this specification.

The Contract Schedule shall furnish or comply with the following requirements:

- A. Format: a time scaled CPM schedule.
- B. Overall time of completion and time of completion for each milestone shown on the Contract Schedule shall adhere to the times in the Project Manual, if applicable.
- C. Calendar Schedule: Calendar days are the basis of the schedule.
- D. No activity on the schedule shall have duration longer than seven (7) days, with the exception of fabrication and procurement activities, unless otherwise approved by the Construction Manager. Activity durations shall be the total number of actual days required to perform that activity including consideration of weather impact on completion of that activity.

- E. Procurement of major equipment, through receipt and inspection at the job site, identified as a separate activity.
- F. County-furnished materials and equipment if any, identified as separate activities.
- G. Dependencies (or relationships) between activities shown.
- H. Processing/approval of submittals and shop drawings for major equipment shown. Activities that are dependent on submittal acceptance and/or material delivery shall not be scheduled to start earlier than the expected acceptance or delivery dates.
- I. The total cost of performing each activity shown. This cost shall be the total of labor, material, equipment, including overhead and profit. The sum of the cost for activities shall equal the total contract value.
- J. The resources required (manpower and major equipment) to perform each activity shown.
- K. Ten (10) days for developing punch list(s), completion of punch list items, and final clean up for the Work or any designated portion thereof.
- L. Interface with the work of other Contractors (or entities).
- M. Separate buildings and other independent project elements shall be individually identified in the network.

Along with the schedule, Contractor shall provide a procurement log including the following information for each type of material or equipment to be provided:

- N. Material or equipment description.
- O. Technical specification reference.
- P. Duration in days required for preparation and review of submittals.
- Q. Duration in days required for fabrication and delivery.
- R. Cross references to activities, which will be affected by the delivery date of the material or equipment item.
- S. Scheduled delivery dates.

The Contractor shall submit the reports and number of copies as required under Division One of this specification.

The Construction Manager will review the Proposed Contract Schedule for conformance with the requirements of the Contract. Within three (3) days after receipt, the Construction Manager will accept the Contract Schedule or will return it with comments. If the Proposed Contract Schedule is not accepted, Contractor shall revise the schedule to incorporate comments and resubmit the schedule for acceptance within three (3) days after receiving the comments.

The accepted Contract Schedule shall be the basis for evaluating job progress, payment requests, and time extension requests. The responsibility for developing the Contract Schedule

and monitoring actual progress as compared to the schedule rests with the Contractor.

Failure of the Contract Schedule to include any element of the Work or any inaccuracy in the Contract Schedule will not relieve Contractor from responsibility for accomplishing all the work in accordance with the Contract.

Acceptance of the Contract Schedule will not relieve the Contractor of the responsibility for accomplishing the work in accordance with the Contract.

Monthly Updates

Contractor shall submit to the Construction Manager each month an up-to date status report of the work. The status report shall include:

- A. Contractor's estimated percentage complete for each activity not yet complete.
- B. Actual start/finish dates for activities as appropriate.
- C. Identification of processing errors, if any, on the previous update reports.
- D. Revisions, if any, to the assumed activity durations including revisions for weather impact for any activities due to the effect of the previous update on the schedule.
- E. Identification of activities that are affected by Proposed Change Orders issued during the update period.
- F. Resolution of conflict between actual work progress and work schedule. When out-of-sequence activities develop in the Contract Schedule because of actual construction progress, the Contractor shall submit revisions to the schedule to conform to current status and direction.

The Construction Manager will review the updated information and meet with the Contractor each month at the site to determine the status of the Work. If agreement cannot be reached on any issue, the Contractor will use the Construction Manager's determination in the processing of the update.

Progress payments pursuant to the Contract will be based on the update of the Contract Schedule.

Short Interval Schedules

Contractor shall prepare a Short Interval Schedule (SIS) to be used throughout the duration of Work. The SIS shall include all current activities and projected activities for the succeeding one (1) week. The SIS shall include actual start/finish dates for the preceding one (1) week. The SIS shall be submitted to the Construction Manager prior to the weekly construction meeting. The Contractor shall participate in short interval scheduling coordination during the weekly construction meetings.

Responsibility for Completion

The Contractor shall furnish sufficient manpower, materials, facilities and equipment and shall work sufficient hours, including night shifts, overtime operations, Sundays and holidays as may be necessary to insure the prosecution and completion of the Work in accordance with the accepted Construction Schedule. If work on the critical path is seven days or more behind the currently updated Construction Schedule and it becomes apparent that the Work will not be completed within the Contract Time, the Contractor will implement whatever steps it deems necessary to make up all lost time. If the Contractor's solution is not successful, it will make further

attempts using the following sequence of events:

- A. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities.
 - B. If the above cannot be achieved then;
1. The Contractor shall increase manpower in such quantities and crafts as will substantially eliminate, in the judgment of the Construction Manager, the backlog of work; or increase the number of working hours, shifts per working day, working days per week or the amount of equipment or any combination of the foregoing sufficiently to substantially eliminate in the judgment of the Construction Manager the backlog of work.
 2. In addition, the Construction Manager may require the Contractor to submit a recovery schedule demonstrating its program and proposed plan to make up a lag in scheduled progress and to ensure completion of the Work within the Contract Time. If the Construction Manager finds the proposed recovery schedule unacceptable, it may require the Contractor to submit a new plan. If the actions taken by the Contractor or the second plan proposed are unsatisfactory, the Construction Manager may require the Contractor to take any of the actions set forth in the previous paragraph without additional cost to the County to make up the lag in scheduled progress.

Failure of the Contractor to comply with the requirements of "Short Interval Schedules" shall be considered grounds for a determination by the County, pursuant to Article 14, that the Contractor is failing to prosecute the Work with such diligence as will ensure its completion within the time specified.

Daily Reports

Contractor shall submit a Daily Activity Report to the Construction Manager for each workday including weekends and holidays, when worked.

Contractor may use its own report, provided it contains the same information included in the standard form furnished by the Construction Manager.

4.11 RECORDS, DOCUMENTS AND SAMPLES AT THE SITE

- 4.11.1 The Contractor shall maintain all records of required City, County or State inspections and shall promptly notify the Construction Manager of the results of any inspection. Copies of all such records shall be provided to the County upon request.
- 4.11.2 The Contractor shall secure and maintain required certificates of inspection, testing or approval and shall promptly deliver them to the Construction Manager.
- 4.11.3 The Contractor shall maintain a master set of drawings and specifications at the site which shall be regularly updated to reflect current as-built conditions of the Work. The Contractor shall update the drawings as work progresses. The information to be recorded by the Contractor will be determined by the Project Consultant, who will be responsible for preparing the final, reproducible as-built drawings based upon the information submitted by the Contractor. At a minimum, the following information shall be inserted and dimensioned on those drawings and specifications, in RED, by the Contractor: the exact horizontal and vertical location of all installations in their finished condition, including all electrical, plumbing and mechanical installations; all changes in construction, materials and installed equipment; adequate dimensional data, both horizontal and vertical, to allow location of covered

installations and the identification of changes authorized by Change Order. The updated drawings and specifications shall be available for review by the Construction Manager and the Inspector.

4.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- 4.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
- 4.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.
- 4.12.3 Samples are physical examples, which illustrate materials, equipment or workmanship, and establish standards by which the work will be judged.
- 4.12.4 The Contractor, at its sole cost and expense, shall furnish to the Construction Manager all drawings and other descriptive material as are required by the specifications or requested by the Project Consultant. Shop drawings shall be done with sufficient detail to adequately describe items proposed to be furnished or methods of installation to enable the County and Project Consultant to determine compliance with the specifications and with the design and arrangement shown on the working drawings. The Construction Manager will not accept shop drawings or manufacturers' instructions which are not sufficiently dimensioned and detailed to demonstrate compliance with the Contract Documents.

The Contractor shall check and coordinate all submittals with the work of all trades involved before they are submitted.

All submittals for the Project shall be made within fifteen (15) days of the Notice of Award; however, the Contractor shall have the additional responsibility to coordinate the schedule of its submittals with the requirements of the Construction Schedule so as not to delay the Project. No delay claims related to submittals will be entertained on the Project for any submittal originally received after the 15 day submittal period.

All submissions must be marked with the name of the Project and the name of the Contractor and shall be numbered consecutively and complete in every respect.

The drawings and instructions shall be submitted promptly, so as to cause no delay in the work. The drawings and instructions shall be submitted so as to allow the Construction Manager and the Project Consultant a review period of no less than five (5) days.

- 4.12.5 By preparing, approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that the Contractor has determined and verified all materials, field measurements and field construction criteria related thereto, or will do so with reasonable promptness, and has checked and coordinated the information contained within such submittals with the requirements of the Work, the Project and the Contract Documents. The Contractor shall adhere to any supplementary processing and scheduling instructions pertaining to shop drawings as may be issued by the Construction Manager.
- 4.12.6 The Contractor shall not be relieved from responsibility to fulfill the Contract at no extra cost to the County, within the Contract Time, by the Project Consultant's approval of Shop Drawings, Product Data or Samples. The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Construction Manager's approval of

Shop Drawings, Product Data or Samples under Subparagraph 2.2.14, unless the Contractor has specifically informed the Construction Manager in writing of such deviation at the time of submission and the Project Consultant has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Project Consultant's approval of them.

- 4.12.7 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Project Consultant shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.
- 4.12.8 The Contractor shall direct specific attention, in writing or on resubmitted Shop drawings, Product Data, or Samples, to revisions other than those requested by the Project Consultant on previous submittals. It shall be the responsibility of the Contractor to specifically point out any variation or discrepancy between the shop drawings or manufacturers' instructions submitted and the Contract Documents.

The Contractor shall make specific mention of all variations, along with an explanation of why they are requested, in its letter of transmittal.

FAILURE BY THE CONTRACTOR TO IDENTIFY IN ITS LETTER OF TRANSMITTAL ANY VARIATION, DISCREPANCY, OR CONFLICT WITH THE CONTRACT DOCUMENTS SHALL RENDER THE APPROVAL NULL AND VOID, AND THE CONTRACTOR SHALL BEAR ALL RISK OF LOSS AND RECONSTRUCTION COSTS OR DELAYS.

If any architectural, plumbing, mechanical, electrical, or structural modifications are required as a result of the approval of shop drawings or manufacturers' instructions which deviate from or do not comply with the Contract Documents, those modifications shall be made without extra cost to the County, and without extension of the Contract Time. Any other resultant costs, including but not limited to design fees, Construction Management fees, cost incurred by other contractors, or inspection fees, shall be at the expense of the Contractor.

- 4.12.9 No portion of the work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Project Consultant as provided in Subparagraph 2.2.14. All such portions of the Work shall be in accordance with approved submittals.
- 4.12.10 Submission of Shop Drawings and Samples to the Construction Manager is required for only those items specifically mentioned in the Specification Sections. If Contractor submits Shop Drawings for items other than the above, the Construction Manager will not be obligated to distribute or review them. Contractor shall be responsible for the procuring of Shop Drawings for its own use as it may require for the progress of the Work.
- 4.12.11 The term "Shop Drawings" as used herein also includes, but is not limited to fabrication, erection, layout and setting drawings, manufacturer's standard drawings, descriptive literature, catalogs, brochures, performance and test data, wiring and control diagrams, all other drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and methods of construction as may be required to show that the materials, equipment or systems and the positions and layout of each conform to the Contract requirements. As used herein the term "manufactured" applies to standard units usually mass-produced and "fabricated" means items specifically assembled or made out of selected materials to meet individual design requirements. Shop Drawings shall establish the actual detail of all manufactured or fabricated items; indicate proper relation to adjoining Work; amplify design details of mechanical and electrical equipment in proper relation to physical spaces in the structure; and incorporate minor changes of design or construction to suit actual conditions.

Review of Shop Drawings.

Following submission, the shop drawings will be returned with one or more of five possible responses by the Construction Manager or Project Consultant. These possible responses are as follows:

- A. Unreviewed: If the submittal is not required, or if it is not complete, or if it does not meet the form, format, and number requirements specified, it may be returned unreviewed. If the submittal is not required, work may commence; if the submittal was returned due to form requirements, it shall be resubmitted and approval obtained prior to commencement of the work.
- B. Approved, Reviewed, or No exceptions taken: In the event the submittal is acceptable as submitted, it will be returned with this status. Work may proceed upon receipt of approved submittal.
- C. Make Corrections Noted: If the submittal is acceptable except for certain items which have been noted by the Project Consultant, it will be so designated. Work may proceed with the corrections made, and no resubmittal is necessary.
- D. Revise and Resubmit: This status indicates that revisions are noted on the submittal, and an additional submittal is required to reflect those revisions and/or additional information. Work may not commence until the resubmittal is approved.
- E. Rejected: A submittal may be rejected if it is not in compliance with the Contract Documents, or if it proposes an "or equal" or substitution which is not acceptable to the Project Consultant. A superseding submittal shall be submitted and approved prior to commencement of the work.

Should the Contractor proceed with the work shown on a submittal before approval is received, it shall remove and replace or adjust any work which is not in accordance with the shop drawings or manufacturers' instructions as ultimately approved, and it shall be responsible for any resultant damage, defect, or added cost. The County shall be under no obligation to pay for work installed prior to approval of shop drawings, until the shop drawings are approved and the work in place is found to be in compliance with the Contract Documents.

The Contractor shall resubmit submittals in categories "D" and "E" above after making any changes required so that submittals will comply with the Contract Documents. When resubmitting, the Contractor shall direct specific attention to deficient areas. Resubmittals shall be made in the same number of copies as the original submittal. Resubmittals shall be made within five (5) days of return of previous submittal, and in any event in sufficient time so as to avoid delay to the Work. No delay claims related to resubmittals will be entertained on the Project for any resubmittal originally received after the 5 days.

The Project Consultant shall determine the adequacy and completeness of all submittals. Where the Project Consultant deems a submittal to be inadequate, incomplete, or otherwise unsuitable for proper review, the Contractor shall submit all additional information requested by the Project Consultant. There shall be no change to the Contract Time or the Contract Sum when such additional information is required.

- 4.12.12 Drawings: Following Contractor's review and approval, Contractor shall submit to the Construction Manager five (5) copies of each drawing for approval. The Construction Manager will check the submittal to see if it is complete. If complete, the Construction Manager will forward the drawings to the Project Consultant. The Project Consultant will check the drawings and affix a stamp to the prints, indicating the status of acceptance, and will return same to the

Contractor, each retaining prints for its records. Comments, if any, will be noted directly on the prints. The Contractor shall then print and distribute the appropriate number of copies to its job personnel as required. If a print is stamped "Rejected", the Contractor shall correct and resubmit as outlined above.

- 4.12.13 Samples: Following Contractor's review and approval, it shall submit to the Construction Manager, two samples of all materials in quantities and sizes as specified herein. Submittals shall be given to the Construction Manager at a time determined by the Contractor, which allows for any necessary resubmittal and which will not cause any delay in the work. Samples will be forwarded to the Project Consultant. If a sample is rejected, one sample noted so will be returned to the Contractor. If a sample is marked "Note Markings", one sample so noted will be returned. Corrected samples shall be resubmitted for approval as per the original submittal.
- 4.12.14 Brochures: Following Contractor's review and approval, it shall submit to the Construction Manager, six (6) copies of all manufacturer's catalogs or brochures as required. If a brochure is stamped "No Exception Taken", two (2) copies will be returned to the Contractor. If stamped "Rejected", one marked copy and two (2) unmarked copies will be returned. Corrected copies shall be resubmitted for approval as per the original submittal.
- 4.12.15 Manufacturer's Instructions: Where any item of work is required by Project Manual to be furnished, installed or performed in accordance with a specified product manufacturer's instructions, Contractor shall procure and distribute the necessary copies of such instructions to all concerned parties.
- 4.12.16 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, and the Project Consultant has no information creating doubt as to the reliability of such certification, the Project Consultant shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

4.13 **USE OF SITE**

- 4.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents, and shall not unreasonably encumber the site with any materials or equipment. The Contractor shall be liable for any and all damage caused by it to County's premises. The Contractor shall hold and save the County, its agents, representatives, Project Consultant and Construction Manager, free and harmless and defend them from liability of any nature or kind arising from any use, trespass, or damage occasioned by its operations on premises or third persons.
- 4.13.2 The Contractor shall coordinate all of the Contractor's operations with, and secure approval from, the Construction Manager before using any portion of the site.
- 4.13.3 All workers, contractors, or contractors' representatives are admitted to the Site only for the proper execution of the Work, and have no tenancy.
- 4.13.4 The site will remain open to the public during construction of this project. Areas of the site may be closed where the Contractor is working at a given time. Permission to close an area of the site must be obtained from the Construction Manager in advance of the proposed closure. Contractor is responsible for all warning devices and barriers required to protect the health and welfare of the public at all times.

4.14 **CUTTING AND PATCHING OF WORK**

- 4.14.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to

complete the Work or to make its several parts fit together properly.

- 4.14.2 The Contractor shall not damage or endanger any portion of the Work or the work of the County or any separate contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the County or any separate contractor except with the written consent of the County and of such separate contractor. The Contractor shall not unreasonably withhold from the County or any separate contractor consent to cutting or otherwise altering the Work.
- 4.14.3 In all cases, the Contractor exercise extreme care in cutting operations, and perform such operations under adequate supervision by competent mechanics skilled in the applicable trade. Openings shall be neatly cut and shall be kept as small as possible to avoid unnecessary damage. Careless and/or avoidable cutting damage, etc., will not be tolerated, and the Contractor will be held responsible for such avoidable or willful damage.
- 4.14.4 All replacing, patching and repairing of all materials and surfaces cut or damaged in the execution of the Work shall be performed by experienced mechanics of the several trades involved. Such replacing, repairing or patching shall be done with the applicable materials, in such a manner that all surfaces so replaced, etc., will, upon completion of the Work, match the surrounding similar surfaces.

4.15 **CLEANING UP**

- 4.15.1.1 The Contractor shall at all times maintain its work area in an orderly manner. The Contractor shall keep the premises, including the Site, the Project, the adjacent sidewalks and street free from accumulation of waste materials or rubbish caused by the Contractor's operations on a daily basis or as directed by the Construction Manager. At the completion of the Work, the Contractor shall remove all of the Contractor's waste materials and rubbish from and about the Project as well as all the Contractor's tools, construction equipment, machinery and surplus materials.

The Contractor shall clean the portions of existing improvements and facilities which are used by, traversed or dirtied by the workers on the Work (normal maintenance due to use by the County's employees or the public excepted.)

The Contractor, at its sole cost, shall contract with a disposal company to remove all rubbish, and shall have the refuse containers emptied at frequent enough intervals so that waste does not overflow the containers.

- 4.15.2 If the Contractor fails to clean up during progress or at the completion of the Work, the County may do so as provided in Paragraph 3.4 and the cost thereof shall be paid by the Contractor.

4.15.3 Final Cleaning of Project.

Prior to final acceptance and occupancy by the County, the Contractor shall thoroughly clean the interior and exterior of the buildings, and the Site and adjacent areas, of all material related to its performance of the Work, including spots, stains, paint spots, trade markings and labels, and accumulated dust and dirt. The following list is not inclusive but to act as a guideline to include:

- .1 Removal of all paint spots, stains, rubbish, debris, tools and equipment from all areas and broom clean. Steam clean all carpets and mop floors.
- .2 Cleaning interior and exterior of the buildings including all windows in any area affected by the Work.

- .3 Brush off, broom sweep, dust and clean ledges, stairs, doors, hardware, chalk board trays and any adjoining rooms or areas that were affected by the work.
- .4 The Contractor shall clear grounds and exterior paved areas and walks of all construction debris, dirt and dust and shall repair any site areas damaged during the course of construction.

Prior to final completion or County occupancy, the Contractor shall conduct an inspection of sight-exposed surfaces, and all work areas, to verify that the entire work is clean. In the event the Contractor fails to do so, the County may cause this work to be done at the Contractor's expense in accordance with subparagraph 3.4.1.

4.16 **ROYALTIES AND PATENTS**

- 4.16.1 The Contractor shall pay all royalties and license fees, shall defend all suits or claims for infringement of any patent rights and shall defend and save the County harmless from loss on account thereof, except that the County shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is selected by the Project Consultant. If the Contractor has reason to believe that the design, process or product selected is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly given to the County, Project Consultant and Construction Manager in writing.

4.17 **INDEMNIFICATION AND DEFENSE**

- 4.17.1 To the fullest extent permitted by law, Contractor must indemnify, defend (at Contractor's sole cost and expense and with legal counsel approved by County, which approval may not be unreasonably withheld), protect and hold harmless County, Construction Manager, Project Consultant, Inspector, all subsidiaries, divisions and affiliated companies of County, and all of that Parties' representatives, partners, designees, officers, directors, shareholders, employees, consultants, agents, successors and assigns, and any lender of County with an interest in the Project (collectively, the "Indemnified Parties"), from and against all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional expert or consultants' fees and costs and County's general and administrative expenses) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise from or in any manner relate (directly or indirectly) to any work performed or services provided under the Contract (including, without limitation, defects in workmanship or materials and/ or design defects or Contractor's presence or activities conducted under the Contract (including, without limitation, the negligent and/ or willful acts, errors and/or omissions of Contractor, its principals, officers, agents, employees, vendors, suppliers, consultants, sub-consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them). The Contractor's obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, then Contractor's indemnification obligation shall be reduced in proportion to the established comparative liability.

The duty to defend is a separate and distinct obligation from Contractor's duty to indemnify. Contractor shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, the Indemnified Parties immediately upon tender to Contractor of the Claim in any form or at any stage of an action or proceeding, whether or not liability is established. Payment to Contractor by any Indemnified Party or the payment or advance of defense costs by any

Indemnified Party cannot be a condition precedent to enforcing the Indemnified Party's rights to indemnification under the Contract. An allegation or determination that persons other than Contractor are responsible for the Claim does not relieve Contractor from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Contractor asserts that liability is caused in whole or in part by the negligence or willful misconduct of an Indemnified Party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an Indemnified Party, then Contractor may submit a claim to the County for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established comparative liability of the Indemnified Party. Contractor's indemnification obligations under the Contract will survive the expiration or earlier termination of this Contract until action against the Indemnified Parties for the matter indemnified is fully and finally barred by the applicable statute of limitations or statute of repose. Contractor's liability for indemnification under the Contract is in addition to any liability Contractor may have to County for a breach by Contractor of any of the provisions of the Contract. Under no circumstances may the insurance requirements and limits set forth in the Contract be construed to limit Contractor's indemnification obligation or other liability under the Contract. The terms of the Contract are contractual and the result of negotiation between the Parties.

Contractor must indemnify and hold County harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses, for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by County, or any of its officers or agents, of articles or services to be supplied in the performance of the Contract.

- 4.17.2 In any and all claims against the County, the Construction Manager and Project Consultant or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 4.17 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 Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- 4.17.3 The obligations of the Contractor under this Paragraph 4.17 shall not extend to the liability of the Project Consultant or Construction Manager, their agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Project Consultant, their agents or employees, provided such giving or failure to give directions is the primary cause of the injury or damage.

The indemnity obligation expressly extends to and includes any and all claims, demands, damages, costs, expenses, or liability occasioned as a result of damages to adjacent property caused by the conduct of the Work.

The indemnity obligation expressly extends to and includes any and all claims, demands, damages, costs, expenses, or liability occasioned as a result of the violation by the Contractor, the Contractor's agents, employees, or independent contractors or subcontractors, of any provisions of federal, state or local law, including applicable administrative regulations.

The indemnity obligation also expressly extends to and includes any claims, demands, damages, costs, expenses, or liability occasioned by injury to or death of any person, or any property

damage to property owned by any person while on or about the Site or as a result of the Work, whether such persons are on or about the Site by right or not, whenever the Work is alleged to have been a contributing cause in any degree whatsoever.

Nothing contained in the foregoing indemnity provisions shall be construed to require the Contractor to indemnify the County in contravention of Section 2782 of the Civil Code for the sole negligence or willful misconduct of the County.

Indemnification of Adjacent Property Owners.

In the event the Contractor enters any agreement with the owners of any adjacent property to enter upon or adjacent to such property for the purpose of performing this Contract, the Contractor shall fully indemnify, defend and save harmless such person, firm, or corporation, state or other governmental agency which owns or has any interest in the adjacent property. The form and content of the indemnification agreement shall be approved by the County prior to commencement of any work on or about such property. The Contractor also shall indemnify the County as provided in this Article 4. These provisions shall be in addition to any other requirements of the owners of adjacent property.

4.18 FAIR EMPLOYMENT PRACTICES CLAUSE

- 4.18.1 Nondiscrimination: In connection with the performance of Work under the Contract, the Contractor agrees (as prescribed in Chapter 6 of Division 3 of Title II of the Government Code of the State of California, Commencing at Section 12900 and by Labor Code Section 1735) not to discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status or sex. The aforesaid provisions 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 forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, Notices to be provided by the County, setting forth the provisions of this discrimination clause. The Contractor further agrees to insert the foregoing provisions in all subcontracts hereunder, except subcontracts for standard commercial supplies of raw materials.

ARTICLE 5
SUBCONTRACTORS

5.1 DEFINITION

- 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work at the site. The term Subcontractor means a Subcontractor or a Subcontractor's authorized representative. The term Subcontractor does not include any separate contractor or any separate contractor's subcontractors.
- 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the work at the site. The term Sub-subcontractor means a Sub-sub contractor or an authorized representative thereof.

5.2 AWARDS OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

- 5.2.1 The Contractor shall only use subcontractors included in its sealed bid unless first approved by the County pursuant to statute. With respect to subcontractors ineligible to perform work on public works projects under Public Contract Code section 6109, the Contractor shall not use any such subcontractor, shall repay to the County any money paid to any such subcontractor, and

shall pay the wages of the workers for any such subcontractor allowed to work on the Project.

5.3 SUBCONTRACTUAL RELATIONS

- 5.3.1 By an appropriate agreement, written where legally required for enforceability, the Contractor shall require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the County, the Project Consultant and the Construction Manager. Said agreement shall preserve and protect the rights of the County, the Project Consultant and the Construction Manager under the Contract Documents with respect to the work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor Agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the County. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with their Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 5.3, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to their Sub-subcontractors. Nothing contained herein shall be deemed to create an agency relationship between the County and any Subcontractor or material supplier.
- 5.3.2 The substitution or addition of Subcontractors shall be permitted only as authorized by Public Contracts Code Section 4100, et. seq. The Subcontractors employed by the Contractor shall be appropriately licensed in conformity with the laws of the State of California. Should the Contractor violate any of the provisions of this Section, the violation shall be deemed a breach of this Contract and the County shall have all remedies provided by California law, including but not limited to those provided in Public Contract Code Section 4100, allowing termination of the Contract or a penalty assessment of ten percent (10%) of the subcontract amount.
- 5.3.3 Nothing contained in this Contract shall create any contractual relationship between any Subcontractor and the County nor create any contractual relationship between any Subcontractor and the Construction Manager or the Project Consultant.
- 5.3.4 Jurisdictional disputes between Subcontractors or between Contractor and Subcontractor shall not be mediated or decided by the County, Project Consultant or the Construction Manager. The Contractor shall be responsible for the resolution of all such disputes based upon its contractual relationship with its Subcontractors. If, through acts or neglect on the part of the Contractor, including failure to supervise and control its subcontractors or suppliers, any other contractor, subcontractor or supplier, or worker suffers loss or damage, the Contractor agrees to settle with such other contractor, subcontractor, supplier, or worker by agreement or arbitration, if such other contractor, subcontractor, or worker shall assert any claim against the County or any of its officers, agents, or employees, or account of any damage alleged to have been so sustained.
- In the event of the receipt of any such claim, the County shall notify the Contractor, who shall defend, indemnify, and save harmless the County and all of its officers, agents, and employees against any such claim.

ARTICLE 6 **WORK BY COUNTY OR BY SEPARATE CONTRACTORS**

6.1 COUNTY'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

- 6.1.1 The County reserves the right to perform work related to the Project with the County's own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar Conditions of the Contract. If the Contractor claims that delay, damage or additional cost is involved because of such action by the County, the Contractor shall make such claim as provided elsewhere in the Contract Documents.
- 6.1.2 When separate contracts are awarded for different portions of the Project or other work on the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate County-Contractor Agreement.
- 6.1.3 The County shall provide for coordination of the activities of the County's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the County in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the County until subsequently revised.
- 6.1.4 Unless otherwise provided in the Contract Documents, when the County performs construction or operations related to the Project with the County's own forces, the County shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract including, without excluding others, those stated in Article 4, this Article 6 and Articles 10, and 13.

6.2 MUTUAL RESPONSIBILITY

- 6.2.1 The Contractor shall afford the County and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.
- 6.2.2 When any part of the Contractor's Work depends for proper execution or results upon the work of the County or any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Construction Manager any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acceptance of the County's or separate contractor's work as fit and proper to receive the Work, except as to defects which may subsequently become apparent in such work by others.
- 6.2.3 If, following the reporting of any discrepancy or defect as required in Subparagraph 6.2.2, the Contractor suffers damage due to disruption or delay caused by the separate contractor, without fault by the County, the Contractor's remedy shall be limited to seeking recovery from the separate contractor.
- 6.2.4 Any costs caused by defective or ill-timed work shall be borne by the Contractor or Subcontractor responsible therefore.
- 6.2.5 Should the Contractor cause damage to the work or property of the County, or to other work or property on the site, the Contractor shall promptly remedy such damage as provided in Subparagraph 10.2.5.

- 6.2.6 Should the Contractor wrongfully delay or cause damage to the work or property of any separate contractor, the Contractor shall, upon due notice, promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. If such separate contractor sues the County on account of any delay or damage alleged to have been caused by the Contractor, the County shall notify the Contractor who shall defend such proceedings, and if any judgment or award against the County arises there from, the Contractor shall pay or satisfy it and shall reimburse the County for all costs which the County has incurred.
- 6.3 **COUNTY'S RIGHT TO CLEAN UP**
- 6.3.1 If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by Paragraph 4.15, the County may clean up and the Contractor therefore shall pay the County such portions of the cost thereof as the Construction Manager shall determine to be just.

ARTICLE 7

MISCELLANEOUS PROVISIONS

- 7.1 **GOVERNING LAW**
- 7.1.1 The Contract shall be governed by the law of the State of California.
- 7.2 **SUCCESSORS AND ASSIGNS**
- 7.2.1 The County and the Contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other.
- 7.3 **WRITTEN NOTICE**
- 7.3.1 Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY:

Tulare County
 General Services Agency
 Capital Projects
 2637 W. Burrel Ave., Ste. 200
 Visalia, CA 93291
 Phone: (559) 205-1100

CONTRACTOR

 Phone: (559) _____
 Fax: (559) _____

PROJECT CONSULTANT:

Chas Rhoads
 Chas Rhoads Architects
 128 Katherine Street
 Hanford, CA 93230
 559-584-3371– Phone
 chasrhoads@sbcglobal.net

Notice personally delivered is effective when delivered. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

7.4 CLAIM REQUIREMENTS

7.4.1 A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time, arising out of or relating to the Contract or a request for equitable adjustment or Change Order which cannot be resolved per provisions of Article 12. **Any Claim shall be reduced to writing and filed with the Tulare County Administrative Officer (or his/her designee), within twenty calendar days after the Contractor has notice of the condition giving rise to the Claim, and final action per Article 12 procedures has taken place or has been declared as such in writing, by either party.** Such twenty day notice of an asserted claim is in addition to the requirement for prompt notice required per Paragraph 12.3.

7.4.2 Except as provided by Public Contract Code Section 7102, the Contractor shall not claim or recover any overhead cost administrative or otherwise, particularly 'Home Office' expenses, 'Extended site overhead', or any other overhead cost on the basis of any 'Home Office' damages formula, 'Eichleay' formula, 'Total Cost' recovery formula or any other such formula.

7.4.3 Except as provided by Public Contract Code Section 7102, the Contractor shall have no claim for damages or compensation for any delay or hindrance. Contractor shall make any claims in writing within the time set forth above, for any unreasonable delay or hindrance caused by County, and specifying the cause thereof as required in **7.4.4 below**.

7.4.4 REQUIREMENTS FOR FILING A CLAIM. Claims must be filed within the time specified in 7.4.1 above, but in no event later than the date of final payment. Claims shall be submitted to the Tulare County Administrative Officer (or his/her designee). The claim shall be in writing and shall be sum certain if known. If unknown, Contractor shall specify the basis for establishing the sum certain. Claim shall include a statement of the reasons for the asserted entitlement, and include the documents necessary to substantiate the claim. Such documents may include but are not limited to payroll records, purchase orders, quotations, invoices, estimates, subcontracts, daily logs, supplier contracts, subcontract billings, bid takeoffs, equipment rental invoices, ledgers, journals, daily reports, job diaries, and any documentation related to the requirements of Article 12. In the case of a continuing delay, only one claim is necessary. If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the critical activities on the construction schedule. The Contractor shall certify, at the time of submission of a claim, as follows:

"I certify under penalty of perjury under the laws of the State of California, that the foregoing claim is made in good faith, that the supporting data are accurate, and in my opinion, justify the contract adjustments requested.

By: _____
(Contractor's signature)

Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by Contract for the filing of claims. For any claim subject to this Article 7.4, the

following requirements apply:

- .1 For claims of less than fifty thousand dollars (\$50,000), the Tulare County Administrative Officer (CAO), shall review the facts pertinent to the claim, obtain additional information deemed necessary for a decision (if any), review recommendations of the County's Representative, coordinate with the contract administrator (if any) and secure assistance from legal and other advisors, and render a written decision on the claim within 45 days of receipt of the claim. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the County Administrative Officer and claimant. The CAO's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.
- .2 For claims of fifty thousand dollars (\$50,000) or more, and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the CAO shall review the facts pertinent to the claim, obtain additional information deemed necessary for a decision (if any), review recommendations of the County's Representative, coordinate with the contract administrator (if any) and secure assistance from legal and other advisors, and render a written decision on the claim within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the County may have against the claimant. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the CAO and the claimant. The CAO's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documents, or a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.
- .3 If the claimant disputes the written response of the CAO or the CAO fails to respond within the time prescribed, the claimant may so notify the CAO, in writing, either within 15 days of receipt of the CAO's response or within 15 days of the CAO's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the CAO (or his/her designee) shall schedule a meet and confer conference within 30 days for settlement of the dispute.
- .4 If following the meet and confer conference the claim or any portion remains in dispute, the claimant may file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference.

7.4.5 CLAIMS AND DISPUTES EXEMPT FROM FILING REQUIREMENTS. The procedures and remedies provided in this Article 7.4 do not apply to:

- .1 Any claims by the County;
- .2 Any claim for or respecting personal injury or death or reimbursement or other compensation arising out of or resulting from liability for personal injury or death;
- .3 Any claim or dispute relating to stop payment requests or stop notices; and
- .4 Any claim related to the approval, refusal to approve, or substitution of subcontractors, regardless of tier, and suppliers.

7.4.6 PAYMENT OF UNDISPUTED PORTION OF CLAIM. County shall pay claimant such portion of a claim which is undisputed except as otherwise provided in the Contract.

7.4.7 CONTINUE WORK DURING DISPUTE. In the event of any dispute between the County and the Contractor, the Contractor will not stop work but will prosecute the work diligently to completion in the manner directed by the County, and the dispute shall be resolved by a court of law after completion of the Work. However, all disputes must be submitted by Contractor in accordance with the provisions of Article 7.4.

7.5 **PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND**

7.5.1 The Contractor shall furnish Performance Bond in the amount of 100% of the Contract amount and Payment Bond in the amount of 100% of the Contract amount. The Bonds shall be the forms shown in Sections 00502 and 00503 respectively.

7.5.2 All bonds required, whether Bid bonds, Performance, Payment, or other bonds, shall be on the forms provided in Sections 00501, 00502 and 00503 above. **The Bid Bond, Performance Bond, and Payment Bond must be issued by the same California admitted surety insurer.** The payment and performance bonds required by these specifications will neither be accepted nor approved by the County unless the bonds are underwritten by an admitted surety and the requirements of California Code of Civil Procedure section 995.630(a) and (b) are met and the bonds are accompanied by the County Clerk's certificate as provided for in California Code of Civil Procedure Section 995.640(b). The County further reserves the right to satisfy itself as to the acceptability of the surety and the form of bond. **Upon request of Tulare County the bidder must submit the following documents:**

- .1 **The original, or a certified copy, of the unrevoked appointment, power of attorney, bylaws, or other instrument authorizing the person who executed the bond to do so.**
- .2 **A certified copy of the certificate of authority of the insurer issued by the California Insurance Commissioner.**
- .3 **A certificate from the county clerk that the certificate of authority has not been surrendered, revoked, canceled, annulled, or suspended, or in the event that it has, that renewed authority has been granted.**
- .4 **A financial statement of the assets and liabilities of the insurer to the end of the quarter calendar year prior to 30 days next preceding the date of the execution of the bond, in the form of an officers' certificate as defined in Corporations Code section 173. If the surety insurer is not found to be an "admitted surety insurer" the bid shall be determined to be non-responsive and shall be rejected. If the surety insurer's assets do not exceed its liabilities in an amount equal to or in excess of the amount of the bond, subject to Section 12090 of the Insurance Code; or if the bidder fails to provide the specified documents; the bid may be determined non-responsive and may be rejected.**

7.5.3 All costs for applicable bid bonds, payment bonds and performance bonds shall be included in the bid.

7.6 **RIGHTS AND REMEDIES**

7.6.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

7.6.2 No action or failure to act by the County, the Construction Manager, the Project Consultant or the Contractor shall constitute a waiver of any right or duty afforded any of them under the

Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

7.7 TESTS AND INSPECTIONS

7.7.1 Materials Which May be Tested.

The County reserves the right to require the Contractor to provide samples, and to perform tests on any materials, articles, equipment, installations, or construction performed by the Contractor in addition to those specified in the Contract Documents. The County shall assume the cost of sampling and testing materials only when the Contract Documents do not require the Contractor to do so.

7.7.2 Testing.

All tests shall be performed under the supervision of the testing laboratory or Project Consultant employed by the County and at such times as are convenient to the County. The Contractor shall provide written notice to the Construction Manager prior to the need for off-site tests or inspections, and the Construction Manager will arrange such tests or inspections.

7.7.3 Selection of Samples.

All samples and specimens for testing shall be selected by the Inspector or by the testing laboratory, but not by the Contractor.

7.7.4 Delivery of Samples.

The Contractor shall, at its sole cost and expense, furnish, package, mark, and deliver all samples to be tested at locations other than the Site. Samples shall be delivered either to the Inspector or to the testing laboratory or such other address specified by the Construction Manager.

Delivery of all samples to the testing laboratory shall be made in ample time to allow the test to be made without delaying construction. No extra time will be allowed for the completion of the Work by reason of delay in testing samples required by the Contract Documents or due to the Contractor's request for substitution.

The Contractor shall allow free access at all times to the representatives of the testing laboratory to the Work, and shall point out the sources from which samples are taken.

All test reports shall be sent to all parties specified by the Construction Manager.

7.7.5 Approval of Samples.

No materials or work of which samples and/or tests are required shall be used or covered until the Construction Manager informs the Contractor that such samples and/or tests have been approved. If the Contractor installs, uses, or covers any such material, article, or work prior to testing and approval, such shall be at the Contractor's sole risk and expense, and it shall bear all costs of uncovering, repair, and replacement thereof. The approval of any samples shall be for the characteristics thereof, or for the uses named in such approval, and no other. No approval of any samples shall be deemed a change or modification in any requirement of the Contract Documents. Upon testing of any sample of material or work, no additional sample shall be considered. All material or work installed after the sampling and testing is performed and approved shall be equal to or better than the approved sample in all respects.

7.7.6 Damage Due to Testing.

The Contractor shall, at its sole cost and expense, repair all damage resulting from testing specified in the Contract Documents. The County shall issue a Change Order for repair of damage due to sampling or testing other than specified in the Contract Documents.

The Contractor shall not make any tests upon portions of the Project already completed, except with the prior written consent and under the direction and supervision of the Construction Manager.

7.7.7 Retesting.

If as a result of any test, whether originally specified or not, any material or work is found to be unacceptable, it shall be rejected, and all further sampling and testing required by the County or Construction Manager shall be at the Contractor's expense.

7.7.8 Effect of Sampling and Testing.

The County assumes no obligation, and the Contractor shall be relieved of no obligation undertaken pursuant to the Contract Documents by virtue of sampling and testing specified in this article.

The responsibility for incorporating satisfactory materials and workmanship which meet the Contract Documents in the work rest entirely with the Contractor, notwithstanding any prior samples or tests.

7.7.9 Inspection shall be provided as required under CCR Title 24, current edition. All inspection costs will be paid for by the County, including special inspection required by Title 24, except as noted otherwise below. A list of required inspections for the Project is included in the Contract Documents.

The Inspector shall be approved by the County. The Inspector will be employed by the County and will perform all inspections in accordance with Title 24, parts 1-5.

The designated Inspector shall be considered to be a representative of the County. It is the inspector's duty to inspect those portions of the Work which the County has designated.

The Inspector shall have the authority to order the work designated for inspection stopped if a determination is made that work is proceeding in violation of the Contract Documents or any orders issued by the County, Construction Manager, or Project Consultant.

Upon issuing a stop work notice, the Inspector shall notify the Project Consultant, who shall inspect the work in question and determine whether it does or does not comply with the Contract Documents. The decision of the Project Consultant shall be final. The Contractor shall thereafter comply with the instructions of the Project Consultant regarding corrections needed to cure the defect. The suspended work shall be resumed only when the instructions are fulfilled. The Contractor shall not be entitled to an extension of time in the event of such suspension of work.

Neither the final inspection and payment, nor any interim inspection or progress payment shall relieve the Contractor of its obligation to fulfill the Contract as required by the Contract Documents.

Any work, materials or equipment not meeting the requirements and intent of the Contract Documents may be rejected, and unsuitable work or materials shall be made good, notwithstanding the fact that such work or materials may previously have been inspected and/or payment therefore may have been made.

Should the Construction Manager or the Project Consultant determine that it is necessary or advisable to make an inspection of work already completed at any time before final inspection and acceptance of the Work, by removing or exposing any work, the Contractor shall, upon instruction of the Construction Manager, promptly furnish all necessary facilities, labor, and

materials to do so. If the work is found to be defective in any respect due to the fault of the Contractor or any subcontractor, the Contractor shall bear all expenses of such examination and satisfactory reconstruction. If, however, the work is found to meet the requirements of the Contract Documents, the additional cost of labor and material necessarily involved in the examination and replacement shall be allowed the Contractor and a change order shall be issued for such cost and any time extension justified by delays to the critical path.

Where the Contract Documents, instructions by the Inspector, Construction Manager or the Project Consultant, laws, ordinances, or any public authority having jurisdiction require work to be inspected, tested or approved before the Work proceeds, such work shall not proceed, nor shall it be covered up without inspection. If any part of the Work is covered prior to inspection, the County may order the work to be uncovered so that inspection may be accomplished. The Contractor shall bear all expenses of such examination and satisfactory reconstruction.

The Contractor shall provide written notice to the Inspector at least twenty-four (24) hours in advance of the readiness for inspection.

All work shall be available for inspection and the Inspector shall have full access to review all work during all working times. The Contractor shall provide all necessary means of access (e.g. ladders) for the Inspector to perform its duties. The Contractor shall furnish the Inspector with any information necessary to fully inform it of conditions. Inspection does not relieve the Contractor from fulfilling the requirements of the Contract Documents.

7.8 DISPUTES AND DISPUTE RESOLUTION

7.8.1 In the event a dispute arises between the Parties concerning, or arising out of, this Contract, or an alleged breach thereof, then each Party shall continue to perform its respective duties and responsibilities under this Contract during the pendency of any such dispute. The Parties shall utilize the following procedures to attempt to resolve such disputes.

7.8.2 **Informal Negotiations.** The Parties shall make their best efforts to informally resolve disputes that arise out of or relate to this Contract. To foster a spirit of cooperation and efficiency in the administration of this Contract, disputes between the Parties shall first be subjected to a good faith negotiations process as follows:

- .1 The aggrieved Party shall give the other Party, as soon as possible after the event giving rise to the concern, written notice setting forth, with specificity, the issues to be resolved. Notice shall be provided consistent with the terms of the Contract. Said notice shall suggest a date, time and place for the negotiations session. The Parties may jointly decide to meet at another time and place; provided, however, the Parties agree that such negotiations session shall commence within fifteen (15) calendar days after the date that the original notice was given to the applicable Party, unless the Parties agree that there is good cause to extend this time limit.
- .2 The Parties agree that the negotiations session(s), including proceedings or discussions concerning the proposed negotiations session(s), are to be considered confidential settlement negotiations for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence. All conduct, statements, promises, offers, views and opinions, oral or written, made during a negotiations session by any Party or a Party's agent, employee, or attorney shall be deemed to be confidential and shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding, including mediation, involving the Parties; provided, however, that evidence otherwise subject to

discovery or otherwise admissible is not excluded from discovery or admission into evidence simply as a result of it having been used in connection with the negotiations session(s).

- .3 Absent mutual consent of the Parties, if a noticed negotiations session fails to commence within the fifteen (15) calendar day period, or if a reasonable attempt to schedule or reschedule the negotiations session has not been made within those fifteen (15) calendar days, then the negotiations obligation imposed under this subparagraph shall be deemed to have been satisfied and the Parties shall be free to pursue their rights and remedies under this Paragraph 7.8, unless the reason for such failure to convene a negotiations session is the refusal of the Party asserting a claim to participate in the negotiations session, in which event said claim will be deemed to have been waived.
- .4 If the dispute is not resolved to the satisfaction of the Parties within thirty (30) calendar days after the first negotiations session, then upon the written request of either Party, the dispute may be submitted to non-binding mediation in accordance with this Paragraph 7.8 ("Mediation Request").

7.8.3 **Mediation.** If a dispute arising out of or relating to this Contract is not resolved through the above-described negotiations process, then within thirty (30) days after notice is provided through a Mediation Request, the Parties shall participate in non-binding mediation administered by a mediator to help mediate and settle the dispute as soon as practicable. The mediation shall proceed as follows:

- .1 The mediation shall be held at a mutually agreeable location within Tulare County, California.
- .2 The Parties shall mutually select the mediator, but in case of disagreement, then the Parties will select the mediator by lot from among two nominations provided by each Party.
- .3 The mediator shall meet with and hear presentations by the Parties as soon as practicable after appointment.
- .4 Mediation will be conducted consistent with California Evidence Code sections 1115-1128. The mediator shall owe a professional duty to both Parties, and shall be barred from testifying in any litigation concerning any information obtained or disclosed in the course of the mediation.
- .5 Each side shall bear its own costs and attorneys' fees, and one-half of all fees and expenses of the mediator.
- .6 Unless otherwise agreed upon by the Parties in writing, the mediation shall be completed within thirty (30) days of the selection of the mediator.
- .7 The Parties agree that the mediation, including proceedings or discussions concerning the mediation, is to be considered a confidential settlement negotiation for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence. All conduct, statements, promises, offers, views and opinions, oral or written, made during the mediation by any Party or a Party's agent, employee, or attorney shall be deemed to be confidential and shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding involving the Parties; provided, however, that evidence otherwise subject to discovery or admissible is not excluded from discovery or admission into evidence simply as a result of it having been used in connection with the mediation.

- .8 The mediator's decision shall not be binding on or admissible against either Party. If mediation fails to resolve the dispute, then either Party may pursue litigation to resolve the dispute.

ARTICLE 8

TIME

8.1 DEFINITIONS

- 8.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Completion of the Work as defined in Subparagraph 8.1.3, including authorized adjustments thereto. "Date of Completion" is the date certified by the Construction Manager when construction of the Work is 100% complete including acceptance by the Project Consultant on all punch list corrections.
- 8.1.2 The Date of Commencement of the Work is the date established in a Notice to Proceed. If there is no Notice to Proceed, it shall be such other date as may be established in the County-Contractor Agreement and receipt of all required preconstruction submittals, bonds and insurance, or as established elsewhere in the Contract Documents.
- 8.1.3 The Date of Completion of the Work or designated portion thereof is the Date certified by the Construction Manager when construction is sufficiently complete, in accordance with the Contract Documents, so that the County or separate contractors can occupy or utilize the Work or a designated portion thereof for the use for which it is intended.
- 8.1.4 The Date of Completion of the Project (if more than one phase or contractor) or designated portion thereof is the Date certified by the Construction Manager when construction is sufficiently complete so the County can occupy or utilize the Project or designated portion thereof for the use for which it was intended.
- 8.1.5 The term Day as used in the Contract Documents shall mean calendar day of 24 hours, including each and every day of the year unless specifically designated otherwise.
- 8.1.6 Abnormal Weather Conditions as used in the Contract Documents shall be defined as weather conditions that the area does not encounter more than once, on an average of every ten or fifteen years.
- 8.1.7 Normal Weather Conditions are weather conditions which are normal for the location of the Project, according to the U. S. Weather Bureau Records. The Contractor shall reasonably anticipate that normal weather conditions will be encountered, which based on the weather data from the Western Regional Climate Center, National Weather Service, for Visalia, California, average precipitation days per month are as follows:

January	5 days
February	5 days
March	4 days
April	2 days
May	1 day
June	0 days

July	0 days
August	0 days
September	0 days
October	1 day
November	3 days
December	4 days
Total:	25 days/year

Final determination of the final impact of adverse weather may be deferred to the conclusion of the Work. Extensions of time may be requested for any month of construction for days lost, which affect the critical path of construction, due to adverse weather in excess of the normal weather conditions, as defined above. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating days claimed and the impact on the critical path of construction.

The Contractor will not be granted time extensions for weather conditions which are normal for the Project location.

8.2 **PROGRESS AND COMPLETION**

8.2.1 All time limits stated in the Contract Documents are of the essence of the Contract.

8.2.2 The Contractor shall begin the Work on the date of commencement as defined in Subparagraph 8.1.2.

8.2.3 The Contractor shall carry the Work forward expeditiously with adequate forces and shall achieve Completion of the Work within the Contract Time.

8.3 **DELAYS AND EXTENSIONS OF TIME**

8.3.1 Extensions of Time: Unavoidable Delays.

The Contractor shall not be granted an extension of time except on the issuance of a Change Order by the County, upon a finding of good cause for such extension.

A. As used herein, the following terms shall have the following meanings:

"Excusable Delay" means any delay in completion of the Work beyond the expiration of the Contract Time caused by conditions beyond the control and without the fault or negligence of the Contractor. These events may include strikes, embargoes, fire, unavoidable casualties, national emergency, and stormy and inclement weather conditions in which the Construction Manager and Inspector agree that work on the critical path cannot continue. The financial inability of the Contractor or any Subcontractor or supplier and any default of any Subcontractor, without limitation, shall not be deemed conditions beyond the Contractor's control. An Excusable Delay may entitle the Contractor to an extension of the Contract Time, in accordance with this Section of the general conditions, but shall not entitle the Contractor to any adjustment of the Contract Sum.

"Compensable Delay" means any delay in the completion of the Work beyond the expiration date of the Contract Time caused solely by the wrongful acts of the County and which delay is unreasonable under the circumstances and not within the contemplation of the parties. A Compensable Delay may entitle the Contractor to an extension of the Contract Time, in accordance with this Section of the General Conditions and/or an adjustment of the Contract

Sum, in accordance with Article 12. Except as provided herein, the Contractor shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption.

"Inexcusable Delay" means any delay in completion of the Work beyond the expiration of the Contract Time resulting from causes other than those listed in Subparagraphs A1 and A2, above. An Inexcusable Delay will not entitle the Contractor to an extension of the Contract Time or an adjustment of the Contract Sum.

B. The Contractor may make a claim for an extension of the Contract Time, for an Excusable Delay or a Compensable Delay, subject to the following:

1. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first delay to the cessation of the delay which ends last. Any adjustment of the Contract Sum shall be in accordance with Article 12 and shall be based only on the non-concurrent portion of any Compensable Delay.

2. If an Inexcusable Delay occurs concurrently with either an Excusable Delay and/or a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, by which the duration of the Excusable Delay and/or the Compensable Delay calculated in accordance with Subparagraph B1, if applicable, exceeds the Inexcusable Delay. The duration of the concurrence is non-compensable.

Delays in the prosecution of parts or classes of the Work which do not prevent or delay the completion of the whole Work within the Contract Time are not to be considered Excusable or Compensable.

8.3.2 Notice of Delays.

Whenever the Contractor foresees any delay in the prosecution of the Work, and in any event immediately upon the occurrence of any delay which the Contractor regards as good cause for an extension, the Contractor shall notify the Construction Manager in writing of the delay. The notice shall specify with detail the cause asserted by the Contractor to constitute good cause for an extension together with a description of the effect of the delay on the Construction Schedule and a quantification of the length of the requested extension of time. Failure of the Contractor to submit such a notice within seven (7) days after the initial occurrence of the event giving rise to the delay shall constitute a waiver by the Contractor of any request for extension, and no extension shall be granted as a consequence of such delay. Any claim or extension of time shall be made in writing to the Construction Manager not more than ten (10) days after the commencement of the delay; otherwise it shall be waived. In the case of a continuing delay only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work.

The County shall have no obligation to consider any time extension request unless the requirements of the Contract Documents are complied with. The County shall not be responsible or liable to the Contractor for any constructive acceleration due to failure of the County to grant time extensions under the Contract Documents, should the Contractor fail to comply with the submission and justification requirements of the Contract Documents for time extension requests. The Contractor's failure to perform in accordance with the Construction Schedule shall not be excused because the Contractor has submitted time extension requests, unless and until such requests are approved by the County.

8.3.3 Investigation; Procedure.

Upon receipt of a request for extension, the Construction Manager shall conduct an investigation of the facts asserted by the Contractor to constitute good cause for an extension. The

Construction Manager shall report the results of this investigation, as well as the propriety of the time extension requested, to the Contractor in writing within 10 days of receipt of the request and shall indicate whether it will recommend for or against the extension.

Upon receiving the Construction Manager's recommendation, the Contractor may either concur in the recommendation, or reject the recommendation and proceed with a claim as provided for in Article 7.4.

8.3.4 Discretionary Time Extensions for Best Interest of County.

The County reserves the right to extend the time for completion of the Work if the County determines that such extension is in the best interest of the County. In the event that a discretionary extension is granted at the request of the Contractor, the County shall have the right to charge to the Contractor all or any part, as the County may deem proper, of the actual cost of construction management, Consulting, inspection, supervision, incidental and other overhead expenses that accrue during the period of the extension, and to deduct all or any portion of that amount from the final payment for the Work.

In the event a discretionary time extension is ordered over the objection of the Contractor, and the decision rests solely with the County and is not legally compelled for any cause, the Contractor shall be entitled to a Change Order adjusting the price paid to reflect the actual costs incurred by the Contractor as a direct result of the delay, upon its written application therefore, accompanied with such verification of costs as the Construction Manager requires. The decision of the County on any discretionary time extension and the costs thereof shall be final and binding on the County and the Contractor.

8.3.5 Liquidated Damages.

If the Work is not completed by the Contractor in the time specified in, or within any period of extension authorized pursuant to this Article, the Contractor acknowledges and admits that the County will suffer damage, and that it is impracticable and infeasible to fix the amount of actual damages. Therefore, it is agreed by and between the Contractor and the County that the Contractor shall pay to the County as fixed and liquidated damages, and not as a penalty, the sum specified in the Agreement for Construction for each calendar day of delay until the Date of Completion, and that both the Contractor and the Contractor's surety shall be liable for the total amount thereof, and that County may deduct Liquidated Damages from any monies due or that may become due to the Contractor. If it appears during the course of construction that the Contractor is behind schedule and the imposition of liquidated damages is likely, or if liquidated damages begin to accrue prior to the time for final payment, the amount accrued shall be withheld from any progress payment that would otherwise be due. This right to withhold funds is intended to complement the County's rights under Section 9.6.1.

This liquidated damages provision shall apply to all delays of any nature whatsoever, save and except only delays found to be excusable or compensable pursuant to Section 8.3, or time extensions granted by the County pursuant to Section 8.3.

Payment by the County of any progress payments after expiration of the Contract Time shall not constitute a waiver by the County of its right to claim liquidated damages in accordance with this Section.

8.3.6 Extension of Time Not a Waiver.

Any extension of time granted the Contractor pursuant to this Article shall not constitute a waiver by the County of, nor a release of the Contractor from the Contractor's obligation to perform this Contract in the time specified by the Agreement, as modified by the particular extension in question.

The County's decision to grant a time extension due to one circumstance set forth in one request,

shall not be construed as a grant of an extension for any other circumstance or the same circumstance occurring at some other time, and shall not be viewed by the Contractor as a precedent for any other request for extension.

8.3.7 Suspensions Exceeding One Year.

Should the Work be suspended for a period exceeding one calendar year due to war conditions, labor conditions, legal actions, or for other conditions constituting the legal defense of impossibility of performance, the Contractor and County agree to enter into an agreement terminating the Agreement upon the following terms and conditions.

County shall be responsible only to pay the Contractor the actual value of the work performed from the Date of Commencement or from the date of the last progress payment, whichever is later, plus the five percent (5%) retention from such prior progress payments, less any deductions authorized by the Contract Documents.

As between the Contractor and County, it shall be conclusively presumed that the actual value for the Contractor's work to the date of the last progress payment is no more than the actual amount of that prior progress payment plus the five percent (5%) retention from such those progress payments; provided, however, that this Section shall not preclude County from deducting charges for work or materials which do not meet the requirements of the Contract Documents.

Effect of Stop Work Notice.

If the County orders a suspension of the Work pursuant to Article 14, the days on which the suspension is in effect shall be included in determining the required completion date, and shall not otherwise modify or extend the time within which the Contractor is to perform. In such event, the Contractor shall not be entitled to any damages or compensation on account of such suspension or delay, unless the Contractor can establish that Stop Work Notice was not warranted.

**ARTICLE 9
PAYMENTS AND COMPLETION**

9.1 **CONTRACT SUM**

9.1.1 The Contract Sum is stated in the County-Contractor Agreement and, including authorized adjustments thereto, is the total amount payable by the County to the Contractor for the performance of the Work under the Contract Documents.

9.2 **SCHEDULE OF VALUES**

9.2.1 As part of the required post-bid submittals, and at least fourteen (14) days prior to the first payment application, the Contractor shall submit to the Construction Manager a Schedule of Values allocated to the various portions of the Work, prepared in such form and in sufficient detail to allow evaluation of the progress of construction. In no event shall an individual line item on a schedule of values exceed five percent of the Contract Sum. Labor, material, and subcontract costs shall be shown separately. Cost of contract closeout shall be shown as an individual line item, up to five percent of the Contract Sum. All other General Conditions items should be prorated among the actual construction values. The Schedule of Values shall be supported by such data to substantiate its accuracy as the Construction Manager may require. This schedule, unless objected to by the Construction Manager, shall be used only as a basis for the Contractor's Applications for Payment.

9.3 **APPLICATIONS FOR PAYMENT**

9.3.1 At least fifteen days before the date for each progress payment established in the County-

Contractor Agreement, the Contractor shall submit to the Construction Manager an itemized Application for Payment, notarized if required, supported by such data substantiating the Contractor's right to payment as the County or the Construction Manager may require, and reflecting retainage, if any, as provided elsewhere in the Contract Documents. AIA Documents G702, Application and Certificate for Payment and G703, Continuation Sheet, or other substitute form supplied and required by the County shall be used. Payment is expressly conditioned upon submission by the Contractor and all of its subcontractors and material suppliers warranting that title to all work, labor, materials and equipment covered by the application is free and clear of all liens, claims, security interests or encumbrances. Additionally the Contractor and all of its subcontractors and material suppliers shall submit unconditional lien releases for all work through the prior progress payment. For final payment, the Contractor shall submit a notarized unconditional lien release. Waiver and Release forms must be submitted on forms provided or approved by the County of Tulare. Copies of said forms shall comply with Civil Code §3262.

- 9.3.2 No progress payment will be made unless all general conditions items (as-built updates, schedule updates, certified payroll or other pay records, lien releases, etc.) have been received by the Construction Manager in acceptable form. The onsite master set of drawings will be reviewed by the Construction Manager to verify that all changes have been noted and that the drawings are current prior to the processing of any pay application.
- 9.3.3 Unless otherwise provided in the Contract Documents, payments may be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, if approved in advance by the County, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the County to establish the County's title to such materials or equipment or otherwise protect the County's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site. Materials stored off-site, to be considered for payment, shall, in addition to the above requirements, be stored in a bonded warehouse, fully insured, and available to the Project Consultant and Construction Manager for inspection. The Construction Manager shall have complete discretion as to the amount of material and equipment that may be stored on the Site at any given time.
- 9.3.4 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the County either by incorporation in the construction or upon receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, stop notices, claims, security interest or encumbrances, hereinafter referred to in this Article 9 as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

The Contractor agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any work covered by this Contract shall have any right to a lien upon the premises or any improvement or appurtenances thereon; provided, however, that nothing contained in this Section shall defeat or impair the rights of persons furnishing materials or labor under the payment bond given by the Contractor, nor any rights under any law permitting such persons to look to funds due to the Contractor but retained by County.

The Contractor shall cause the provisions of this Section to be inserted in all subcontracts and material contracts executed by the Contractor and notice of this provision shall be given to all persons furnishing materials for the Work.

This Section shall not disallow the Contractor's installing any devices or equipment of utility companies or of governmental agencies, the title to which is commonly retained by the utility company or the agency.

- 9.3.5 Progress Payments: The Contractor shall on or before the assigned billing date of each month make an estimate of the work performed during the preceding month and submit an itemized Application for Payment, notarized if required, supported by such data substantiating the Contractor's right to payment as the County or the Construction Manager may require, including appropriate updates to the CPM Construction Schedule, and reflecting retainage, if any, as provided elsewhere in the Contract Documents. The Contractor will assemble the Application and forward it to the Construction Manager within seven days for checking and approval.

At a meeting held on or before the assigned billing date of each month, the Construction Manager, Project Consultant, Inspector and Contractor will review the Contractor's proposed percentages of completion and agree on a final percentage to be paid for that month.

On or about the 25th day following the assigned billing date of the month in which the work was performed, the County shall pay to the Contractor ninety-five (95%) percent of the value of said work in place, as checked and approved by the Construction Manager. The balance of five (5%) percent of the estimate shall be retained by the County until the time of final acceptance of said work. In lieu of the five (5%) percent retainage, the Contractor may substitute securities as provided in Article 9.3.5 below.

- .1 If the County does not pay the Contractor within thirty days after receipt of an undisputed and properly submitted payment request for a progress payment, excluding that portion of the final payment designated by the Contract as retention earnings, then the County shall pay interest to the Contractor as provided by Public Contract Code section 20104.50. Payment for Change Orders, if any, under this Contract shall be made in like manner. Said interest penalty is the sole recourse of Contractor and Contractor shall have no right to stop the Work until payment of the amount owing has been received, nor shall the Contract Time be extended, nor shall the Contract Sum be increased in any way, including by reason of any costs incurred by Contractor, except to the extent of said interest payment.
- .2 Pursuant to Public Contract Code section 7107, in the event of a dispute between the County and Contractor, the County may withhold from the final payment an amount not to exceed 150 percent of the disputed amount. Except as so provided, the County shall release the retention withheld within 60 days after the date of completion of the work of improvement, as "completion" is defined in Public Contract Code section 7107. In the event that retention payments are not made within the time periods required by Public Contract Code section 7107, the County may be subject to the interest provisions of Public Contract Code section 7107.

- 9.3.6 Security Substitutions and Escrow for Moneys Withheld to Insure Contractor's Performance. Pursuant to Public Contract Code section 22300, the Contractor may deposit in an escrow, equivalent securities for any moneys withheld to insure performance and have said moneys paid directly to Contractor, or, in the alternative, have the County deposit such moneys directly into an escrow. Upon the closing of any such escrow, Contractor shall pay to each subcontractor, not later than 20 days after receipt of the closing payment, the respective amount of interest earned, net of costs attributed to retention withheld from each subcontractor, on the amount of retention withheld to insure the performance of the Contractor. Any escrow established pursuant to this article shall be with a state or federally chartered bank, shall be at the sole expense of the Contractor, and shall be established using an escrow agreement in substantially

the following form:

Either alternative under this Section may be exercised only if requested in writing by the Contractor within five (5) days after receipt of Notice of Intent to Award. The Contractor shall notify its subcontractors in writing within fifteen (15) days of exercising this option.

**ESCROW AGREEMENT FOR
SECURITY DEPOSITS IN LIEU OF RETENTION**

This Escrow Agreement ("Escrow Agreement") is made and entered into by and between the County of Tulare, _____ (hereinafter _____ called "County"), _____ (hereinafter called "Contractor"); and _____, a state or federally chartered bank in California, (hereinafter called "Escrow Agent").

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

1. Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by County pursuant to the Construction Contract entered into between the County and Contractor for _____ in the amount of \$_____, and dated _____ (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the County shall make payments of the retention earnings directly to the Escrow Agent. When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the County within ten (10) days of the deposit. The market value of the securities at the time of the substitution, as valued by the County, shall be at least equal to the cumulative total cash amount then required to be withheld as retention under the terms of the Contract. If the County determines that the securities are not adequate it will notify Contractor and Escrow Agent, and Contractor shall deposit additional security as further determined by the County. Securities shall be held in the name of the County and shall designate the Contractor as the beneficial owner.
2. Upon the deposit of adequate securities, County shall make progress payments to the Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions.
3. When the County, at Contractor's written request, makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until such time as the escrow created under this Escrow Agreement is terminated. The Contractor 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 the County pays the Escrow Agent directly.
4. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the County. These expenses and payment terms shall be determined by the County, Contractor and Escrow Agent.
5. The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the County.
6. Contractor 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 the Escrow Agent that County consents to the withdrawal of the amount sought to be withdrawn by Contractor.
7. The County shall have the right to draw upon the securities or any amount paid directly to Escrow Agent in the event of default by the Contractor. Upon seven (7) days written notice to the Escrow Agent from the County of the default, the Escrow Agent shall immediately convert the securities to

cash and shall distribute the cash, including any amounts paid directly to Escrow Agent, as instructed by the County. Escrow Agent shall not be concerned with the validity of any notice of default given by County pursuant to this paragraph, and shall promptly comply with County's instructions to pay over said escrowed assets. Escrow Agent further agrees to not interplead the escrowed assets in response to conflicting demands and hereby waives any present or future right of interpleader.

8. Upon receipt of written notification from the County certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor 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 moneys and securities on deposit and payment of fees and charges.
9. Escrow Agent shall rely on the written notifications from the County and Contractor pursuant to Sections (3), (5), (6), (7) and (8) of this Escrow Agreement and the County and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.
10. Securities eligible for investment under this Escrow Agreement, as provided by Public Contract Code section 22300, shall be those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and County.
11. The venue of any litigation concerning the rights and obligations of the parties to this Escrow Agreement shall be the County of Tulare and the removal provisions of Code of Civil Procedure Section 394 shall not apply to any such litigation.
12. The names of the persons who are authorized to give written notice or to receive written notice on behalf of the County and on behalf of Contractor 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 Contractor:

Title
Name
Signature
Address

On behalf of Escrow Agent:

Title
Name
Signature
Address

At the time the Escrow Account is opened, the County and Contractor shall deliver to the Escrow Agent a fully executed counterpart 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.

County:

Title
Name
Signature
Address

Contractor:

Title
Name
Signature
Address

Escrow Agent:

Title
Name
Signature
Address

9.3.7 Itemized Breakdown: The Contractor shall submit a financial breakdown of the Work, itemized by crafts or sections as designated by the Construction Manager. The Contractor's payment shall be based upon the monthly percentage of completion of these items.

9.3.8 Lien Waivers: The County or Construction Manager may require the Contractor to submit, along with the progress payment request, notarized lien waivers from each subcontractor, materials or equipment supplier. Lien waivers shall comply with Civil Code section 3262. The aggregate sum of which shall reflect previous progress payments.

9.4 **CERTIFICATES FOR PAYMENT**

9.4.1 The Construction Manager will, within seven days after the receipt of the Project Application for Payment, review the Project Application for Payment and either issue a Project Certificate for Payment to the County for such amounts as the Construction Manager determines are properly due, or notify the Contractor in writing of the reasons for withholding a Certificate as provided in Subparagraph 9.6.1. The application for payment shall be made on AIA Documents G702 and G703 of the latest edition, in triplicate.

9.4.2 The issuance of a Project Certificate for Payment will constitute a representation by the Construction Manager, Project Consultant and Inspector to the County that, based on their observations at the site as provided in Subparagraph 2.2.4 and the data comprising the Project Application for Payment, the Work has progressed to the point indicated; that, to the best of the Construction Manager's, Project Consultant's and Inspector's knowledge, information and belief, the quality and timeliness of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Completion of the Work, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate); and that the Contractor is entitled to payment in the amount certified. However, by issuing a Project Certificate for Payment, the Construction Manager, Project Consultant and Inspector shall not thereby be deemed to represent that they have made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, have reviewed the construction means, methods, techniques, sequences or procedures, or have made any examination to ascertain how or for what purpose the Contractor has used the monies previously paid on account of the Contract Sum.

9.5 **PROGRESS PAYMENTS**

9.5.1 After the Construction Manager has issued a Project Certificate for Payment, the County shall make payment in the manner and within the time provided in the Contract Documents.

9.5.2 The Contractor shall promptly pay each Subcontractor upon receipt of payment from the County, out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's Work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to their Sub-subcontractors in similar manner.

9.5.3 The Construction Manager may on request, at the Construction Manager's discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Construction Manager on account of Work done by such Subcontractor.

9.5.4 Neither the County nor the Construction Manager shall have any obligation to pay or to see to the payment of any monies to any Subcontractor or Material Suppliers except as may otherwise

be required by law.

- 9.5.5 Neither certification of a progress payment, delivery of a progress payment, nor partial or entire use or occupancy of the Project by the County, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

9.6 PAYMENTS WITHHELD

- 9.6.1 The Construction Manager may decline to certify payment and may withhold the Certificate in whole or in part to the extent necessary to reasonably protect the County, if, in the Construction Manager's opinion, the Construction Manager is unable to make representations to the County as provided in Subparagraph 9.4.2. If the Construction Manager is unable to make representations to the County as provided in Subparagraph 9.4.2, and to certify payment in the amount of the Project Application, the Construction Manager will notify the Contractor as provided in Subparagraph 9.4.1. If the Contractor and the Construction Manager cannot agree on a revised amount, the Construction Manager will promptly issue a Project Certificate for Payment for the amount for which the Construction Manager is able to make such representations to the County. The Construction Manager may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, the Construction Manager may nullify the whole or any part of any Project Certificate for Payment previously issued to such extent as may be necessary, in the Project Consultant's opinion, to protect the County from loss because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, including claims by separate contractors;
- .3 failure of the Contractor to make payments properly to Subcontractors, or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the County or another contractor;
- .6 reasonable evidence that the Work will not be accomplished in compliance with the Contract Time;
- .7 persistent failure to carry out the Work in accordance with the Contract Documents; or
- .8 stop notice served upon the County.
- .9 Failure of the Contractor to comply with any lawful or proper direction concerning the Work given by any County representative authorized to have given such instruction;
- .10 Claims and/or penalties which state law assesses against the Contractor for violation of such law;
- .11 Any claim or penalty asserted against the County by virtue of the Contractor's failure to comply with the provisions of all governing laws, ordinances, regulations, rules, and orders;
- .12 Any liquidated damages which may accrue as a result of the Contractor's progress failing to meet the schedule milestones or failing to achieve completion within the Contract Time.
- .13 Any reason specified elsewhere in the Contract Documents as grounds for a retention or that would legally entitle the County to a withhold.

- 9.6.2.1 When the grounds in Subparagraph 9.6.1 above are removed, payment shall be made for amounts withheld because of them.

In order to adequately protect the County, the Contractor agrees that the basic standard to determine the amount to be withheld pursuant to this Section shall be one hundred fifty percent (150%) of the amounts claimed or the value of the work not done or defectively done; provided, however, that County reserves the authority to retain greater sums should such sums be necessary in the County's discretion to adequately protect it.

Disbursement of Withheld Amounts.

The County, in its sole discretion, may apply any withheld amount or amounts to the payment of any claim resulting in a withhold. The Contractor agrees and hereby designates the County as its agent for such purposes, and any payment so made by the County shall be considered as a payment made under this Contract by the County to the Contractor. The County shall not be liable to the Contractor for any payments made in good faith. Such payments may be made without a prior judicial determination of the claim or claims. The County shall render to the Contractor a proper accounting of any funds disbursed on behalf of the Contractor.

Prior to disbursing any amounts, County shall afford the Contractor an opportunity to present good cause, if any it has, why the claim or claims in issue are not valid or just claims against the Contractor. The County reserves the right then to take such further steps as are appropriate, in its sole discretion, including, but not limited to, seeking a judicial resolution of the controversy.

Correction of Statement and Withholding of Payment.

No inaccuracy or error in any statement provided by the Contractor shall operate to release the Contractor or any surety from the error, or from damages arising from such work, or from any obligation imposed by the Contract Documents. The County shall retain the right subsequently to correct any error made in any previously issued claim for the progress payment, or progress payment issued, by adjustments to subsequent payments.

Effect of Progress Payments.

Neither the payment, the withholding, nor the retention of all or any portion of any progress payment claimed to be due and owing to the Contractor shall operate in any way to relieve the Contractor from its obligations under this Agreement. The Contractor shall continue diligently to prosecute the Work without reference to the payment, withhold, or retention of any progress payment. The payment, withhold, or retention of any progress payment shall not be grounds for an extension of the Contract Time.

9.7 COMPLETION, INSPECTION, AND OCCUPANCY BY COUNTY

9.7.1 Notice of Punch List Inspection.

When the Contractor believes that a phase of its Work is complete, it shall request in writing a punch list inspection. Within five (5) days of the receipt of such request, the Construction Manager and the Project Consultant shall make a punch list inspection or inform the Contractor that the Work is not ready for punch list inspection; upon completion of the deficient work, the Contractor shall again request a punch list inspection. The Contractor or its representatives shall be present at the punch list inspection. The purpose of the punch list inspection is to determine whether the Work has been completed in accordance with the Contract Documents, including all Change Orders, all interpretations and instructions previously issued.

If Contractor fails to attend any punch list inspection, the Contractor shall be charged for the cost of the Construction Manager, Project Consultant, the Inspector, and other design professionals who attended the punch list inspection.

Punch List.

The Construction Manager and the Project Consultant shall notify the Contractor in writing of any deficiencies to be remedied prior to final acceptance, by preparing a written list, known in the industry as a punch list.

The Contractor shall remedy all items shown on the punch list prior to final acceptance by the Construction Manager and the Project Consultant.

No one is authorized to amend the Contract Documents by use of the punch list; it is provided

solely for the benefit of the Contractor to enable it to determine what items must be corrected before final acceptance will be recommended by the Construction Manager and the Project Consultant. The County reserves the right to require compliance with the Contract Documents, notwithstanding the issuance of a punch list or the completion by the Contractor of all items on the punch list.

In the event that the Work still does not comply with the Contract Documents, the County reserves the right to issue such further punch lists as may be required, or to deduct from the final payment the cost of correcting any work not completed in accordance with the Contract Documents, but accepted by the County, without the issuance of further punch lists.

If punch list work needs to be performed after the County has taken occupancy of a phase, the work shall be conducted outside of normal operating hours at the direction of the Construction Manager.

9.7.2 Use of Work Prior to Acceptance.

Whenever, in the opinion of the County, the Work or any part thereof, is in a condition suitable for use, and the best interests of the County require such use, the County may take possession of, connect to, and open for public or County use that portion of the Work.

9.7.3 Repairs or Renewal in the Work.

Prior to the Date of Completion, the Contractor shall make all repairs or renewals in the portion of the Work occupied made necessary due to defective material or workmanship, or the operations of the Contractor, ordinary wear and tear accepted.

9.7.4 Effect of Occupancy.

The County occupancy as contemplated in this Article shall not constitute acceptance by the County of the Work or any part thereof. Such use shall neither relieve the Contractor of any of its responsibilities under the Contract Documents, nor act as a waiver by the County of any of the terms or conditions of the Contract Documents. Any damage done by the County is the responsibility of the County.

9.7.5 Coordination with Other Activities.

The Contractor shall conduct its operations so as not to interfere unreasonably with the County's use of the occupied portions of the site. The Contractor shall submit periodic schedules to the Construction Manager proposing the times, areas, and types of work to be done within such areas.

If the Work produces conditions rendering the occupied portions of building, the Site, or other areas uninhabitable, either because of noise, dust, vibration, smoke, fumes, or for any other cause whatsoever, the Construction Manager may suspend the Work or direct the Contractor to modify the Construction Schedule, and the Contractor shall comply.

Except as provided by Change Order, the Contractor shall not be entitled to a time extension or increase in the Contract Sum by virtue of conflicts between the Contractor's work and the County's occupancy.

9.7.6 Warranties required by the Contract Documents shall commence on the date of the recording of the Notice of Completion on the Project.

9.8 **FINAL COMPLETION, CONTRACT CLOSEOUT AND FINAL PAYMENT**

9.8.1 Contractor's Request for Final Payment.

When the Contractor determines that the Contract is complete and all items on the punch list have been satisfied, or contends that such items are not required by the Contract Documents, the

Contractor shall submit a request for final payment.

9.8.2 Additional Submissions.

Simultaneously with the Contractor's request for final payment, the Contractor shall submit the following items to the Construction Manager:

- A. As-built drawing information pursuant to Section 4.11.3.
- B. Three (3) sets of documentation completely covering the operation and maintenance of the mechanical and electrical installation, elevators, kitchen equipment, and all other equipment required by the technical specifications to be furnished with such manuals. The documentation shall include charts, diagrams, performance curves, catalog information, lubrication manuals, and details pertaining to the functioning of various items of equipment. The documentation shall be divided logically into "systems" on the basis of operation, without respect to trades, subcontractors or arbitrary specifications sections. The relationship of the "systems" shall be clearly and concisely detailed.

No payment will be processed unless accompanied by the listed documents in acceptable form.

Final Estimate.

Upon receipt of the submittals required by this Article, the Construction Manager shall prepare a written estimate of the sum due to the Contractor. This estimate shall take into account the Contract Sum, as adjusted by any Change Orders; amounts already paid; and sums to be retained for incomplete work, liquidated damages, and for any other cause under the Contract Documents.

The Project Consultant shall prepare a statement of final inspection, stating that the Work has been given a final inspection, that the Contractor has submitted the required documents, setting forth with detail any deviations in the Work as completed from the Contract Documents, and estimating the cost of correction of such deviations.

The Project Consultant's statement shall be transmitted to the County along with the Contractor's request for final payment. The Construction Manager shall provide a copy of the Project Consultant's statement of final inspection and the Construction Manager's estimate of the sum due to the Contractor.

If the Contractor contests the estimate of sums due prepared by the Construction Manager, within seven (7) calendar days following service of Construction Manager's estimate of the sum due, the Contractor shall file its protest in writing with the County, setting forth in detail all grounds alleged by it to justify an adjustment to the Construction Manager's final estimate. Failure to file a timely protest shall constitute a waiver and acceptance by the Contractor of the Construction Manager's estimate.

Notice of Completion and Acceptance of Contract.

Acceptance of the Work by the County and the recordation of a Notice of Completion shall be in the manner prescribed by law, provided that the Work shall then be fully and satisfactorily completed and the provisions of the Contract Documents fully and satisfactorily performed in all respects.

Certificate of Final Payment.

Within ten (10) days after the recordation of the Notice of Completion, the County shall present a certificate of final payment stating the entire balance found to be due the Contractor. The amount set forth in that certificate shall then be due and payable, less retentions due to stop notices.

Approval of Final Payment.

Following receipt of the certificate of final payment by the County, the County shall authorize final payment to the Contractor in the sum specified on the certificate of final payment, subject to retentions for stop notices as provided in Article 14. Final payment shall be made within sixty (60) days after recordation of the Notice of Completion and in accordance with Public Contract Code Section 7107.

Withholding for Stop Notices.

The County may, in its sole discretion, and at any time, withhold from the Contractor any unpaid claims alleged in Stop Notices filed pursuant to Civil Code Section 3179 et seq. The County reserves all remedies it may have in the event of a stop notice dispute. The basic standard to determine a sufficient withholding in the event of a Stop Notice shall be one hundred fifty percent (150%) of the total of all stop notices filed; provided, however, the County reserves the right to withhold different or greater sums in its discretion.

Non-Waiver.

Neither acceptance of, nor payment for, the Work or any part thereof, nor any extension of time, nor any possession taken by County shall operate as a waiver of any of the provisions of this Contract, nor shall a waiver of any breach of this Contract be held to be a waiver of any other or subsequent breach. In addition, recordation of a Notice of Completion shall not be deemed an acceptance of latent defects, nor shall it constitute a waiver of any of the provisions of this Agreement.

- 9.8.3 Final completion of the Work is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, and the Construction Manager so confirms, the County shall, upon application by the Contractor and certification by the Construction Manager and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished as provided in Paragraph 7.5, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Construction Manager prior to certification of such payment. Such payment shall be made under the Terms and Conditions governing final payments, except that it shall not constitute a waiver of claims. AIA Documents G707, Consent of Surety Company to Final Payment or if appropriate G707-A, Consent of Surety to Reduction in or Partial Release of Retainage, shall be used.
- 9.8.4 The acceptance of final payment shall, after the Date of Completion of the Project, constitute a waiver of all claims by the Contractor.
- 9.8.5 All provisions of the Agreement, including without limitation those establishing obligations and procedures, shall remain in full force and effect notwithstanding the making or acceptance of final payment.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

- 10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The responsibility for maintaining a safe working site shall be the Contractor's, and the County and Construction Manager undertake no

obligation to suspend the work or notify the Contractor of any hazardous conditions or noncompliance with safety laws.

10.2 SAFETY OF PERSONS AND PROPERTY

- 10.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:
- .1 all employees on the Work and all other persons who may be affected thereby;
 - .2 all the work and all materials and equipment to be incorporated therein, whether in storage or off the site, under the care, custody or control of the Contractor or any of the Contractor's Subcontractors or Sub-subcontractors;
 - .3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and
 - .4 the work of the County or other separate contractors.
- 10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.
- 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and the progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying County and users of adjacent facilities. The Contractor shall enforce any instructions from the Construction Manager or County regarding placement of signs, fires, danger signals, barricades, radios, noise and smoking.
- 10.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.
- 10.2.5 The Contractor shall promptly remedy all damage or loss to any property referred to in Clauses 10.2.1.2. and 10.2.1.3 caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, anyone directly or indirectly employed by any of them, or any one for whose acts any of them may be liable, and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable solely to the acts or omissions of the County, the Construction Manager, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 4.17.
- 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the County and the Construction Manager.
- 10.2.7 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.
- 10.2.8 Traffic Signs and Traffic Control

Existing signs, lights, traffic signals, control boxes, hydrants, meters, and other similar items occurring within the street or sidewalk areas shall be kept free of obstructions and accessible at all times. All such items shall be protected from the Contractor's operations and shall not be obliterated or obscured by its equipment or materials.

Should it be necessary to cover up, move, or alter such items, this shall be done only with permission of the authorities having jurisdiction over the items involved.

Should it be necessary to block a street or sidewalk, the Contractor shall first notify the Construction Manager and the police and fire departments and other agencies with jurisdiction, and shall comply with their instructions, including scheduling limitations.

10.2.9 Security of the Site.

The Contractor's attention is directed to Specifications Section 01500 (if applicable) regarding requirements for fencing the Site, gates, and screening. The Contractor's attention is further directed to the security requirements in the Construction Administrative Procedures Manual.

10.2.10 Removal of Barricades.

Upon completion of the Work, the Contractor shall remove from the site all materials used for barricades, temporary scaffolding, or any other temporary uses.

10.2.11 Protection of Adjacent Property; Notices.

In addition to any requirements imposed by law, the Contractor shall shore up, brace, underpin, and protect as may be necessary all foundations and other parts of all existing structures on the Site or adjacent to the Site which are in any way affected by the excavations or other operations connected with the completion of the Work.

Prior to excavation, the Contractor shall notify all public utilities and governmental agencies of the work proposed, and shall ascertain from them the exact location of their utilities.

Prior to commencing any work which in any way affects adjoining or adjacent land or buildings thereon, or public utilities, the Contractor shall notify the Construction Manager, who will send the County and occupants thereof a notice, which specifies the type of work to be done, the schedule of the work, the impacts expected from the work and the protective measures being taken by the Contractor. The notice shall also specify that any person receiving notice who has questions regarding it may contact the Construction Manager.

Whenever any notice is required to be given to any adjoining or adjacent landowner, utility, governmental agency or other party before commencement of any work, the notice shall be given by the Contractor at least seven days in advance of the work, or longer if required by law or regulation, with a copy delivered to the Construction Manager.

The Contractor shall, at the written instruction of the Construction Manager, meet with any recipient of such notice to explain and discuss the proposed work.

10.2.12 Fire Protection.

The Contractor shall take all steps necessary to protect all structures from fires and sparks originating from the Work, shall comply with all laws and regulations regarding fire protection, and shall comply with all instructions of the fire department with jurisdiction.

The Contractor shall notify the Construction Manager and the fire department in writing at least 72 hours prior to disconnection of either water or electrical service to the site, and shall comply with the fire department's instructions regarding fire safety.

10.2.13 Repairs or Replacement.

Any damage to existing conditions, or to any other improvement or property above or below the surface of the ground, whether private or public, arising from performance of this Contract shall be repaired within 48 hours by the Contractor without expense to the County, unless disruption of existing facility operations or creation of a safety hazard has occurred, in which case damage will be corrected immediately.

If, in the opinion of the Project Consultant, the best interest of the County requires that repairs be made prior to the execution of any further work, the Construction Manager will so notify the Contractor who shall delay or discontinue that part of the Work until the necessary repair has been made. Such delay shall not be considered unavoidable and no extension of the Contract Time will be granted therefore.

Upon the failure of the Contractor to comply with any such order, or upon the Contractor's failure to make immediate emergency repairs which are necessary to protect the Work, the County shall do that work itself as is necessary to protect life and property, in its sole discretion, and deduct the total cost of such work from the next progress payment. No prior notice to the Contractor shall be necessary for the County to take this action.

10.3 **EMERGENCIES**

- 10.3.1 In any emergency affecting the safety of persons or property, including adjoining property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. The Contractor shall immediately notify the Construction Manager of such actions. Any costs to the Contractor for expenditures or time shall be borne by the Contractor.

ARTICLE 11
INSURANCE

11.1 **CONTRACTOR'S INSURANCE.**

Bidders' and their subcontractors' attention is directed to the insurance requirements below. It is highly recommended that Bidders confer with their respective insurance carriers or brokers to determine in advance of bid submission the availability of insurance certificates and endorsements as prescribed and provided herein. If an apparent low bidder fails to comply strictly with the insurance requirements, that Bidder may be disqualified from award of the Contract and forfeits its Bid Bond.

Contractor and subcontractors shall provide and maintain insurance for the duration of the warranty period against claims for injuries to persons and damage to property, which may arise from, or in connection with, performance under the Agreement by the CONTRACTOR, its agents, representatives, employees or subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance

- 1) Coverage at least as broad as Commercial General Liability, insurance Services Office Commercial General Liability coverage occurrence form GC 00 01, with limits no less than \$2,000,000 per occurrence including products and completed operations, property damage, bodily injury and personal & advertising injury. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

- 2) Automobile Liability Insurance of \$1,000,000 per occurrence for bodily injury and property damage covering any auto. If the annual aggregate applies it must be no less than \$2,000,000.
- 3) Workers' Compensation Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- 4) Builders Risk. (County shall be named loss payee as its interest may appear)
 - a. All Risk (Special Perils) covering completed value of the project with no coinsurance penalty provision but not necessarily including flood and earthquake coverage.
 - b. Professional Liability of \$1,000,000 per occurrence or claim for design and build.
 - c. Contractors Pollution Legal Liability and/or Asbestos Legal Liability and/or errors and omissions of \$1,000,000 each occurrence with \$2,000,000 policy aggregate.

B. Specific Provisions of the Certificate

1. If any of the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.
2. The General Liability and Automobile Liability policies are to be endorsed to contain the following provisions:
 - a. *The COUNTY, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired or borrowed by the CONTRACTOR.*
 - b. *For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.*
 - c. *Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice has been provided to the COUNTY.*
 - d. CONTRACTOR hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.
3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONTRACTOR, its employees, agents and subcontractors. CONTRACTOR waives all rights against the COUNTY and its officers, agents, officials, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.

C. Deductibles and Self- Insured Retentions

Self-insured retentions must be declared and the COUNTY Risk Manager must approve any deductible or self-insured retention that exceeds \$100,000.

D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A-: VII and a Standard & Poor's Rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager

E. Verification of Coverage

Prior to approval of this Agreement by the COUNTY, the CONTRACTOR shall file with the Tulare County Board of Supervisors, certificates of insurance with original endorsements effecting coverage in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.

11.1.2 ADDITIONAL CONSTRUCTION INSURANCE REQUIREMENTS:

- a. Payment Bond: For public works projects of more than \$25,000 a "payment bond" is required in the full amount of the Contract price, and shall insure to the benefit of persons performing labor or furnishing materials in connection with the Work of the Contract. This bond shall be maintained in full force and effect until all work under the Contract is completed and accepted by the COUNTY, or until all claims for materials and labor have been paid, whichever is longer.
- b. Performance Bond: For public works projects of more than \$25,000 a "performance bond" is required in the full amount of the Contract price and shall insure the faithful performance by Contractor of all work under the Contract. It shall also insure the replacing of, or making acceptable, any defective materials or faulty workmanship.
- c. Acceptability of Surety: Only California admitted sureties with current AM Best Rating of no less than VII.

ARTICLE 12
CHANGES IN THE WORK

12.1 **CHANGE ORDERS**

- 12.1.1 Definition: A Change Order is a written order to the Contractor signed to show the agreement of the County, the Contractor, the Project Consultant, and the Construction Manager issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time shall be changed only by Change Order. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including the adjustment in the Contract Sum or the Contract Time, for full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.

- 12.1.2 Subject to legal requirements relating to competitive bidding, the County, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletion or other revisions, the Contract Sum and Contract Time being

adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents.

PCO/Work Orders.

Changes also may be made pursuant to a PCO/Work Order, which shall direct a change in the Work and state a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. A PCO/Work Order shall be used in the absence of total agreement on the terms of a Change Order, or when time does not permit processing of a Change Order prior to implementation of the change. Work completed under a PCO/Work Order not yet converted to a Change Order may be billed on progress billings only to an amount that does not cause the total billing to exceed 85% of contract value as modified by approved change orders.

Upon receipt of a PCO/Work Order, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager within five (5) calendar days of the Contractor's agreement or disagreement with the method, if any, provided in the PCO/Work Order for determining the proposed adjustment in the Contract Sum or Contract Time.

Failure to respond to and return a PCO/Work Order to the County within five (5) days indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

Costs mean an itemized breakdown of all labor (by crafts), materials, sales taxes, large equipment rentals, etc., for each portion of the Work which comprises the change order including any subcontractor's itemized breakdown.

The Contractor's combined overhead and profit for work performed by its own forces shall be fifteen percent (15%) of the costs. If the changed work is performed by a Subcontractor, the Subcontractor shall also be entitled to an allowance of fifteen percent (15%) of its labor costs for overhead and profit, and fifteen (15%) of its material costs. The Contractor shall be allowed to mark-up the Subcontractor's price five (5%) for its overhead and profit. Cumulative total markup for all tiers of contractors and subcontractors shall not exceed twenty percent (20%).

The cost or credit to the County resulting from a change in the Work shall be determined in one or more of the following ways:

- .1 by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 by unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 by the method provided in Subparagraph 12.1.3.1 and 12.1.3.2.
- .5 A "cost plus" adjustment subject to the following limitations:

12.1.2.5.1 Record Keeping. In the event that the pricing method selected is the "cost plus" method described above, the Contractor shall keep and present daily, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data of the labor, materials, and equipment used during that day. All labor shall be recorded on separate time sheets clearly identified with the PCO/WO number and scope of extra work involved. These time sheets shall be signed daily by the

Inspector or the Construction Manager. No costs will be allowed for time not recorded and signed the same day the work takes place. The Contractor and the Construction Manager shall discuss and attempt to resolve any disputes concerning the Contractor's daily records at the time the report is submitted.

- 12.1.2.5.2 Reconciliation. The Contractor shall on a monthly basis accompanying the progress payment request submit a reconciliation for all work performed under a cost plus PCO during the period of the progress payment. A final reconciliation shall be submitted within 30 days after the work of the PCO is completed. The reconciliation shall recap all costs and appropriate markups for the period. No costs will be allowed for work not included in a reconciliation within the time periods specified.

- 12.1.3 If none of the methods set forth in Clauses 12.1.2.1, 12.1.2.2, or 12.1.2.3 is agreed upon, the Contractor, provided that a written order signed by the County is received, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the Construction Manager, on the basis of reasonable expenditures or savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit as specified below. In such case, and also under Clause 12.1.2.3 above, the Contractor shall keep and present, in such form as the County or the Construction Manager may prescribe, an itemized accounting of actual cost together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor including social security, Medicare and unemployment insurance and fringe benefits required pursuant to Section 15.9; workers' or workmen's compensation insurance; rental value of equipment and machinery exclusive of small tools, whether rented from the Contractor or others; and the additional costs of supervision as follows:

- 12.1.3.1 Costs of first line supervision labor, including labor burden as described in 12.1.3. "First Line Supervision" shall mean a working foreman or lead craft worker other than the project superintendent;
- 12.1.3.2 Actual cost of the project superintendent associated with any period of compensable delay caused by issuance of the change order. In the absence of a compensable delay, all of the project superintendent's time is considered to have been paid for as part of the overhead;

Upon determination of cost by the Construction Manager, payments to the Contractor may be made based on the Construction Manager's approval of a Project Certificate for Payment. If the Contractor disputes the Construction Manager's cost determination, the Contractor may initiate a claim per the claims and disputes resolution provisions of Paragraph 7.4.

"Overhead" shall include the following: Preparation of all paperwork related to changes in the Work, including field review, estimating and cost breakdown; coordination and supervision, both office and field, including the project superintendent; vehicles including gas and maintenance; small tools, incidentals and consumables; engineering, detailing, and revisions to shop drawings and as-built drawings; general office expense; extended and unabsorbed home office overhead; warranty; costs of bonds, liability insurance, and all taxes; and all other expenses not specifically included in Section 12.1.3 above.

The amount or credit to be allowed by the Contractor or subcontractor to the County, as confirmed by the Construction Manager, for any deletion or change that results in a decrease in the Contract Sum will be the amount of the actual net cost plus five percent (5%) for overhead and profit. When both additions and credits covering related Work or substitutions

are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to that change.

- 12.1.4 Variation in Estimated Quantities: If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated as so changed in a proposed Change Order, that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the County or the Contractor, the applicable unit prices shall be equitably adjusted.

Effect on Sureties.

All changes authorized by the Contract Documents may be made without notice to or consent of the sureties on the Contract bonds, and shall not reduce the sureties' liability on the bonds.

The County reserves the right to require additional payment or performance bonds to secure a change order.

12.2 **CONCEALED CONDITIONS**

- 12.2.1 If this Contract requires the digging of trenches or other excavations that extend deeper than four feet below the existing surface, the following provision shall apply to those trenches or excavations:

- 12.2.1.1 In the event that any of the following described conditions is suspected to exist in the trench or excavation, the Contractor shall promptly, and before the condition is disturbed, notify the Construction Manager, in writing, of any:

- a. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
- b. Subsurface or latent physical conditions at the site differing materially from those indicated.
- c. Unknown physical conditions at the site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

- 12.2.1.2 Upon receipt of notice from the Contractor, the Construction Manager, the County and the Project Consultant shall promptly investigate the conditions, and if it is determined that the conditions do materially so differ or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order or PCO/Work Order under the procedures described in 12.3.

- 12.2.1.3 In the event that a dispute arises between the County and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract Documents, but shall proceed with all work to be performed under the Contract Documents. The Contractor shall retain any and all rights provided either by the Contract Documents or by law which pertain to the resolution of disputes and protests between the contracting parties.

12.3 REQUEST FOR EQUITABLE ADJUSTMENT

- 12.3.1 If the Contractor considers a Request for Equitable Adjustment is justified for an increase in the Contract Sum or Time, the Contractor shall promptly, upon first observance of the condition giving rise to the request, provide the Construction Manager and County written notice of such condition and circumstance. This notice shall be given by the Contractor before proceeding to execute the Work, except in emergency endangering life or property in which case the Contractor shall proceed in accordance with Paragraph 10.3. No such request shall be valid unless so made. Any change in the Contract Sum or Time resulting from such request for equitable adjustment shall be authorized by Change Order.
- 12.3.2 If the Contractor requests that additional cost or time is involved because of, but not limited to, (1) any written interpretation pursuant to Subparagraph 2.2.8, (2) any order by the County to stop the Work pursuant to Paragraph 3.3 where the Contractor was not at fault, or any such order by the Construction Manager as the County's agent, (3) any written order for a minor change in the Work issued pursuant to Paragraph 12.4, the Contractor shall make such request for equitable adjustment as provided in Subparagraph 12.3.1.

12.4 MINOR CHANGES IN THE WORK

- 12.4.1 The Construction Manager will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be enacted by written order issued through the Construction Manager, and shall be binding on the County and the Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 13 **UNCOVERING AND CORRECTION OF WORK**

13.1 UNCOVERING OF WORK

- 13.1.1 If any portion of the Work should be covered contrary to the request of the Construction Manager or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Construction Manager, be uncovered for their observation and shall be replaced at the Contractor's expense.
- 13.1.2 If any other portion of the Work has been covered which the Construction Manager has not specifically requested to observe prior to it's being covered, the Construction Manager may request to see such Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the County. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused by the County or a separate contractor as provided in Article 6 in which event the County shall be responsible for the payment of such costs.

13.2 CORRECTION OF WORK

The County shall have the right to reject materials and workmanship which are determined by the Construction Manager, the Project Consultant, or the Inspector to be defective or fail to comply with the Contract Documents. Rejected workmanship shall be corrected satisfactorily, and rejected materials shall be removed from the premises and replaced, all without cost to the County.

- 13.2.1 The Contractor shall correct, within seven (7) days, all Work rejected by the Construction

Manager as defective or as failing to conform to the Contract Documents whether observed before or after Completion of the Work and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Construction Manager's additional services made necessary thereby.

- 13.2.2 If, within 3 years after the recordation of the Notice of Completion of the Work or designated portion thereof, or within 3 years after acceptance by the County of designated equipment, or within such longer period of time as may be prescribed by the terms of any applicable special warranty required by the Contract Documents, any of the Work to be found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the County to do so unless the County has previously given the Contractor a written acceptance of such condition. This obligation shall survive both final payment for the Work or designated portion thereof and termination of the Contract. The County shall give such notice promptly after discovery of the condition.
- 13.2.3 The Contractor shall, at its sole expense, remove from the site all portions of the Work, which are defective or nonconforming and which have not been corrected under Subparagraphs 4.5.1, 13.2.1 and 13.2.2, unless removal is waived by the County.
- 13.2.4 If the Contractor fails to correct defective or nonconforming Work as provided in Subparagraphs 4.5.1, 13.2.1 and 13.2.2, the County may correct it in accordance with Paragraph 3.4.
- 13.2.5 If the Contractor does not proceed with the correction of such defective or nonconforming Work within a reasonable time fixed by written notice from the Construction Manager, the County may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten days thereafter, the County may, upon ten additional days' written notice, sell such Work at auction or at private sale and shall account for the proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Construction Manager, Project Consultant or other Professional's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the County.
- 13.2.6 The Contractor shall bear the cost of making good all work of the County or separate contractors destroyed or damaged by such correction or removal.
- 13.2.7 Nothing contained within Paragraph 13.2 (Correction of Work) shall be construed to establish a period of limitation with respect to any other obligation, which the Contractor might have under the Contract Documents, including Paragraph 4.5 hereof. The establishment of the time periods noted in Subparagraph 13.2.2, or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents, relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the Contractor's obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

13.3 **ACCEPTANCE OF DEFECTIVE OR NONCONFORMING WORK**

- 13.3.1 If the County prefers to accept defective or nonconforming Work, the County may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be

effected whether or not final payment has been made.

ARTICLE 14

TERMINATION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

- 14.1.1 If the Work is stopped for a period of sixty days under an order of any court or other public authority having jurisdiction, or as a result of an act of government such as a declaration of a national emergency making materials unavailable, through no act or fault of Contractor or a Subcontractor or any agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon thirty additional days' written notice to the County and the Project Consultant, terminate the Contract and recover from the County payment for all work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery.

14.2 TERMINATION BY THE COUNTY

- 14.2.1 Termination by the County for Cause
If the Contractor is adjudged bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of the Contractor's insolvency, or stop notices are served upon the County, or if the Contractor 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, or fails to make prompt payment to Subcontractors for materials or labor, or the Contractor or a subcontractor persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or persistently disregards instructions of the Construction Manager, Project Consultant or County, or otherwise is guilty or a subcontractor is guilty of a substantial violation of a provision of the Contract Documents, or the Contractor fails to provide and keep in full force and effect all insurance required by Article 11, or fails to cause all subcontractors to so comply, and fails after written notice to commence and continue correction of such default, neglect or violation with diligence and promptness, the County upon certification by the Construction Manager that sufficient cause exists to justify such action, may, after an additional written notice and without prejudice to any other remedy the County may have, terminate the Contract.

Procedure for Termination for Cause.

Unless within seven (7) days of the delivery of such notice, the Contractor shall cease such violation and make satisfactory arrangements for a correction thereof, which arrangements are set forth in a written agreement signed by the Contractor and the Construction Manager, the Contractor's right to complete the Work shall cease and terminate.

In the event of any such termination, the County shall, immediately give written notice thereof to the surety and to the Contractor and the surety shall have the rights and obligations set forth in the performance bond. If the County is forced to take over the Work, it may prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of the Contractor, and the Contractor and its sureties shall be liable to the County for any excess costs, including management, supervision, and design support, occasioned thereby. In such event, the County may, without liability take possession of and utilize in completing the Work, the Contractor's materials, equipment, tools, construction equipment and machinery whether stored at the Site or elsewhere, thereon owned by the Contractor and may finish the Work by whatever methods the County may deem expedient. Whenever the Contractor's right to proceed is terminated, the Contractor shall not be entitled to receive any further payment until the Work is finished.

- 14.2.2 If the unpaid balance of the Contract Sum exceeds all direct and indirect costs of finishing the Work, including compensation for the Construction Manager's additional services made necessary thereby, Contractor will only be paid for its actual unpaid costs from such excess. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the County. The amount to be paid to the Contractor or to the County, as the case may be, shall be certified by the Construction Manager, upon application, in the manner provided in Paragraph 9.4 and this obligation for payment shall survive the termination of the Contract.
- 14.2.3 Suspension of Performance: Independent of any right to terminate the Agreement, the authorized representative of County for which CONTRACTOR'S services are to be performed, may immediately suspend performance by CONTRACTOR, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by CONTRACTOR to comply with the provisions of the Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

County will have the right to terminate the Agreement without cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination. County will pay to the CONTRACTOR the compensation earned for conforming, non-defective, work performed and not previously paid for to the date of termination. County will not pay Contractor for lost anticipated profits or other economic loss. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in the Agreement, and is conditioned upon receipt from CONTRACTOR of any and all plans, specifications, records, photographs, logs, and estimates, and other documents pertaining to the Project.

No sanctions will be imposed.

In connection with any termination for convenience, Contractor shall allow County, Construction Manager or any authorized representative(s) to inspect, audit, or reproduce any records to the extent necessary for County or Construction Manager to evaluate and verify the costs incurred by Contractor in performing the Work, including direct and indirect costs such as overhead allocations. Contractor will make this material available upon 48-hours' written notice from County or Construction Manager. County and Construction Manager may inspect and copy, from time to time and at reasonable times and places, any and all information, materials and data of every kind and character (hard copy, as well as computer readable data if it exists), including without limitation, books, papers, documents, subscriptions, recordings, estimates, price quotations, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers, monthly, quarterly, yearly or other financial statements, and any and all other information or documentation that may, in the judgment of County or Construction Manager, have any bearing on or pertain to any matters, rights, duties, or obligations under or covered by the Contract Documents. Such records shall include but not be limited to, the following: accounting records, payroll records, job cost reports, job cost history, margin analysis, written policies and procedures, subcontract files (contracts, correspondence, change order files, including documentation covering negotiated settlements), backcharge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, and any other documents customarily maintained by contractors performing work on public works projects or that County or Construction Manager otherwise deem necessary to substantiate charges related to a Termination.

If this Contract is terminated for default under Article 14 and if it is later determined that the default was wrongful, such default termination automatically shall be converted to and treated as a termination for convenience under this Section. In such event, Contractor shall be entitled to receive only the amounts payable under this Section, and Contractor specifically waives any

claim for any other amounts or damages, including any claim for consequential damages or lost profits.

ARTICLE 15

ADDITIONAL INSTRUCTIONS

15.1 SUBSTITUTION OF MATERIALS

- 15.1.1 When a specific manufacturer, trade name or material is specified or indicated, it is to establish a standard of quality and shall not be constructed as limiting competition. Materials, products, processes, or articles indicated are specified by the name brand of the manufacturer or by patent or proprietary names, shall be deemed to be followed by the words "or equal". If the Contractor desires to use material other than that specified it shall request approval of such substitution, in writing to the County's Representative. Requests for substitutions shall be in the hands of the County's Representative no later than (14) calendar days prior to the date in which addenda will be issued for pre-bid requests per section 00100 Instructions to bidders. Materials found acceptable will be approved by a duly authorized Addendum. Also per section 00100, if a bidder submits non-approved material substitutions, they assume the risk that said substitution may not be approved. Approval of non-approved material substitutions will be made post-bid through the due diligence process. For post-bid substitutions requests, data substantiating the request may be submitted up to 35 days following the Notice of Award. Materials found acceptable will be approved by duly authorized Change Order. It is the intent of this article to comply with Public Contracts Code Section 3400.

If the Contractor desires to use material other than that specified, it shall request approval of such substitution, in writing, to the Construction Manager. Such application constitutes a certification that the Contractor:

- A. Has investigated proposed product and determined that it meets or exceeds, in all respects, specified product.
- B. Will provide the same warranty for equal as for specified product.
- C. Will coordinate installation and make other changes which may be required for work to be complete in all respects.
- D. Waives claims for additional costs which may subsequently become apparent.

The Project Consultant then will determine whether or not the proposed material is equal in quality and utility to the material specified, and its decision shall be final.

Requests for equal materials will only be considered when offered by the Contractor as required by this article.

Requests for substitutions shall be in the hands of the Construction Manager no later than seven (7) calendar days prior to the date on which a decision is needed. Data substantiating the request may be submitted up to 15 days following the Notice of Award. Materials found acceptable will be approved by a duly authorized Addendum or Change Order.

- 15.1.2 Submittals for approval of substitute materials shall contain sufficient information, descriptive brochures, drawings, samples or other data as is necessary to provide direct comparison to the specified materials. Each submittal shall be well marked and identified as to types and kind of the items being submitted for approval. It is the sole responsibility of the Contractor to submit

complete descriptive and technical information so the Project Consultant can make proper appraisal. Lack of proper information will be sufficient cause for rejection. Reference to catalogs that the Project Consultant may or may not have will not be acceptable.

15.1.3 The Project Consultant's review for approval is for quality of visual appearance. It is the Contractor's responsibility to confirm and correlate all quantities and dimensions and coordinate with all trades whose work may be affected by the requested substitution.

15.1.4 Substitutions.

Unless otherwise provided in the technical specifications, the Contractor may make proposals for substitutions to materials and/or processes shown or specified only under one or more of the following conditions:

- A. Unavailability: If the specified product or an equal is no longer available in the marketplace.
- B. Delay: If obtaining the specified product or an equal will delay completion of the Work through no fault of the Contractor.
- C. Better material system or process: If a better material system or process is available at no additional cost.
- D. Savings: If a material which meets all of the performance requirements of the specified material is available at a savings to the County.

A proposal for substitution shall include all information required by the Project Consultant to evaluate the substitute material or process. All substitutions shall be submitted for approval. Such proposal constitutes a certification that the Contractor:

- A. Has investigated the proposed product and determined that it meets or exceeds the performance requirements of the specified product.
- B. Will provide the same or better warranty for substitution as for specified product.
- C. Will coordinate installation and make other changes, including work of other Contractors, which may be required for the work to be complete in all respects at no additional cost to the County.

Effect of Approval of Substitution.

If the substitution is approved, the Contractor shall be solely and directly responsible for setting approved substituted materials and/or equipment into the available space, and for the proper operation of the substituted equipment with all other equipment with which it may be associated, all in a manner acceptable to the County.

No time extensions shall be granted on account of a substitution. The Contract Sum shall be adjusted by the price difference between the approved substitution and the originally specified item.

Time for Proposing Substitution; Decision.

Substitution proposals will not be considered prior to bidding. All requests for substitutions shall be made within the same time requirement for initial submittals. Failure to timely submit a substitution request shall constitute a waiver by the Contractor and an acceptance of the specified materials. Late submittals may be considered only when the Construction Manager consents in writing, and the County's best interests so require.

The Construction Manager and the Project Consultant shall evaluate a timely substitution request, and shall approve, deny, approve with conditions, or initiate the procedure for a change order in response to the Contractor's request. This decision shall be final. If the proposed substitution is rejected, the Contractor shall provide the material originally specified. No time extensions will be granted in connection with substitution requests.

Failure by the Contractor to identify all deviations from the Contract Documents in its request for substitution shall render any County action taken thereon null and void. The Contractor shall bear all costs resulting from any error in the request for substitution.

Only one request for substitution will be considered for each product. When substitution is not accepted, specified product shall be provided.

Samples and Testing of Proposed Substitutions: Costs of Adapting to Work.

When the Construction Manager or Project Consultant determines that samples and testing are required to evaluate a request for a substitution, the Construction Manager shall so advise the Contractor, and specify the materials or work to be sampled. The Contractor shall, at no cost to the County, provide samples as required by Article 7 dealing with samples and testing, or the Technical Specifications.

The Contractor shall bear all costs of sampling and testing required to decide a request for substitution, and if a substitution is accepted, the Contractor shall bear all costs associated therewith, including the cost of the Construction Manager's, Project Consultant's and/or Project Consultant's services required to adapt the substitution to the design to the complete satisfaction of the County, and all costs of mechanical, electrical, structural, or other changes needed to adapt the substitution to the Work.

15.2 REFERENCE TO STANDARDS

15.2.1 Reference to known standards shall mean and intend the latest edition or amendment, in effect on the date of the Bid, unless specifically indicated otherwise, and to such portions of it that relate and apply directly to the material or installation called for on the project.

15.2.2 Where material is specified solely by reference to standard specifications, the Contractor shall, if requested by the Construction Manager, submit to the Construction Manager for its approval, data on all such material proposed to be incorporated into the Work of the Contractor listing the name and address of the vendor, the manufacturer or producer, and the trade or brand names of such materials.

The standard referred to, except as modified in the specifications, shall have full force and effect as though printed in these specifications. These standards are not furnished to the bidder for the reason that the manufacturers and trades involved are assumed to be familiar with their requirements.

1. Where Federal Specifications are referred to as a measure of quality and standard, they refer to Federal Specifications established by the Procurement Division of the United States Government and are available from the Superintendent of Documents, U.S. Government Printing Office.
2. Where Federal Specification numbers are used, they refer to the latest edition including amendments thereto.
3. Where Commercial Standards (CS) or Product Standards (PS) are referred to as a measure of quality, standard, and method of fabrication, they refer to Commercial Standards and Product Standards issued by the U.S. Department of Commerce.

4. Where ASTM serial numbers are used, they refer to the latest tentative specifications, standard specifications, standard method or standard methods of testing, issued by the ASTM, unless specifically noted.

15.3 SPECIFICATIONS

- 15.3.1 The Specifications are organized into Divisions, Sections, and Trade headings based on the Construction Specifications Institute's 48-Division format and the Master format numbering system. This organization shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of the Work to be performed by any trade. The Contractor shall be responsible for examining all sections of the Specifications for inter-related items of the Work, and for furnishing each item identified or specified.
- 15.3.2 No responsibility will be assumed by the County or the Construction Manager for omissions or duplications by the Contractor in the completion of the Contract due to any alleged error in the arrangement of the material in these Specifications nor shall any such segregation of work and materials operate to make the Construction Manager an arbiter in defining the limits to the agreements between the Contractor and its subcontractors or suppliers.
- 15.3.3 The misplacement, addition or omission of any letter, word or punctuation mark shall in no way damage the true spirit, intent or meaning of these Specifications.
- 15.3.4 The words "shown", "indicated", "noted", "scheduled" or words of that effect shall be understood to mean that reference is made to the Drawings accompanying these Specifications.
- 15.3.5 Where reference herein is made to colors or finishes "as selected", the reference is to the Construction Manager with concurrence by the County.

15.4 APPROVED APPLICATORS

- 15.4.1 Where specific instruction in these Specifications require that a particular product and/or materials be installed and/or applied by an "approved applicator" of the manufacturer, it shall be the Contractor's responsibility to insure that any subcontractors used for such work be approved applicators.

15.5 DELIVERY AND STORAGE OF MATERIALS

- 15.5.1 Deliver all manufactured materials in the original packages, containers or bundles (with the seals intact) bearing the name or identification mark of all manufacturers.
- 15.5.2 Deliver fabrications in as large assemblies as practicable and where specified to be shop-primed or shop-finished; they shall be packaged or crated as require to preserve such priming or finish intact and free from abrasion.
- 15.5.3 Store all materials in such manner as necessary to properly protect same from damage, as materials or equipment damage by handling, weather, dirt or from any other cause will not be acceptable.
- 15.5.4 Store materials off sidewalks, roadways, and underground services to cause no obstructions. The Contractor shall be responsible for protecting all material and equipment furnished under the Contract.

15.6 **WORKMANSHIP**

- 15.6.1 Where not more specifically described in any of the various Sections of these Specifications, workmanship shall conform to all of the methods and operations of best standards and accepted practices of the trade or trades involved, and shall include all items of fabrication, construction, or installation regularly furnished or required for completion (including any finish), and for successful operation as intended.
- 15.6.2 All work shall be executed by mechanics skilled in their respective lines of work.
- 15.6.3 When completed, all parts shall have been durably and substantially built and shall present a neat, workmanlike appearance.

15.7 **FINAL GUARANTEE**

- 15.7.1 The Contractor shall be held responsible for, and must make good any defects through faulty, improper, or inferior workmanship or materials, arising or discovered in any part of its work or structure, piping and appurtenances, within one (1) year after the filing of the Notice of Completion. The Performance Bond, furnished by the Contractor, shall cover such defects and protect the County against them.

15.8 **HOURS OF WORK**

- 15.8.1 Eight (8) hours of labor shall constitute a legal day's work upon all work done hereunder, and it is expressly stipulated that no worker employed at any time by the Contractor, or by a subcontractor under this Contract, upon the work, shall be required or permitted to work thereon more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one (1) calendar week, except as provided in Section 1810-1815 inclusive, of the Labor Code of the State of California, all the provisions whereof are deemed to be incorporated herein as if fully set out; and it is further expressly stipulated that for each and every violation of said last named stipulation, said contractor shall forfeit, as a penalty to the County, twenty-five dollars (\$25.00) for each worker employed by the Contractor in the execution of this Contract, for each calendar day during which said worker is required or permitted to labor more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one (1) calendar week in violation of the provisions of said section of the Labor Code.
- 15.8.2 The Contractor and each subcontractor shall also keep or cause to be kept, an accurate record showing the names and actual hours worked each calendar day and each calendar week by each worker employed by it in connection with the Work contemplated by the Agreement, which record shall be open at all reasonable hours to the inspection of the County or its officer or agents, and to the Division of Labor Law Enforcement of the Department of Industrial Relations, its deputies and agents.
- 15.8.3 Notwithstanding the above stipulations, pursuant to Section 1815 of the Labor Code, work performed by employees of contractors in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon the project upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1 1/2) times the basic rate of pay.
- 15.8.4 Whenever the Contractor arranges to work at night or any time when work is conducted other than the normal 40-hour week, or to vary the period during which work is carried on each day, it shall give the Construction Manager a minimum of 48-hours notice so that inspection may be provided. Additional inspection costs incurred because of overtime or shift work shall be paid by

the County. If this overtime work is necessitated by the Contractor's error or failure to perform, the cost of inspection will be borne by the Contractor.

15.9 WAGE RATES

- 15.9.1 Pursuant to Section 1770-1780 of the Labor Code of the State of California, the Department of Industrial Relations has determined the general prevailing rate of per diem wages and rates for legal holidays and overtime in the locality in which this Work is to be performed, for each craft or type of worker or mechanic needed to execute the Contract. Said wage rates pursuant to Section 1773.2 of the Labor Code are on file with the Tulare County General Services Agency, 2637 W. Burrell Avenue Suite 200, Visalia, CA and will be made available to any interested person upon request. They may also be obtained on the internet at www.dir.ca.gov/DLSR/pwd.html. Those prevailing wage rates hereby are incorporated in the Agreement and made a part hereof.
- 15.9.2 It shall be mandatory upon the Contractor to whom the Contract is awarded, and upon any subcontractor under it to pay not less than the said specified rates to all laborers, worker, and mechanics employed by them in the execution of the Contract, and to pay all laborers, workers and mechanics not less often than once weekly. The Contractor to whom the Contract is awarded shall post a copy of the determination of prevailing wages at the job site. The Contractor shall require all subcontractors to comply with Sections 1770-1780 of the Labor Code of the State of California and shall insert into every subcontract the requirements contained therein. The Contractor shall be responsible for compliance by each subcontractor with Labor Code Section 1776.
- 15.9.3 It is hereby further agreed that the Contractor shall forfeit to the County, as a penalty, fifty dollars (\$50.00) for each laborer, worker, or mechanic employed for each calendar day or portion thereof, who is paid less than the said stipulated rates for any work done under the Contract, by it or by any subcontractor under it. The difference between said stipulated rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than said stipulated rate shall be paid to each worker by the Contractor. The Contractor, and each subcontractor, shall keep or cause to be kept an accurate record showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by it or her in connection with the public work. The records shall be open at all reasonable hours to the inspection of the County, to its officers and agents, and to the Division of Labor Law Enforcement of the State Department of Industrial Relations, its deputies and agents. **In addition, the Contractor shall submit a certified copy of the payroll records of the Contractor and each subcontractor to the awarding body within seven (7) days after the payroll week ending date.**
- 15.9.4 In case it becomes necessary for the Contractor or any subcontractor to employ on the work under this Contract any person in a trade or occupation (except executive, supervisory, administrative, clerical or other non-manual workers as such) for which no minimum wage rate is specified, the Contractor shall immediately notify the County who will promptly, after consultation with the DIR, determine the prevailing rate for such additional trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment. The Contractor and all subcontractors shall pay each worker engaged in the specified work not less than those rates. Pending such determination, the wages may be assumed to be those in the applicable collective bargaining agreement, but no adjustment in the Contract Price shall be made if such assumption is incorrect.
- 15.9.5. As of January 1, 2015, no contractor or subcontractor may be listed on a bid proposal for a

public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)]. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

According to sections 1770-1780 of the Labor Code of the State of California, the Director of the Department of Industrial Relations has determined the general prevailing rate of per diem wages in the locality for each craft or type of worker needed to execute the Contract.

The Contractor to whom the Contract is awarded and any subcontractor under it will pay all workers employed on the work at least the rates determined by the Director of the Department of Industrial Relations. Copies of the prevailing rate of per diem wages are on file with the Department of Industrial Relations, Division of Apprenticeship Standards, 455 Golden Gate Avenue 10th Floor, San Francisco, California 94102, and at the Tulare County General Services Agency, 2637 W. Burrell Avenue Suite 200, Visalia, CA, and are available to any interested party on request.

According to Labor Code section 1775, the Contractor will, as a penalty to the Owner, forfeit not more than **\$200.00** for each calendar day or portion of a day, for each worker paid less than the prevailing rates as determined by the director for the work or craft in which the worker is employed. The amount of this penalty will be determined by the California State Labor Commissioner and will be based on the consideration of the Contractor's failure to pay the correct rate as a good faith mistake, penalties assessed against the Contractor within the previous three years for failing to meet its prevailing wage obligations, or the Contractor's willful failure to pay the correct rates of prevailing wages.

According to Public Contract Code section 6109, with respect to subcontractors that are ineligible to perform work on public works projects according to Labor Code section 1777.1 or 1777.7:

1. The Contractor must not allow any such subcontractor to work on this project.
2. The Contractor must repay to the Owner any money paid to any such subcontractor allowed to work on this project.
3. The Contractor will pay the wages of the workers of any such subcontractor allowed to work on this project.

According to Labor Code section 1776, the Contractor and each subcontractor are required to keep or cause to be kept an accurate record showing the names and occupations of all laborers, workers and mechanics employed by it in connection with the execution of this Contract or any subcontracts, and showing also the actual per diem wage paid to each of such workers, which records will be open at all reasonable hours to inspection by the Owner, its officers and agents and to representatives of the Division of Labor Standards Enforcement of the State Department of Industrial Relations. The certified payroll records are required to be on forms provided by the Division of Labor Standards Enforcement or will contain the same information as the forms provided by the division.

15.10 APPLICATION OF HIGHEST STANDARDS AND REQUIREMENTS

- 15.10.1 Whenever two or more standards or requirements appear in these General Conditions or in any other part of the Contract Documents that form the Contract, the highest standard or requirement shall be applied and followed in the performance under this Contract.

15.11 NONDISCRIMINATION IN EMPLOYMENT

- 15.11.1 Federal and State Laws prohibit discrimination in employment. The California Fair Employment Practices Act (Labor Code section 1410 - 1433) prohibits discrimination in employment on the basis of race, religion, color, sex, physical handicap, medical condition, marital status, age, national origin or ancestry, and applies to all employers, employment agencies and labor organizations.
- 15.11.2 Title VII of the Federal 1964 Civil Rights Act (42 U.S.C. sections 2000e - 2000e - 17) prohibits employment discrimination on the basis of race, color, sex, religion, or national origin, and applies to all employers that employ at least 15 workers during each working day in each of 20 or more calendar weeks in the current or preceding year.
- 15.11.3 In addition to these two laws of general application, there are other Federal and State laws that prohibit employment discrimination in particular cases.
- 15.11.4 The County of Tulare is an Affirmative Action Employer and expects all of its contractors and suppliers to familiarize themselves with, and comply with, all applicable laws relating to employment discrimination.
- 15.11.5 To the extent required by law, the Contractor shall meet all requirements of law relating to the participation of minority, women, and disabled veteran business enterprise contracting goals, and shall comply with Public Contract Code section 10115 et seq. and all applicable regulations. Contractor further agrees that, when required, Contractor will ensure compliance by all subcontractors and will complete all forms required by all agencies exercising jurisdiction over the project.

15.12 APPRENTICES

- 15.12.1 Pursuant to Sections 1770-1780 of the Labor Code of the State of California, the Department of Industrial Relations has determined the general prevailing rate of per diem wages in the locality for each craft or type of worker needed to execute the Work. Said wage rates pursuant to Section 1773.2 of the Labor Code are on file with the Tulare County General Services Agency, 2637 W. Burrell Avenue Suite 200, Visalia, California, and will be made available to any interested person on request.
- 15.12.2 Pursuant to Section 1775 of the Labor Code of the State of California, nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.
- 15.12.3 Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which it is employed, and shall be employed only at the work of the craft or trade to which it is registered.
- 15.12.4 Only apprentices, as defined in Section 3077, 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 on public works. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which it is training.

15.13 PROVISIONS REQUIRED BY LAW DEEMED INSERTED

- 15.13.1 Every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted, and this Contract shall be read and enforced as though it were included, and if

through mistake or otherwise any provision is not inserted or is not correctly inserted, upon application of either party the Contract shall be amended to make the insertion or correction.

15.14 Conflict of Interest.

No official of the County who is authorized on behalf of the County to negotiate, make, accept, or approve, any consulting, inspection, construction, or materials supply contract, or any subcontract in connection with the construction of the Project, or any land acquisition in connection with the Project, shall become directly or indirectly interested personally in this Contract or in any part thereof.

No officer, employee, attorney, Consultant, or inspector of or for the County who is authorized on behalf of the County to exercise any executive, supervisory, or other similar function in connection with the construction of the Project shall become directly or indirectly interested personally in this Contract or any part thereof.

15.15 No Verbal Agreements.

No verbal agreement or conversation with any officer, agent, or employee of the County, either before, during, or after the execution of the Contract Documents shall affect or modify any term or condition contained in the Contract Documents, nor shall such verbal agreement or conversation entitle the Contractor to any additional payment or time to perform whatsoever under the terms of this Agreement.

15.16 Anti-Trust Assignment.

By execution of the Contract Documents, or any subcontract awarded by the Contractor, the Contractor or any subcontractor offers and agrees to assign and hereby does assign to the County all rights, title, and interest in and to all causes of action the Contractor or subcontractor may have under Section 4 of the Clayton Act (15 USC Section 15) or under the Cartwright Act (Chapter 2 of Part 2 of Division 7 of the Business and Professions Code, commencing with Section 16700), arising from purchases of goods, services, or materials pursuant to this public works contract or subcontract. This assignment shall be made and shall become effective upon execution of the Contract.

15.17 Contractor Not Agent, Nor Employee.

Neither the Contractor nor any subcontractor, or any officer, agent, or employee of either, is, nor shall they represent themselves to be, an officer, agent, or employee of the County for any purpose whatsoever.

No person employed by the Contractor, or by any subcontractors, are, nor shall they be construed to be in any manner or for any purpose whatsoever, employees of the County

ARTICLE 16
GUARANTEE

- 16.1 Contractor guarantees that all materials and workmanship shall conform to the Contract Documents and agrees to replace, at its sole cost and expense, and in conformity with the Contract Documents, any defective material and any and all work defectively or improperly performed or installed within a period of **One (1) year** after final acceptance in accordance with paragraph 9.8 of the General Conditions. The Contractor shall, in no case longer than fifteen (15) days after receipt of written notice thereof, commence to repair and/or replace any defect in materials or workmanship which may develop during said **1-year** period, and any damage to adjacent materials resulting from the repairing or replacing of such defects, at its own expense and without cost to County. In the event Contractor fails to remedy any such defect within 15 days after receipt of such written notice (unless Contractor has commenced the repair and is diligently pursuing the repair to completion), County may proceed to have such

defects remedied at Contractor's expense and Contractor shall pay the costs and charges incurred thereby. Emergency repairs, including but not limited to power, water, sewer, fire and life safety, shall have a 48-hour response time. The cost and repair of any supplementary damage caused by construction defects will be the sole responsibility of the Contractor. Neither acceptance nor payment nor any provision in these documents shall be deemed to be a waiver by County to relieve Contractor of any responsibility under this Contract. The Contractor shall submit a written guarantee on the form that follows.

GUARANTEE

Guarantee for _____ County of Tulare _____. We hereby guarantee that the **Tulare County – Sheriff and Fire Dispatch Center, 5300 W Tulare Avenue, Visalia, CA 93277** which we have installed in **Visalia, California**, has been installed in accordance with the drawings and specifications, and that the Work as installed will fulfill the requirements included in the specifications. The undersigned agrees to repair or replace any or all so such Work, together with any other adjacent work which may be displaced in connection with such replacement, that may prove to be defective in workmanship or material within a period of **one calendar year** by the _____ County of Tulare _____, ordinary wear and tear and unusual abuse or neglect expected.

In the event of the undersigned's failure to comply with the above-mentioned conditions within a reasonable period of time, as determined by the County, but not later than ten (10) days after being notified in writing by the County, the undersigned authorizes the County to proceed to have said defects repaired and made good at the expense of the undersigned, which will pay the costs and charges therefore upon demand.

Countersigned

(Proper name)
Date of signature: _____

(Proper name)
Date of signature: _____

(Printed name)

(Printed name)

By: _____

By: _____

(Signature of Subcontractor or
General Contractor)

(Signature of General Contractor if for
Subcontractor)

Representatives to be contacted for services;

Name: _____

Address: _____

Telephone Number: _____

END OF SECTION 00700