

Design-Build Manual

CLOVIS REGIONAL AND REEDLEY LIBRARIES

CLOVIS REGIONAL LIBRARY – 755 3RD ST., CLOVIS, CA 93612
REEDLEY LIBRARY – 1819 11TH ST., REEDLEY, CA 93654

RFQ#PWP24-015
CONTRACT NUMBER 24-DB-02

USING THE
Design-Build Project Delivery Method

2220 TULARE STREET 7TH FLOOR
FRESNO, CA 93721

DATE, 2024

Budget / Account: 8863/3150/91406, 8865/8150/91574



Department of Public Works and Planning

DOCUMENT 00 0110

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** Not provided in Sample Contract. To be provided in Project Manual issued with RFP.*

END OF DOCUMENT

SAMPLE

DOCUMENT 00 1119

Request For Proposals County of Fresno

Design-Build Contract Number: 24-DB-02

Stipend A Contract Number: PWP24-015

Stipend B Contract Number: PWP24-020

For the Design-Build of

CLOVIS REGIONAL AND REEDLEY LIBRARIES

Date Released: TBD

Questions and Requests For Clarifications (RFCs)

Closing Date: 4:00 PM, TBD, Pacific Time

DesignServices@fresnocountyca.gov

Subject line "24-DB-02 Clovis Regional And Reedley Libraries - RFC"

Stage 1 Proposals

Due prior to: 12:00 PM (Noon), TBD, Pacific Time

Proposals will be received at: <https://www.bidexpress.com/businesses/36473/home>

Stage 2 Proposals

Due prior to: 12:00 PM (Noon), TBD, Pacific Time

Proposals will be received at: <https://www.bidexpress.com/businesses/36473/home>



Department of Public Works and Planning

Request for Proposals

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Document 00 4530	Iran Contracting Act Certification
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Document 00 5200	Design-Build Agreement
Document 00 5201	Bridging Documents
Document 00 6113.13	Construction Performance Bond
Document 00 6113.16	Construction Labor and Material Payment Bond
Document 00 6536	Guaranty
Document 00 7253	General Conditions
Document 00 7316	Supplementary Conditions - Insurance and Indemnification
Document 00 9113	Addenda

The County of Fresno (alternatively referred to herein as “County” or “the County”) is seeking competitive sealed Proposals from Design-Build Entities as described herein, for the following Design-Build public work:

CLOVIS REGIONAL AND REEDLEY LIBRARIES

Herein referred to alternatively as (“the Project”).

ARTICLE 1 – INTRODUCTION

1.01 Receipt of Proposals

- A. Requests for Clarification (RFCs) regarding this RFP must be submitted in writing either through Bid Express or by email to DesignServices@fresnocountyca.gov. Questions must be received by 4:00 P.M. Pacific Time on XXXXX, 202X.
- B. The County shall receive Electronically Submitted Proposals through Bid Express (<https://www.bidexpress.com/businesses/36473/home>), due no later than 12:00 P.M. (Noon) Pacific Time on XXXXX, 202X. **LATE SUBMITTALS WILL NOT BE ACCEPTED BY THE COUNTY.**

1.02 Proposal Requirements

- A. This Document 00 1119 (Request for Proposals) sets forward terms and conditions for development, preparation, receipt, review, and evaluation of the Proposals for the Project.
- B. Each Design-Build Entity must submit their Proposal in accordance with this Document 00 1119.
- C. The County has deemed all shortlisted Design-Build Entities who responded to #RFQ 24015 shall be qualified to participate in the RFP process.
- D. Shortlisted Design-Build Entities who desire to participate in the RFP process shall notify the County no later than the 5:00 PM, XXXXX, 20XX, deadline. Design-Build Entities not responding by the deadline shall be considered non-responsive and shall not be allowed to participate in the RFP process.
- E. Submission of a Proposal signifies the Design-Build Entity has carefully examined the RFP Documents and has gained a complete understanding of the entire Scope of Work to be performed for the Project.
- F. The Design-Build Entity must complete all the requirements described in Document 00 7253 (General Conditions), as a condition to submitting a Proposal, and submission of a Proposal shall constitute the Design-Build Entities express representation to the County the Design-Build Entity has fully completed these requirements.
- G. Cost is an important criterion for the County and selection will be on a Best Value basis with cost being one the evaluation factors.

1.03 Bridging Documents

- A. The Bridging Documents represent the minimum mandatory scope of the Project, and an item will not be considered an Alternate if it is utilized to meet an “or equal” requirement.
- B. Bridging Documents are made available under Document 00 5201 (Bridging Documents).
- C. Site Plan, Floor Plan, Elevations and Materials shown in the Bridging Documents are based on Library staff approved design.

ARTICLE 2 – PROPOSAL DEVELOPMENT

2.01 Pre-Proposal Conference, Site Visit, and Confidential Meetings

- A. Examine the RFP documents. Notify the County of any errors or ambiguities.
- B. A Pre-Proposal Conference will be conducted on Month XX, 202X at Xxxxx location, at a specific time to be announced. Proposers are encouraged to email questions in advance of the conference.
- C. Design-Build Entities are encouraged to visit the site prior to the Confidential Meetings.
- D. Confidential Pre-Proposal Meetings shall be conducted between XXXXX to XXXXX, 202X on Zoom.

2.02 Existing Conditions and Related Data:

- A. Refer to Document 00 3100 (Available Project Information). The Proposer is responsible for foreseeable site conditions and hazardous materials to the extent described in the RFP that could be reasonably inferred by the Proposers based on their experience and expertise on similar projects.

2.03 Requests for Clarification (RFC) and Addenda

- A. Design-Build Entities must submit to the County all Requests for Clarification (RFC) regarding the RFP Documents by email no later than the 4:00 PM, XXXXX X, 202X, deadline. RFCs submitted later than the deadline will not be considered, and no response shall be given.
- B. The County shall transmit to all Design-Build Entities any Addenda the County in its discretion considers necessary in response to questions arising from RFCs, and the Pre-Proposal Conference, site visit, or from confidential meetings. Design-Build Entities shall not rely upon oral statements; nor shall oral statements be binding or legally effective.
- C. Design-Build Entities may submit two types of RFCs: confidential or general questions. A response to a confidential question will be sent directly to the submitter that asked the question. A response to a general question will be posted online for all short-listed Design-Build Entities to see. If the County disagrees with the Design-Build Entity and considers their

- question to be general, the County may choose to not answer the question unless the Design-Build Entity agrees to allow to post it online.
- D. The County may reword or paraphrase the submitted RFC for spelling, punctuation, grammar, and clarity.
- E. These paraphrased questions and associated responses are not part of the contract documents and shall have no bearing whatsoever on the interpretation of the contract documents. Nor shall they have any bearing whatsoever on the interpretation of other publications referenced therein.
- F. The County shall send by email Addenda to each Design-Build Entity to the address supplied to the County by each Design-Build Entity.
- G. Only County RFC responses as Addenda in writing shall be legally binding. Addenda may include responses to multiple RFCs. Oral and other interpretations or clarifications shall not be binding or legally effective.
- H. If the County deems advisable, the County may issue Addenda to modify the Proposal Documents.
- I. Addenda shall be acknowledged in Document 00 4200-2 (Design-Build Proposal Form) by the County Assigned Number and shall be included as part of the Contract Documents.
- J. Design-Build Entities may obtain a complete list of Addenda via the Bid Express solicitation.

ARTICLE 3 – CONTENT OF PROPOSALS

3.01 General Proposal Submission Instructions

- A. Each Design-Build Entity shall submit Proposals to the County via:
<https://www.bidexpress.com/businesses/36473/home>
You must be logged in on Bid Express to view the solicitation.
- B. Design-Build Entities shall submit Proposals in a PDF format that can be reproduced as follows:
- Letter Size Documents: 8-1/2" x 11"
 - Ledger Size Documents: 11" x 17"
 - Architectural Drawings: 24" x 36"
- C. Design-Build Entities shall submit Proposals and all deliverables in a manner that is structured to permit easy and definitive evaluation of Evaluation Factors. See 3.05 of this document.
- D. Proposals shall include all County Addendums issued in writing.

E. The Proposal must contain fully completed (and where applicable, executed) documents:

1. **Document 00 4200 (Design-Build Proposal Form).**

- a. The Design-Build Proposal Form must be completed on Bid Express as indicated therein. Design-Build Entities must provide information for all items, including Alternates and Proposed Alternates. Information regarding Proposed Alternates must either be attached under "Required Documents" in Bid Express.

2. **Proposal Security.**

- a. Design-Build Entities must submit with their Proposals either cash, a certified check, or a cashier's check made out to the County of Fresno from a responsible bank in the United States, or a corporate surety bond furnished by a surety authorized to do surety business in the State of California, of not less than 10% of the Design-Build Entity's Design-Build Budget Proposal, payable to the County of Fresno. Hardcopy bonds should be scanned and uploaded to Bid Express and an original copy should be brought to the scheduled interview. Proposal bonds may also be submitted online through Bid Express using one of the accepted electronic sureties (Tinubu or Surety 2000).
- b. The County shall provide the required form of corporate surety bond, **Document 00 4316 (Bond Accompanying Proposal)**, if used.
- c. The County shall reject as non-responsive any Proposal submitted without the necessary Proposal security. The County may retain all Proposal securities and Proposal bonds until the later of 60 days after Proposal opening or execution of the Contract and deposit of all necessary bonds and other items, at which time the County shall return the Proposal securities and Proposal bonds of any non-defaulting Design-Build Entity.

3. **Document 00 4330 (Subcontractors List).** Identify all Subcontractors who shall participate in the Project which are known as of the Proposal Deadline due date and time.

4. **Document 00 4516 (Design-Build Entity Certifications).** Provide signed and completed (and including any attachments) as indicated therein.

5. **Document 00 4520 (Non-Collusion Declaration).** No Design-Build Entity may make or file or be interested in more than one Proposal for the same supplies, services, or both.

6. **Document 00 4530 (Iran Contracting Act Certification).** Provide signed and completed as indicated therein.

7. **Letter from Surety.** Provide a letter from a surety duly licensed to do business in the State of California, having a financial rating from A.M. Best Company of A, VII or better, confirming that surety has agreed to provide Design-Build Entity with performance and payment bonds in accordance with the requirements set forth in the Contract Documents 00 6113.13 (Construction Performance Bond) and 00 6113.16 (Construction Labor and Material Payment Bond), with minimum penal sums in the

amounts set forth therein.

8. **Letter from Insurer.** Provide a letter from an insurance underwriter, having a financial rating identified in Document 00 7316 (Supplementary Conditions – Insurance and Indemnification), confirming that the insurer shall provide the coverages and amounts required for Design-Build Entity specified in the Contract Documents.
9. **Material Changes List.** If the Design-Build Entity is unable to certify in Document 00 4516 (Design-Build Entity Certifications) that all information it submitted to County in connection with the RFQ Process remains true and correct in all material respects as of the date of submitting its Proposal, a list of all such changes (“Material Changes List”), accompanied by the same types of information that the Design-Build Entity was required to submit for as part of the RFQ Process.
10. **Technical Proposal Submission.** Contain the following items, as further described below:
 - a. Proposed Staffing and Designated Subcontractors
 - b. Draft Project Management Plan
 - c. Preliminary Baseline Design / Construction Schedule including Staffing Plan
 - d. Base Items
 - e. Alternates and Proposed Alternates
 - f. Life-Cycle costs over 20 years beginning with the Notice of Completion

3.02 Design-Build Entity Team Design and Technical Expertise

A. Proposed Design-Build Entity Team Members and Subcontractors

1. Submit a list of the proposed Design-Build Entity Team Members for the Project. The list must include all key Design-Build Entity Team Members previously approved in the Request for Qualifications and include, at a minimum, the specific positions indicated below, and such others as the County may request before the Proposal Deadline date. Team Member substitutions shall not be permitted without prior approval of the County. Additional staff required but not part of the Request for Qualifications submittal should be added and noted in the Proposal.
 - a. Project Executive
 - b. Project Manager
 - c. Architect of Record
 - d. Design Consultants (By Discipline)
 - e. General Contractor

- f. General Superintendent
- g. Superintendent
- h. Safety Manager
- i. Cost Estimator
- j. Project Scheduler
- k. Quality Control Manager
- l. Subcontractors (By Trade)

If one individual will be fulfilling the duties of more than one position identified above, include one resume for the individual noting the Key Personnel positions they will be filling.

- 2. Design-Build Entities MUST provide an organizational chart for both Design and Build Key Project Management and Staff.
 - 3. Design-Build Entities shall provide a staffing fee breakdown to include hourly rates for the staffing levels identified including a total cost for each staff member and the sum of total cost for ALL staff identified in the table for both Design and Build phases. The hourly rates for staff shall include all applicable staff costs excluding overhead and profit.
 - 4. All Subcontractors who are known to be performing portions of the Work on the Proposal Deadline date (Designated Subcontractors) must be identified in Document 00 4330 (Subcontractors List). All Subcontractors not designated, or trade not performed by the Design-Build Entity, must be competitively bid and awarded by the Design-Build Entity. Designated Subcontractors shall not require public bidding beyond this RFP process.
 - 5. All Subcontractors working on the Project, whether included in the Proposal or otherwise, must have an Experience Modification Rate (EMR) of 1.00 or less.
- B. Proposed Design and Design Approach
- C. Draft Project Management Plan
- 1. Submit a draft Project Management Plan that addresses all the following (in no particular order):
 - a. Project Directory and contact information of Key Personnel
 - b. Meetings and Conferences Plan
 - c. Quality Assurance / Quality Control Plan
 - d. Construction Traffic Management Plan

- e. Safety Plan
 - f. Utility Coordination Plan
- D. Preliminary Design-Build Schedule
- 1. Submit a preliminary Design-Build Schedule to complete the work using Critical Path Software incorporating milestones and events representing the Design-Build Entity intended plan for completing the Work within the contract time and comply with Section 01 3200 Progress Schedules and Reports.
- E. Design Services
- 1. Design Services shall be provided by the Design-Build Entity per Article 4 of Document 00 7253 (General Conditions) of the Design-Build Agreement.
 - 2. For the purpose of this RFP, General Article 4, 4.2, Schematic Design shall be omitted and shall commence with Article 4.3, Design Development.
- F. Base Items
- 1. Work of Contract Documents. This comprises all work of Contract Documents including Bridging Documents.
 - 2. Allowances. There are no allowances on this project.
 - 3. Subtotal: The sum of the Work of Contract Documents and Allowances shall be identified here.
- G. Alternates and Proposed Alternates
- 1. An Alternate is a demonstrated benefit to the Project that is beyond the minimum requirements established in the RFP. All Alternates must be high quality, add significant value, and provide benefit to the County. (See section 3.05(B)(3) and 3.05(B)(6) below, and Document 00 4200 Schedule of Proposal Prices (Design-Build Proposal Form), for scoring the Alternates.)
 - a. Alternates that the County has identified that would be beneficial, but not necessary for the completion of the Project, are referred to as "Alternates."
 - b. In addition to the Alternates, Design-Build Entities are encouraged to propose other alternates, substitutions, or technical design revisions that could improve the Project, referred to as "Proposed Alternates."
 - c. Alternates and Proposed Alternates may be additive or deductive.
 - 2. Project includes number (TBD) Alternates:
 - a. TBD
 - 3. Proposed Alternates may include, without limitation, the following:

- b. TBD
 4. All Proposers must include pricing for each individual Alternate (Schedule 1-A) and Proposed Alternate (Schedule 1-B) on Document 00 4200 Schedule of Proposal Prices (Design-Build Proposal Form).
 5. For each Alternate and Proposed Alternate, also submit the following within your proposal:
 - a. A unique identification number (to be used in Proposal Form Schedule 1-A or 1-B, as applicable);
 - b. A narrative description of the Alternate or Proposed Alternate;
 - c. A list / description of benefits to the County;
 - d. Affected Specification / Bridging Documents section references and changes (if applicable);
 - e. New performance criteria (if applicable);
 - f. New concept drawings (if applicable);
 - g. A comparison between the original Specification / Bridging Documents requirements and the proposed change; and
 - h. Cost benefit analysis (if applicable).
 6. The County will take Alternates and Proposed Alternates into account in determining **Contract Sum** only if accepted and actually included in the Contract at time of award (see Document 00 5100 Notice of Award and Document 00 5200 Agreement section 1.02).
- H. Life-Cycle costs over 20 years
1. Submit a Life-Cycle Cost (LCC) analysis of proposed systems describing the Proposer's approach for evaluating alternatives and developing cost effective designs, systems, and components as part of sustainable design. Life-cycle benefit analyses must be shown over a twenty (20) year life-cycle period and include present value, maintenance, energy use, repairs, and replacement costs (omit salvage value and demolition costs). Proposer's LCC analysis should take into account its proposed Base Project plus Alternates and Proposed Alternates reflected in Document 00 4200 (Proposal Form).
 2. Include hard and soft calculations which demonstrate the level of energy efficiency, as well as a Statement regarding the Proposers' experience in using such programs.

3.03 Proposal Guide

- A. To aid Design-Build Entities in preparing and submitting their Proposals, the following is provided as a guide:
1. It is the intent of the County to utilize the creative expertise of the Design-Build Entities. Document 00 5201 (Bridging Documents) establish the design intent, level of quality, utility, and special requirements.

2. Design-Build Entities may propose, as Proposed Alternates, alternate materials, methods, and means to achieve the County design intent. However, the burden of compliance with the Bridging Documents remains with the Design-Build Entity.
3. The evaluation of the Proposals during this selection phase is not intended to be final judgment on the validity or acceptability of Proposed Alternates.
4. Proposals for substitutions must be made in conformance with the Contract Documents and be made on a system-wide basis such that the County is not asked to piecemeal its review of individual elements of a system. The County will reasonably cooperate in considering and reviewing substitutions and / or modifications. The County is not required, however, to approve substitutions and / or modifications that would change or reduce the performance standards, intended use, and / or value of the Project.
5. The acceptance of, and / or the issuance of a stipend in connection with the Fresno County Xxxxxxx Facility Project Proposal, does not constitute acceptance by the County that any or all of the proposed elements are in conformance with the Contract Documents.
6. Design-Build Entities are encouraged to perform their own site investigations.

3.04 Proposal Receipt and Evaluation

A. General.

1. Design-Build Entities shall be evaluated in a two-stage process. In the first stage ("Stage 1"), all pre-qualified Design-Build Entities shall participate. In the second stage ("Stage 2"), after review of all proposals and meetings with the shortlisted Design-Build Entities as requested and initiated by County, the short-listed Design-Build Entities shall be asked to submit best and final Proposals, and if an award is to be made it shall be based on the best and final Proposal.
 - a. Stage 1
 - 1) County receives all Design-Build Entity Proposals
 - 2) Pre-Proposal Conference
 - 3) Confidential Pre-Proposal Meetings
 - 4) RFC Deadline
 - 5) Design-Build Entity Presentations and Interviews
 - 6) Design-Build Entities revise Proposals based on Presentation Interviews
 - b. Stage 2
 - 1) Design-Build Entities submit Final and Best Proposals
 - 2) County Review Committee completes evaluations and selects Design-

Build Entity to Design and Build the Project

- 3) Qualified Design-Build Entities are notified of their ranking in the RFP selection process
2. The shortlisted Design-Build Entities who are not awarded the Contract are eligible to enter into an agreement to receive a stipend of **(\$40,000.00)** for their participation in the RFP process. In exchange for eligibility to receive the stipend, participation in the RFP process, and subject to compliance with the obligations herein, all Qualified Design-Build Entities shall execute the Stipend Agreement (Document 00 4900) and agree to the following conditions:
 - a. Design-Build Entities who fully complete the RFP process and are not awarded the Contract shall agree not to protest the Award of the Contract to the selected Design-Build Entity.
 - b. Any Design-Build Entity that fails to submit a responsive Proposal (including without limitation withdrawing from the RFP process), or any Design-Build Entity that fails to submit a responsive best and final Proposal, shall not be eligible to receive a stipend.
 - c. Design-Build Entities who receive a stipend shall agree to transfer ownership of all documents and intellectual property as detailed in section 5.03, Ownership of Documents Agreement.

B. Proposal Receipt and Evaluation.

1. Proposals must be submitted on Bid Express and will not be opened publicly but may become public as described below.
2. The County shall open the Proposals and perform a preliminary review to identify any patently defective Proposals. County action on defective Proposals may include refusal to evaluate such Proposals and elimination from the Proposal process. The County reserves all rights to take any action consistent with the requirements of this Document 00 1119 (Request for Proposals), including, without limitation, requesting additional information after receipt and opening of Proposals and waiving any inconsequential defects.
3. All Proposals from Design-Build Entities which remain after the preliminary review shall be evaluated by the Selection Committee which shall be comprised of individuals selected by the County. The Selection Committee shall review the Proposals and award points using the methodology described in this Document 00 1119.

C. Presentations / Interviews.

1. The County hereby reserves the right to request proposal revisions and hold discussions and negotiations with Design-Build Entities. Following receipt and evaluation of Proposals, each Design-Build Entity may be invited to a 90 minute, confidential, and proprietary Presentation / Interview. The Presentation / Interviews are anticipated to take place between XXXXX and XXXXX. At that time, each Design-Build Entity shall have an opportunity to discuss their Proposal in detail with the County appointed Selection Committee. The County may request additional clarification. In these interviews, the

Design-Build Entity and its team of contractors, architects, engineers, and specialty consultants shall present the Proposal, and respond to questions from the Selection Committee. Each Design-Build Entity must have their proposed key personnel assigned to this project present as the primary representatives during this process. The Presentation / Interview shall be hosted by each Design-Build Entity at a venue chosen by the County of Fresno in Fresno, CA. The specific date(s) and times for each Design-Build Entity's interview shall be established and announced at a later date.

2. The County reserves the right to establish additional procedures for the presentations / interviews and shall notify all Design-Build Entities if County exercises this right.
3. In evaluating Proposals (both Stage 1 and Stage 2), the County shall consider the information provided in the Design-Build Entities' Proposals, the Design-Build Entities' compliance with the prescribed requirements, and such other data as may be requested in this Document 00 1119 (Request for Proposals), Design-Build Entities' presentation / interview, or any other items provided prior to the issuance of Document 00 5050 (Notice of Intent to Award). The County's evaluation of Proposals shall follow the methodology described in this Document 00 1119.
4. The County may conduct such investigations as County deems necessary to assist in the evaluation of any Proposal and to establish the Design-Build Entities' responsibility, qualifications and financial ability, proposed designers, subcontractors, suppliers, and other persons and organizations to perform and furnish the work in accordance with the Contract Documents and Design-Build Entities' proposed price to the County's satisfaction within the prescribed time. County shall have the right to communicate directly with Design-Build Entities' Surety regarding Design-Build Entities' bonds.
5. The County shall resolve discrepancies between (a) the multiplication of units of work and unit prices in favor of the unit prices; (b) the indicated sum of any column of figures and the correct sum thereof in favor of the correct sum; and (c) written words and figures, or words and numerals, in favor of the words.

3.05 Evaluation Factors / Best Value

- A. **Maximum Points for Each Evaluation Factor.** For each of Stage 1 and Stage 2, the County shall evaluate each Proposal based upon the following factors, with the maximum number of points allocated to each factor as indicated in the Points Matrix below.

EVALUATION FACTORS		Maximum Points
1.	Proposed Technical Design and Construction Expertise	50
2.	Proposed Design and Design Approach	30
3.	Base Items Price	50
4.	Draft Project Management Plan	20
5.	Preliminary Design-Build Schedule	20
6.	Base Items Pricing – Alternates and Proposed Alternates	20
7.	Quality of Proposal / Presentation and Questions	20
8.	Proposed Approach to Skilled and Trained Workforce	20
9.	<u>Life-Cycle Costs over 20 Years</u>	5
	Total Maximum	235

B. Evaluation Factor Description.

1. Factor 1. Technical Design and Construction Expertise of Proposed Dedicated Staff Team (including Designers and Subcontractors)
 - a. The proposed Design-Build Entity team, including Designers and Designated Subcontractors determined by the County to be the most qualified, when compared with the teams proposed by the other Design-Build Entities, shall receive the maximum number of points for this factor. All other Design-Build Entities shall receive fewer points, as determined by the County.
2. Factor 2. Proposed Design and Design Approach to Architectural Aesthetics, Design Innovation and Project Requirements
 - a. Considering site and building Schematic Drawings have been established in the Bridging Documents, the County will pay close attention to Design-Build Entities approach to civil, structural, mechanical, plumbing design, and construction methods.
3. Factor 3. Base Items Price
 - a. This factor is divided into three categories, each with a designated number of points, based on what Project features each Proposer will provide for the Base Items Price. This factor is based on what Best Value features each Design-Build Entity shall provide to Design and Build the Project and all Site work. See Document 00 4200 Schedule of Proposal Prices (Design-Build Proposal Form).
 - b. As described in more detail in the Design-Build Proposal Form, Proposal submissions shall fall into one of these categories:
 - 1) **Total Base Items Price with No Alternates**
 - 2) **Total Base Items Price with Alternates**
Alternates can vary widely in scope, therefore, scores will be determined by Alternates used, based on best value related to the nature, extent, and quality of the proposed additives or deduction(s).
 - 3) **Total Base Items Price with Alternates and / or Proposed Alternates**
The County will determine scores based best value related to the nature, extent, and quality of the additive, deductive, or proposed alternate concepts.
4. Factor 4. Draft Project Management Plan
 - a. The Design-Build Entity whose draft Project Management Plan, including the clarity of the intent of each individual item and the continuity of all items comprising the overall plan is determined by the County to be the most thorough, comprehensive, and likely to achieve the highest quality project, when compared with the draft management plans proposed by the other Design-Build Entities, shall receive the maximum number of points for this factor. All other Design-Build Entities shall receive fewer points, as determined by the County. See Article 3.02(D).

5. Factor 5. Preliminary Design-Build Schedule
 - a. The Design-Build Entity whose Preliminary Design-Build Schedule (see paragraph 3.02(D) above) is determined by the County to show:
 - 1) Recognition of and understanding of the tasks necessary to complete the Project,
 - 2) Clear identification of the process requirements for each of the project stakeholders and all governing agencies that shall affect the Project,
 - 3) Acknowledgement of critical milestones,
 - 4) Efficiencies that can be achieved in project delivery,
 - 5) The earliest realistically achievable completion dates, when compared with the Preliminary Baseline Design / Construction Schedules proposed by the other Design-Build Entities, and which includes a Key Personnel staffing schedule consistent with the proposed progress of the Work, shall receive the maximum number of points for this factor. All other Design-Build Entities shall receive fewer points, as determined by County.
6. Factor 6. Base Items Pricing – Alternates and Proposed Alternates
 - a. This factor includes Alternates and Proposed Alternates contained in each Proposal within the Base Items Price and provide Best Value to the County. The County will score each Proposal between 0 and 10 points depending on the desirability, value, and utility of the proposed alternates.
7. Factor 7. Quality of Proposal / Presentation and Questions
 - a. The Design-Build Entity whose Proposal is determined by County to be the most thorough, comprehensive, and likely to achieve the highest quality project, when compared with the Proposals by other Design-Build Entities, shall receive the maximum number of points for this factor. All other Design-Build Entities shall receive fewer points, as determined by County.
8. Factor 8. Proposed Approach to Skilled and Trained Workforce
 - a. The Design-Build Entity whose Proposal is determined by the County to demonstrate the most recognition of and understanding of the tasks necessary to maintain the Design-Build Entity's and its subcontractors' commitment to using a skilled and trained workforce at every tier of the Project in compliance with Public Contract Code section 22164(c). The County does not have a project labor agreement and did not enter into a project labor agreement prior to January 1, 2017 (Pub. Contract Code, §§ 22164(c)(2)(A-C)).
9. Factor 9. Life-Cycle costs over 20 years
 - a. The County is interested in constructing new facilities whose sustainable design results in a low life cycle cost as calculated over a twenty (20) year period and in

assessing realistically achievable ideas for costs savings / enhancements / and / or proposed systems to reduce the project's operating costs. As such, the County will evaluate Each Proposer's Life-Cycle Cost (LCC) analysis and estimate the reasonably anticipated life cycle costs over twenty (20) years associated with each Proposal, based on each Proposer's Base Project Plus Enhancements reflected in Part II of Schedule of Proposal Prices in Document 00 4200 (Proposal Form), and taking into account (a) replacement costs of any systems / components whose service lives do not exceed twenty (20) years, and (b) annual price increases and present value discounts identified in paragraph 3.02.H.2. The Proposer whose Proposal is (a) estimated to have the least expensive life-cycle costs over twenty (20) years and (b) determined to contain the most realistic proposals for cost savings shall receive the maximum number of points for this factor. All other Proposers will receive fewer points, as determined by the County.

- C. **Best Value; Tie Breaker.** The Proposal that receives the greatest total number of points based on the above Evaluation Factors shall be considered to provide the Best Value to the County. In the event of a tie, the County reserves the right to select the Proposal which, in the County's sole discretion, is determined to provide a superior design and construction solution with regard to sustainability, efficiency, systems, and processes, as compared to the other Proposal receiving a tied score and shall be considered to provide the Best Value to the County.

3.06 Modification / Addition of RFP Procedures

- A. County reserves the right to modify existing procedures and / or establish additional procedures for the Proposal process and shall notify all Design-Build Entities if County exercises this right.

ARTICLE 4 – AWARD

4.01 Notification of Ranking

- A. If the Contract is to be awarded, the County shall notify the responsive Design-Build Entity whose best and final Proposal is determined to provide the Best Value to the County. The County shall email the notice to all Design-Build Entities who submitted best and final Proposals and all parties who requested that the County provide such notice. The notice shall identify the Design-Build Entity recommended for award.

4.02 Award of Contract

- A. Upon completion of the County's evaluation of all Proposals, including without limitation all required action by the County's Board of Supervisors, County shall identify the non-selected Design-Build Entities in ranking order.
- B. Document 00 5100 (Notice of Award) shall, among other things, identify which Alternates and Proposed Alternates specified in the successful Design-Build Entities final Document 00 4200 (Design-Build Proposal Form) Schedules 1-A and 1-B, shall be included in Work at time of award.

- C. The County reserves the right to terminate the Contract at any time for convenience prior to the commencement of construction. Upon notice of termination for convenience Design-Build Entity shall only be entitled to payment for work performed during the design phase of the project.

4.03 Post-Notice of Award Requirements

- A. The successful Design-Build Entity must submit the documents listed in items 1 and 6 below no later than 5:00 p.m. on the date that is eight (8) business days after issuance of Notice of Award. Execution of the Contract is dependent upon approval of these documents:
1. **Document 00 5200 (Design-Build Agreement):** To be executed by the successful Design-Build Entity.
 2. **Document 00 6113.13 (Construction Performance Bond):** To be executed by successful Design-Build Entity and surety, in the amount set forth in Document 00 6113.13 (Construction Performance Bond). Submit one (1) copy via email and two (2) hard copies, each bearing all required original signatures.
 3. **Document 00 6113.16 (Construction Labor and Material Payment Bond):** To be executed by successful Design-Build Entity and surety, in the amount set forth in Document 00 6113.16 (Construction Labor and Material Payment Bond). Submit one (1) copy via email and two (2) hard copies, each bearing all required original signatures.
 4. **Document 00 6536 (Guaranty):** To be executed by successful Design-Build Entity, in the form set forth in Document 00 6536 (Guaranty).
 5. Insurance forms, documents, certificates, and endorsements required by **Document 00 7316 (Supplementary Conditions – Insurance and Indemnification)**. Submit one (1) copy via email and one (1) hard copy, bearing all required original signatures.
 6. Any other document specified in **Document 00 5100 (Notice of Award)**.

4.04 Failure to Execute and Deliver Documents

- A. If the Design-Build Entity to whom the Contract is awarded fails or neglects to execute and deliver all required Contract Documents including bonds, insurance certificates and other documents, as required in paragraph 4.03 above, the County may, in its sole discretion, deposit the Design-Build Entity's surety bond, cashier's check or certified check for collection, and retain the proceeds as liquidated damages for Design-Build Entity's failure to enter into the Contract Documents. The Design-Build Entity agrees that calculating the damages the County may suffer as a result of the Design-Build Entity's failure to execute and deliver all required Contract Documents and other required documents would be extremely difficult and impractical and that the amount of the Design-Build Entity's required Proposal security shall be the agreed and presumed amount of the County's damages.

4.05 Right to Reject Proposals

- A. The County reserves the right to reject any and all Proposals and waive any informalities or minor irregularities in the Proposals at its sole discretion. The County also reserves the right,

in its discretion, to reject any or all Proposals and to re-issue a new Request for Proposals for the Project. The County reserves the right to reject any or all nonconforming, non-responsive, unbalanced or conditional Proposals, request other proposals and to reject the Proposal of any Design-Build Entity if the County believes that it would not be in the best interest of the County to make an award to that Design-Build Entity, whether because the Proposal is not responsive or the Design-Build Entity is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by the County. The County also reserves the right to waive informalities, inconsequential deviations or minor irregularities not involving price, time, or changes in the Work, to the fullest extent permitted by law. For purposes of this paragraph, an unbalanced Proposal is one having nominal prices for some work items and enhanced prices for other work items.

ARTICLE 5 – GENERAL CONDITIONS AND REQUIREMENTS

5.01 Wage Rates

- A. Design-Build Entities are required to comply with all applicable state and federal prevailing wage requirements and / or regulations. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are on file at the County's main office and are deemed included in the Proposal Documents. Upon request, the County shall make available copies to any interested party. State prevailing wage requirements are published by the Director of the State of California Department of Industrial Relations and can be found online at www.dir.ca.gov.
- B. Design-Build Entities are notified that this Project is subject to the requirements of Labor Code sections 1720-1861, and the requirements of Title 8, Division 1, Chapter 8, Subchapter 4.5 Compliance Monitoring and Enforcement by Department of Industrial Relations of the California Code of Regulations, including the obligation to furnish certified payroll records directly to the Labor Commissioner (8 CCR § 16461).

5.02 Equal Employment Opportunity

- A. The Design-Build Entity shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical conditions, disability, or any other reason.

5.03 Ownership of Documents Agreement

- A. Upon Design-Build Entity submission of their RFP Proposal for the Project, each Design-Build Entity understands and agrees that the County of Fresno shall retain full ownership rights of the Design-Build Entity Proposal Intellectual Property including drawings and the work-product of the submitted Design-Build Entity Proposal to the fullest extent permitted by law.
- B. In this regard, the Design-Build Entity acknowledges and agrees that the Design-Build Entity Proposals are on behalf of the County and are to be considered "works made for hire," as

that term is defined in copyright law, by the County; that the drawings and work-product to be prepared by Design-Build Entity are for the sole and exclusive use of the County, and shall be the sole property of the County and its assigns, and the County and its assigns shall be the sole owner of all patents, copyrights, trademarks, trade secrets and other contractual and intangible rights of any kind or nature in connection therewith; that all the contractual or intangible rights of any kind or nature, title, and interest in and to the drawings and work-product will be transferred to the County by the Design-Build Entity, and Design-Build Entity will assist the County to obtain and enforce patents, copyrights, trademarks, trade secrets, and other contractual and intangible rights relating to said drawings and work-product; that the County shall be and become the owner of such drawings and work product, free and clear of any claim by the Design-Build Entity or anyone claiming any right through the Design-Build Entity.

- C. The Design-Build Entity further acknowledges and agrees that the County's ownership rights in such drawings and work product shall apply regardless of whether such drawings or work product, or any copies thereof, are in the possession of the Design-Build Entity, or any other person, firm, corporation, or entity.
- D. For the purpose of this Design-Build Agreement, the terms "drawings and work-product" shall mean all reports and study findings commissioned to develop the design of the Project, drawings and schematic or preliminary design documents for the Project, certified reproducible of the original final construction contract drawings of the Project, specifications of the Project, record drawings for the Project, as-built plans of each project, and discoveries, developments, designs, improvements, inventions, formulas, processes, techniques, or specific know-how and data generated or conceived or reduced to practice or learning by the Design-Build Entity, either alone or jointly with others, that result from the tasks assigned to Design-Build Entity by the County under this Design-Build Agreement.
- E. The County acknowledges and agrees that details, concepts, ideas, devices, configurations, and designs previously developed or used by the Design-Build Entity or developed by the Design-Build Entity without County compensation, shall remain the property of the Design-Build Entity and use is granted to the County only for the specific project undertaken under this Design-Build Agreement.

5.04 Public Records Act Requests

- A. Pursuant to the California Public Records Act, the County shall make available to the public the Design-Build Entity's Proposals (to the extent opened), all correspondence and written questions submitted during the Proposal period, all Proposal submissions opened in accordance with the procedures of this Document 00 1119, and all subsequent Proposal evaluation information. Any submissions not opened shall remain sealed and eventually be returned to the submitter. Except as otherwise required by law, the County shall not disclose trade secrets or proprietary financial information submitted that has been designated confidential by Design-Build Entity. Any such trade secrets or proprietary financial information that a Design-Build Entity believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections shall not be permitted and shall be invalid. The specific information must be clearly identified as such.
- B. All materials included with, and Information disclosed in the Proposal and the attendant submissions are the property of the County. Subject to the requirements in the Public

Records Act, reasonable efforts shall be made to prevent the disclosure of information except on a need-to-know basis during the evaluation process.

5.05 Definitions

- A. Except as set forth herein, all abbreviations and definition of terms used in these Instructions are set forth in Document 00 7253 (General Conditions) or Specifications Section 01 4200 (References and Definitions).

5.06 County Provided Services

- A. The County shall provide Building Commissioning Services at no cost to the Design-Build Entity.
- B. The County shall provide Peer Review of the Contract Documents at no cost to the Design-Build Entity.
- C. The County shall provide County Staff Construction Observation at no cost to the Design-Build Entity.
- D. **Reimbursement of Fees.** The County shall reimburse the Design-Build Entity for all fees paid to City, County, State or Federal or other Jurisdictional or Governing or Utility Agency paid by the Design-Build Entity on a dollar-for-dollar basis upon County receipt of proof of payment. Fresno County Grading, Building Permit fees or any other Fresno County fees shall be paid by directly by the County. Reimbursable fees include but are not limited to the following:
1. Utility Connection fees
 2. PG&E Rule 16 application fees
 3. Encroachment Permits
 4. Federal, State and County Environmental Agency fees
 5. Jurisdictional Agency Inspection fees
 6. Special Inspection costs

ANTICIPATED PROJECT SCHEDULE

The projected project key milestones are as follows:

Issuance of RFP to Shortlisted Design-Build Entities	XXXXX, 202X
Pre-Proposal Conference	XXXXX, 202X
Confidential Pre-Proposal Meetings	XXXXX to XXXXX, 202X
Requests For Clarifications Deadline	XXXXX, 202X
Design-Build Entities Stage 1 Proposals Deadline	XXXXX, 202X
Design-Build Entity Presentations / Interviews	XXXXX to XXXXX, 202X
Design-Build Entities Stage 2 (Best) Proposals Deadline	XXXXX, 202X
County RFP Proposal Review Process Complete	XXXXX, 202X
Design-Build Entity Ranking and Notification Issued	XXXXX, 202X
County BOS Award / Contract Approval	XXXXX, 202X
Issue Notice to Proceed with Design	XXXXX, 202X

Note: Dates are tentative and may change.

**DOCUMENT 00 3100
AVAILABLE PROJECT INFORMATION**

ARTICLE 1 — AVAILABLE PROJECT INFORMATION

1.01 Reports and Utility Surveys

- A. The County and County Consultants may have collected documents providing a general description the Scope of Work. These reports, documents and other information are not part of the Contract Documents and are intended to depict existing conditions that Design-Build Entity will have to address as part of its construction planning and operations. Available reports include but are not limited to the following:

1. Bridging Documents 00 5201
 - a. Project Program
 - b. Vicinity Map
 - c. Site Plan or Allowable Buildable Area
 - d. Site Survey
 - e. Architectural Drawings
 - f. Geotechnical Report
 - g. Fresno County Design Guidelines
 - h. Other Supporting Documents

1.02 Bridging Document Inspection

- A. Design-Build Entity shall inspect the Bridging Documents and information regarding existing conditions at the Site. These documents are available for review on the Bid Express solicitation for this RFQ. These reports, documents, and other information are not part of the Contract Documents. Nevertheless, Design-Build Entity accepts full responsibility for reviewing, knowing, and understanding the contents of all County provided documents.

1.03 Inclusion in Project Manual

- A. Geotechnical reports may be included in the Project Manual and information regarding existing conditions may also be included in the Project Manual, but neither shall be considered part of the Contract Documents, but rather “for information only.”

1.04 Available Documentation

- A. Design-Build Entity acknowledges that the County Available Documentation has been provided for Design-Build Entity's review.

ARTICLE 2 — USE OF INFORMATION ON EXISTING CONDITIONS AND REQUIRED PRE-CONTRACTING INVESTIGATIONS

- 2.01 Design-Build Entity's attention is directed to the Contract Documents including, but not limited to, Document 00 7253 (General Conditions) and to the Division 01 Specifications, Section 01 1100 (Summary of Work).

END OF DOCUMENT

SAMPLE

1 **DOCUMENT 00 4900**

2 **SAMPLE DESIGN-BUILD STIPEND AGREEMENT**

3 This Stipend Agreement (“Agreement”) is made and entered into in Fresno County,
4 California, by and between _____, a California Corporation (Design-Build Entities) , and
5 the County of Fresno, a political subdivision of the State of California (“County”) (collectively,
6 the Parties) with respect to the Clovis Regional and Reedley Libraries project (“the Project”)
7 performed independently or cooperatively by the Parties.

8 **Recitals**

9 A. It is an industry best practice to provide a stipend to Design-Build Entities to cover a
10 portion of the costs expended on requests for proposals for Design-Build projects when not
11 selected as the Design-Build Entity awarded with the Design-Build of the Project, and

12 B. Department issued a Request for Qualifications #24-015 for Design-Build services for
13 the construction of the Project on Apr 18, 2024 (date) (“RFQ”); and

14 C. Department on _____(date) based on its evaluation of all qualification responses
15 received in response to the RFQ, Department shortlisted three (3) Design-Build Entity teams to
16 participate in County’s procurement process for Design-Build Project; and

17 D. The shortlisted Design-Build Entity teams thereafter formed, or will form, with the
18 County’s approval, Proposal teams with prequalified Design-Build subcontractors; and

19 E. The County has, or will, issue a Request for Proposals for the Project (“RFP”) which
20 includes, or will include, draft instruction to the Design-Build Entities; and

21 F. Design-Build Entity is, or will become, an integrated Design-Build Entity team eligible to
22 submit a Proposal for the RFP, consisting of all parties contributing intellectual property to the
23 Proposal; and

24 G. Department desires to compensate the non-awarded teams in exchange for County
25 ownership of the team’s work product and intellectual property associated with the Proposal

26 H. As a condition to the Design-Build Entity’s eligibility to receive a stipend with respect to
27 the RFP, Design-Build Entity is required to execute and deliver to County a signed Stipend
28 Agreement no later than _____; and

1 I. On February 28, 2023 County of Fresno Board of Supervisors adopted a resolution
2 delegating authority to the Director of Public Works and Planning to execute stipend
3 agreements with non-selected vendors; and

4 J. The Parties now desire to enter into this Stipend Agreement to govern the non-awarded
5 Proposals for the Project.

6 NOW, THEREFORE, in consideration of the mutual acknowledgments, covenants, and
7 conditions herein contained, it is hereby agreed as follows:

8 **Article 1**

9 **Definitions**

10 1.1 "Background Intellectual Property" means all Intellectual Property authored, created,
11 invented, or first put into practice prior to, independent of, and not of the purposes of Design-
12 Build Entity's Proposal or the Procurement Process.

13 1.2 "Background Work Product" means all material and items as described in the
14 definition of Work Product that, rather than generated or developed in connection with Design-
15 Build Entity's Proposal or the Procurement Process, are authored, created, invented, or first put
16 into practice prior to, independent of, and not for the purposes of Design-Build Entity's Proposal
17 or the Procurement Process.

18 1.3 "Intellectual Property" means all current and future legal and/or equitable rights and
19 interests in know how (including processes, methodologies, trade secrets and confidential
20 business information which have been recorded in or on any media), copyrights (including moral
21 rights), designs (registered and unregistered), other design rights, utility models, other
22 intellectual activity, and all analogous rights in other jurisdictions and applications (drafted or
23 pending), and applications of or for any of the foregoing, subsisting in or incorporated into the
24 Work Product.

25 1.4 "Transferred Intellectual Property" means Intellectual Property which is authored,
26 created, invented, or first put into practice for the purposes of Design-Build Entity's Proposal or
27 during the Procurement Process, except Background Intellectual Property.

1 1.5 "Work Product" means, collectively, all work product (including all written and
2 electronic material, tapes, disks, designs, concepts, ideas, technology, techniques, methods,
3 processes, drawings, reports, studies, surveys, plans, specifications, exhibits, photographs,
4 information, documents, data, and other graphic and visual aids) generated or developed by or
5 on behalf of Design-Build Entity or any of its team members during the RFP and Procurement
6 Process in connection with the Project, including aesthetic design concepts, interim design
7 submittals, and all other items generated or developed in any medium, media, or format by or
8 on behalf of Design-Build Entity in connection with Design-Build Entity's Proposal, and including
9 data and information gathered and reports prepared from any surveys or site investigations by
10 or on behalf of Design-Build Entity. "Work Product" excludes Intellectual Property subsisting in
11 or incorporated into any of the foregoing.

12 **Article 2**

13 **Design-Build Entity's Services**

14 2.1 Professional services of a Design-Builder to submit a Proposal in connection with the
15 RFP, to design and construct the Project.

16 2.2 Ownership and Transfer of Work Product:

17 (A) Except for Background Work Product, Design-Build Entities agree that all Work
18 Product, whether it includes Intellectual Property or not, is deemed to be owned by
19 County and will not be returned to Design-Build Entity.

20 (B) In consideration for County's payment to Design-Build Entity pursuant to this
21 Stipend Agreement, Design-Build Entity grants to County all rights, title, and interest in
22 and to the Transferred Intellectual Property, free of all intellectual property rights and
23 claims, without further action on County's part, and without restriction or limitation on
24 their use, exploitation, exercise of rights, or transferability.

25 (C) County grants to Design-Build Entity and members of Design-Build Entity's team
26 an irrevocable, perpetual, non-exclusive, transferable, license, without incremental
27 charge, to use, exploit, manufacture, distribute, reproduce, adapt, and display the Work
28 Product and Transferred Intellectual Property.

1 (D) Except as provided below and subject to Design-Build Entity's receipt of the
2 stipend provided by this Stipend Agreement, Design-Build Entity grants to County an
3 irrevocable, perpetual, non-exclusive, transferable, license, without incremental charge,
4 to use, exploit, manufacture, distribute, reproduce, adapt, and display the Background
5 Intellectual Property and Background Work Product solely in connection with the Project.

6 This right and license shall not cover:

7 (1) Design-Build Entity's or any Design-Build Entity team member's name, logo,
8 and other branding elements;

9 (2) Background Intellectual Property.

10 2.3 License terms shall survive the expiration or earlier termination of this Stipend
11 Agreement.

12 2.4 If County cancels the procurement prior to the submission of the Technical Proposal
13 by Design-Build Entity, all Work Product and Transferred Intellectual Property developed by
14 Design-Build Entity at any time through the cancellation date will become property of and owned
15 by County and shall be promptly submitted to County as a condition precedent to payment
16 under this Stipend Agreement.

17 2.5 Design-Build Entity agrees that the Work Product and Transferred Intellectual
18 Property have been specially ordered and commissioned by County, and that Transferred
19 Intellectual Property shall be considered "work-made-for-hire," as that term is defined in Section
20 101 of Title 17 of the U.S. Code ("Copyright Law"). To the extent that the Transferred
21 Intellectual Property is determined by a court of competent jurisdiction, or the U.S. Copyright
22 Office, not to be work-made-for-hire, Design-Build Entity hereby agrees to assign to County all
23 right, title, and interest in and to all Transferred Intellectual Property. Neither Design-Build Entity
24 nor any of its team members shall claim, retain, apply for, and/or register any U.S. or
25 international Intellectual Property rights in the Transferred Intellectual Property including
26 copyright or patent rights.

27 2.6 Design-Build Entity agrees that County shall be entitled to use, exploit, and exercise
28 all rights in the Transferred Intellectual Property and Work Product, Background Intellectual

1 Property, in whole or in part, to the extent described in this Stipend Agreement (subject to
2 Section 4 subsection b part iv) regarding Background Intellectual Property and Background
3 Work Product). Starting after County's issuance of the Selection Notice, County will have the
4 right to inform the Best Value Design-Build Entity regarding the contents of Design-Build Entity's
5 Work Product and Transferred Intellectual Property as well as the Background Work Product
6 and Background Intellectual Property covered by County's right and license, and incorporate
7 such Work Product, Transferred Intellectual Property, Background Intellectual Property and
8 Background Work Product or concepts based thereon into the Agreement; provided such Best
9 Value Design-Build Entity agrees to use such Background Intellectual Property and Background
10 Work Product solely for the Project and for no other purpose, and further agrees to keep such
11 Background Intellectual Property and Background Work Product Intellectual Property
12 confidential and not to disclose it to third parties except as otherwise required in connection with
13 the Project.

14 2.7 Use of the Work Product under this Stipend Agreement, whether in connection with
15 the Project or otherwise, and use of the Background Work Product in connection with the
16 Project, by County or any other person or entity acting through or on behalf of County is at
17 County's and such other person's or entity's sole risk and discretion, and shall in no way be
18 deemed to confer liability on Design-Build Entity. Further, Design-Build Entity makes no
19 warranties, express or implied, as to the conduct, completeness, success or particular results of
20 the Work Product or Background Work Product, or the condition, merchantability, or fitness for a
21 particular purpose of the Work Product or Background Work Product.

22 2.8 Design-Build Entities must submit signed copies of this Stipend Agreement. Should
23 one or more of the selected Design-Build Entities decline to execute the Project Stipend
24 Certification, the County reserves the right to invite the next highest scoring Design-Build Entity
25 from the RFQ process to participate in the RFP phase.

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1 **Article 3**

2 **County's Responsibilities**

3 3.1 The County shall review the Proposals and assign points using the methodology
4 described in the Request for Proposals (Document 00 1119). The County agrees to compensate
5 the two lowest scoring Design-Build Entities from the RFQ shortlist for the design-build
6 procurement of the Project.

7 **Article 4**

8 **Compensation, Invoices, and Payments**

9 4.1 The County agrees to pay, and the two (2) Design-Build Entity agrees to receive,
10 compensation for the performance of its services under this Agreement as described in this
11 section.

12 4.2 **Maximum Compensation.** The maximum compensation payable to a Design-Build
13 Entity under this Agreement is forty thousand (\$40,000) during the term of the
14 Agreement. Under no circumstances will the maximum compensation for all services performed
15 under this agreement be in excess of Forty Thousand 0/100 Dollars (\$40,000.00). The Design-
16 Build Entity acknowledges that the County is a local government entity and does so with notice
17 that the County's powers are limited by the California Constitution and by State law, and with
18 notice that the Design-Build Entity may receive compensation under this Agreement only for
19 services performed according to the terms of this Agreement and while this Agreement is in
20 effect, and subject to the maximum amount payable under this section. The Design-Build Entity
21 further acknowledges that County employees have no authority to pay the Design-Build Entity
22 except as expressly provided in this Agreement.

23 4.3 **Invoices.** The Design-Build Entity shall submit a completed Exhibit A titled "Stipend
24 Invoice" The Design-Build Entity shall submit Exhibit A within 60 calendar days after the month
25 in which the Design-Build Entity performs services and in any case within 30 Calendar days
26 after the end of the term or termination of this Agreement.

27 4.4 **Payment.** The County shall pay each correctly completed and timely submitted
28 Stipend Invoice within 45 calendar days after receipt. The County shall remit any payment to the

1 Design-Build Entity's address specified in the invoice.

2 4.5 **Incidental Expenses.** The Design-Build Entity is solely responsible for all of its costs
3 and expenses that are not specified as payable by the County under this Agreement.

4 **Article 5**

5 **Term of Agreement**

6 5.1 **Term.** This Agreement is effective upon contract execution and terminates on within
7 six (6) months of the award of the RFP Contract of the top ranked firm or payment in full,
8 whichever is sooner.

9 **Article 6**

10 **Notices**

11 6.1 **Contact Information.** The persons and their addresses having authority to give and
12 receive notices provided for or permitted under this Agreement include the following:

13 **For the County:**

14 Design Services
15 Department of Public Works and Planning
16 County of Fresno
17 2220 Tulare Street, 6th Floor
18 Fresno, CA 93721
19 DesignServices@fresnocountyca.gov

20 **For the Design-Build Entity:**

21 [Title]
22 [Name of Design-Build Entity]
23 [Street Address]
24 [City, State ZIP]
25 [Email Address]

26 6.2 **Change of Contact Information.** Either party may change the information in section
27 6.1 by giving notice as provided in section 6.3.

28 6.3 **Method of Delivery.** Each notice between the County and the Design-Build Entity
provided for or permitted under this Agreement must be in writing, state that it is a notice
provided under this Agreement, and be delivered either by personal service, by first-class
United States mail, by an overnight commercial courier service, or by Portable Document
Format (PDF) document attached to an email.

(A) A notice delivered by personal service is effective upon service to the recipient.

1 (B) A notice delivered by first-class United States mail is effective three County
2 business days after deposit in the United States mail, postage prepaid, addressed to the
3 recipient.

4 (C) A notice delivered by an overnight commercial courier service is effective one
5 County business day after deposit with the overnight commercial courier service,
6 delivery fees prepaid, with delivery instructions given for next day delivery, addressed to
7 the recipient.

8 (D) A notice delivered by PDF document attached to an email is effective when
9 transmission to the recipient is completed (but, if such transmission is completed outside
10 of County business hours, then such delivery is deemed to be effective at the next
11 beginning of a County business day), provided that the sender maintains a machine
12 record of the completed transmission.

13 6.4 **Claims Presentation.** For all claims arising from or related to this Agreement,
14 nothing in this Agreement establishes, waives, or modifies any claims presentation
15 requirements or procedures provided by law, including the Government Claims Act (Gov. Code,
16 § 810 et seq.).

17 **Article 7**

18 **Termination and Suspension**

19 7.1 **Termination for Non-Allocation of Funds.** The terms of this Agreement are
20 contingent on the approval of funds by the appropriating government agency. If sufficient funds
21 are not allocated, then the County, upon at least thirty (30) days advance written notice to the
22 Design-Build Entity, may:

- 23 (A) Modify the services provided by the Design-Build Entity under this Agreement; or
- 24 (B) Terminate this Agreement.

25 7.2 **Termination for Breach.**

26 (A) Upon determining that a breach (as defined in paragraph (C) below) has
27 occurred, the County may give written notice of the breach to the Design-Build Entity.
28

1 The written notice may suspend performance under this Agreement and must provide at
2 least 30 days for the Design-Build Entity to cure the breach.

3 (B) If the Design-Build Entity fails to cure the breach to the County's satisfaction
4 within the time stated in the written notice, the County may terminate this Agreement
5 immediately.

6 (C) For purposes of this section, a breach occurs when, in the determination of the
7 County, the Design-Build Entity has:

- 8 (1) Obtained or used funds illegally or improperly;
- 9 (2) Failed to comply with any part of this Agreement;
- 10 (3) Submitted a substantially incorrect or incomplete report to the County; or
- 11 (4) Improperly performed any of its obligations under this Agreement.

12 **7.3 Termination without Cause.** In circumstances other than those set forth above, the
13 County may terminate this Agreement by giving at least 30 days advance written notice to the
14 Design-Build Entity.

15 **7.4 No Penalty or Further Obligation.** Any termination of this Agreement by the County
16 under this Article 7 is without penalty to or further obligation of the County.

17 **7.5 County's Rights upon Termination.** Upon termination for breach under this Article
18 7, the County may demand repayment by the Design-Build Entity of any monies disbursed to
19 the Design-Build Entity under this Agreement that, in the County's sole judgment, were not
20 expended in compliance with this Agreement. The Design-Build Entity shall promptly refund all
21 such monies upon demand. This section survives the termination of this Agreement.

22 **Article 8**

23 **Independent Contractor**

24 **8.1 Status.** In performing under this Agreement, the Design-Build Entity, including its
25 officers, agents, employees, and volunteers, is at all times acting and performing as an
26 independent contractor, in an independent capacity, and not as an officer, agent, servant,
27 employee, joint venturer, partner, or associate of the County.

1 8.2 **Verifying Performance.** The County has no right to control, supervise, or direct the
2 manner or method of the Design-Build Entity's performance under this Agreement, but the
3 County may verify that the Design-Build Entity is performing according to the terms of this
4 Agreement.

5 8.3 **Benefits.** Because of its status as an independent contractor, the Design-Build Entity
6 has no right to employment rights or benefits available to County employees. The Design-Build
7 Entity is solely responsible for providing to its own employees all employee benefits required by
8 law. The Design-Build Entity shall save the County harmless from all matters relating to the
9 payment of Design-Build Entity's employees, including compliance with Social Security
10 withholding and all related regulations.

11 8.4 **Services to Others.** The parties acknowledge that, during the term of this
12 Agreement, the Design-Build Entity may provide services to others unrelated to the County.

13 **Article 9**

14 **Indemnity and Defense**

15 9.1 **Indemnity.** The Design-Build Entity shall indemnify and hold harmless and defend
16 the County (including its officers, agents, employees, and volunteers) against all claims,
17 demands, injuries, damages, costs, expenses (including attorney fees and costs), fines,
18 penalties, and liabilities of any kind to the County, the Design-Build Entity, or any third party that
19 arise from or relate to the performance or failure to perform by the Design-Build Entity (or any of
20 its officers, agents, proposed subcontractor, or employees) under this Agreement. The County
21 may conduct or participate in its own defense without affecting the Design-Build Entity's
22 obligation to indemnify and hold harmless or defend the County.

23 9.2 **Survival.** This Article 9 survives the termination of this Agreement.

24 **Article 10**

25 **Inspections, Audits, and Public Records**

26 10.1 **Inspection of Documents.** The Design-Build Entity shall make available to the
27 County, and the County may examine at any time during business hours and as often as the
28 County deems necessary, all of the Design-Build Entity's records and data with respect to the

1 matters covered by this Agreement, excluding attorney-client privileged communications. The
2 Design-Build Entity shall, upon request by the County, permit the County to audit and inspect all
3 of such records and data to ensure the Design-Build Entity's compliance with the terms of this
4 Agreement.

5 **10.2 State Audit Requirements.** If the compensation to be paid by the County under this
6 Agreement exceeds \$10,000, the Design-Build Entity is subject to the examination and audit of
7 the California State Auditor, as provided in Government Code section 8546.7, for a period of
8 three years after final payment under this Agreement. This section survives the termination of
9 this Agreement.

10 **10.3 Public Records.** The County is not limited in any manner with respect to its public
11 disclosure of this Agreement or any record or data that the Design-Build Entity may provide to
12 the County. The County's public disclosure of this Agreement or any record or data that the
13 Design-Build Entity may provide to the County may include but is not limited to the following:

14 (A) The County may voluntarily, or upon request by any member of the public or
15 governmental agency, disclose this Agreement to the public or such governmental
16 agency.

17 (B) The County may voluntarily, or upon request by any member of the public or
18 governmental agency, disclose to the public or such governmental agency any record or
19 data that the Design-Build Entity may provide to the County, unless such disclosure is
20 prohibited by court order.

21 (C) This Agreement, and any record or data that the Design-Build Entity may provide
22 to the County, is subject to public disclosure under the Ralph M. Brown Act (California
23 Government Code, Title 5, Division 2, Part 1, Chapter 9, beginning with section 54950).

24 (D) This Agreement, and any record or data that the Design-Build Entity may provide
25 to the County, is subject to public disclosure as a public record under the California
26 Public Records Act (California Government Code, Title 1, Division 7, Chapter 3.5,
27 beginning with section 6250) ("CPRA").
28

1 (E) This Agreement, and any record or data that the Design-Build Entity may provide
2 to the County, is subject to public disclosure as information concerning the conduct of
3 the people's business of the State of California under California Constitution, Article 1,
4 section 3, subdivision (b).

5 (F) Any marking of confidentiality or restricted access upon or otherwise made with
6 respect to any record or data that the Design-Build Entity may provide to the County
7 shall be disregarded and have no effect on the County's right or duty to disclose to the
8 public or governmental agency any such record or data.

9 **10.4 Public Records Act Requests.** If the County receives a written or oral request
10 under the CPRA to publicly disclose any record that is in the Design-Build Entity's possession or
11 control, and which the County has a right, under any provision of this Agreement or applicable
12 law, to possess or control, then the County may demand, in writing, that the Design-Build Entity
13 deliver to the County, for purposes of public disclosure, the requested records that may be in
14 the possession or control of the Design-Build Entity. Within five business days after the County's
15 demand, the Design-Build Entity shall (a) deliver to the County all of the requested records that
16 are in the Design-Build Entity's possession or control, together with a written statement that the
17 Design-Build Entity, after conducting a diligent search, has produced all requested records that
18 are in the Design-Build Entity's possession or control, or (b) provide to the County a written
19 statement that the Design-Build Entity, after conducting a diligent search, does not possess or
20 control any of the requested records. The Design-Build Entity shall cooperate with the County
21 with respect to any County demand for such records. If the Design-Build Entity wishes to assert
22 that any specific record or data is exempt from disclosure under the CPRA or other applicable
23 law, it must deliver the record or data to the County and assert the exemption by citation to
24 specific legal authority within the written statement that it provides to the County under this
25 section. The Design-Build Entity's assertion of any exemption from disclosure is not binding on
26 the County, but the County will give at least 10 days' advance written notice to the Design-Build
27 Entity before disclosing any record subject to the Design-Build Entity's assertion of exemption
28 from disclosure. The Design-Build Entity shall indemnify the County for any court-ordered award

1 of costs or attorney's fees under the CPRA that results from the Design-Build Entity's delay,
2 claim of exemption, failure to produce any such records, or failure to cooperate with the County
3 with respect to any County demand for any such records.

4 **Article 11**

5 **Disclosure of Self-Dealing Transactions**

6 11.1 **Applicability.** This Article 11 applies if the Design-Build Entity is operating as a
7 corporation, or changes its status to operate as a corporation.

8 11.2 **Duty to Disclose.** If any member of the Design-Build Entity's board of directors is
9 party to a self-dealing transaction, he or she shall disclose the transaction by completing and
10 signing a "Self-Dealing Transaction Disclosure Form" (Exhibit B to this Agreement) and
11 submitting it to the County before commencing the transaction or immediately after.

12 11.3 **Definition.** "Self-dealing transaction" means a transaction to which the Design-Build
13 Entity is a party and in which one or more of its directors, as an individual, has a material
14 financial interest.

15 **Article 12**

16 **General Terms**

17 12.1 **Modification.** Except as provided in Article 7, "Termination and Suspension," this
18 Agreement may not be modified, and no waiver is effective, except by written agreement signed
19 by both parties. The Design-Build Entity acknowledges that County employees have no
20 authority to modify this Agreement except as expressly provided in this Agreement.

21 12.2 **Non-Assignment.** Neither party may assign its rights or delegate its obligations
22 under this Agreement without the prior written consent of the other party.

23 12.3 **Governing Law.** The laws of the State of California govern all matters arising from
24 or related to this Agreement.

25 12.4 **Jurisdiction and Venue.** This Agreement is signed and performed in Fresno
26 County, California. Design-Build Entity consents to California jurisdiction for actions arising from
27 or related to this Agreement, and, subject to the Government Claims Act, all such actions must
28 be brought and maintained in Fresno County.

1 12.5 **Construction.** The final form of this Agreement is the result of the parties' combined
2 efforts. If anything in this Agreement is found by a court of competent jurisdiction to be
3 ambiguous, that ambiguity shall not be resolved by construing the terms of this Agreement
4 against either party.

5 12.6 **Days.** Unless otherwise specified, "days" means calendar days.

6 12.7 **Headings.** The headings and section titles in this Agreement are for convenience
7 only and are not part of this Agreement.

8 12.8 **Severability.** If anything in this Agreement is found by a court of competent
9 jurisdiction to be unlawful or otherwise unenforceable, the balance of this Agreement remains in
10 effect, and the parties shall make best efforts to replace the unlawful or unenforceable part of
11 this Agreement with lawful and enforceable terms intended to accomplish the parties' original
12 intent.

13 12.9 **Nondiscrimination.** During the performance of this Agreement, the Design-Build
14 Entity shall not unlawfully discriminate against any employee or applicant for employment, or
15 recipient of services, because of race, religious creed, color, national origin, ancestry, physical
16 disability, mental disability, medical condition, genetic information, marital status, sex, gender,
17 gender identity, gender expression, age, sexual orientation, military status or veteran status
18 pursuant to all applicable State of California and federal statutes and regulation.

19 12.10 **No Waiver.** Payment, waiver, or discharge by the County of any liability or obligation
20 of the Design-Build Entity under this Agreement on any one or more occasions is not a waiver of
21 performance of any continuing or other obligation of the Design-Build Entity and does not
22 prohibit enforcement by the County of any obligation on any other occasion.

23 12.11 **Entire Agreement.** This Agreement, including its exhibits, is the entire agreement
24 between the Design-Build Entity and the County with respect to the subject matter of this
25 Agreement, and it supersedes all previous negotiations, proposals, commitments, writings,
26 advertisements, publications, and understandings of any nature unless those things are
27 expressly included in this Agreement. If there is any inconsistency between the terms of this
28 Agreement without its exhibits and the terms of the exhibits, then the inconsistency will be

1 resolved by giving precedence first to the terms of this Agreement without its exhibits, then to
2 the terms of the exhibits, then the project RFP.

3 **12.12 No Third-Party Beneficiaries.** This Agreement does not and is not intended to
4 create any rights or obligations for any person or entity except for the parties.

5 **12.13 Authorized Signature.** The Design-Build Entity represents and warrants to the
6 County that:

7 (A) The Design-Build Entity is duly authorized and empowered to sign and perform
8 its obligations under this Agreement.

9 (B) The individual signing this Agreement on behalf of the Design-Build Entity is duly
10 authorized to do so and his or her signature on this Agreement legally binds the Design-
11 Build Entity to the terms of this Agreement.

12 **12.14 Electronic Signatures.** The parties agree that this Agreement may be executed by
13 electronic signature as provided in this section.

14 (A) An “electronic signature” means any symbol or process intended by an individual
15 signing this Agreement to represent their signature, including but not limited to (1) a
16 digital signature; (2) a faxed version of an original handwritten signature; or (3) an
17 electronically scanned and transmitted (for example by PDF document) version of an
18 original handwritten signature.

19 (B) Each electronic signature affixed or attached to this Agreement (1) is deemed
20 equivalent to a valid original handwritten signature of the person signing this Agreement
21 for all purposes, including but not limited to evidentiary proof in any administrative or
22 judicial proceeding, and (2) has the same force and effect as the valid original
23 handwritten signature of that person.

24 (C) The provisions of this section satisfy the requirements of Civil Code section
25 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3,
26 Part 2, Title 2.5, beginning with section 1633.1).

27 (D) Each party using a digital signature represents that it has undertaken and
28 satisfied the requirements of Government Code section 16.5, subdivision (a),

1 paragraphs (1) through (5), and agrees that each other party may rely upon that
2 representation.

3 (E) This Agreement is not conditioned upon the parties conducting the transactions
4 under it by electronic means and either party may sign this Agreement with an original
5 handwritten signature.

6 12.15 **Counterparts.** This Agreement may be signed in counterparts, each of which is an
7 original, and all of which together constitute this Agreement.

8 **Article 13**

9 **Conflict of Interest**

10 13.1 The Consultant shall comply with the provisions of the Fresno County Department of
11 Public Works and Planning Conflict of Interest Code, attached hereto as Exhibit C and
12 incorporated herein by this reference. Such compliance shall include the filing of annual
13 statements pursuant to the regulations of the State Fair Political Practices Commission
14 including, but not limited to, portions of Form 700.

15 13.2 During the term of this Agreement, the Consultant shall disclose any financial,
16 business, or other relationship with the County that may have an impact upon the outcome of
17 this contract, or any ensuing County construction project. The Consultant shall also list current
18 clients who may have a financial interest in the outcome of this contract, or any ensuing County
19 construction project, which will follow.

20 13.3 The Consultant certifies that it has disclosed to the County any actual, apparent, or
21 potential conflicts of interest that may exist relative to the services to be provided pursuant to
22 this Agreement. The Consultant agrees to advise the County of any actual, apparent or potential
23 conflicts of interest that may develop subsequent to the date of execution of this Agreement.
24 The Consultant further agrees to complete any statements of economic interest if required by
25 either County ordinance or State law.

26 13.4 The Consultant hereby certifies that it does not now have nor shall it acquire any
27 financial or business interest that would conflict with the performance of services under this
28 Agreement.

1 13.5 The Consultant hereby certifies that the Consultant or subconsultant and any firm
2 affiliated with the Consultant or subconsultant that bids on any construction contract or on any
3 Agreement to provide construction inspection for any construction project resulting from this
4 Agreement, has established necessary controls to ensure a conflict of interest does not exist.
5 An affiliated firm is one, which is subject to the control of the same persons, through joint
6 ownership or otherwise.

7 **Article 14**

8 **Ownership of Data**

9 14.1 All documents, including preliminary documents, calculations, and survey data,
10 required in performing services under this Agreement shall be submitted to, and shall remain at
11 all times the property of the County regardless of whether they are in the possession of the
12 Consultant or any other person, firm, corporation or agency.

13 14.2 The Consultant understands and agrees the County shall retain full ownership rights
14 of the work product of the Consultant for the Project, to the fullest extent permitted by law. In
15 this regard, the Consultant acknowledges and agrees the Consultant's services are on behalf of
16 the County and are "works made for hire," as that term is defined in copyright law, by the
17 County; that the work product to be prepared by the Consultant are for the sole and exclusive
18 use of the County, and that the County shall be the sole owner of all patents, copyrights,
19 trademarks, trade secrets and other rights and contractual interests in connection therewith
20 which are developed and compensated solely under this Agreement; that all the rights, title and
21 interest in and to the work product will be transferred to the County by the Consultant to the
22 extent the Consultant has an interest in and authority to convey such rights; and the Consultant
23 will assist the County to obtain and enforce patents, copyrights, trademarks, trade secrets, and
24 other rights and contractual interests relating to said work product, free and clear of any claim
25 by the Consultant or anyone claiming any right through the Consultant. The Consultant further
26 acknowledges and agrees the County's ownership rights in such work product, shall apply
27 regardless of whether such work product, or any copies thereof, are in possession of the
28 Consultant, or any other person, firm, corporation, or entity.

1 14.3 If this Agreement is terminated during or at the completion of any Project phase,
2 electronic and reproducible copies of report(s) or preliminary documents shall be submitted by
3 the Consultant to the County, which may use them to complete the Project(s) at a future time.

4 14.4 The files provided by the Consultant to the County are submitted for an acceptance
5 period lasting until the expiration of this Agreement (i.e., throughout the duration of the contract
6 term, including any extensions). Any defects the County discovers during such acceptance
7 period will be reported to the Consultant and will be corrected as part of the Consultant's "Basic
8 Scope of Work."

9 **Article 15**

10 **Rebates, Kickbacks or Other Unlawful Consideration**

11 15.1 The Consultant warrants that this Agreement was not obtained or secured through
12 rebates, kickbacks or other unlawful consideration, either promised or paid to any County
13 employee. For breach or violation of this warranty, the County shall have the right, in its
14 discretion, to terminate this Agreement without liability; or to pay only for the value of the work
15 actually performed; or to deduct from this Agreement the price or consideration, or otherwise
16 recover, the full amount of such rebate, kickback or other unlawful consideration.

17 **Article 16**

18 **Contingent Fees**

19 16.1 The Consultant warrants, by execution of this Agreement that no person or selling
20 agency has been employed, or retained, to solicit or secure this Agreement upon an agreement
21 or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona
22 fide employees, or bona fide established commercial or selling agencies maintained by the
23 Consultant for the purpose of securing business. For breach or violation of this warranty, the
24 County has the right to: annul this Agreement without liability, and to pay only for the value of
25 the work actually performed; or in its discretion to deduct from the Agreement the price or
26 consideration, or otherwise recover, the full amount of such commission, percentage,
27 brokerage, or contingent fee.

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IN WITNESS WHEREOF, they have executed this Agreement this ____ day of

_____, 202_.

(Design-Build Entity)

County of Fresno
(Owner)

By:
Title
Address

By: _____
Steve E. White, Director
Department of Public Works and Planning
County of Fresno

For accounting use only:

Org No.:
Account No.:
Fund No.:
Subclass No.:

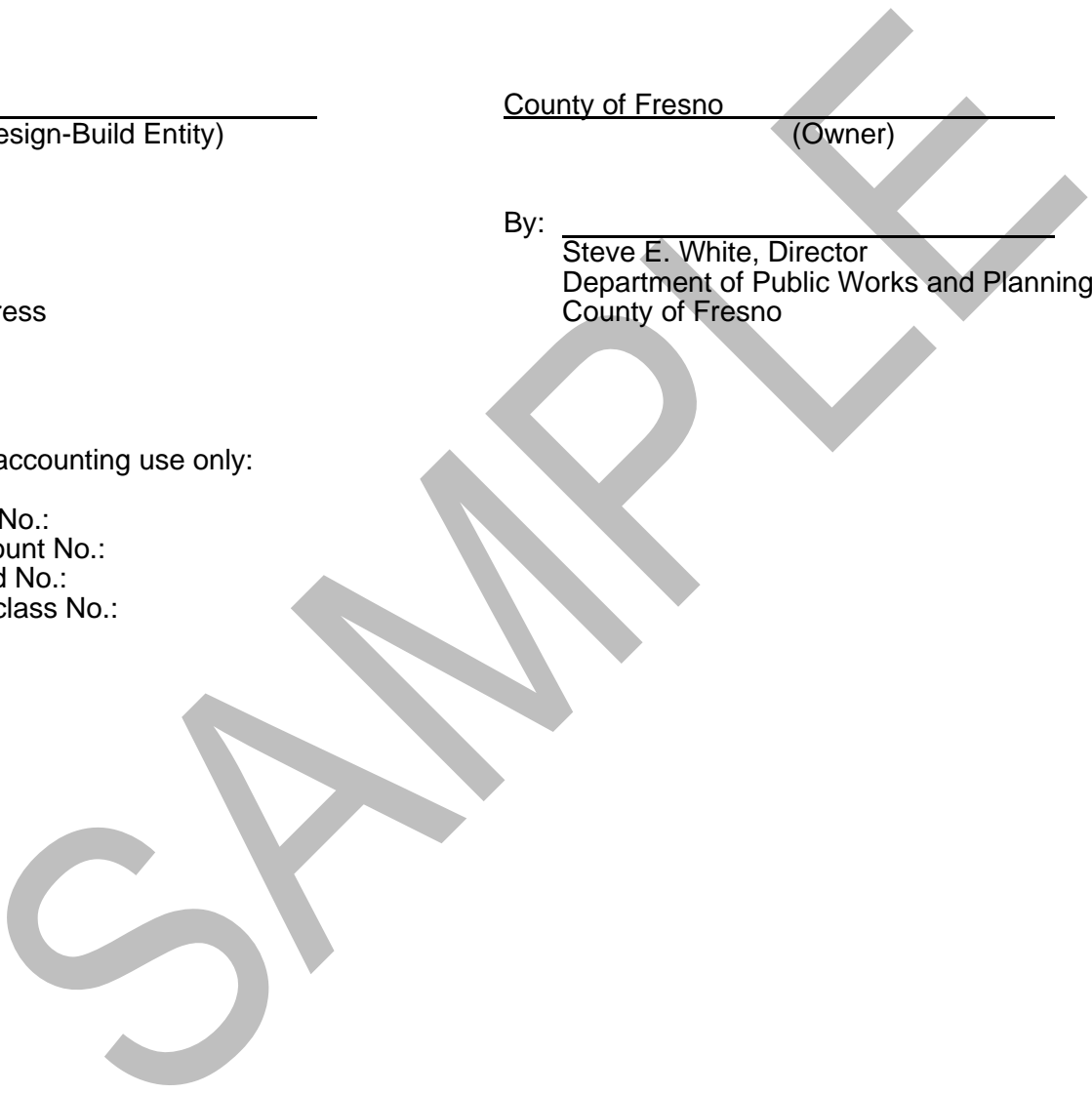


Exhibit A

Stipend Invoice

Reference is made to that Request for Proposals issued by County of Fresno Department of Public Works and Planning ("County") for the PROJECT NAME Project, Number _____ ("Project").

Reference is also made to the "PROJECT DESIGN-BUILD STIPEND AGREEMENT" dated as of _____ by and between County and _____ ("Design-Build Entity").

1. Pursuant to the PROJECT RFP and the Stipend Agreement, Design-Build Entity hereby requests payment of \$_____ reflecting the amount to which Design-Build Entity is entitled under Section 4 of the Stipend Agreement.
2. Upon Design-Build Entity's receipt of the amount of the stipend as prescribed under the Stipend Agreement and the RFP, Design-Build Entity hereby:
 - a. Grants to County all rights, title, and interest in and to the Transferred Intellectual Property, as defined in the Stipend Agreement, free of all intellectual property rights and claims, without further action on County's part, and without restriction or limitation on their use, exploitation, exercise of rights, or transferability;
 - b. Grants to County an irrevocable, perpetual, non-exclusive, transferable, without incremental charge, to use, exploit, manufacture, distribute, reproduce, adapt, and display the Background Intellectual Property, Background Work Product solely in connection with the Project, which shall not cover:
 - i. Design-Build Entity's or any Design-Build Entity team member's name, logo, and other branding elements;
 - ii. Any Background Intellectual Property or Background Work Product embodied in the Project; or
 - iii. Background Intellectual Property;
 - c. Waives all rights to protest any aspect of the Procurement Process, including any protest of ranking, award, or cancellation of the procurement; and
 - d. Fully unconditionally, and irrevocably releases and waives all claims against County arising out of or relating to the County's use of the Work Product.
3. Design-Build Entity represents and warrants to County that: (a) the Stipend Agreement Certification has been duly and validly executed and delivered to County and is in full force and effect; and (b) Design-Build Entity is eligible for payment pursuant to the terms of the Stipend Agreement and the Project RFP.
4. Design-Build Entity acknowledges that submission of this invoice, and payment by County of any amount in response to this invoice, is in all respects subject to the terms and conditions of the Stipend Agreement and the Project RFP.

Date: _____ Design-Build Entity: _____

Signature: _____ Name, Title: _____

Exhibit B

Self-Dealing Transaction Disclosure Form

In order to conduct business with the County of Fresno ("County"), members of a contractor's board of directors ("County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest."

The definition above will be used for purposes of completing this disclosure form.

Instructions

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.

The form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

Exhibit B

(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to)			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code § 5233 (a)			
(5) Authorized Signature			
Signature:		Date:	

**DOCUMENT 00 5100
NOTICE OF AWARD**

DATED: _____

TO: _____ (“Design-Build Entity”)

ADDRESS: _____

PROJECT NO.: _____

CONTRACT FOR: **COUNTY OF FRESNO**
_____ (Project)
_____ (Address)

The Contract Sum of your Contract (including the Alternates and Proposed Alternates) identified below) is _____ Dollars (\$_____).

1. The Work of your Contract includes the following Alternates and Proposed Alternates in addition to the Base Project Pricing:
 - a. Alternates and Proposed Alternates

Alternate / Proposed Alternate Identification Number	Alternate / Proposed Alternate Description	Alternate / Proposed Alternate Price
A – 1		\$
A – 2		\$
PA – 1		\$
PA – 2		\$

2. As required by Public Contract Code section 20160, the second and third- ranked Design-Build Entities are _____ and _____.
3. Copies of the proposed Contract Documents listed below accompany this Notice of Award.
4. You must comply with the following conditions precedent by 5:00 p.m. of the third business day following the date of this Notice of Award, that is, by **[Day of the Week, Month Day, 202__]**:
 - a. Deliver to County via email to DesignServices@fresnocountyca.gov, one (1) scanned copy of fully executed counterparts of Document 00 5200 (Agreement). The copy of Document 00 5200 (Agreement) must bear your signature on the signature page.
 - b. Deliver to County via email to DesignServices@fresnocountyca.gov, one (1) scanned copy of Document 00 6536 (Guaranty), executed by you.
 - c. _____.

5. Additionally, you must comply with the following conditions precedent by 5:00 p.m. of the eighth day following the date this Notice of Award, that is by **[Day of the Week, Month Day, 202__]**:
- a. Deliver to County two (2) originals of Document 00 6113.13 (Construction Performance Bond), executed by you and your surety. Deliver to County via email one (1) scanned copy to DesignServices@fresnocountyca.gov. Hard copies should be mailed to Attention: Jennica Geddert, Design Division, 2220 Tulare St., 6th Floor, Fresno, CA 93721.
 - b. Deliver to County two (2) originals of Document 00 6113.16 (Construction Labor and Material Payment Bond), executed by you and your surety. Deliver to County via email one (1) scanned copy to DesignServices@fresnocountyca.gov. Hard copies should be mailed to Attention: Jennica Geddert, Design Division, 2220 Tulare St., 6th Floor, Fresno, CA 93721.
 - c. Deliver to County one (1) original set of the insurance certificates with endorsements required under Document 00 7316 (Supplementary Conditions - Insurance and Indemnification). Deliver to County via email one (1) scanned copy to DesignServices@fresnocountyca.gov. Hard copies should be mailed to Attention: Jennica Geddert, Design Division, 2220 Tulare St., 6th Floor, Fresno, CA 93721.
6. Failure to comply with these conditions within the time specified will entitle County to consider your Proposal abandoned, to annul this Notice of Award, and to declare your Proposal security forfeited.
7. Within twenty-one (21) days after you comply with the conditions in Paragraphs 4 and 5 above, County will return to you one fully signed counterpart of Document 00 5200 (Agreement).
8. Upon commencement of the Work, you and each of your Subcontractors shall certify and provide County copies of payroll records on forms provided by the Division of Labor Standards Enforcement, in accordance with California Labor Code section 1776.

COUNTY OF FRESNO

BY: _____

(Title)

(Print Name)

AUTHORIZED BY COUNTY BOARD AGENDA ITEM:

NO: _____

ADOPTED: _____, 20__

[Copy of Agenda Item Attached]

END OF DOCUMENT

**DOCUMENT 00 5200
DESIGN-BUILD AGREEMENT**

THIS AGREEMENT, in Fresno, California, by and between _____ [Name of Design-Build Entity], a _____ [State of operation & type of business], whose address is located: _____ (“Design-Build Entity”), and the County of Fresno (“County”), acting under and by virtue of the authority vested in County by the laws of the State of California.

PROJECT NUMBER: 24-DB-01
COUNTY OF FRESNO
CLOVIS REGIONAL AND REEDLEY LIBRARIES
at CLOVIS REGIONAL LIBRARY – 755 3RD ST., CLOVIS, CA 93611
REEDLEY LIBRARY – 1819 11TH ST., REEDLEY, CA 93654

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

ARTICLE 1 - SCOPE OF WORK OF THE CONTRACT

1.01 Work of the Contract

A. Design-Build Entity hereby agrees to serve as the Design-Build Entity for the Project identified herein, inclusive of complete planning, design and engineering services, construction management services, complete permitted plan sets, construction services, completion and commissioning services, and turnover of a complete, functional and legally operable Project, in accordance with the Specifications, Drawings, and all other terms and conditions of the Contract Documents (“Work”).

B. Without limiting the foregoing, Work specifically includes the following Alternates:

1. The following Alternates:

A-# [number] [description] [\$amount] _____

A-# [number] [description] [\$amount] _____

A-# [number] [description] [\$amount] _____

C. Without limiting the foregoing, Work specifically includes the following Proposed Alternates:

1. The following Proposed Alternates:

PA-# [number] [description] [\$amount] _____

PA-# [number] [description] [\$amount] _____

PA-# [number] [description] [\$amount] _____

1.02 Price for Completion of the Work

- A. County shall pay Design-Build Entity the following Contract Sum, _____ (\$_____) for completion of Work in accordance with Contract Documents (including the Alternates and Proposed Alternates identified in paragraphs 1.01(B) and 1.01(C) above)

ARTICLE 2 - COMMENCEMENT AND COMPLETION OF WORK

2.01 Commencement of Work

- A. Design-Build Entity shall commence Work on _____.
- B. County reserves the right to modify or alter the Commencement Date.

2.02 Completion of Work

- A. Design-Build Entity shall achieve Final Completion of the entire Work no later than _____, 20__.

2.03 Design and Construction Milestones

- A. Design-Build Entity shall also complete design and construction of the Project consistent with the following milestones.
1. Substantial Completion by _____, 20__;
 2. Certificate of Beneficial Occupancy of entire Project Recorded by _____, 20__;
 3. Final Completion of entire Project by _____, 20__.

2.04 Liquidated Damage Amounts

- A. County and Design-Build Entity recognize that time is of the essence of this Agreement and that County will suffer financial loss, if the Work is not completed within the time specified herein, taking into account any extensions thereof allowed in accordance with the Contract Documents.
- B. Consistent with terms, conditions, stipulations, and limitations in Document 00 7253 (General Conditions) regarding liquidated damages, Design-Build Entity and County agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of actual damages incurred by County because of a delay in completion of the Work. Accordingly, in the event of delay in completion of the Work, or any Phase or Subproject, County and Design-Build Entity agree that Design-Build Entity shall pay County as liquidated damages the number of Dollars provided below:
1. As liquidated damages for delay, Design-Build Entity shall pay County _____ (\$#,###) for each Day that expires after the time specified herein for Design-Build Entity to achieve the Final Completion of the

entire Work (paragraph 2.02A above), until achieved.

2.05 Scope of Liquidated Damages

- A. Measures of liquidated damages shall apply cumulatively.
- B. Limitations and stipulations regarding liquidated damages are set forth in Document 00 7253 (General Conditions).

ARTICLE 3 - PROJECT REPRESENTATIVES AND STAFFING

3.01 County's Project Administrator

- A. County has designated _____ as its Project Administrator to act as County's Representative in those matters relating to the Contract Documents that do not require Board of Supervisors approval.
- B. To the extent Board of Supervisors approval is not required, Project Administrator shall have authority over various matters pertaining to the Contract Documents and shall have sole authority to modify the Contract Documents on behalf of County, to accept work, and to make decisions or actions binding on County, and shall have sole signature authority on behalf of County. By this clause, Project Administrator is not assigned any rights or obligations that require Board of Supervisors approval.
- C. County may assign all or part of the Project Administrator's rights, responsibilities, and duties to a Construction Manager, or other County Representative.

3.02 Design-Build Entity's Project Manager and Dedicated Staff

- A. Design-Build Entity has designated _____ as its Project Manager to act as Design-Build Entity's Representative in all matters relating to the Contract Documents. For the construction phase, the Project Manager shall be resident at the Project Site and shall be devoted solely to the Project. Design-Build Entity may not change the identity of its Project Manager without prior County written approval, which approval shall not be unreasonably withheld, provided such replacement has similar or greater experience and qualifications.
- B. Design-Build Entity's Proposal provides an organization chart and lists the key personnel previously approved in the Request for Qualification Process Phase 1 Steps 1 and 2 or otherwise (together, "Key Personnel") Design-Build Entity intends to provide to the Project to perform its design, construction and obligations under the Contract Documents, including but not limited to, their position, responsibility, resume, and qualifications. Design-Build Entity represents that such staff have the necessary licenses, experience, and qualifications to satisfactorily perform the requirements of the Contract Documents, and that at all times, Design-Build Entity shall maintain such staff or similar staff having all necessary licenses, certifications, experience, and skills necessary to perform all obligations of the Contract Documents.
- C. Design-Build Entity acknowledges that the quality and qualifications of the Key Personnel were important factors in County's selection of Design-Build Entity for the Project. Design-Build Entity and County agree that the personal services of the Key

Personnel is a material term of the Contract Documents, and substitution or removal or change in role or level of effort, of such Key Personnel would result in damages to the County, the measure of which would be impractical or extremely difficult to fix.

- D. Liquidated damages for substitution of Key Personnel shall be deducted from the next applicable Application for Payment or, if insufficient, shall be paid by Design-Build Entity.
- E. No liquidated damages shall be due under this paragraph 3.02 for any substitution required due to death or incapacity of a Key Personnel.

3.03 Bridging Architect

- A. County Staff furnished the Bridging Documents (Performance Criteria and Concept Drawings) and shall have the rights assigned to Bridging Architect in the Contract Documents.

ARTICLE 4 - CONTRACT DOCUMENTS

4.01 Contract Documents consist of the following documents, including all changes, Addenda, and Modifications thereto:

Document 00 4200	Design-Build Proposal Form, attached hereto
Document 00 4330	Subcontractors List
Document 00 5100	Notice of Award
Document 00 5200	Design-Build Agreement
Document 00 5201	Bridging Documents
Document 00 5500	Notice to Proceed with Construction
Document 00 5501	Notice to Proceed with Design Services
Document 00 6113.13	Construction Performance Bond
Document 00 6113.16	Construction Labor and Material Payment Bond
Document 00 6325	Substitution Request Form
Document 00 6530	Agreement and Release of Any and All Claims
Document 00 6536	Guaranty
Document 00 7253	General Conditions
Document 00 7316	Supplementary Conditions - Insurance and Indemnification
Document 00 9113	Addenda

Division 01 Sections identified in Document 00 0110 (Table of Contents)

Design-Build Entity's Proposal for County of Fresno dated: _____, 20__.

Final Construction Documents (following receipt of all approvals required by other Contract Documents), whether listed on Document 00 4330 (Subcontractors List) or otherwise.

4.02 There are no Contract Documents other than those listed above. The Contract Documents may only be amended, modified, or supplemented as provided in Document 00 7253 (General Conditions).

ARTICLE 5 - MISCELLANEOUS

5.01 Terms and abbreviations used in this Agreement are defined in Document 00 7253 (General Conditions) and Section 01 4200 (References and Definitions) and will have the meaning indicated therein. Prior to executing this Agreement, Design-Build Entity has performed all required pre-construction investigations required and described in the Contract Documents.

5.02 Notices

a. Contact Information. The persons and their addresses having authority to give and receive notices provided for or permitted under this Agreement include the following:

For the County:
[Title Only]
County of Fresno
[Street Address]
[City, State ZIP]
Email Address

For the Contractor:
[Title]
[Name of Contractor]
[Street Address]
[City, State ZIP]
[Optional: Email Address]

b. Change of Contact Information. Either party may change the information in section 5.02.a. by giving notice as provided in section 5.02.c.

c. Method of Delivery. Each notice between the County and the Contractor provided for or permitted under this Agreement must be in writing, state that it is a notice provided under this Agreement, and be delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, or by Portable Document Format (PDF) document attached to an email.

5.03 In order to induce County to enter into this Agreement, Design-Build Entity represents that it is duly organized, existing, and in good standing under applicable state law; is licensed to perform all aspects of the Work; will employ only persons and subcontractors and designers with all required licenses and certifications; that Design-Build Entity is duly qualified to conduct business in the State of California; that Design-Build Entity has duly authorized the execution, delivery, and performance of this Agreement, the other Contract Documents and the Work to be performed herein; and that the Contract Documents do not violate or create a default under any instrument, agreement, order or decree binding on Design-Build Entity.

5.04 Design-Build Entity shall not assign any portion of the Contract Documents.

5.05 Should any part, term, or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void, or unenforceable, all remaining parts, terms, and provisions shall remain in full force and effect and shall in no way be invalidated, impaired, or affected thereby. If the provisions of any law causing such invalidity, illegality, or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest

extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).

- 5.06 It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of County or acting as an employee, agent, or representative of County, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of County is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- 5.07 In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, Design-Build Entity or Subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time County tenders final payment to Design-Build Entity, without further acknowledgment by the parties.
- 5.08 Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and on file at County's Office and shall be made available to any interested party on request. Pursuant to California Labor Code sections 1860 and 1861, in accordance with the provisions of Section 3700 of the Labor Code, every Design-Build Entity will be required to secure the payment of compensation to his or her employees. Design-Build Entity represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Design-Build Entity shall comply with such provisions before commencing the performance of the Work of the Contract Documents.
- 5.09 County shall have the right to review all phases of Design-Build Entity's design including, but not limited to, drawings, specifications, shop drawings, samples, and submittals, as specified in the Contract Documents. Such review and other action shall not relieve Design-Build Entity of its responsibility for a complete design complying with the requirements of the Contract Documents, but rather, such review shall be in furtherance of County's monitoring and accepting the design as developed and issued by the Design-Build Entity, consistent with these Contract Documents. Design-Build Entity's responsibility to design and construct the Project in conformance with the Contract Documents shall be absolute.
- 5.10 This Agreement and the Contract Documents shall be deemed to have been entered into in the County of Fresno, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in the Superior Court for the County of Fresno.

ARTICLE 6 - INDEMNIFICATION

- 6.01 To the fullest extent permitted by law, Design-Build Entity agrees to and shall indemnify, save, hold harmless and at County's request, defend County and its officers, agents, and employees, and the Project Manager and their respective officers, agents and employees, from any and all costs and expenses, attorney fees and court costs, damages, liabilities, claims and losses occurring or resulting to County, or the Project Manager in connection with the performance, or failure to perform, by Design-Build Entity, its officers, agents or employees under this Agreement, and from any and all costs and expenses, attorney fees and court costs, damages, liabilities, claims and losses occurring or resulting to any person, firm or corporation who may be injured or damaged by the performance, or failure to perform, of Design-Build Entity, its officers, agents or employees under this Agreement. In addition, Design-Build Entity agrees to indemnify County for Federal, State of California, and/or local audit exceptions resulting from non-compliance herein on the part of Design-Build Entity.
- 6.02 In any and all claims against the County, the Project Manager, or any of their respective officers, agents, or employees, initiated by any employee of the Design-Build Entity, 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 set forth in the immediately preceding paragraph 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 Design-Build Entity or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

SIGNATURES:

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____, 20__

(Design-Build Entity)

COUNTY OF FRESNO
(OWNER)

By: _____

By: _____

Name: _____

NAME OF CHAIRMAN, Chairman
of the Board of Supervisors of the
County of Fresno

Title: _____

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of
California

Address

By: _____
Deputy

FOR ACCOUNTING USE ONLY
#####/#####/#####/#####/#####

END OF DOCUMENT

DOCUMENT 00 6530
AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS
[Public Contract Code § 7100]

THIS AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS ("Agreement and Release"), made and entered into this _____ day of _____, 202__, by and between the County of Fresno ("County"), and _____ ("Design-Build Entity"), whose place of business is _____.

1.01 County and Design-Build Entity entered into Contract for Project Number _____ (the "Contract") for construction of the Fresno County _____ (project(s)) located at _____ (street address), California.

1.02 The Work under the Contract has been completed.

1.03 NOW THEREFORE, it is mutually agreed between County and Design-Build Entity as follows:

A. Design-Build Entity will not be assessed liquidated damages except as detailed below:

Original Contract Sum \$ _____

Modified Contract Sum \$ _____

Payment to Date \$ _____

Liquidated Damages \$ _____

Payment Due Design-Build Entity \$ _____

B. Subject to the provisions of this Agreement and Release, County will forthwith pay to Design-Build Entity the sum of [_____ Dollars and _____ Cents (\$_____)] under the Contract, less any amounts withheld under the Contract or represented by any Notice to Withhold Funds on file with County as of the date of such payment.

C. Design-Build Entity acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against County arising from the Contract, except for the claims described in Paragraph 1.03(E) of this Document 00 6530. It is the intention of the parties in executing this Agreement and Release that this Agreement and Release shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of Design-Build Entity against County, and all if its agents, employees, consultants, inspectors, representatives, assignees and transferees, except for the Disputed Claims set forth in Paragraph 1.03(E) of this Document 00 6530. Nothing in this Agreement and Release shall limit or modify Design-Build Entity's continuing obligations described in Paragraph G of this Document 00 6530.

D. The following claims submitted under Document 00 7253 (General Conditions),

Article 12, are disputed (hereinafter, the “Disputed Claims”) and are specifically excluded from the operation of this Agreement and Release.

E. [Insert information in Chart below, affix attachment if necessary]

CLAIM NO.	DATE SUBMITTED	DESCRIPTION OF CLAIM	AMOUNT OF CLAIM

F. Consistent with California Public Contract Code section 7100, Design-Build Entity hereby agrees that, in consideration of the payment set forth in Paragraph 1.03(8) of this Document 00 6530, Design-Build Entity hereby releases and forever discharges County, and all of its agents, employees, consultants, inspectors, assignees and transferees from any and all liability, claims, demands, actions or causes of action of whatever kind or nature arising out of or in any way concerned with the Work under the Contract.

G. Guarantees and warranties for the Work, and any other continuing obligation of Design-Build Entity, shall remain in full force and effect as specified in the Contract Documents.

H. Design-Build Entity shall immediately defend, indemnify and hold harmless County, any of the County’s Representatives, Project Manager, and all of their agents, employees, consultants, inspectors, assignees and transferees, from any and all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities that may be asserted against them by any of Design-Build Entity’s suppliers and/or Subcontractors of any tier and/or any suppliers to them for any and all labor, materials, supplies and equipment used, or contemplated to be used in the performance of the Contract, except for the Disputed Claims set forth in Paragraph 1.03(E) of this Document 00 6530.

1.04 Design-Build Entity hereby waives the provisions of California Civil Code section 1542, which provide as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

1.05 The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable, and if any such provision or

any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal or other law, ruling, or regulation, then such provision, or part thereof shall remain in force and effect only to the extent permitted by law, and the remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.

1.06 Design-Build Entity represents and warrants that it is the true and lawful owner of all claims and other matters released pursuant to this Agreement and Release, and that it has full right, title, and authority to enter into this instrument. Each party represents and warrants that it has been represented by counsel of its own choosing in connection with this Agreement and Release.

1.07 All rights of County shall survive completion of the Work or termination of the Contract, and execution of this Agreement and Release.

*****CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING*****

OWNER: COUNTY OF FRESNO

By: _____
Signature

Name: _____
Print

Its: _____
Title

ATTEST:

Secretary

Print

DESIGN-BUILD ENTITY:

By: _____
Signature

Name: _____
Print

Its: _____
Title

ATTEST:

By: _____

Signature

Name: _____
Print

Its: _____
Title

REVIEWED AS TO FORM:

Dated: _____, [202__]

By: _____
Counsel for County

Name: _____
Print

END OF DOCUMENT

SAMPLE

DOCUMENT 00 6536
GUARANTY

TO: The COUNTY OF FRESNO ("Owner"), for construction of THE FRESNO COUNTY XXXXXXX FACILITY PROJECT located at xxx Xxxxxx Street, Xxxxxxxx, California.

- A. The undersigned guarantees all construction performed on this Project and also guarantees all material and equipment incorporated therein.
- B. Design-Build Entity hereby grants to Owner for a period of ten (10) years following the date of Final Acceptance of the Work completed, its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all design, engineering, professional services, labor, materials and equipment provided by Design-Build Entity and its Subcontractors of all tiers in connection with the Work.
- C. Neither final payment nor use nor occupancy of the Work performed by the Design-Build Entity shall constitute an acceptance of Work not done in accordance with this Guaranty or relieve Design-Build Entity of liability in respect to any express warranties or responsibilities for faulty materials or workmanship. Design-Build Entity shall remedy any defects in the Work and pay for any damage resulting therefrom, which shall appear within one year, or longer if specified, from the date of Final Acceptance of the Work completed.
- D. If within ten (10) years after the date of Final Acceptance of the Work completed, or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents, any Work is found to be Defective, Design-Build Entity shall promptly, without cost to Owner and in accordance with Owner's written instructions, correct such Defective Work. Design-Build Entity shall remove any Defective Work rejected by Owner and replace it with Work that is not Defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Design-Build Entity fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the Defective Work corrected or the rejected Work removed and replaced. Design-Build Entity shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Design-Build Entity fails to correct Defective Work, or defects are discovered outside the correction period, Owner shall have all rights and remedies granted by law.
- E. Inspection of the Work shall not relieve Design-Build Entity of any of its obligations under the Contract Documents. Even though equipment, materials, or Work required to be provided under the Contract Documents have been inspected, accepted, and estimated for payment, Design-Build Entity shall, at its own expense, replace or repair any such equipment, material, or Work found to be Defective or otherwise not to comply with the requirements of the Contract Documents up to the end of the guaranty period.
- F. All abbreviations and definitions of terms used in this Agreement shall have the meanings set forth in the Contract Documents.
- G. The foregoing Guaranty is in addition to any other warranties of Design-Build

Entity contained in the Contract Documents, and not in lieu of, any and all other liability imposed on Design-Build Entity under the Contract Documents and at law with respect to Design-Build Entity's duties, obligations, and performance under the Contract Documents. In the event of any conflict or inconsistency between the terms of this Guaranty and any warranty or obligation of the Design- Build Entity under the Contract Documents or at law, such inconsistency or conflict shall be resolved in favor of the higher level of obligation of the Design-Build Entity.

Date: _____,20

Design-Build Entity's name

By: _____
Signature

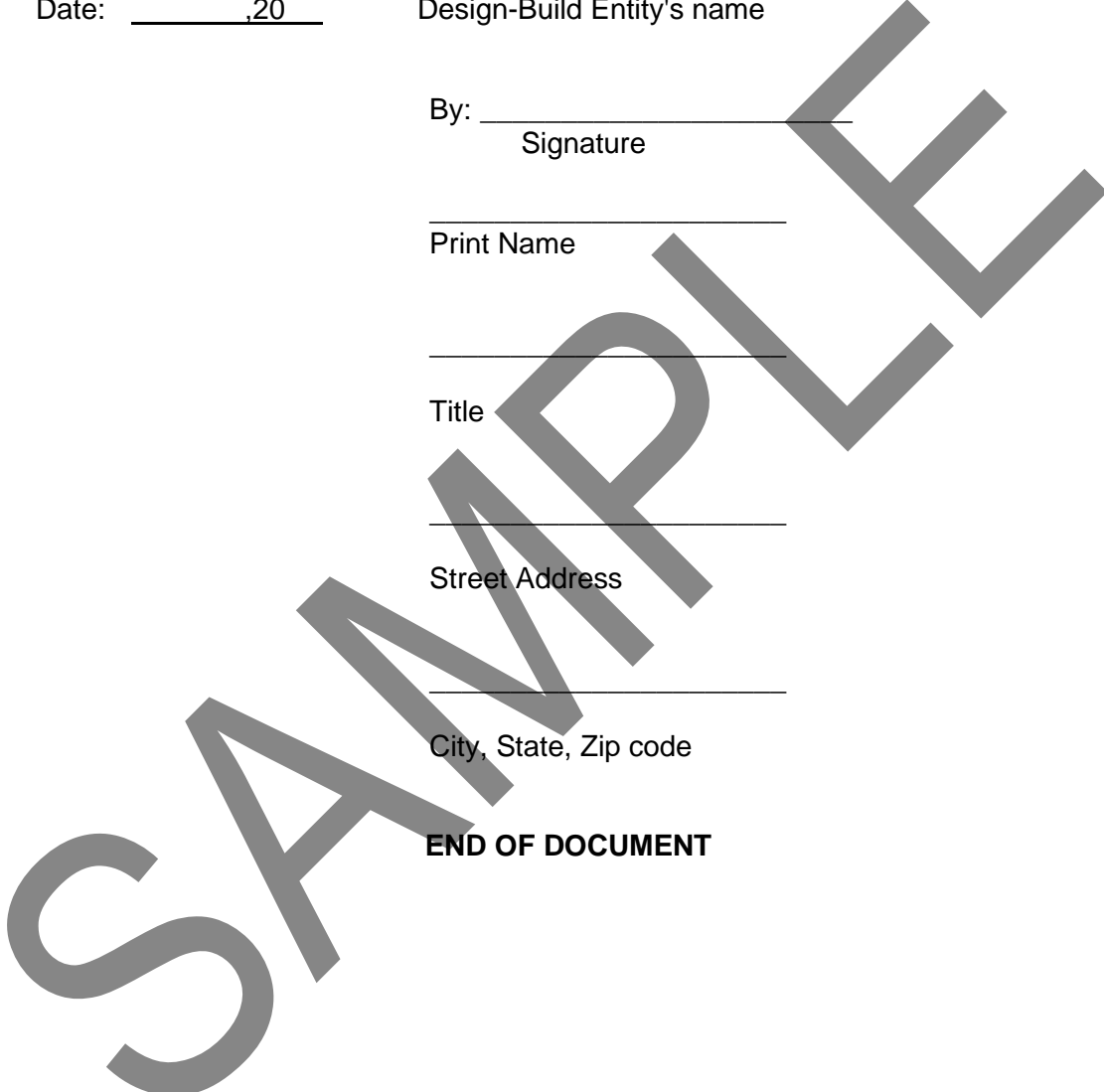
Print Name

Title

Street Address

City, State, Zip code

END OF DOCUMENT



ARTICLE 1 - GENERAL

1.01 Defined Terms

- A. All abbreviations and definitions of terms used and not otherwise defined in this Document 00 7253 are set forth in Section 01 4200 (References and Definitions).
- B. This Document 00 7253 subdivides at first level into Articles, and then into paragraphs, then into subparagraphs.

1.02 Documents

- A. Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. Contract Documents shall not be construed to create a contractual relationship of any kind between (a) Architect/Engineer or any County Representative and Design-Build Entity; (b) County and/or its representatives and (except in the event of assignment upon termination) a Subcontractor, sub-Subcontractor, or supplier of any Project labor, materials, or equipment; or (c) between any persons or entities other than County and Design-Build Entity.
- C. County shall, however, be deemed to be an intended third-party beneficiary of subcontracts and purchase orders of any tier, and each such agreement shall so provide.

1.03 Precedence Of Documents

- A. In the case of discrepancy or ambiguity in the Contract Documents, the following order of precedence shall prevail:
 - 1. Modifications in inverse chronological order (i.e., most recent first), and in the same order as specific portions they are modifying;
 - 2. Division 00 5000 Series Documents, including but not limited to, Document 00 5200 (Agreement), and terms and conditions referenced therein, and such other documents within the Division 00 5000 Series (i.e., starting at 00 5200 and continuing to 00 5299) and the Division 00 6000 Series Documents (i.e., starting at 00 6000 and continuing to 00 6999);
 - 3. Division 00 7300 Series Documents, including but not limited to, Supplementary Conditions, and any Division 00 8000 Series Documents (i.e., starting at 00 8000 and continuing to 00 8999);
 - 4. Division 00 7200 Series Documents, including but not limited to, Document 00 7253 (General Conditions-Design-Build);
 - 5. Bridging Documents;
 - 6. Division 01 (General Requirements) Series Specifications;

7. Technical Specifications starting with Division 02 Series and continuing to Division 33 Series;
 8. Drawings;
 9. Written numbers over figures, unless obviously incorrect;
 10. Figured dimensions over scaled dimensions;
 11. Large-scale drawings over small-scale drawings;
 12. Specific details over standard or typical details.
- B. Within the Bridging Documents:
1. Design Narratives control over;
 2. Narrative Equipment Lists, which control over;
 3. Specifications, which control over;
 4. Drawings, which in the event of conflicts with drawings, the order of precedence will be as follows:
 - a. Schedules when identified as such will control over all other portions of the drawings;
 - b. Specific Notes will control over all other notes and all other portions of the drawings except schedules;
 - c. Larger scale drawings will control over smaller scale drawings;
 - d. Figured or Numerical dimensions will control over dimensions obtained by scaling;
 - e. Room Data Sheets.
- C. Any conflict between Drawings and Specifications above Division 01 will be resolved in favor of the document of the latest date (i.e., the most recent document), and if the dates are the same or not determinable, then in favor of Specifications.
- D. Any conflict between a bill or list of materials shown in the Contract Documents and the actual quantities required to complete Work required by Contract Documents, will be resolved in favor of the actual quantities.
- E. In the event the Specifications include divisions above Division 33 (e.g., Division 34 and above), then such divisions shall be included within the Contract Documents unless identified otherwise.

End of Article

ARTICLE 2 - SCOPE OF DESIGN-BUILD OBLIGATION

2.01 All-Inclusive Design-Build Obligation

- A. Except as may be specifically limited and/or excluded in Document 00 5201 (Bridging Documents) and Section 01 1100 (Summary of Work), Design-Build Entity shall provide a complete, legally operable, functional, and maintainable Project, in accordance with the Contract Documents, including providing, furnishing, and performing all necessary Design, engineering, architectural, and construction Services and providing and furnishing all necessary supplies, housing, materials, and equipment, and all necessary supervision, labor, and services required for the engineering, Design, procurement, quality assurance and inspection, construction, installation, startup, checkout, testing, site cleanup, and for the training of County's personnel, all in conformity with the requirements, legal requirements, criteria, performance guarantees, and warranties set forth in the Contract Documents, for a complete, full, and legally operable Project in full conformance with Contract requirements. The signature and seal of a licensed engineer(s) or architect(s) shall be obtained as necessary for compliance with legal requirements.
- B. Design-Build Entity's professional architectural and engineering services shall include, without limitation, all architectural services and all civil, electrical, fire protection, mechanical, structural engineering, landscape, cost estimating, planning, and coordination services required to complete the Project and to perform Design-Build Entity's obligations under the Contract Documents ("Services"). Design-Build Entity and its Designers and other consultants shall possess all necessary training, licenses, and permits to perform the Services, and the performance of the Services shall conform to the standard of practice of a professional with substantial experience and expertise in performing professional services of like nature and complexity of the Services. Design-Build Entity's licensed architectural and engineering Designers shall owe a duty of care to the County in performing their architectural and engineering portions of the Services.
- C. No construction or alteration of any County facility under the Contract Documents shall commence prior to the receipt of the written acceptance of the final Drawings and Specifications from the County and, as required, approvals from County and City Fire Marshals (if applicable), and all authorities having jurisdiction. Design-Build Entity shall design and construct a complete, operational, fully functional, and legally operable project in full compliance with all applicable laws, codes, and standards (both public and private), including but not limited to the standards included and warranties expressed in the Contract Documents and manufacturer's recommendations pertaining to individual items of equipment or systems. Design-Build Entity shall have full responsibility to manage, coordinate, and comply with the requirements of authorities with jurisdiction, including but not limited to City and County building officials.
- D. Without limiting any other provision of Contract Documents, the Design-Build Entity must design and construct the Project to enable conformance with operational, fire and life safety, and physical plant standards contained in Fresno County Ordinance Code Title 15 and California Code of Regulations (CCR) Title 24.

2.02 Description Of Design Requirements

- A. Without limiting the generality of the foregoing paragraphs, Design-Build Entity and its Designers shall prepare preliminary designs, interim designs, complete designs, engineering, working drawings, and shop drawings and generate drawings, and/or engineering analysis setting forth in detail the specifications and requirements for the purchasing and procurement of the services, materials, and equipment, all necessary utilities, natural gas, and water supply for construction, and for the construction of the complete, operational, legally operable and fully functional Project and shall furnish the services of all necessary supervisors, architects, engineers, designers, draftsmen, and other personnel necessary for the preparation of those drawings and specifications required for the Work. The Design shall include all disciplines necessary to design and engineer the Project, including but not limited to architectural, civil, structural, mechanical, electrical, instrumentation, and control work.
- B. Design-Build Entity shall coordinate the services of all architectural and engineering disciplines and other Designers involved in completing the Work, including, without limitation, conducting design coordination meetings with Designers in the frequency necessary for Design-Build Entity to meet its design coordination obligations herein and all other provisions of Contract Documents.
- C. All professional services shall be performed with the degree of care, skill, and responsibility customary among such licensed personnel with substantial experience and expertise in Work similar to the Work of this Contract.
- D. Design-Build Entity and its Designers' Design shall provide that all surfaces, fixtures, and equipment are readily accessible for maintenance, repair, or replacement by ladders, power lifts, catwalks, and the like without exceeding the design loads of the floors, roofs, ceilings and that such access is in conformance with Cal/OSHA. All drawings, specifications, structural, and electrical design calculations, site data, cost estimates, and any other deliverables required by State or Federal law shall comply with State and federal standards. Design-Build Entity shall comply with any other requirements of public or private authorities with jurisdiction over the Project, the Drawings and Specifications, and tie-ins to the Project. Design-Build Entity shall comply with the applicable standard of care when preparing Drawings and Specifications to comply with applicable building codes, ordinances, statutes, laws, standards, governmental regulations, and private restrictions, including necessary tie-ins applicable to the Project and the Services, including, but not limited to, those listed in this Contract, all environmental, energy conservation, energy tie-in, and disabled access requirements, regulations, and standards of the County and City Fire Marshals (if applicable) and all other authorities having jurisdiction over the Project.
- E. Design-Build Entity shall attend meetings with the community, representatives of the County, interested parties, and governmental entities, as necessary, and provide information and diagrams to fully describe the intended Design and the Project.
- F. The Design-Build Entity shall prepare and present, for the County's approval, the instrument of services in the following phases:

1. Schematic Design

- a. The Design-Build Entity shall prepare and submit Schematic Design Documents to the County based on the Program Documents, any County-approved changes thereto, and any and all aspects of the Design-Build Entity's original proposal that exceed the functional, Program, and technical requirements of the Program Documents, unless otherwise authorized in writing by the County, the Design-Build Entity shall revise, modify, and further detail its original proposal, as appropriate, to incorporate any changes required by the County for conformity with the Program Documents, inclusion of any value added options accepted by the County, and any additional detailing required for a traditional Schematic Design submittal, and prepare, for Review and Concurrence by the County, Schematic Design Documents illustrating the scale and relationship of the Project components, outline Specifications showing the general scope and character of the Project, including, but not limited to, descriptions of the proposed structural, mechanical, electrical and plumbing systems.
- b. The Architect of Record and Consulting Professionals shall review the County Design Guidelines included in the RFP Bridging Documents prior to developing Schematic Drawings.
- c. The Architect of Record shall submit written certification to the County that it has reviewed the Schematic Design submittal and that it conforms with the requirements of the Contract Documents. The Design-Build Entity shall submit to the County, for the County's review, comment, and approval, a PDF copy, six (6) one-half size copies, and one (1) full size hard copy of the Schematic Drawings.
- d. Within five (5) workdays of delivery of Schematic Documents, the Design-Build Entity shall schedule a meeting between the Design-Build Entity and County meeting to address questions or issues.
- e. The County shall return comments and revisions to the Design-Build Entity within ten (10) workdays.
- f. The Design-Build Entity shall provide documentation of all County comments and meeting minutes to date annotated with resulting decisions/changes.
- g. Documentation of County comments shall include the Design-Build Entity's written response to each County's comment noting the action taken, including the Specification section or sheet number(s) affected, or describing why action was not taken. Receipt by the County of these written responses to the County's comments shall be a condition precedent to the County's final payment for the Schematic phase of the Design.

- h. The Design-Build Entity shall submit to the County a written statement identifying each deviation from the requirements of the Program Documents and requesting the County's approval of each deviation or provide the County with a written statement that no such deviations exist.

2. Site Plan Review

- a. For New Construction Projects or Projects where Site Plan Review is required, the Design-Build Entity shall provide, print, and process all applications and documentation required to obtain Site Plan Review approval from the Governing Jurisdiction. Documents shall conform to the Governing Jurisdiction requirements.
- b. The Design-Build Entity shall provide a PDF copy set of approved Site Plan Review documents bearing the Governing Jurisdiction "Approval" Stamp.
- c. The County will assist the Design-Build Entity with County information needed in the application process.
- d. Site Plan Review shall run concurrently with the Design Development phase.

3. Design Development

- a. Based on the approved Schematic Design Documents and any changes approved by the County in the scope or requirements of the Program Documents, the Design-Build Entity shall prepare, for review and concurrence by the County, Design Development Documents.
- b. Design Development Documents shall be reviewed at fifty percent (50%), eighty percent (80%), and one hundred percent (100%) completion.
- c. County comments and/or revisions shall be returned to the Design-Build Entity within ten (10) workdays from delivery of Documents. County review comments or revisions shall be "red line" noted on PDF documents provided by the Design-Build Entity.
- d. Return of Documents to the Design-Build Entity shall be coordinated with a meeting between the Design-Build Entity and the County to discuss the County's comments or revisions.
- e. Upon completion of each Design Development Phase, the Design-Build Entity shall submit to the County, for the County's review, comment, and approval, a PDF copy and six (6) sets of one-half size hard copies of the Documents.
- f. Design Development Drawings, Documentation, and Exhibits shall

consist of, but not be limited to Cover Sheet, Site Plan, Preliminary Civil Grading and Utility Plans, Floor Plans, Room Finish Schedules, Reflected Ceiling Plans, Roof Plans, Exterior Elevations, Interior Elevations, Foundation Plan, Roof Framing Plans, Plumbing Plans, Mechanical Plans, Electrical and Lighting Plans, Landscape Plan, Landscape Irrigation Plans.

- g. The Design-Build Entity shall prepare a set of outline Specifications, including a Table of Contents, for County review at fifty percent (50%), eighty percent (80%), and one hundred percent (100%) Design Development Phases. Specification review by the County shall run concurrently with Drawing review. County comments or revisions shall be "red line" comments on PDF documents provided by the Design-Build Entity.
- h. The Design-Build Entity shall provide documentation of all County comments and meeting minutes to date annotated with resulting decisions/changes. Documentation of the County's comments shall include the Design-Build Entity's written response to each of the County's comments noting the action taken, including the Specification section or sheet number(s) affected, or describing why action was not taken. Receipt by the County of these written responses to the County's comments shall be a condition precedent to the County making payment for the Design Development phase of Design.
- i. The Design-Build Entity shall submit to the County a written statement certifying that one hundred percent (100%) of Design Development Documents comply with the County-approved Program.

4. Construction Documents

- a. Based on the County approved Design Development Documents, including changes approved by the County in the scope or requirements of the Program Documents, the Design-Build Entity shall complete the preparation for review and concurrence by the County, Construction Documents for the Project, including, but not limited to, base building core and shell, site work and tenant interiors, consisting of Drawings, Specifications, and other documents setting forth in detail the requirements for the construction of the Project.
- b. Construction Documents shall comply with applicable California Codes of Regulations, Title 24, Americans with Disabilities Act (ADA), and any other Governing Agency rules and regulations.
- c. The Design-Build Entity shall be responsible for providing all Design and Engineering services required to develop documents sufficiently complete and detailed for construction purposes and for obtaining all necessary approvals, permits, and permissions from

all private and public authorities having jurisdiction over the Work.

- d. The Architect of Record shall submit written certification to the County that it has reviewed the Construction Documents submittal or submittals and that each conforms to the requirements of the Contract Documents.
- e. The Design-Build Entity shall submit to the County, for the County's review, comment, and approval, PDF file Drawings at eighty percent (80%) and one hundred percent (100%) completion of the Construction Document Phase.
- f. The Design-Build Entity shall obtain review and concurrence by the County of the Construction Documents before proceeding with the Construction Phase. The County will review the Construction Documents and submit written comments to the Design-Build Entity for specific changes or corrections to the Construction Documents required for conformity with the Contract Documents, with reasonable promptness, and endeavor to complete such review or submit such written comments to the Design-Build Entity within fifteen (15) workdays of its receipt thereof.
- g. County review responses will be "red line" comments in Adobe PDF format on the submitted Contract Documents. The Design-Build Entity shall continue to work on Construction Documents during County review.
- h. At the time the full Electrical Load requirements of the Project are known, the Design-Build Entity shall apply for PG&E Rule 16. If applicable, the Design-Build Entity shall promptly deliver Rule 16 payment vouchers to the County. The County shall reimburse the Design-Build Entity the Rule 16 fees with reasonable promptness.
- i. Prior to delivery to the County of the one hundred percent (100%) submittal, the Design-Build Entity shall submit to the County a written statement that all requirements of the Program Documents have been complied with or, if not complied with, obtain the County's prior written approval of all deviations from requirements of the Program Documents and provide the County with copies of the Design-Build Entity's written requests for deviations and the County's written approvals of such deviations.
- j. The Design-Build Entity shall submit all necessary Drawings and other documents necessary to obtain, and shall obtain all required approvals, permissions, and permits from the County, any special agencies such as, but not limited to, the particular water authority, sewer authority, public or private utility servers, private entities, public entities, organizations or subdivisions, and any and all other local, state or federal public authorities having jurisdiction over the Project to include any and all corrections or changes to the Drawings and other documents necessary to obtain such

approvals, permissions, and permits at no additional cost to the County. The signatures of all appropriate County personnel shall be inserted on the original Drawings. The Design-Build Entity shall also submit for permits all Drawings or other documents required to obtain off-site construction permits, encroachment permits, private construction permits, and all easements from any agency, municipality, private entity or persons, County, State, Federal, or Public Authorities having jurisdiction over the Project.

- k. The Design-Build Entity shall prepare one (1) color/sample board for the County Project Manager to be kept in the County on-site office. The color/sample board shall be mounted on a 1/4" thick foam board and shall have samples of all finish materials used on the Project.
- l. The Design-Build Entity shall prepare final construction Specifications following County Project Manual format, including a Signature Sheet and Table of Contents, and shall deliver a PDF file and one (1) set of Specifications to the County in final form, single-sided, formatted for double-sided printing. Sheets shall be formatted for printing on 8½" x 11" pages. The final print of the Specifications shall be proofed by the Design-Build Entity to ensure that each page is numbered, contains the project name, that each section has an "End of Section" notation, and that all pages are in the correct order and are listed in the Table of Contents. If errors are found in the condition of the Specifications, they shall be returned to the Design-Build Entity for correction. The top signature sheet of the specifications shall be in the format provided by the County. If applicable, Asbestos, lead-based paint, and soil boring reports should be included in the Specifications as an attachment after the last Division and included in the Table of Contents.

5. Observation Of Project Construction

- a. Observation by the Architect of Record or his or her designated Representative of the construction of Work under the Contract Documents is required. Such observation shall be in person. The Architect of Record shall observe the construction of the Work weekly, or if necessary, at more frequent intervals to ensure that the Work conforms to the requirements of the Contract Documents. The Architect of Record shall meet with the Construction Manager, Design-Build Entity's Site Superintendent, and others as necessary, to resolve problems and monitor construction progress. The Architect of Record shall prepare and submit to the County, through the Design-Build Entity, a report of these periodic observations, that shall include items that are noted as requiring action or correction, and all decisions concerning interpretations of the Contract Documents. Other design professionals engaged by the Design-Build Entity shall observe the construction of their portion of the Work at sufficiently frequent intervals to ensure that their portion of the Work conforms to the requirements of the

Contract Documents and shall prepare and submit to the County through the Design-Build Entity, a report similar to above.

- b. Any observation by the Architect of Record or other Design Professionals engaged by the Design-Build Entity in addition to that required by Article 2.02(F)(5)(a) (Observation of Project Construction) considered necessary or reasonably advisable by the County shall be provided promptly when requested by the County or the Construction Manager. The observation of the construction of the Work by the Architect of Record, other Design Professionals, and Subcontractors retained by the Design-Build Entity to provide professional services shall be in addition to observation of the construction of the Work, testing, or inspections provided by the County.
- c. In addition to the observation of the construction of the Work set forth in this Document 00 7253 (General Conditions) Article 2.02(F)(5)(b), certain Design Professionals shall perform the following additional observations of the construction of the Work and services specified herein.
- d. Mandatory observation of construction Work shall be provided by the Architect of Record, the Landscape Architect or Designer, the Civil Engineer, the Structural Engineer, the Mechanical/Plumbing Engineer or Designer, the Fire Suppression Engineer or Designer, the Electrical Engineer, the Fire Alarm Engineer or Designer, and any other professional providing design services for the Project.
- e. Construction work observation shall concur with the Building Department, Fire Department, or any governing agency inspection and occur during and after installation and prior to the Building Department, Fire Department, or other agency inspection and any work being covered up.
- f. At the completion of construction, the Architect of Record and other Design Professionals shall submit signed letter statements summarizing their observation activity and verifying that checking, as specifically requested, has been performed. These statements are to be directed to the County through the Architect of Record and Design-Build Entity.

6. As-Built Drawings

- a. At the completion of construction, the Design-Build Entity shall have a professionally drawn set of As-Built Drawings delivered to the County. The As-Built Drawings shall clearly show revisions to the Project using Delta 1 through Delta (infinity), with each Delta clearly describing the revisions made.

2.03 Owner's Right To Review

- A. The County at all times shall have the right (but not the duty) to review Design-Build Entity's design work, whether performed by Design-Build Entity or Designers of any tier, and whether in a final or preliminary form, to determine progress and conformance to the requirements of Contract Documents.
- B. In the event County should ever dispute the conformance of any design work (at any stage) with the intent of the Bridging Documents, then County's determination shall control, and the Design-Build Entity and/or its Designers shall perform the disputed design services and/or work to completion in accord with the County's determination. Design-Build Entity shall, however, retain its rights under the procedure in this Document 00 7253 (General Conditions) Article 12 for claims and disputes, and Design-Build Entity may, under that procedure, in its name, advance any claim of any Designer.

2.04 Description Of Construction Obligations

- A. Without limiting the generality of the foregoing paragraph, Design-Build Entity shall provide, at a minimum, the following Services and materials and equipment, provided, however, that these sections shall not be construed in any way to limit Design-Build Entity's obligations hereunder to design, engineer, furnish, construct, checkout, startup, and test a complete, operable, and maintainable Project in accordance with the provisions of the Contract Documents.
- B. Design-Build Entity shall furnish the services of all personnel, including supervisors, engineers, designers, and draftsmen necessary for the Work. Except as otherwise provided in Contract Documents, Design-Build Entity shall obtain, at Design-Build Entity's expense, all governmental and private approvals, licenses, and permits required to complete the Work, including, but not limited to, all aspects of coordination and approvals of any type from state and/ or local agencies and authorities with jurisdiction, for example, and not by way of limitation, City and County building officials.
- C. Design-Build Entity shall provide, install, and complete as specified, and pay for all labor, materials and equipment, tools, supplies, construction equipment and machinery, construction, startup, and testing (except that testing to be provided by the County), site cleanup, utilities, transportation, and other facilities and services (including any temporary materials, equipment, supplies, and facilities) necessary for the proper execution and completion of the complete, operational, and fully functional Project including required permanent interconnection for electricity, and any other utilities and demonstration of fully satisfactory operation of all systems and equipment.
- D. Design-Build Entity shall provide all equipment and materials and furnish the services of all supervision, buyers, inspectors (other than the IOR, and any County employee or inspector acting solely on County's behalf), expeditors, and other personnel necessary to procure all materials and equipment for the construction of the Project. Design-Build Entity shall provide, install, complete, and pay for all labor, materials and equipment, tools, supplies, construction equipment and machinery, construction utilities (including all water, power, and sanitary facilities), transportation (including road or other infrastructure and improvements on and off the Site), customs clearance, quality assurance, and other facilities and services

(including any temporary or consumable materials, water, fuels, and electricity necessary for the proper execution and completion of the Work, including any of the utilities, as required). The Design-Build Entity shall maintain all materials and equipment in accordance with the manufacturer's requirements while such materials and equipment are in transit or in the care and custody of the Design-Build Entity. Design-Build Entity shall supervise and direct the Work and shall furnish the services of all supervisors, forepersons, skilled and unskilled labor, and all other personnel necessary to design and construct the complete, operational, legally operable, and fully functional Project and appurtenant projects described in the Contract Documents. Without limiting the generality of the foregoing, Design-Build Entity shall provide any and all construction required for the temporary upgrading of any public or private road which is inadequate for the performance of the Work, temporarily relocate any interference in public or private roadways necessary for the transportation of equipment and materials, and repair all excessive damage to, or deterioration (other than fair wear and tear) of, any public or private road which arises out of the performance of the Work.

- E. Design-Build Entity shall provide all Project-related insurance, except as otherwise provided by Contract Documents.
- F. Design-Build Entity shall supervise and direct Work and shall furnish the services of all supervisors, foremen, skilled and unskilled labor, quality control, and all other personnel in sufficient quantities and with sufficient skills necessary to perform the Services in accordance with the Contract Documents. At County's request, Design-Build Entity shall replace, at Design-Build Entity's expense, any individual if it is determined by County and Design-Build Entity that such individual's continued presence would jeopardize the quality or timely completion of the Work. Whenever required by applicable laws or the Contract Documents, Design-Build Entity shall employ licensed personnel as necessary to perform engineering, Design, architectural, or other professional services in the performance of the Work.
- G. Design-Build Entity shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract Documents, and County shall not be responsible for or exercise any control over the actions or omissions of Design-Build Entity, any supplier, or any of their employees or agents performing any of the Work or Design-Build Entity's warranty obligations. Design-Build Entity shall prosecute the Work continuously and diligently and complete the Work in accordance with all requirements of the Contract Documents.
- H. Design-Build Entity shall coordinate ingress and egress to and from the Site so as to minimize disruption to the Work and to traffic in the vicinity of the Site.
- I. Design-Build Entity shall be responsible for the layout of the Work and shall perform all necessary surveying during the construction of the Projects. Design-Build Entity shall take field measurements, verify all field conditions, and carefully compare all the foregoing and other available information with Contract Documents. The accuracy of all grades, elevations, alignments, and plumbing of any structures and the location of all facilities described in the final plans and specifications shall be the responsibility of the Design-Build Entity. Design-Build

Entity shall preserve all permanent survey construction monuments and benchmarks. Prior to the final completion date, the Design-Build Entity shall accurately correct all Project documents to as-built conditions and deliver to County these as-built documents in accordance with the Contract Documents. Such documents shall show the location of the Project and shall show all related easements, improvements, utilities, and rights of way above and below ground, on and off the Site, as of the date of delivery of such documents. Such documents shall also show the dimensions and the distances to the nearest benchmarks.

- J. Design-Build Entity shall provide appropriate installation and startup representatives from suppliers of major equipment and control systems, all necessary supervising personnel, all equipment, tools, construction, and temporary material, and all labor for checkout, startup, and testing. Design-Build Entity shall be responsible for checkout, startup, and testing of the Project and shall carry out those activities in accordance with all applicable codes and legal requirements, startup, and checkout requirements, and procedures as set forth in the Contract Documents or established by any County-engaged Commissioning Agent.
- K. In addition to all required safety and warning signs, the Design-Build Entity may install two (2) large construction signs on the Site without County's express written consent.
- L. Design-Build Entity shall be responsible for Site security until Final Completion or termination of the Work. Such security shall include, to the extent reasonably necessary, barriers, lighting, controlled access, and other measures required to prevent vandalism, theft, and danger to personnel, the Project, materials, and equipment.
- M. Design-Build Entity shall prepare, or cause to be prepared, and shall furnish to County all drawing logs, drawings, manufacturer's drawings and data, supplier manuals, and operating manuals in accordance with the Contract Documents.
- N. Design-Build Entity shall ensure that County and its representatives shall, at all times, have access to the Project for all purposes. In order to allow County and its representatives to be present, the Design-Build Entity shall give County at least three (3) days advance notice of any system or equipment checkout or testing. If County desires access to any places where Work is being performed or from which materials and equipment are being obtained, the Design-Build Entity shall provide or arrange reasonable access thereto and shall provide County reasonable advanced notice of any factory tests or other off-site tests. Design-Build Entity shall maintain the Site in a safe condition to permit County and any person authorized in writing by County to inspect and review all field work during working hours, including materials and equipment, installation, calibration, startup, and testing.
- O. As part of the procurement of equipment, to be determined by County and Design-Build Entity during Project Design, Design-Build Entity shall provide to County a list of recommended operating spare parts, which list shall include all relevant costs and ordering lead time information with terms and conditions. If requested, the Design-Build Entity shall procure such operating spare parts from Suppliers, as requested by County, on behalf of County. The cost of such operating

spare parts shall be covered by Contract Modification.

- P. Design-Build Entity shall perform all services and activities necessary to comply with all applicable governmental regulations and requirements and to obtain all applicable governmental reviews and approvals for and regarding the Work.
- Q. When any equipment or portion of the Work is damaged, the Design-Build Entity shall inform County as soon as possible and provide County a damage report detailing such occurrence, any required repairs, and the estimated duration of such repairs.
- R. Except for special inspections performed by County, the Design-Build Entity shall provide to County all tests and measurements, laboratory analyses, and reports made or prepared in connection with the Work.
- S. Design-Build Entity's progress schedules shall include design services, deliverables, milestones, and interfaces with construction.
- T. Design-Build Entity shall be responsible for all labor relations matters relative to the Work on the Site and shall at all times use all reasonable efforts to maintain harmony among all workers employed in connection with the Work on the Site.

End of Article

ARTICLE 3 - REQUIRED INVESTIGATIONS

3.01 Required Investigations - All Projects

- A. For all Projects, and prior to submitting a Proposal and as a condition of executing Document 00 5200 (Agreement), Design-Build Entity shall make reasonable efforts to investigate fully the Work of the Contract per the requirements of this Article.
- B. Design-Build Entity shall visit the Site, examine thoroughly, and understand fully the nature and extent of the Contract Documents, Work, Site, locality, actual conditions and as-built conditions, and all other information made available before executing the Work Authorization. Design-Build Entity's investigation shall include, without limitation, requesting and thoroughly examining of all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, product specification(s) or reports, made available by County for contracting purposes or during Design-Build Entity's pre-construction services, of existing aboveground and (to the extent applicable) below ground conditions (together, "Existing Conditions Data"), including, as applicable, Underground Facilities, geotechnical data, as-built data, utility surveys, record documents of all types, hazardous materials surveys, or similar materials which may appear in the Contract Documents, and all local conditions, and federal, state, and local laws and regulations that in any manner may affect cost, progress, performance, or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences, or procedures of construction to be employed by Design-Build Entity and safety precautions and programs incident thereto.
- C. Also, Design-Build Entity shall:
 1. completely and thoroughly correlate all Existing Conditions Data, and shall provide County with prompt written notice of all conflicts, errors, ambiguities, or discrepancies of any type, that it discovered in or among the Contract Documents and the Existing Conditions Data, and
 2. subject to County's approval, conduct any such additional or supplementary examinations, investigations, explorations, tests, studies, and data compilations, concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site or otherwise, which may affect cost, progress, performance, or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences, or procedures of construction to be employed by Design-Build Entity and safety precautions and programs incident thereto or which Design-Build Entity deems necessary to determine that it could perform and furnish the Work in accordance with the time, price, and other terms and conditions of Contract Documents.
- D. By executing Document 00 5200 (Agreement), Design-Build Entity agrees that County has responded to and resolved any conflict, error, or ambiguity in the Existing Conditions Data and Contract Documents that Design-Build Entity has brought to County's attention. During performance of the Contract, Design-Build Entity will be charged with knowledge of all information that it should have learned

in performing its required pre-construction services and pre-construction investigations and other obligations, and shall not be entitled to Change Orders (time or compensation) due to any information, error, inconsistency, omission, or conditions that Design-Build Entity should have known as a part of this Work. Design-Build Entity shall be responsible for the resultant losses, including, without limitation, the cost of correcting Defective Work.

- E. In performing the Work of the Contract Documents, Design-Build Entity shall rely on the results of its own independent investigations of existing conditions and not on information provided by County. Design-Build Entity shall conduct such further investigations of existing conditions as are necessary for Design-Build Entity to perform the Services and shall advise County of any further design or other services necessary to complete the Project.

3.02 Required Investigations – Renovation Projects

- A. For Projects involving renovation of existing facilities, Design-Build Entity shall verify by independent investigation all such aboveground and as-built conditions, and bring any discrepancies to County's attention through written question. In executing Document 00 5200 (Agreement), Design-Build Entity shall rely on the results of its own independent investigation and shall not rely on County-supplied information regarding aboveground conditions and as-built conditions, and Design-Build Entity shall accept full responsibility for its verification work sufficient to complete the Work as intended.
- B. Regarding aboveground and as-built conditions shown on the Contract Documents or supplied by County, such information has been compiled in good faith, however, Design-Build Entity must independently verify such information. Design-Build Entity shall also consider fully the fact that information supplied regarding existing aboveground and as-built conditions at or contiguous to the Site is in many cases based on information furnished to County by others (e.g., the prior owner or builders), and that due to their age or their chain of custody since preparation, may not meet current industry standards for accuracy. County does not expressly or impliedly warrant or represent that information as to aboveground conditions or as-built conditions indicated in the Contract Documents or supplied by County, is correctly shown or indicated, or otherwise complete for construction purposes.

3.03 Required Investigations – Excavation and Utilities Relocation Projects

- A. For Projects involving excavation or relocation of existing utilities, Design-Build Entity shall make reasonable efforts to verify information regarding Underground Facilities, including but not limited to, requesting additional information or verification of information as necessary.
- B. Because of the nature and location of County and the Project, the existence of Underground Facilities is deemed inherent in the Work of the Contract, as is the fact that Underground Facilities are not always accurately shown or completely shown on as-built records, both as to their depth and location. Design-Build Entity shall, therefore, take care to note the existence and potential existence of Underground Facilities, in particular, above and below grade structures, drainage lines, storm drains, sewers, water, gas, electrical, chemical, hot water, and other

similar items and utilities. Design-Build Entity shall carefully consider all supplied information, request additional information Design-Build Entity may deem necessary, and visually inspect the Site for aboveground indications of Underground Facilities (such as, for example not by way of limitation, the existence of existing service laterals, appurtenances or other types of utilities, indicated by the presence of an underground transmission main or other visible facilities, such as buildings, new asphalt, meters and junction boxes, on or adjacent to the Site). Design-Build Entity shall also consider fully the fact that information supplied regarding existing Underground Facilities at or contiguous to the Site is in many cases based on information furnished to County by others (e.g., the builders of such Underground Facilities or others), and that due to their age or their chain of custody since preparation, may not meet current industry standards for accuracy.

- C. Design-Build Entity shall also consider local underground conditions and typical practices for Underground Facilities, either through its own direct knowledge or through its subcontractors, and fully consider this knowledge in assessing the existing information and the reasonableness of its reliance.
- D. Regarding subsurface conditions other than Underground Facilities shown on the Contract Documents or otherwise supplied by County, Design-Build Entity may rely only upon the general accuracy of actual reported depths, actual reported character of materials, actual reported soil types, actual reported water conditions, or actual obstructions shown or indicated in the Contract Documents. County is not responsible for the completeness of any subsurface condition information, Design-Build Entity's conclusions or opinions drawn from any subsurface condition information, or subsurface conditions that are not specifically shown. (For example, County is not responsible for soil conditions in areas contiguous to areas where a subsurface condition is shown.)

End of Article

ARTICLE 4 - CONTRACT AWARD AND COMMENCEMENT OF THE WORK

4.01 Award Of Contract

- A. The County will make the Award of Contract by issuing a Notice of Award.
- B. As a condition to the County signing Document 00 5200 (Agreement), however, Design-Build Entity shall deliver to the County the executed agreements, forms, bonds, and insurance documents required by Document 00 1119 (Request for Proposals) and Document 00 4200 (Proposal Form) in the required quantities and within the required times.
- C. Bonds shall specifically include:
 - 1. Corporate surety bond, in the form of Document 00 6113.13 (Construction Performance Bond), in the penal sum of one hundred percent (100%) of the Design-Build Entity's Proposal as accepted, to guaranty faithful performance of the Work; and
 - 2. Corporate surety bond, in the form of Document 00 6113.16 (Construction Labor and Material Payment Bond), in the penal sum of one hundred percent (100%) of the Design-Build Entity's Proposal as accepted, to guaranty payment of wages for services engaged and of bills contracted for materials, supplies, and equipment used in performance of Contract Documents.
- D. Sureties on payment and performance bonds shall be satisfactory to the County. Corporate sureties on these bonds and on bonds accompanying Proposals shall be duly licensed to do business in the State of California and shall have an AM Best Company financial rating of A, VIII, or better.
- E. Document 00 7316 (Supplementary Condition – Insurance) incorporated herein by this reference, provides insurance requirements.

4.02 Commencement Of Design and Construction Work

- A. When Design-Build Entity and the County have signed the Contract Documents, the County will serve a Notice to Proceed with Design Services (Document 00 5501) upon Design-Build Entity to that effect. When Design-Build Entity has obtained all required approvals (including without limitation from Fresno County) to begin actual on-Site construction of all or a portion of the Work, the County will issue a Notice to Proceed with Construction (Document 00 5500) on Design-Build Entity. Any Notice to Proceed shall be in writing and issued by means authorized for notices under the Contract documents. No construction Work may be performed at the Site until the County has issued Notice to Proceed with Construction.
- B. The start date for Contract Time shall be on the date indicated in the applicable Notice to Proceed. If no date is indicated, the start date for Contract Time shall be the fifteenth (15th) Day from the date that Design-Build Entity receives, by hand, email, overnight delivery, facsimile transmission, the County's written Notice to

Proceed, unless the Notice to Proceed is served by mail only, in which case the start date for Contract Time shall be the fifth (5th) Day following the mailing date. The total number of Days for completion of the Work under the Contract Documents shall be as provided in Document 00 5200 (Agreement).

4.03 Subcontractors

- A. All subcontracts that were not listed by the Design-Build Entity in its Proposal shall be awarded by the Design-Build Entity in accordance with the Contract Documents.
- B. Design-Build Entity shall, at a minimum, do all of the following:
 - 1. Provide public notice of the availability of work to be subcontracted.
 - 2. Provide a fixed date and time on which the subcontracted work will be awarded.
 - 3. If more than one subcontractor that was not listed by the Design-Build Entity in its Proposal is to be awarded by the Design-Build Entity, the Design-Build Entity may provide multiple listing and award dates as necessary for completion of the Project Work, according to the schedule developed in accordance with Section 01 1102 (Summary of Work - Design-Build Contractor Services).
 - 4. With the County's concurrence and in compliance with all applicable legal, regulatory, and professional standards and Contract Documents requirements, Design-Build Entity may release design packages for construction to properly awarded Design-Build subcontractors prior to completion of Construction Documents. The County's consent shall not be unreasonably withheld, provided, however, Design-Build Entity and its Subcontractors must complete Construction Documents and details under procedures permitting the County rights of review and acceptance of final details sufficient to assure compliance with design intent.
- C. In any contract between Design-Build Entity and a Subcontractor, and in a contract between a Subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the Contract Documents (not greater than five percent (5%)). If Design-Build Entity provides written notice to any Subcontractor who is not a member of Design-Build Entity's team in its Proposal, prior to or at the time the Subcontractor's bid is requested, that a bond may be required and the Subcontractor subsequently is unable or refuses to furnish a bond to Design-Build Entity, then Design-Build Entity may withhold retention proceeds in excess of the percentage specified in the Contract Documents from any payment made by Design-Build Entity to the Subcontractor.
- D. Design-Build Entity shall provide the County with additional versions of Document 00 4330 (Subcontractors List) as follows:
 - 1. Within fourteen (14) Days of award of any subcontract, a Document 00

4330 (Subcontractors List) identifying all Subcontractors not included on a prior Document 00 4330 (Subcontractors List); and

2. Before commencing any construction Work, a complete Document 00 4330 (Subcontractors List) identifying all Subcontractors, however and whenever procured.
- E. All Subcontractors bidding on subcontracts shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code. Without limiting the forgoing, Design-Build Entity shall not substitute any other person or firm in place of any Subcontractor listed in the Proposal. Consistent with the Subcontractor Listing Law, Subcontractors shall not assign or transfer their subcontracts or permit them to be performed by any other Design-Build Entity without the County's written approval. At the County's request, Design-Build Entity shall provide the County with a complete copy of all executed subcontracts or final commercial agreements with Subcontractors and/or suppliers.
 - F. Subcontract agreements shall preserve and protect the rights of the County under the Contract Documents so that subcontracting will not prejudice such rights. To the extent of the Work to be performed by a Subcontractor, Design-Build Entity shall require the Subcontractor's written agreement (a) to be bound to the terms of Contract Documents, and (b) to assume vis-a-vis Design-Build Entity all the obligations and responsibilities that Design-Build Entity assumes toward the County under the Contract Documents. (These agreements include for example, and not by way of limitation, all warranties, claims procedures and rules governing submittals of all types to which Design-Build Entity is subject under the Contract Documents.)
 - G. Design-Build Entity shall provide for the assignment to the County of all rights any Subcontractor may have against any manufacturer, supplier, or distributor for breach of warranties and guaranties relating to the Work performed by the Subcontractor under the Contract Documents.

End of Article

ARTICLE 5 - BRIDGING DOCUMENTS, DRAWINGS AND SPECIFICATIONS

5.01 General

- A. Bridging Documents supplied under Document 00 5201 (Bridging Documents) establish the design intent and the minimum requirements for the quality and type of materials to be used in the Project. Bridging Documents and any addenda will be used to confirm that Design-Build Entity-prepared Design Development and Construction Documents are in conformance with the design intent and the minimum requirements for the quality and type of materials to be used in the Project.
- B. Design-Build Entity-prepared Construction Documents are the Drawings and Specifications for construction. Subject to all provisions of Contract Documents, Design-Build Entity shall construct the Project in accordance with those Drawings and Specifications. The warranty and other requirements in the Contract Documents (including Bridging Documents), however, shall constitute the minimum design, material, quality, workmanship, and other standards required under the Contract Documents, and shall have higher precedence in case of inconsistency with the Design-Build Entity prepared Construction Documents.
- C. Where County has specified equipment or materials, Design-Build Entity shall provide the specified equipment or materials (regardless of any Design-Build Entity contention that proposed equipment or materials meet or exceed County's requirements).
- D. Design-Build Entity shall be fully responsible for all design errors, including without limitation all errors, inconsistencies, and omissions in the Design-Build Entity-prepared Construction Documents, and shall report any such matter to County promptly following discovery. Design-Build Entity has full "turnkey" responsibility to deliver the fully functional, operational Project described in Document 00 5201 (Bridging Documents), as referenced in the Contract Documents.

5.02 Intent

- A. Final Drawings and Specifications shall describe a functionally complete and operable Project (and all parts thereof) to be constructed in accordance with the requirements of Contract Documents and in compliance with all applicable codes and standards. Unless expressly excluded elsewhere in the Contract Documents, Design-Build Entity shall perform any work, provide services, and furnish any materials or equipment that may reasonably be inferred from the requirements of Contract Documents or from prevailing custom or trade usage as being required to produce this intended result. Design-Build Entity shall furnish all permits, temporary controls, machinery, tools, facilities, employee training and testing, hoisting facilities, shop drawings, storage, testing, security, transportation, disposal, the securing of all necessary or required field dimensions, the cutting or patching of existing materials, notices, documents, reports, agreements and all general conditions, seismic requirements, general requirements and incidentals and any other items required or necessary to timely and fully complete such Work described and the results intended by Contract Documents and, in particular, Drawings and Specifications and (as applicable) Bridging Documents.

- B. Design-Build Entity shall interpret Bridging Documents words or phrases used to describe Work (including services), materials or equipment that have well-known technical or construction industry or trade meaning in accordance with that meaning. Bridging Documents' intent specifically includes the intent to require construction that complies with all applicable laws, codes, and standards.
- C. Divisions and Specification Sections and the identification on any Bridging Documents shall not control Design-Build Entity in preparing final Construction Documents, dividing Work among Subcontractors or suppliers, or delineating the Work to be performed by any specific trade.

5.03 Drawing Details

- A. A typical or representative detail on Drawings shall constitute the standard for workmanship and material throughout corresponding parts of Work, as long as it otherwise complies with all Bridging Documents requirements. Where necessary, and where reasonably inferable from Drawings, Design-Build Entity shall adapt such representative detail for application to such corresponding parts of Work. If County requests, the details of such adaptation shall be subject to prior approval by County. Repetitive features shown in outline on Drawings which otherwise comply with Bridging Documents shall be in exact accordance with corresponding features completely shown.

5.04 Interpretation Of Bridging Documents

- A. Should any discrepancy appear, or any dispute arise as to the importance of anything contained in Bridging Documents, or should Design-Build Entity have any questions or requests relating to Bridging Documents or any Contract Document for which County is responsible under the Contract Documents, Design-Build Entity shall refer the matter to County, in writing. County will issue with reasonable promptness written responses, clarifications, or interpretations as County may determine necessary, which shall be consistent with the intent of and be reasonably inferable from Contract Documents. Such written clarifications or interpretations shall be binding upon Design-Build Entity. If Design-Build Entity believes that a written response, clarification, or interpretation justifies an adjustment in Contract Sum, Design-Build Entity shall give County prompt written notice as provided in Section 01 2600 (Modification Procedures and Pricing of Changed Work). If the parties are unable to agree to the amount or extent of the adjustment, if any, then Design-Build Entity shall perform the Work in conformance with County's response, clarification, or interpretation and may make a written claim for the adjustment as provided in Article 12 of this Document 00 7253.

5.05 Checking Of Drawings

- A. Before undertaking each part of construction Work, Design-Build Entity shall carefully study and compare Contract Documents and check and verify pertinent figures shown in the Contract Documents and all applicable field measurements. Design-Build Entity shall be responsible for all errors, except for those attributable to Contract Documents for which County is responsible and which could not have been avoided even by such comparison. Unless obviously incorrect or otherwise expressly provided, figures shown on final Drawings shall be followed;

Design-Build Entity shall not scale measurements. Design-Build Entity shall promptly report to County, in writing, any conflict, error, ambiguity, or discrepancy that Design-Build Entity may discover in any Contract Document, along with an indication of whether County or Design-Build Entity is responsible for that Contract Documents, and Design-Build Entity's proposed resolution.

5.06 Standards To Apply Where Specifications Are Not Furnished

- A. Wherever in the Contract Documents (including without limitation Bridging Documents), or in any orders given by County, it is provided that Design-Build Entity shall furnish materials or manufactured articles or shall do work for which no detailed or performance specifications are set forth, and Document 00 5201 (Bridging Documents) does not otherwise establish the applicable standard, the following general specifications shall apply.
- B. Design and construction shall meet the standards required to provide County with a first class, fully functional Project, designed and constructed in a manner consistent with the standards, equipment, materials, and design, found in comparable, first class, fully functional, contemporary facilities. Reference facilities identified in Document 00 5201 (Bridging Documents) shall be used as the guide in this determination, but only when the Bridging Documents are otherwise silent.
- C. Materials or manufactured articles shall be of the grade, in quality and workmanship, consistent with the requirements of this Contract and obtainable in the market from firms of established good reputation, or, if not ordinarily carried in stock, shall conform to the usual standards for first-class materials or articles of the kind required, with due consideration of the use to which they are to be put. Work for which no detailed specifications are set forth herein shall conform to the requirements of this subparagraph.

5.07 Deviation From Specifications And Drawings

- A. Design-Build Entity shall perform Work in accordance with Drawings and Specifications. Deviations from Drawings and from the dimensions therein given, or from the Specifications, whether or not error is believed to exist, shall be made only when approved in writing by County. Design-Build Entity may deviate from Drawings, or the dimensions given in the Drawings, and may deviate from the Specifications, only upon County's advance written approval of the proposed deviation, either by Change Order, Change Directive, or Instruction Bulletin.
- B. Change Orders changing the approved Drawings and Technical Specifications are subject to approval by County as provided in Article 14 of this Document 00 7253 and Section 01 2600 (Modification Procedures and Pricing of Changed Work).
- C. Design-Build Entity's construction experience was a material factor in its selection as Design-Build Entity for this Project. Design-Build Entity, also, acknowledges that changes are a normal feature of construction projects. Design-Build Entity shall rely on its experience and proactively cooperate, coordinate and schedule RFCs, and (as necessary) Change Requests, submittals, field questions, inspections, and document assembly, to facilitate the prompt and efficient use of the Change Order and Change Directive procedure as necessary to prevent delay in actual field

construction.

- D. As set forth in Title 24, California Code of Regulations, no modification or deviation from the Contract Documents will be permitted. Design-Build Entity must perform design and construction Work in strict accordance with Contract Documents. Design-Build Entity shall review drawings and specifications developed by its subconsultants and Design-Build subcontractors under this Contract for compliance with the Contract Documents prior to submission to and approval by authority having jurisdiction. No order for any alteration, modification, or extra which shall increase or decrease the cost of Work shall be valid unless the resulting increase or decrease in price shall have been agreed upon in writing, and the order signed by the Design-Build Entity, and certified by the authorized officer representing County. As appropriate, Change Orders changing the approved drawings and technical specifications are subject to approval by Fresno County under the procedures prescribed in Title 24, California Code of Regulations. Deviations from Drawings and from the dimensions therein given, or from the Specifications, whether or not error is believed to exist, shall be made only when approved in writing by County.

5.08 Ownership And Use Of Drawings, Specifications And Contract Documents – Ownership Of Results/Works for Hire

- A. Any interest (including copyright interests) of Design-Build Entity or its Subcontractors or consultants, including Designers (together, “Sub-consultants”), in studies, reports, memoranda, computational sheets, Construction Documents, artwork, copy, posters, billboards, photographs, videos, audio recordings, systems designs, software, reports, diagrams, surveys, source codes, and any other original works of authorship (including electronic media) created by Design-Build Entity or its Sub-consultants in connection with the Work, shall become the property of the County. To the extent permitted by Title 17 of the United States Code, work product produced under the Contract Documents shall be deemed works for hire and all copyrights in such works shall be the property of the County. In the event that it is ever determined that any works created by Design-Build Entity or its Sub-consultants under the Contract Documents are not works for hire under U.S. law, Design-Build Entity hereby assigns to County all copyrights to such works. With County’s prior written approval, Design-Build Entity and its Sub-consultants may retain and use copies of such works for reference and as documentation of experience and capabilities.
- B. Design-Build Entity and its Sub-consultants shall, however, retain the copyright in their standard details, and grant County an unlimited license to use such details for all purposes reasonably related to the Project, including, without limited to, the operation, maintenance, repair, renovation, restoration, and expansion thereof. Should County desire to reuse any of the items specified above and not use the services of Design-Build Entity or applicable Sub-Designer, then the County agrees to assume any and all obligations for their reuse and, if applicable, process the same through all authorities having jurisdiction, and County releases Design-Build Entity and its Sub-consultants from liability associated with the reuse.
- C. County acknowledges that: any functionally required elements, such as standard space configurations, individual standard features such as windows, doors, and

other ordinary building components, functional elements whose design or placement is dictated by utilitarian concerns, and any other design element which any applicable law generally excludes from the scope of a copyright, are excluded from the copyright granted to the County.

End of Article

SAMPLE

ARTICLE 6 - CONSTRUCTION BY COUNTY OR BY SEPARATE CONTRACTORS

6.01 County's Right To Perform Construction And To Award Separate Contracts

- A. County may perform with its own forces, construction or operations related to the Project. County may also award separate contracts in connection with other portions of the Project or other construction or operations, on the Site or areas contiguous to the Site, under conditions similar to these Contract Documents, or may have utility owners perform other work. When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the terms "Contractor" or "Design-Build Entity" in these Contract Documents shall mean the Design-Build Entity herein.

6.02 Mutual Responsibility

- A. Design-Build Entity shall afford all other contractors, utility owners, and County (if County is performing work with its own forces), proper and safe access to the Site, and reasonable opportunity for the installation and storage of their materials. Design-Build Entity shall ensure that the execution of its Work properly connects and coordinates with others' work, and shall cooperate with them to facilitate the progress of the Work.
- B. Design-Build Entity shall coordinate its Work with the work of other separate contractors, County, and utility owners. Design-Build Entity shall hold coordination meetings with other contractors, County and its representatives, and utility owners as required by Section 01 3119 (Project Meetings).
- C. Unless otherwise provided in the Contract Documents, Design-Build Entity shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Design-Build Entity shall not endanger any work of other separate contractors, County, or utility owners by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of the County and the others whose work will be affected.
- D. Design-Build Entity's duties and responsibilities under Article 6 of this Document 00 7253 are for the benefit of the County and also for the benefit of such other contractors and utility owners working at the Site to the extent that there are comparable provisions for the benefit of Design-Build Entity in the direct contracts between the County and such other contractors and utility owners.
- E. To the extent that any part of Design-Build Entity's Work is to interface with work performed or installed by other contractors or utility owners, Design-Build Entity shall inspect and measure the in-place work. Design-Build Entity shall promptly report to County in writing any defect in in-place work that will impede or increase the cost of Design-Build Entity's interface unless corrected. County will require the contractor responsible for the Defective Work to make corrections so as to conform to its contract requirements, or, if the defect is the result of an error or omission in any Contract Documents for which County is responsible (i.e., excluding Construction Documents), issue a Change Order. If Design-Build Entity fails to measure, inspect, and/or report to County in writing defects that are reasonably

discoverable in Contract Documents for which County is responsible, Design-Build Entity shall bear all costs of accomplishing the interface acceptable to County. This provision shall be included in any and all other contracts or subcontracts for Work to be performed where such a conflict could exist.

6.03 County Authority Over Coordination

- A. County will have authority over coordination of the activities of multiple contractors in cases where County performs work with its own forces or contracts with others for the performance of other work on the Project, or utilities work on the Site. County may at any time and in its sole discretion, designate a person or entity other than County to have authority over the coordination of the activities among the various contractors. County's authority with respect to coordination of the activities of multiple contractors and utility owners shall not relieve Design-Build Entity of its obligation to other contractors and utility owners to coordinate its Work with other contractors and utility owners as specified in this Article. Design-Build Entity shall promptly notify County in writing when another Design-Build Entity on the Project fails to coordinate its work with the Work of Contract Documents.
- B. Design-Build Entity shall suspend any part of the Work or carry on the same in such manner as directed by County when such suspension or prosecution is necessary to facilitate the work of other contractors or workers. No damages or claims by Design-Build Entity will be allowed if the suspension or Work change is due in whole or in part to Design-Build Entity's failure to perform its obligation to coordinate its Work with other contractors and utility owners. Damages or claims will be allowed only to the extent of fault by County if the suspension or Work change is due in whole or in part to another Design-Build Entity's failure to coordinate its work with Design-Build Entity, other contractors, and utility owners. County reserves the right to back charge Design-Build Entity for any damages or claims incurred by other contractors as a result of Design-Build Entity's failure to perform its obligations to coordinate with other contractors and utility owners. County may deposit the funds retained with a Court of competent jurisdiction pursuant to applicable interpleader procedures and Design-Build Entity releases County of further liability regarding such funds.

6.04 County Furnished Products

- A. Where County procures products or materials directly, County's responsibilities shall include:
 - 1. Arrange for and deliver County-reviewed Shop Drawings, Product Data, and Samples to Design-Build Entity.
 - 2. Arrange and pay for delivery to site.
 - 3. On delivery, inspect products jointly with Design-Build Entity.
 - 4. Submit claims for transportation damage and replace damaged, defective, or deficient items.
 - 5. Arrange for manufacturers' warranties, inspections, and service.

- B. Where County procures products or materials directly, Design-Build Entity's responsibilities shall include:
1. Review County-reviewed Shop Drawings, Product Data, and Samples.
 2. Receive and unload products at site; inspect for completeness or damage jointly with County.
 3. Handle, store, install, and finish products.
 4. Repair or replace items damaged after receipt.

End of Article

SAMPLE

ARTICLE 7 - COUNTY AND PAYMENT

7.01 County Representative(s)

- A. County Representative(s) will have limited authority to act on behalf of the County as set forth in the Contract Documents. Except as otherwise provided in these Contract Documents or subsequently identified in writing by County, County will issue all communications to Design-Build Entity through County Representative, and Design-Build Entity shall issue all communications to County through County Representative in a written document delivered to County. Should any direct communications between Design-Build Entity and County's consultants, architects, or Architect/Engineers not identified in Document 00 5200 (Agreement) occur during field visits, by videoconference, teleconference, or by telephone, Design-Build Entity shall immediately confirm them in a written document copied to County.

7.02 Means And Methods Of Construction

- A. Subject to those rights specifically reserved in the Contract Documents, County will not supervise, or direct, or have control over, or be responsible for, Design-Build Entity's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or Design-Build Entity's failure to comply with laws and regulations applicable to the furnishing or performance of Work. County will not be responsible for Design-Build Entity's failure to perform or furnish the Work in accordance with Contract Documents.

7.03 Receipt And Processing Of Applications For Payment

- A. As required by Section 01 2000 (Measurement and Payment), Design-Build Entity shall prepare the schedules, submit Applications for Payment, and warrant title to all Work covered by each Application for Payment. County will review Design-Build Entity's Applications for Payment and County will and make payment thereon, and Design-Build Entity shall make payments to Subcontractors, suppliers, and others, as required by Section 01 2000 (Measurement and Payment).

End of Article

ARTICLE 8 - CONTROL OF THE WORK

8.01 Supervision Of Work By Design-Build Entity

- A. Design-Build Entity shall supervise, inspect, and direct Work competently and efficiently, devoting the attention and applying such personal skills and expertise as may be required and necessary to perform Work in accordance with Contract Documents.
- B. Design-Build Entity is fully responsible for Design-Build Entity's own acts and omissions. Design-Build Entity is responsible for all acts and omissions of its Subcontractors, suppliers, Designers, and other persons and organizations performing or furnishing any of the Work, labor, materials, or equipment under a direct or indirect contract with Design-Build Entity.
- C. Design-Build Entity shall be solely responsible for and have control and charge of construction means, methods, techniques, sequences and procedures, safety precautions, and programs in connection with the Work. Design-Build Entity shall be responsible to see that the completed Work complies accurately with Contract Documents.
- D. Design-Build Entity shall keep on the Site at all times during Work progress, a competent resident Superintendent, who shall not be replaced without County's express written consent. The Superintendent shall be Design-Build Entity's representative at the Site and shall have complete authority to act on behalf of Design-Build Entity. All communications to and from the Superintendent shall be as binding as if given to or by Design-Build Entity.
- E. Administration of design and construction shall include the following delineations of responsibilities pursuant to Title 24, California Code of Regulations. Design-Build Entity shall perform as required.
- F. During construction, reconstruction, repair, alteration of, or addition to any detention facility, Fresno County, as provided by the California Code of Regulations, shall make such inspection as in its judgment is necessary or proper for enforcement of the Act, and the protection of the safety of inmates, supervisory personnel, and the public. If at any time as the Work progresses, prior to the issuance of the final approval, it shall be found that modifications or changes are necessary to secure safety, orders shall be by Fresno County for such modifications or changes.

8.02 Observation Of Work By County

- A. County Representative(s). County Representative(s) will have authority to act on behalf of County as set forth in the Contract Documents. Except as otherwise provided in these Contract Documents or subsequently identified in writing by County, County will issue all communications to Design-Build Entity through County Representative, and Design-Build Entity shall issue all communications to County through County Representative in a written document delivered to County. Should direct communications between Design-Build Entity and County's consultants or Architects occur during field visits or by telephone, Design-Build

Entity shall promptly confirm them in a written document copied to County.

- B. Means and Methods of Construction. Subject to those rights specifically reserved in the Contract Documents, County will not supervise, or direct, or have control over, or be responsible for, Design-Build Entity's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or Design-Build Entity's failure to comply with laws and regulations, codes, referenced standards and manufacturer's installation instructions applicable to the furnishing or performance of Work. County will not be responsible for Design-Build Entity's failure to perform or furnish the Work in accordance with Contract Documents.
- C. In exercising its responsibilities and authorities under the Contract Documents, County does not assume any duties or responsibilities to any Subcontractor or supplier and does not assume any duty of care to Design-Build Entity, Design-Build Entity's Subcontractors or suppliers. Except as expressly set forth in the Contract Documents, in exercising their respective responsibilities and authorities under the Contract Documents, neither Bridging Architect nor any County Representative assume any duties or responsibilities to any Subcontractor, sub-Subcontractor, or supplier nor assume any duty of care to Design-Build Entity or any Subcontractor, sub-Subcontractor, Designer, or suppliers.
- D. Work shall be performed under County's general observation and administration. Design-Build Entity shall comply with County's directions and instructions in accordance with the terms of Contract Documents, but nothing contained in these General Conditions shall be taken to relieve Design-Build Entity of any obligations or liabilities under the Contract Documents. County's failure to review or, upon review, failure to object to any aspect of Work reviewed, shall not be deemed a waiver or approval of any non-conforming aspect of Work.

8.03 Delegation To Consultant

- A. County may delegate to Bridging Architect and/or other Consultant (collectively for purposes of this paragraph, "Consultant") the County's role (or portions thereof) under the Contract Documents to observe construction and to perform construction administration including receiving, reviewing, and responding to RFC submittals, and initial review of change order requests. When County so delegates these functions, Design-Build Entity must copy County on all writings, RFCs, submittals, and communications pertaining to such delegated matters, and County shall have the right to affirm or disaffirm Bridging Architect or Consultant decisions and recommendations (but must do so promptly). County shall at all times retain the sole right to sign and approve change orders.
- B. If engaged, Consultant will advise and consult with County, but will have authority to act on behalf of County only to the extent provided in the Contract Documents or as set forth in writing by County. Consultant will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with Work. Consultant will not be responsible for or have control over the acts or omissions of Design-Build Entity, Subcontractors or their agents or employees, or any other persons performing Work.

- C. Consultant may review Design-Build Entity's submittals, such as Shop Drawings, Product Data, and Samples, but only for conformance with design concept of Work and with information given in the Contract Documents.
- D. Consultant may visit the Site at intervals appropriate to stage of construction to become familiar generally with the progress and quality of Work and to determine in general if Work is proceeding in accordance with Contract Documents. Based on its observations, Consultant may recommend to County that it disapprove or reject Work that Consultant believes to be defective or will not produce a complete Project that conforms to Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by Contract Documents. County will also have authority to require special inspection or testing of Work, whether or not the Work is fabricated, installed, or completed.
- E. Consultant may conduct inspections to recommend to County the dates that Design-Build Entity has achieved Substantial Completion and Final Acceptance, and will receive and forward to County for review written warranties and related documents required by Contract Documents.

8.04 Access To Work

- A. During performance of Work, County and its agents, officers, consultants, and employees may at any time enter upon Work, shops, or studios where any part of the Work may be in preparation, or factories where any materials for use in Work are being, or are to be, manufactured, and Design-Build Entity shall provide proper and safe facilities for this purpose, and shall make arrangements with manufacturers to facilitate inspection of their processes and products to such extent as County's interests may require. Other contractors performing work for County may also enter upon Work for all purposes required by their respective contracts. Subject to the rights reserved in the Contract Documents, Design-Build Entity shall have sole care, custody, and control of the Site and its Work areas.
- B. County may, at any time, and from time to time, during the performance of the Work, enter the Work Site for the purpose of installing any necessary work by County labor or other contracts, and for any other purpose in connection with the installation of facilities. In doing so, County shall endeavor not to interfere with Design-Build Entity and Design-Build Entity shall not interfere with other work being done by or on behalf of County.
- C. If, prior to completion and final acceptance of all the Work, County takes possession of any structure or facility (whether completed or otherwise) comprising a portion of the Work with the intent to retain possession thereof (as distinguished from temporary possession contemplating return to Design-Build Entity), then, while County is in possession of the same, Design-Build Entity shall be relieved of liability for loss or damage to such structure other than that resulting from the Design-Build Entity's fault or negligence. Such taking of possession by County shall not relieve the Design-Build Entity from any provisions of the Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure or facility.
- D. If, following installation of any equipment or facilities furnished by Design-Build

Entity, defects requiring correction by Design-Build Entity are found, County shall have the right to operate such unsatisfactory equipment or facilities and make reasonable use thereof until the equipment or facilities can be shut down for correction of defects without injury to County.

End of Article

SAMPLE

ARTICLE 9 - WARRANTY, GUARANTY, AND INSPECTION OF WORK

9.01 Warranty And Guaranty

- A. General Representations and Warranties. Design-Build Entity represents and warrants that it is, and will be at all times, fully qualified and capable of performing every Phase of the Work and to complete Work in accordance with Title 24, California Code of Regulations and the terms of Contract Documents. Design-Build Entity warrants that all design and construction services shall be performed in accordance with generally accepted professional standards of good and sound design and construction practices and all requirements of Contract Documents, and that the design as developed will comply with the Bridging Documents and the intended use of the Project. Design-Build Entity warrants that Work, including but not limited to each item of materials and equipment incorporated therein, shall be new, of suitable grade of its respective kind for its intended use, and free from defects in design, architecture and/or engineering, materials, construction, and workmanship. Design-Build Entity warrants that Work shall conform in all respects with all applicable requirements of federal, state, and local laws, applicable construction codes and standards, licenses, and permits, Bridging Documents and all descriptions set forth therein, and all other requirements of Contract Documents. Design-Build Entity shall not be responsible, however, for the negligence of others in the specification of specific equipment, materials, design parameters, and means or methods of construction where that is specifically shown and expressly required by Contract Documents.
- B. Extended Guaranties. Any guaranty exceeding two (2) years provided by the supplier or manufacturer of any equipment or materials used in the Project shall be extended for such term. Design-Build Entity shall supply County with all warranty and guaranty documents relative to equipment and materials incorporated in the Project and guaranteed by their suppliers or manufacturers.
- C. Environmental and Toxics Warranty. The covenants, warranties, and representations contained in this paragraph are effective continuously during Design-Build Entity's Work on the Project and following cessation of labor for any reason including, but not limited to, Project completion. Design-Build Entity covenants, warrants, and represents to County that:
1. To Design-Build Entity's knowledge after due inquiry, no lead or asbestos-containing materials were installed or discovered in the Project at any time during Design-Build Entity's construction thereof. If any lead or asbestos-containing materials were discovered, Design-Build Entity made immediate written disclosure to County.
 2. To Design-Build Entity's knowledge after due inquiry, no electrical transformers, light fixtures with ballasts or other equipment containing PCBs are or were located on the Project at any time during Design-Build Entity's construction thereof.
 3. To Design-Build Entity's knowledge after due inquiry, no storage tanks for gasoline or any other toxic substance are or were located on the Project at any time during Design-Build Entity's construction thereof. If any such

materials were discovered, Design-Build Entity made immediate written disclosure to County.

4. Design-Build Entity's operations concerning the Project are and were not in violation of any applicable environmental federal, state, or local statute, law or regulation dealing with hazardous materials substances or toxic substances and no notice from any governmental body has been served upon Design-Build Entity claiming any violation of any such law, ordinance, code or regulation, or requiring or calling attention to the need for any work, repairs, construction, alteration, or installation on or in connection with the Project in order to comply with any such laws, ordinances, codes, or regulations, with which Design-Build Entity has not complied. If there are any such notices with which Design-Build Entity has complied, Design-Build Entity shall provide County with copies thereof.

9.02 Inspection Of Work

- A. All materials, equipment, and workmanship used in Work shall be subject to inspection and testing at all times during construction and/or manufacture in accordance with the terms of Contract Documents. Work and materials, and manufacture and preparation of materials, from beginning of construction until final completion and acceptance of Work, shall be subject to inspection and rejection by County, its agents, representatives, or independent contractors retained by County to perform inspection services, or governmental agencies with jurisdictional interests. Design-Build Entity shall provide them proper and safe conditions for such access and advise them of Design-Build Entity's Site safety procedures and program so that they may comply therewith as applicable. Upon request or where specified, County shall be afforded access for inspection at the source of supply, manufacture, or assembly of any item of material or equipment, with reasonable accommodations supplied for making such inspections.
- B. Design-Build Entity shall give County a minimum of two (2) Business Days' notice of readiness of Work for all required inspections, tests, or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- C. County may hire through separate contract, a County-certified Inspector of Record for this Project, and a Special Inspection and Materials Testing Laboratory. Upon advance notice as set forth above, County will endeavor to schedule required inspections, but if resources are not available, Design-Build Entity may need to reschedule the Work at no additional cost to the County.
- D. In the event that a scheduled inspection is canceled in less than twenty-four (24) hours' notice by Design-Build Entity and the County incurs costs associated with the cancellation, Design-Build Entity will reimburse County for the actual costs of the canceled inspections. The amount will be deducted from payment owed Design-Build Entity.
- E. If applicable laws or regulations of any public body (other than Fresno County) having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body,

Design-Build Entity shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, and furnish County with the required certificates of inspection, or approval. County will pay the cost of initial testing and Design-Build Entity shall pay all costs in connection with any follow-up or additional testing. Design-Build Entity shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for the acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to Design-Build Entity's purchase thereof for incorporation in the Work.

- F. If Design-Build Entity covers any Work, or the work of others, prior to any required inspection, test, or approval without written approval of County, Design-Build Entity shall uncover the Work at County's request. Design-Build Entity shall bear the expense of uncovering Work and replacing Work.
- G. In any case where Design-Build Entity covers Work contrary to County's request, Design-Build Entity shall uncover Work for County's observation or inspection at County's request. Design-Build Entity shall bear the cost of uncovering Work.
- H. Whenever required by County, Design-Build Entity shall furnish tools, labor, and materials necessary to make examination of Work that may be completed or in progress, even to extent of uncovering or taking down portions of finished Work. Should Work be found unsatisfactory, cost of making examination and of reconstruction shall be borne by Design-Build Entity. If Work is found to be satisfactory, County, in manner herein prescribed for paying for alterations, modifications, and extra Work, except as otherwise herein specified, will pay for examination.
- I. County shall select testing agencies approved by Fresno County to conduct required tests and inspections for the Project. A list of required structural tests and inspections prepared by Design-Build Entity and approved by Fresno County shall be provided to the designated testing agency, County's representative, and Inspector prior to the start of construction.
- J. The testing agency shall forward the test results to Fresno County, Design-Build Entity, and the Project Inspector within fourteen (14) Days of the date of the test. The testing agency shall forward to Fresno County a verified report covering all the tests required to be made by that agency during the progress of the Project.
- K. Inspection of the Work by or on behalf of County, or County's failure to do so, shall not under any circumstances be deemed a waiver or approval of any non-conforming aspect of the Work. Design-Build Entity shall have an absolute duty, in the absence of a written Change Order signed by County, to perform Work in conformance with the Contract Documents.
- L. Any inspection, evaluation, or test performed by or on behalf of County relating to the Work is solely for the benefit of County, and shall not be relied upon by Design-Build Entity. Design-Build Entity shall not be relieved of the obligation to perform Work in accordance with the Contract Documents, nor relieved of any guaranty, warranty, or other obligation, as a result of any inspections, evaluations, or tests performed by County, whether or not such inspections, evaluations, or

tests are permitted or required under the Contract Documents. Design-Build Entity shall be solely responsible for testing and inspecting Work already performed to determine whether such Work is in proper condition to receive later Work.

9.03 Correction Of Defective Work

- A. Design-Build Entity shall correct Defective Work promptly upon knowledge of it. If Design-Build Entity fails to supply sufficient skilled workers, suitable materials or equipment, or to furnish or perform the Work in such a way that the completed Work will conform to Contract Documents, County may order Design-Build Entity to replace any Defective Work, or stop any portion of Work to permit County (at Design-Build Entity's expense) to replace such Defective Work. These County rights are entirely discretionary on the part of the County, and shall not give rise to any duty on the part of the County to exercise the rights for the benefit of Design-Build Entity or any other party.
- B. County may direct Design-Build Entity to correct any Defective Work or remove it from the Site and replace it with Work that is not defective and satisfactorily correct, or remove and replace any damage to other Work or the work of others resulting from the correction or removal. Design-Build Entity shall be responsible for any and all claims, costs, losses, and damages caused by or resulting from such correction or removal. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, County may decide the proper amount or, in its discretion may elect to leave the Contract Sum unchanged and deduct from moneys due Design-Build Entity, all such claims, costs, losses, and damages caused by or resulting from the correction or removal. If Design-Build Entity disagrees with County's calculations, it may make a claim as provided in Article 12 of this Document 00 7253. County's rights under this paragraph shall be in addition to any other rights it may have under the Contract Documents or by law.
- C. Correction period:
 1. With respect to equipment and machinery supplied by Design-Build Entity and incorporated into the Work and placed into continuous service, if within one (1) year after the date of Final Completion of the portion of the Work incorporating the equipment and/or machinery (or, to the extent expressed by Change Order or Certificate of Final Completion, one (1) year after County's written acceptance of such equipment), or such longer period as may be prescribed by laws or regulations, or by the terms of the Contract Documents, any equipment or machinery is found to be defective, Design-Build Entity shall promptly, without cost to County and in accordance with County's written instructions, correct such Defective Work.
 2. With respect to structures within the scope of Work, if within one (1) year after the date of Final Completion, or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents, any Work is found to be defective, Design-Build Entity shall promptly, without cost to County and in accordance with County's written instructions,

correct such Defective Work.

3. Design-Build Entity shall remove any Defective Work rejected by County and replace it with Work that is not defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Design-Build Entity fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, County may have the Defective Work corrected or the rejected Work removed and replaced.
 4. Design-Build Entity shall pay for all claims, costs, losses, and damages caused by, or resulting from, such removal and replacement. Where Design-Build Entity fails to correct Defective Work, or defects are discovered outside the correction period, County shall have all rights and remedies granted by law.
- D. Where Defective Work or rejected Work (and damage to other Work resulting therefrom) has been removed and replaced under this provision after the commencement of the correction period, the correction period hereunder with respect to such Work shall be extended for an additional period of one (1) year after such removal and replacement has been satisfactorily completed.
- E. If, following installation of any equipment, machinery, or facilities furnished by Design-Build Entity, defects requiring correction by Design-Build Entity are found, County shall have the right to operate such defective equipment or facilities and make reasonable use thereof until the equipment, machinery, or facilities can be shut down for correction of defects without causing injury to County.

9.04 Acceptance And Correction Of Defective Work By County

- A. County may accept Defective Work. Design-Build Entity shall pay all claims, costs, losses, and damages attributable to County's evaluation of and determination to accept such Defective Work. If County accepts any Defective Work prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, County may deduct from moneys due Design-Build Entity, all claims, costs, losses, damages, expenses, and liabilities attributable to the Defective Work. If Design-Build Entity disagrees with County's calculations, Design-Build Entity may make a claim as provided in Article 12 of this Document 00 7253. If County accepts any Defective Work after final payment, Design-Build Entity shall pay to County, an appropriate amount as determined by County.
- B. County may correct and remedy a deficiency if, after five (5) Days' written notice to Design-Build Entity, Design-Build Entity fails to correct Defective Work or to remove and replace rejected Work as set forth in this Article; or provide a plan for correction of Defective Work acceptable to County; or perform Work in accordance with Contract Documents. In connection with such corrective and remedial action, County may exclude Design-Build Entity from all or part of the Site; take possession of all or part of Work and suspend Design-Build Entity's Work related thereto; take possession of all or part of Design-Build Entity's tools, appliances,

construction equipment and machinery at the Site; and incorporate in Work any materials and equipment stored at the Site or for which County has paid Design-Build Entity but which are stored elsewhere. Design-Build Entity shall allow County, its representatives, agents, employees, and other contractors and County's consultants access to the Site to enable County to exercise the rights and remedies under this paragraph. Design-Build Entity shall be responsible for all claims, costs, losses, damages, expenses, and liabilities incurred or sustained by County in exercising such rights and remedies. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, County may deduct from moneys due Design-Build Entity, all claims, costs, losses, and damages caused by or resulting from the correction or removal. If Design-Build Entity disagrees with County's calculations, Design-Build Entity may make a claim as provided in Article 12 of this Document 00 7253.

- C. County's decisions to accept Defective Work or correct Defective Work are subject to approval of Fresno County, and any requirements of Title 24, California Code of Regulations.

9.05 Rights Upon Inspection Or Correction

- A. Design-Build Entity shall not be allowed an extension of Contract Time because of any delay in the performance of Work attributable to the exercise by County of its rights and remedies under this Article 9. Where County exercises its rights under this Article 9, it retains all other rights it has by law or under the Contract Documents including, but not limited to, the right to terminate Design-Build Entity's right to proceed with the Work under the Contract Documents and/or make a claim or back charge where a Change Order cannot be agreed upon.
- B. Inspection by County shall not relieve Design-Build Entity of its obligation to have furnished material and workmanship in accordance with Contract Documents. Payment for Work completed through periodic progress payments or otherwise shall not operate to waive County's right to require full compliance with Contract Documents and shall in no way be deemed as acceptance of the Work paid therefore. Design-Build Entity's obligation to complete the Work in accordance with Contract Documents shall be absolute, unless County agrees otherwise in writing.

9.06 Samples And Tests Of Materials And Work

- A. Design-Build Entity shall furnish, in such quantities and sizes as may be required for proper examination and tests, samples or test specimens of all materials to be used or offered for use in connection with Work. Design-Build Entity shall prepare samples or test specimens at its expense and furnish them to the County. Design-Build Entity shall submit all samples in ample time to enable County to make any necessary tests, examinations, or analyses before the time it is desired to incorporate the material into the Work.
- B. Test samples or specimens of material for testing shall be taken by the Bridging Architect, his or her representative, Project Inspector, or representative of the testing agency. In no case shall Design-Build Entity or vendor select the sample.

9.07 Proof Of Compliance Of Contract Provisions

- A. In order that the County may determine whether Design-Build Entity has complied or is complying with requirements of Contract Documents not readily enforceable through inspection and tests of Work and materials, Design-Build Entity shall at any time, when requested, submit to County properly authenticated documents or other satisfactory proofs of compliance with all applicable requirements.

9.08 Acceptance

- A. Inspection by the County or its authorized agents or representatives, any order or certificate for the payment of money, any payment, acceptance of the whole or any part of Work by the County, any extension of time, any verbal statements on behalf of the County or its authorized agents or representatives shall not operate as a waiver or modification of any provision of the Contract Documents, or of any power reserved to the County herein or therein or any right to damages provided in the Contract Documents. Any waiver of any breach of the Contract Documents shall not be held to be a waiver of any other subsequent breach.

End of Article

SAMPLE

ARTICLE 10 - DESIGN-BUILD ENTITY'S ORGANIZATION AND EQUIPMENT

10.01 Design-Build Entity's Legal Address

- A. Address and email address given in Design-Build Entity's Proposal are hereby designated as Design-Build Entity's legal address and email address. Design-Build Entity may change its legal address and email address by notice in writing, in accordance with the provisions in Document 00 5200 (Agreement) Article 5.02 Notices, which in conspicuous language advises County of a change in legal address or email address, and which County accepts in writing.

10.02 Design-Build Entity's Office At The Work Site

- A. Design-Build Entity shall maintain an office at the Site, which office shall be headquarters of a Design-Build Entity representative authorized to transmit to and receive from County, communications, instructions, or Drawings. Communications, instructions, or Drawings given to Design-Build Entity's representative, or delivered at the Site office in representative's absence, shall be deemed to have been given to Design-Build Entity.

10.03 Design-Build Entity's Superintendents Or Forepersons

- A. Design-Build Entity shall at all times be represented on Site by one or more superintendents or forepersons authorized and competent to receive and carry out any instructions that County may give, and shall be liable for faithful observance of instructions delivered to Design-Build Entity or to authorized representative or representatives on Site.

10.04 Design-Build Entity's And Subcontractors' Employees

- A. Design-Build Entity shall employ, and shall permit its Subcontractors to employ, only competent and skillful personnel to do Work. If County notifies Design-Build Entity that any of its employees, or any of its Subcontractors' employees on Work is incompetent, unfaithful, disorderly or profane, or fails to observe customary standards of conduct or refuses to carry out any provision of the Contract Documents, or uses threatening or abusive language to any person on Work representing County, or violates sanitary rules, or is otherwise unsatisfactory, and if County requests that such person be discharged from Work, then Design-Build Entity or its Subcontractor shall immediately discharge such person from Work and the discharged person shall not be re-employed on the Work except with consent of County.

10.05 Design-Build Entity To List Trades Working

- A. Design-Build Entity shall list the trades working on the Site and their scheduled activities on a daily basis, and provide a copy of that list to County.

10.06 Design-Build Entity's Use Of The Site

- A. Design-Build Entity shall not make any arrangements with any person to permit occupancy or use of any land, structure, or building within the limits of the Work,

for any purpose whatsoever, either with or without compensation, in conflict with any agreement between County and any owner, former owner, or tenant of such land, structure, or buildings. Design-Build Entity may not occupy County-owned property outside the limit of the Work as indicated on the Drawings unless it obtains prior written approval from County.

End of Article

SAMPLE

ARTICLE 11 - PROSECUTION AND PROGRESS OF THE WORK

11.01 Design-Build Entity To Submit Required Schedules

- A. At the Preconstruction Conference, Design-Build Entity shall submit to County for review and discussion, and again in final form prior to the first payment application, the following documents:
 - 1. Work Breakdown Schedule/Schedule of Values ("WBS/SOV") per Section 01 2000 (Measurement and Payment);
 - 2. Progress schedules and reports as required in Section 01 3200 (Progress Schedules and Reports), as applicable;
 - 3. Quality Control program and other submittals; and
 - 4. Schedule of submittals per Section 01 3300 (Submittals).
- B. No progress payment shall be due or owing to Design-Build Entity until such schedules are submitted to and acceptable to County as meeting the requirements of the Contract Documents. County's acceptance of Design-Build Entity's schedules will not create any duty of care or impose on County any responsibility for the sequencing, scheduling, or progress of Work nor will it interfere with or relieve Design-Build Entity from Design-Build Entity's full responsibility therefore.
- C. Before commencing any portion of Work, Design-Build Entity shall inform County in writing as to time and place at which Design-Build Entity wishes to commence Work, and nature of Work to be done, in order that proper provision for inspection of Work may occur, and to assure measurements necessary for record and payment. Information shall be given to County a reasonable time in advance of time at which Design-Build Entity proposes to begin Work, so that County may complete necessary preliminary work without inconvenience or delay to Design-Build Entity.

11.02 Design-Build Entity To Supply Sufficient Workers And Materials

- A. Unless otherwise required by County under the terms of Contract Documents, Design-Build Entity shall at all times keep on the Site materials and employ qualified workers sufficient to prosecute Work at a rate and in a sequence and manner necessary to complete Work within the Contract Time. This obligation shall remain in full force and effect notwithstanding disputes or claims of any type.
- B. At any time during progress of Work should Design-Build Entity directly or indirectly (through Subcontractors) refuse, neglect, or be unable to supply sufficient materials or employ qualified workers to prosecute the Work as required, then County may require Design-Build Entity to accelerate the Work and/or furnish additional qualified workers or materials as County may consider necessary, at no cost to County. If Design-Build Entity does not comply with the notice within three (3) Business Days of date of service thereof, County shall have the right (but not a duty) to provide materials and qualified workers to finish the Work or any affected portion of Work, as County may elect. County may, at its discretion, exclude

Design-Build Entity from the Site, or portions of the Site or separate work elements during the time period that County exercises this right. County will deduct from moneys due or which may thereafter become due under the Contract Documents, the sums necessary to meet expenses thereby incurred and paid to persons supplying materials and doing Work. County will deduct from funds or appropriations set aside for purposes of Contract Documents the amount of such payments and charge them to Design-Build Entity as if paid to Design-Build Entity. Design-Build Entity shall remain liable for resulting delay, including liquidated damages (if any) and indemnification of County from claims of others.

- C. Exercise by County of the rights conferred upon County in this subparagraph is entirely discretionary on the part of County. County shall have no duty or obligation to exercise the rights referred to in this subparagraph and its failure to exercise such rights shall not be deemed an approval of existing Work progress or a waiver or limitation of County's right to exercise such rights in other concurrent or future similar circumstances. (The rights conferred upon County under this subparagraph are, like all other such rights, cumulative to County's other rights under any provision of the Contract Documents.)

11.03 Design-Build Entity To Protect Underground Facilities

- A. Drawings may indicate above and below grade structures and Underground Facilities such as: drainage lines, storm drains, sewers, water, gas, electrical, chemical, hot water, and other similar items and utilities. Design-Build Entity shall locate these known existing installations before proceeding with trenching or other operations that may cause damage. Design-Build Entity shall further locate, by carefully excavating with small equipment, potholing and principally by hand, all such utilities or installations that are to remain and that are subject to damage. If additional utilities whose locations are unknown are discovered, Design-Build Entity shall immediately report to County for disposition of the same.
- B. Additional utilities whose locations are unknown to County are suspected to exist. Design-Build Entity shall be alert to their existence; if they are encountered, Design-Build Entity shall immediately report to County for disposition of the same. Design-Build Entity shall also investigate the existence of existing service laterals, appurtenances, or other types of utilities, indicated by the presence of an underground transmission main or other visible facilities, such as buildings, new asphalt, meters, and junction boxes, on or adjacent to the Site, even if not shown or indicated in information supplied by County or the regional notification center. Design-Build Entity shall immediately secure all such available information and notify County and the utility owner, in writing, of its discovery.
- C. At all times during construction, all operating Underground Facilities shall remain in operation, unless the Contract Documents expressly indicate otherwise. Design-Build Entity shall maintain such Underground Facilities in service where appropriate; shall repair any damage to them caused by the Work; and shall incorporate them into the Work, including reasonable adjustments to the design location (including minor relocations) of the existing or new installations. Design-Build Entity shall take immediate action to restore any in-service installations damaged by Design-Build Entity's operations.

11.04 Design-Build Entity To Locate Underground Utilities

- A. Before commencing work of digging trenches or excavation, Design-Build Entity shall also review all information available regarding subsurface conditions, including but not limited to information supplied in Document 00 3100 (Available Project Information), and subject to the terms and conditions of these documents, Design-Build Entity shall also comply with Government Code sections 4216 to 4216.9, and in particular section 4216.2 which provides, in part:

Before notifying the appropriate regional notification center, an excavator planning to conduct an excavation shall delineate the area to be excavated. If the area is not delineated, an operator may, at the operator's discretion, choose not to locate and field mark until the area to be excavated has been delineated. Except in an emergency, an excavator planning to conduct an excavation shall notify the appropriate regional notification center of the excavator's intent to excavate at least two (2) working days, and not more than fourteen (14) calendar days, before beginning that excavation.

- B. Design-Build Entity shall contact Underground Service Alert, and schedule the Work to allow ample time for the center to notify its members and, if necessary, for any member to field locate and mark its facilities. Design-Build Entity is charged with knowledge of all subsurface conditions reflected in Underground Service Alert records. Prior to commencing excavation or trenching work, Design-Build Entity shall provide County with copies of all Underground Service Alert records secured by Design-Build Entity. Design-Build Entity shall advise County of any conflict between information provided in Document 00 3100 (Available Project Information), the Drawings and that provided by Underground Service Alert records. Design-Build Entity's excavation shall be subject to and comply with the Contract Documents, including without limitation all applicable requirements set forth in this Document 00 7253 (General Conditions).
- C. Additional compensation or extension of time on account of utilities not shown or otherwise brought to Design-Build Entity's attention, including reasonable action taken to protect or repair damage, shall be determined as provided in this Document 00 7253 (General Conditions).
1. At no additional cost to County, Design-Build Entity shall incorporate into the Work main or trunk line utilities identified in the Contract Documents and other utilities or underground structures known or reasonably discernible and that will remain in service, including reasonable adjustments to the design location (including minor relocations) of the existing or new installations. Design-Build Entity shall take immediate action to restore any in-service installations damaged by Design-Build Entity's operations. Should County determine that Design-Build Entity has not responded in a timely manner or not diligently pursued completion of the Work, County may restore service and deduct the costs of such action by County from the amounts due under the Contract.
 2. Consistent with Government Code section 4215, as between County and

Design-Build Entity, County will be responsible for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Site only if such utilities are not identified in the Contract Documents or Document 00 3100 (Available Project Information). County will compensate for the cost of locating and repairing damage not due to Design-Build Entity's failure to exercise reasonable care, removing and relocating such main or trunk line utility facilities not indicated in the Contract Documents or Document 00 3100 (Available Project Information) with reasonable accuracy, and equipment on the Project necessarily idled during such work.

- D. Design-Build Entity shall have full responsibility for: (a) reviewing and checking all available information and data and information supplied from the regional notification center; (b) locating all Underground Facilities shown or indicated in the Contract Documents, available information, or indicated by visual observation including, but not limited to, and by way of example only, engaging qualified locating services and all necessary back hoeing and potholing; (c) coordination of the Work with the owners of such Underground Facilities during construction; and (d) the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.
- E. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated in the materials supplied by County or in information on file at Underground Service Alert or is otherwise reasonably available to Design-Build Entity, then Design-Build Entity shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby (and in no event later than seven (7) Days), and prior to performing any Work in connection therewith (except in an emergency as required by this Document 00 7253), identify the owner of such Underground Facility and give written notice to that owner and to County. During such time, Design-Build Entity shall be responsible for the safety and protection of such Underground Facility.
- F. Design-Build Entity shall be allowed an increase in the Contract Sum or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that is owned and was built by County only where the Underground Facility:
1. Was not shown or indicated in the Contract Documents or in the information supplied pursuant to Document 00 3100 (Available Project Information) or in information on file at Underground Service Alert; and
 2. Design-Build Entity did not know of it; and
 3. Design-Build Entity could not reasonably have been expected to be aware of it or to have anticipated it from the information available. (For example, if surface conditions such as pavement repairs, valve covers, or other markings, indicate the presence of an Underground Facility, then an increase in the Contract Sum or an extension of the Contract Time will not be due, even if the Underground Facility was not indicated in the Contract Documents, in the information supplied to Design-Build Entity pursuant to Document 00 3100 (Available Project Information), in information on file at

Underground Service Alert, or otherwise reasonably available to Design-Build Entity.)

- G. Design-Build Entity shall bear the risk that Underground Facilities not owned or built by County may differ in nature or locations shown in information made available by County pursuant to Document 00 3100 (Available Project Information), in information on file at Underground Service Alert, or otherwise reasonably available to Design-Build Entity. Underground Facilities are inherent in construction involving digging of trenches or other excavations and Design-Build Entity is to apply its skill and industry to verify the information available.

11.05 Connections To Or Alterations To Existing Conditions And Facilities

- A. In planning and performing the Work, every effort shall be made to minimize the levels of noise, dirt, dust, molds, biological organisms (e.g., aspergillus), fumes, odors, and similar items to the extent possible. Design-Build Entity shall remove, cut, alter, replace, and repair existing building infrastructure, including without limitation plumbing, medical gas, fire and life safety equipment, utilities, and casework, consistent with Design-Build Entity's coordination and planning responsibilities to not interfere with ongoing County operations, as necessary to install new Work. Except as otherwise shown or specified, Design-Build Entity shall not cut, alter, or remove any structural Work, and shall not disturb any ducts, plumbing, steam, gas, or electrical Work without approval of County.
- B. Unless otherwise specified or indicated, Design-Build Entity shall make all connections or alterations to existing facilities, including structures, drain lines, and utilities such as water, sewer, gas, telephone, and electric, necessary to complete the Work of the Contract Documents. In each case, Design-Build Entity shall provide advance notice to and receive permission from County or the owning utility prior to undertaking any connection or making any alterations.
- C. Design-Build Entity shall restore existing conditions (walls, structures, partitions, floors, mechanical and electrical Work, etc.) disturbed or removed as a result of performing required new Work to the original conditions. Existing conditions or facilities to be altered or extended and found to be defective in any way, shall be reported to County before commencing Work. Materials and workmanship used in restoring conditions or facilities shall conform or exceed in type and quality that of original existing construction, except as otherwise shown or specified or required by codes or applicable standards.

11.06 Lines And Grades

- A. All Work shall be done to the lines, grades, and elevations indicated on the Drawings.
- B. County may such provide basic horizontal and vertical control points to be used as datums for the Work, as may be indicated on Drawings and Specifications; however, all further survey, layout, and measurement work shall be performed by Design-Build Entity as a part of the Work.
- C. Design-Build Entity shall provide at its cost an experienced, appropriately licensed

civil engineer or land surveyor, and all required instrument persons, competent assistants, and such instruments, tools, stakes, and other materials required to complete the survey, layout, and measurement of work. In addition, Design-Build Entity shall furnish at its cost competent persons and such tools, stakes, and other materials as County may require in establishing or designating control points, or in checking survey, layout, and measurement work performed by Design-Build Entity.

- D. Design-Build Entity shall locate control points before commencing construction Work on any Site, preserve all reference points throughout construction, and promptly replace all points which become lost or destroyed.
- E. Design-Build Entity shall keep County informed, a reasonable time in advance, of the times and places at which it wishes to do Work, so that any checking deemed necessary by County may be done with minimum inconvenience to County and minimum delay to Design-Build Entity.
- F. Design-Build Entity shall remove and reconstruct Work which is improperly located.

11.07 Design-Build Entity To Not Disrupt County Operation

- A. Design-Build Entity shall schedule and execute all Work in a manner that does not interfere with or disrupt County operations, including but not limited to, parking, utilities (electricity, gas, water), noise, vibration, odors/fumes, access by employees and administration, access by vendors, teachers, students, and any other person or entity using County facilities or doing business with County. Design-Build Entity shall produce and supply coordination plans and make timely requests to County, following County procedures, for any necessary interference of construction with County, with which County will reasonably cooperate. At a minimum, Design-Build Entity shall make every effort to minimize the levels of noise, vibration, dirt, dust, molds, biological organisms, fumes, odors, and similar items to the extent possible and in accordance with local ordinances or other requirements.
- B. Design-Build Entity's use of service areas and equipment and vehicle ingress and egress shall be kept to the minimum essential to its operations. Non-essential vehicles and equipment shall be kept out of such areas. In the event of unavoidable conflict with County's operations, and upon request of facility staff or vehicle attendants, Design-Build Entity shall eliminate such conflicting use immediately for emergency services.
- C. Design-Build Entity shall produce and supply coordination plans and requests to County, following County procedures, for all necessary interface of construction with County, which County will reasonably cooperate with.

11.08 Maintenance, Product Handling, And Protection

- A. Design-Build Entity shall transport, deliver, handle, and store materials and equipment at the Site in such a manner as to prevent the breakage, damage or intrusions of foreign matter or moisture, and otherwise to prevent damage. Design-Build Entity shall arrange for County right of inspection or observation of

all materials and equipment in fabrication, assembly, or transport, which right County may exercise in its sole unfettered discretion.

- B. Design-Build Entity shall provide County with copies of the OSHA Material Safety Data Sheets (MSDS) for all products containing a hazardous substance, examples: Adhesives, paints, sealants, and the like.
- C. Design-Build Entity shall provide packaged material in manufacturer's original containers with seals unbroken and labels intact until incorporated into the Work.
- D. Design-Build Entity shall remove all damaged or otherwise unsuitable material and equipment promptly from the Site.
- E. Design-Build Entity shall protect all work in place.
- F. Cost of maintenance of systems and equipment prior to either Substantial Completion or Final Completion will be considered as included in Contract prices and no direct or additional payment will be made therefore.
- G. Service and Maintenance Agreements. Design-Build Entity shall supply County with all service and maintenance agreements provided by the supplier or manufacturer of any equipment or materials used in the Project and provided by any subcontractors that performed any portion of the Project Work, including, but not limited to, Project landscaping, elevators, HVAC systems, and other large electrical and mechanical equipment. The duration of any service or maintenance agreements supplied to County shall be from the date of Final Completion of the Project Work.

11.09 Electronic Communications And Information Distribution

- A. To maximize the efficiency of Project communication, Design-Build Entity agrees to work collaboratively with County to implement a common, accessible system for creating and maintaining Project reports, storing, and retrieving Project minutes, logs, CAD files, and other critical Project documentation.
- B. All communications recognized under the Contract Documents shall be in writing, in the form of a serialized document, by type of communication. For example, RFCs shall be serialized beginning with RFC No. 1; payment applications shall be serialized beginning with Payment Application No. 1, submittals shall be serialized per specification section and transmitted with transmittal sheets beginning with Transmittal No. 1; and correspondence shall be serialized beginning with letter No. 1. Design-Build Entity may propose other record management and identification systems or protocols, intended to facilitate orderly transmittal of project information, storage and retrieval of such information, which County will review consistent with these stated objectives, and accept or reject in its sole discretion.
- C. All documents requiring signatures for approval prior to implementing action, as stipulated in other portions of these Contract Documents, shall require a signed, serialized letter delivered to the other party at its address for notice otherwise specified in the Contract Documents, either personally, by mail, or by email. Electronic signatures can include but are not limited to, a digital signature, or an

electronically scanned and transmitted by PDF document version of an original handwritten signature. For example, change orders and authorizations for extra cost, require signatures.

- D. All emails shall be copied to County's and Design-Build Entity's Project Representative. County reserves the right to preclude e-mail communication, in whole or in part, as Project needs may require.
- E. Communication between County and Design-Build Entity shall not be via Facebook, social media, or other types of instant text message systems. Any such communications shall be inadmissible for any purpose related to this Contract.

11.10 Design-Build Entity To Require, Review, Approve, And Submit Submittals And Shop Drawings In Addition To Completed Design Drawings

- A. Design-Build Entity's design team must obtain from Design-Build Entity's construction team, and then independently review and approve (and so indicate thereon), all technical submittals, to verify the quality of the Work and its conformance to design intent. Design-Build Entity's technical submittals consist of Shop Drawings, Manufacturer's Data, Samples, and Miscellaneous Submittals.
 - 1. Shop Drawings include, but are not limited to, custom prepared data such as fabrication, erection, and installation drawings, schedule information, setting diagrams, actual shop work manufacturing instructions, custom templates, special wiring diagrams, coordination drawings, individual system or equipment inspection and test reports, concrete design mixes, Design-Build Entity engineering calculations and specially prepared operating and maintenance instructions, as applicable to the Work.
 - 2. Manufacturer's Data includes, but is not limited to, standard prepared data for manufactured products such as a manufacturer's production specification and installation instructions, printed statements of compliance and applicability, catalogue cuts, product photographs, product operation and maintenance instruction and spare-parts listings, printed product warranties, as applicable to the Work.
 - 3. Samples include, but are not limited to, physical samples of the Work such as sections of manufactured or fabricated Work, cuts or containers of materials, complete units for repetitively used products, paint samples, textile swatches, specimens for coordination of visual effect, graphic symbols, and units of Work to be used for independent inspection and testing, as applicable to the Work.
 - 4. Miscellaneous Submittals include, but are not limited to, job-prepared warranties and guaranties, maintenance agreements, project photographs, Design-Build Entity's survey data, excavating/foundation field reports, tradesmen testing/qualifying/certifying reports, list and delivery schedule for County-furnished and Design-Build Entity installed equipment, printed industry standards, record drawings, as-built records, collected and bound operating and maintenance manuals, keys and other security, protection and/or safety devices, maintenance tools and spare parts, as applicable to

the Work.

- B. Design-Build Entity shall coordinate all technical submittals from Subcontractors or otherwise, and review them for completeness and compliance with applicable Contract Documents. Design-Build Entity's design team must independently review and approve (and so indicate thereon), all technical submittals, prior to their coordination and review by Design-Build Entity.
- C. Design-Build Entity shall submit submittals to County for review in strict accordance with Section 01 3300 (Submittals). Design-Build Entity's submittal of Shop Drawings shall be in addition to Design-Build Entity's Design Documents developed pursuant to the Contract Documents. Submission of a submittal shall constitute Design-Build Entity's representation that all requirements of Section 01 3300 (Submittals) have been complied with. All submittals will be identified as County may require and in the number of copies specified in Section 01 3300 (Submittals).
- D. Design-Build Entity shall not perform Work that requires submission of a Shop Drawing or Sample or other submittal prior to submission and favorable review of the Shop Drawing or Sample or submittal. Where a Shop Drawing or Sample or other submittal is required by Contract Documents or the final Schedule of Shop Drawing and Sample Submittals accepted by County, any related Work performed prior to County's approval of the pertinent submittal shall be at the sole expense, responsibility, and risk of Design-Build Entity.

11.11 Cost Data

- A. Design-Build Entity shall maintain full and correct information as to the number of workers employed in connection with each subdivision of Work, the classification and rate of pay of each worker in form of certified payrolls, the cost to Design-Build Entity of each class of materials, tools and appliances used by Design-Build Entity in Work, and the amount of each class of materials used in each subdivision of Work. Design-Build Entity shall provide County with monthly summaries of this information. If Design-Build Entity maintains or is capable of generating summaries or reports comparing actual Project costs with Proposal estimates or budgets, Design-Build Entity shall provide County with a copy of such report upon County's request and whenever it is generated.
- B. Design-Build Entity shall maintain daily job reports recording all significant activity on the job, including the number of workers on Site, Work activities, problems encountered and delays. Design-Build Entity shall provide County with copies for each Day Design-Build Entity works on the Project, to be delivered to County either the same Day or the following morning before starting work at the Site. Design-Build Entity shall take monthly progress photographs of all areas of the Work. Design-Build Entity shall maintain copies of all correspondence with Subcontractors and records of meetings with Subcontractors.
- C. County shall have the right to audit and copy Design-Build Entity's books and records of any type, nature, or description relating to the Project (including but not limited to financial records reflecting in any way costs claimed on the Project), and to inspect the Site, including Design-Build Entity's trailer, or other job Site office,

and this requirement shall be contained in the subcontracts of Subcontractors working on Site. By way of example, County shall have the right to inspect and obtain copies of all Contract Documents, planning and design documents, Proposal and negotiation documents, cost records and job cost variance reports, design modification proposals, value engineering or other cost reduction proposals, revisions made to the original design, job progress reports, photographs, and as-built drawings maintained by Design-Build Entity. County and any other applicable governmental entity shall have the right to inspect all information and documents maintained under this paragraph 11.11 at any time during the Project and for a period of five (5) years following Final Completion. This right of inspection shall not relieve Design-Build Entity of its duties and obligations under the Contract Documents. This right of inspection shall be specifically enforceable in a court of law, either independently or in conjunction with enforcement of any other rights in the Contract Documents.

11.12 Record Documents

- A. Design-Build Entity shall maintain in a safe place at the Site, construction records to include, but not limited to, the following documents to be maintained on a current basis:
 - 1. One record copy of all Drawings, Specifications, Addenda, Contract Modifications, Change Orders, Work Directives, Force Account orders, and written interpretations and clarifications, organized and in good order and marked to show all as-built changes made during construction.
 - 2. Shop drawings; product data/material data sheets; samples; submittal; purchases; materials; equipment; inspections; applicable handbooks; Title 15; Title 24; the California Uniform Building Code; maintenance and operating manuals and instructions; other related documents and revisions which arise out of the Construction Contracts. Design-Build Entity shall maintain records in duplicate, of principal building layout lines, elevations for the bottom of footings, floor levels, and key site elevations (certified by a qualified surveyor or professional engineer, if necessary).
- B. Design-Build Entity shall make all such records available to County. At the completion of the Project, Design-Build Entity shall deliver all such records to the County to have a complete set of record as-built drawings.
- C. Design-Build Entity's failure to comply with recordkeeping requirements under this subparagraph entitles County to withhold five percent (5%) of any Application for Payment until compliance.

End of Article

ARTICLE 12 - CLAIMS BY DESIGN-BUILD ENTITY

12.01 General

- A. The claim notice and documentation procedure described in this Article 12 applies to all claims and disputes arising under the Contract Documents, including without limitation any claim or dispute by any Subcontractor or material supplier. All Subcontractor and supplier claims of any type shall be brought only through Design-Build Entity as provided in this Article 12. Under no circumstances shall any Subcontractor or supplier make any direct claim against the County.
- B. "Claim" means a written demand or written assertion by Design-Build Entity seeking, as a matter of right, the payment of money, the adjustment or interpretation of Contract Documents terms, or other relief arising under or relating to Contract Documents. In order to qualify as a "claim", the written demand must state that it is a claim submitted under this Article 12. A voucher, invoice, proposed change, Application for Payment, cost proposal, RFC, change order request, or other routine or authorized form of request for payment is not a claim under the Contract Documents. If such request is disputed as to liability or amount, then the disputed portion of the submission may be converted to a claim under the Contract Documents by submitting a separate claim in compliance with claim submission requirements.
- C. The provisions of this Article 12 constitute a non-judicial claim settlement procedure, and also step one of a two-step claim presentment procedure by agreement under California Government Code section 930.2. Specifically, step one is compliance with this contract claims procedure and filing/administering timely contract claims in accordance with the Contract Documents first. Step two is filing a timely Government Code section 910 claim in accordance with the California Government Code.
- D. The provisions of this Article 12 shall survive termination, breach, or completion of the Contract Documents. Design-Build Entity shall bear all costs incurred in the preparation and submission of a claim. Pursuant to Government Code section 930.2, the one-year period in Government Code section 911.2 to file a Government Code section 910 claim shall be reduced to one hundred fifty (150) Days. Any Government Code section 910 claims shall be presented in accordance with the Government Code and shall affirmatively indicate Design-Build Entity's prior compliance with the claims procedure herein and previous dispositions of claims submitted hereunder.

12.02 Mandatory Procedures For Disputed Work

- A. Disputed Work and Contract Procedures. Should it appear to Design-Build Entity that the Work to be performed or any of the matters relative to the Contract Documents are not satisfactorily detailed or explained therein, or should any questions arise as to the meaning or intent of the Contract Documents, or should any dispute arise regarding the true value of any work performed, work omitted, extra work that the Design-Build Entity may be required to perform, time extensions, payment to the Design-Build Entity during performance of this Contract, performance of the Contract, and/or compliance with Contract

procedures, County decisions or directions, County actions or inactions, or should Design-Build Entity otherwise seek extra time or compensation FOR ANY REASON WHATSOEVER (hereafter, "Disputed Work"), then Design-Build Entity shall so advise County in writing and complete any applicable procedures set forth in the Contract for addressing and/or resolving such matters (including but not limited to other Articles of this Document 00 7253 and Section 01 2600 (Modification Procedures and Pricing of Changed Work)).

- B. Timely Notice and Review of Disputed Work Required. Before commencing any Disputed Work (e.g., disputed RFC responses, Supplemental Instructions, Information Bulletins, decisions, etc.), or within ten (10) Days after Design-Build Entity's first knowledge of the Disputed Work, whichever is earlier, Design-Build Entity shall file a written notice and preliminary good faith cost proposal for the Disputed Work with County stating clearly and in detail its objection and reasons for contending the Disputed Work is outside or in breach of the requirements of Contract Documents. It is the responsibility of the Design-Build Entity to substantiate that the Disputed Work is in fact a change from the base scope of Work.
1. The written notice must identify the subcontractors, vendors, suppliers affected, if any, sufficient for County to visit the Site to inspect the work and/or conduct a telephonic interview of the persons involved, and/or to photograph the work in question; and Design-Build Entity shall supply digital photographs by email and provide County with contact information for all involved subcontractors, suppliers of any tier, to facilitate prompt "in person" review at the next job site meeting.
 2. The preliminary cost proposal must provide a good faith preliminary estimate of the labor (workers, crews), equipment and/or materials involved, and a corresponding good faith preliminary estimate of cost.
 3. The written notice and preliminary cost proposal for Disputed Work must be placed, by Design-Build Entity, as a specific discussion item on the Agenda for the next weekly meeting, where both County and Design-Build Entity shall then make a good-faith effort to review the Disputed Work, involving all Subcontractors, vendors, and other involved parties.
 4. If discussions at the weekly meeting do not resolve the Disputed Work, then Design-Build Entity shall update its written notice and preliminary cost proposal based upon the discussions at the weekly meeting, and shall calendar the matter for discussion at the project executive level to occur within ten (10) Days of the weekly meeting unless mutually agreed otherwise. The attendees at the project executive level meeting shall include all appropriate parties to the dispute and, in addition, senior level representatives of the County's and Design-Build Entity's Project team who have, or who have been designated with, primary responsibility for administration of the Contract.
 5. If the initially required written notice and preliminary cost proposal for Disputed Work is not issued within the time period required herein, or if Design-Build Entity proceeds with the Disputed Work without first having given the notice of

the Disputed Work, Design-Build Entity shall be deemed to have waived its rights to further claim on the specific issue.

- C. **Timely Notice of Potential Claims Required.** County will review Design-Build Entity's timely notice and preliminary cost proposal for Disputed Work at the Project executive level, and provide a decision. If, after receiving the decision, Design-Build Entity disagrees with it or still considers the Work required of it to be outside of the requirements of Contract Documents, then Design-Build Entity shall so notify County, in writing, within ten (10) Days after receiving the decision, by submitting a notice of potential claim, stating that a formal claim will be issued. (If for any reason County should fail to act or provide a decision on a notice and preliminary cost proposal within thirty (30) Days, then Design-Build Entity shall submit a notice of potential claim within ten (10) Days following the thirtieth (30th) day, i.e., or by the fortieth (40th) day following the notice and preliminary cost proposal.) In all cases, Design-Build Entity shall continue to prosecute the Disputed Work to completion.
- D. **Claim Negotiations Required.** Upon receipt of Design-Build Entity's notice of potential claim, Design-Build Entity and County shall negotiate the claim, again, once at the Project level, and a second time at the executive level, if necessary, to try and reach agreement. If Design-Build Entity and County fail or are unable to schedule or complete such negotiations, then the notice of potential claims shall be deemed denied.
- E. **Quarterly Claims Required.** At the end of each calendar year quarter (March 31, June 30, September 30, and December 31) of each year, for each and every notice of potential claim that Design-Build Entity may have submitted in that quarter, Design-Build Entity shall submit a formal claim in the form specified herein. Design-Build Entity may file a single consolidated claim each quarter, or may file separate claims each quarter, as Design-Build Entity sees fit, provided Design-Build Entity complies with the requirements below. (Design-Build Entity may defer until the next reporting period the filing of a formal claim for any notices of potential claim timely issued within the last twenty-one (21) Days of the prior quarter.) The formal claim(s) shall include all arguments, justification, cost or estimates, schedule analysis, and detailed documentation supporting Design-Build Entity's position, for each notice of potential claim that Design-Build Entity intends to pursue as a formal claim (further described below).
- F. **Claim Updates Required.** If Disputed Work persists longer than a single calendar quarter, then Design-Build Entity shall, every quarter until the Disputed Work ceases, submit to County a document titled "Claim Update" that shall update and quantify all elements of the claim as completely as possible. Design-Build Entity's failure to submit a Claim Update or to quantify costs every quarter shall result in waiver of the claim for that period. Claims or Claim Updates stating that damages, total damages (direct and indirect), schedule impact and/or any time extension will be determined at a later date shall not comply with this subparagraph and shall result in Design-Build Entity waiving its claim(s). Design-Build Entity shall also maintain a continuing "claims log" that shall list all outstanding claims and their value, and provide such log to County quarterly.

12.03 Action On Claims

- A. Final Decision. Upon receipt of Design-Build Entity's formal claim(s) including all arguments, justifications, cost or estimates, schedule analysis, and documentation supporting its position as required herein, and if the claims negotiations are unsuccessful, County or its designee will review the issue and render a final determination. If County should fail to provide a decision, then such claims shall be deemed denied after forty-five (45) Days following their receipt.
- B. Mediation. All Design-Build Entity formal claims shall, as a condition precedent to litigation thereon, first be mediated. Mediation shall be confidential, non-binding and utilize the services of a mediator mutually acceptable to the parties and, if the parties cannot agree, a mediator selected by the American Arbitration Association from its panel of approved mediators trained in construction industry mediation. All statutes of limitation shall be tolled from the date of the demand for mediation until a date two (2) weeks following the mediation's conclusion. All unresolved Design-Build Entity claims shall be submitted to the same mediator. The cost of mediation shall be equally shared by all parties to the mediation.

12.04 Claim Format

- A. Design-Build Entity shall submit the formal claim(s) with a cover letter and certification of the accuracy of the formal claim.
- B. The formal claim(s) shall list separately each notice of potential claim that Design-Build Entity intends to pursue as a formal claim(s), and for each such item separately, Design-Build Entity shall provide the following:
 - 1. Summary of the claim, including underlying facts, entitlement, schedule analysis, quantum calculations, contract provisions supporting relief;
 - 2. List of documents relating to claim including Specifications, Drawings, clarifications/requests for information, schedules, notices of delay, and any others;
 - 3. Chronology of events and correspondence;
 - 4. Analysis of claim merit;
 - 5. Analysis of claim cost; and
 - 6. Attach supporting cost and schedule documents as required in this Article and elsewhere in the Contract Documents (e.g., Section 01 3230 (Progress Schedules and Reports)).
- C. For each notice of potential claim that Design-Build Entity intends to pursue as a formal claim, Design-Build Entity shall establish in the formal claim a direct causal link between the separate item of cost/time requested, the separate notices of potential claim timely issued, and the specific changed Work asserted. Total cost claims shall not be allowed.
- D. Claims shall be calculated in the same manner as Change Orders per Section 01 2600 (Modification Procedures and Pricing of Changed Work).

12.05 Subcontractor Claims

- A. Design-Build Entity shall require each Subcontractor, sub-Subcontractor and supplier to comply with this claims procedure, to provide Design-Build Entity with timely notice and documentation of all claims; and Design-Build Entity shall present as its claims, all Subcontractor, sub-Subcontractor and supplier claims of any type, and prove them under the terms of the Contract Documents. County shall not be directly liable to any Subcontractor, any supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages or extra costs of any type arising out of or resulting from the Project.

12.06 Waiver and Substantial Compliance

- A. If Design-Build Entity fails to comply with this Article 12 as to any claim or Disputed Work, then Design-Build Entity shall waive its rights to such claim. All claim(s), Disputed Work items or issue(s) not raised in a timely notice, timely notice of potential claim and then timely claim submitted under this Article 12, may not be asserted in any subsequent arbitration, litigation or legal action, and any award (or portion thereof) issued contrary to this preclusion shall be vacated to the extent contrary.
- B. Design-Build Entity may request an extension of time to comply with the claims procedure herein, but must do so in advance of time periods expiring and County must give its approval in writing (which approval may be withheld in County discretion.) As to any other feature of the claim procedure herein (and its claims waiver feature), it may not be waived or altered absent a written Change Order signed by both parties and accepted as to form by their legal counsel.
- C. County, in its sole discretion, may consider Design-Build Entity's substantial compliance with the required initial notice and cost proposal, provided Design-Build Entity demonstrates good faith and a manifest lack of prejudice to County from late written notice, for example, contemporaneous County/Design-Build Entity discussions and review of Disputed Work with full opportunity to investigate and verify costs and work performed. Under no circumstances may substantial compliance be considered when the required written notice is more than twenty-one (21) calendar Days late.
- D. County shall not be deemed to waive or alter any provision under this Article 12, if at County's sole discretion, a claim is administered in a manner not in accord with this Article 12.

12.07 Intent

- A. The claim notice and documentation procedure described in this Article 12 is intended to require notice and sufficient documentation of claims, potential claims, disputes and disagreements, to permit discussions and negotiations of the matters in question, between and among all parties involved, prior to and contemporaneously with the matters in question, in sufficient time for the parties to make informed decisions, mitigate and document costs and potential costs.
- B. Under no circumstances may this procedure be interpreted, modified, or viewed to

permit, claims, potential claims or change order requests for Disputed Work that has been performed, covered up or otherwise become unavailable for reasonable contemporaneous verification and negotiation with involved parties (e.g., Design-Build Entity, Subcontractor, suppliers, County, Bridging Architect, etc.).

End of Article

SAMPLE

ARTICLE 13 - LEGAL AND MISCELLANEOUS

13.01 Laws And Regulations

- A. Design-Build Entity shall keep fully informed of and shall comply with all laws, ordinances, regulations and orders of any properly constituted authority affecting the Contract Documents, Work and persons connected with Work, and shall to the greatest extent permitted by law, protect and indemnify the County and its officers, employees, consultants and agents against any claim or liability, including attorney's fees, arising from or based on violation of law, ordinance, regulation or order, whether by Design-Build Entity or by Subcontractors, employees or agents. Authorized persons may at any time enter upon any part of Work to ascertain compliance of all applicable laws, ordinances, regulations, and orders.
- B. Whenever Bridging Documents require larger sizes or higher standards than are required by any applicable law, ordinance, regulation or order, Bridging Documents shall govern. Whenever Bridging Documents require something that will violate such laws, ordinances, regulations, or orders, then such laws, ordinances, regulations, or orders shall govern.
- C. Design-Build Entity shall comply with applicable portions of Title 15 and Title 24, California Code of Regulations (Uniform Building Code) (most recent edition), Public Contract Code. Whenever Contract Documents require larger sizes or higher standards than are required by any applicable law, ordinance, regulation or order, Contract Documents shall govern. Whenever Contract Documents require something that will violate such laws, ordinances, regulations, or orders, then such laws, ordinances, regulations, or orders shall govern.
- D. Design-Build Entity shall maintain in the Project Office a current copy of Title 15 and 24 of the California Code of Regulations at all times during construction.

13.02 Permits And Taxes

- A. Design-Build Entity shall procure all permits and licenses applicable to the Work (including environmental matters to the extent applicable), pay all charges and fees, including fees for street opening permits, comply with, implement, and acknowledge effectiveness of all permits, initiate, and cooperate in securing all required notifications or approvals therefore, and give all notices necessary and incident to due and lawful prosecution of Work, unless otherwise provided herein. The County will pay applicable building permits, school, sanitation, and water fees, except as otherwise provided in the Contract Documents. If, under federal excise tax law, any transaction hereunder constitutes a sale on which a federal excise tax is imposed, and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the County, upon request, will execute a certificate of exemption which will certify (a) that the County is a political subdivision of the state for the purpose of such exemption, and (b) that the sale is for the exclusive use of the County. No excise tax for such materials shall be included in any bid price. Design-Build Entity shall pay all sales and/or use taxes levied on materials, supplies, or equipment purchased and used on or incorporated into Work, and all other taxes properly assessed against equipment or other property used in connection with Work, without any increase in the Contract Sum.

Design-Build Entity shall make necessary arrangements with proper authorities having jurisdiction over roads, streets, pipelines, navigable waterways, railroads, and other works in advance of operations, even where County may have already obtained permits for the Work.

13.03 Concealed Or Unknown Conditions

- A. If either of the following conditions is encountered at Site when digging trenches or other excavations that extend deeper than four feet below the surface, Design-Build Entity shall give a written Notice of Differing Site Conditions to County promptly before conditions are disturbed, except in an emergency as required by this Document 00 7253, and in no event later than seven (7) Days after first observance of:
1. Subsurface or Latent physical conditions which differ materially from those indicated in the Contract Documents; or
 2. Unknown physical conditions of an unusual nature or which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.
- B. In response to Design-Build Entity's Notice of Differing Site Conditions under this paragraph, County will investigate the identified conditions, and if they differ materially and cause increase or decrease in Design-Build Entity's cost of, or time required for, performance of any part of the Work, County will issue either a Proposal Form or a Construction Change Directive under the procedures described in the Contract Documents, including without limitation Section 01 2600 (Modification Procedures and Pricing of Changed Work). If County determines that physical conditions at the Site are not Latent or are not materially different from those indicated in Contract Documents or that no change in terms of the Contract Documents is justified, County will so notify Design-Build Entity in writing, stating reasons. Design-Build Entity shall in all cases continue to prosecute the Work.
- C. Design-Build Entity shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed Latent or materially different Site conditions (whether above or below grade) if:
1. Design-Build Entity knew of the existence of such conditions at the time Design-Build Entity submitted its Proposal; or
 2. Design-Build Entity should have known of the existence of such conditions as a result of having complied with the requirements of Contract Documents; or
 3. The information or conditions claimed by Design-Build Entity to be Latent or materially different consist of information, conclusions, opinions, or deductions of the kind that this Document 00 7253 precludes reliance upon; or
 4. Design-Build Entity was required to give written Notice of Differing Site Conditions and failed to do so within the time required.

- D. If County and Design-Build Entity are unable to agree on entitlement to or as to the amount or length of any adjustment in the Contract Sum or Contract Time required under this paragraph, Design-Build Entity may make a claim as provided in Article 12 of this Document 00 7253.

13.04 Notice Of Hazardous Waste Or Materials Conditions

- A. Design-Build Entity shall give a written Notice of Hazardous Materials Condition to County promptly, before any of the following conditions are disturbed (except in an emergency as required by this Document 00 7253), and in no event later than twenty-four (24) hours after first observance of any:
 - 1. Material that Design-Build Entity believes may be hazardous waste or hazardous material, as defined in the Health and Safety Code section 25117 (including, without limitation, asbestos, lead, PCBs, petroleum and related hydrocarbons, and radioactive material) that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law ("hazardous material"); or
 - 2. Other material that may present an imminent substantial danger to persons or property exposed thereto in connection with Work at the Site ("other materials").
- B. Except as otherwise provided in the Contract Documents or as provided by applicable law, Design-Build Entity shall not be required to give any notice for the disturbance or observation of any such hazardous materials or other materials where such matter is disturbed or observed as part of the scope of Work under the Contract Documents (such as hazardous waste or hazardous material investigation, remediation or disposal activities which are identified as the subject of Work under the Contract Documents), where Design-Build Entity complies with all requirements in the Contract Documents and applicable law respecting such materials.
- C. Design-Build Entity's Notice of Hazardous Materials Condition shall indicate whether the hazardous materials or other materials were shown or indicated in the Contract Documents to be within the scope of Work, and whether the hazardous materials or other materials were brought to the Site by Design-Build Entity, its Subcontractors, suppliers, or anyone else for whom Design-Build Entity is responsible.
- D. Design-Build Entity shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed hazardous waste or materials if:
 - 1. Design-Build Entity knew of the existence of such hazardous materials or other materials at the time Design-Build Entity submitted its Proposal; or
 - 2. Design-Build Entity should have known of the existence of such hazardous material or other materials as a result of its having the responsibility to obtain additional or supplementary examinations, investigation, explorations, tests, studies, and data concerning the conditions at or contiguous to the Site prior to submitting its Proposal;

3. Design-Build Entity failed to give the written notice within the time required by this Document 00 7253; or
 4. Design-Build Entity failed to give advance written notice, at least sixty (60) Days prior to date when removal was required, of hazardous materials known to exist and required to be removed prior to execution of the Work.
- E. If County determines that conditions involve hazardous materials or other materials and that a change in Contract Document terms is justified, County will issue either a Proposal Form or Construction Change Directive under the procedures described in the Contract Documents, including without limitation Section 01 2600 (Modification Procedures and Pricing of Changed Work). If County determines that conditions do not involve hazardous materials or other materials or that no change in Contract Document terms is justified, County will notify Design-Build Entity in writing, stating the reasons for its determination.
- F. If County and Design-Build Entity are unable to agree on entitlement to or as to the amount or length of any adjustment in the Contract Sum or Contract Time required, Design-Build Entity may make a claim as provided in Article 12 of this Document 00 7253.
- G. In addition to the parties' other rights under this Document 00 7253, if Design-Build Entity does not agree to resume Work based on a reasonable belief that it is unsafe, or does not agree to resume Work under special conditions, County may order the disputed portion of Work deleted from the Work, or performed by others, or County may invoke its right to terminate Design-Build Entity's right to proceed under the Contract Documents in whole or in part, for convenience or for cause as the facts may warrant. If Design-Build Entity does not agree with County's determination of any adjustment in the Contract Sum or Contract Time as a result, Design-Build Entity may make a claim as provided in Article 12 of this Document 00 7253.

13.05 Suspension Of Work

- A. County may, without cause, order Design-Build Entity in writing to suspend, delay or interrupt Work in whole or in part for such period of time as County may determine. An adjustment shall be made for increases in cost of performance of Work of the Contract Documents caused by any such suspension, delay, or interruption, calculated using the measures set forth in Section 01 2600 (Modification Procedures and Pricing of Changed Work). No adjustment shall be made to extent that:
1. Performance is, was or would have been so suspended, delayed or interrupted by another cause for which Design-Build Entity is responsible or otherwise not entitled to compensation under the Contract Documents; or
 2. A change order is made or denied under any other provision of Contract Documents; or
 3. The suspension of Work was the direct or indirect result of Design-Build

Entity's failure to perform any of its obligations hereunder. Adjustments made in cost of performance may have a mutually agreed fixed or percentage fee; if the parties cannot agree, Design-Build Entity may file a claim under Article 12 of this Document 00 7253.

13.06 Termination Of Contract For Cause

- A. County may declare Design-Build Entity in default of Contract Documents and County may terminate Design-Build Entity's right to proceed under the Contract Documents for cause:
1. Should Design-Build Entity make an assignment for the benefit of creditors; admit in writing its inability to pay its debts as they become due; file a voluntary petition in bankruptcy; be adjudged a bankrupt or insolvent; be the subject of an involuntary petition in bankruptcy which is not dismissed within sixty (60) Days; file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation; file any answer admitting or not contesting the material allegations of a petition filed against Design-Build Entity in any such proceeding; or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Design-Build Entity or of all or any substantial part of its properties or if Design-Build Entity, its directors or shareholders, take action to dissolve or liquidate Design-Build Entity; or
 2. Should Design-Build Entity commit a material breach of the Contract Documents. If County declares Design-Build Entity in default due to material breach, however, County must allow Design-Build Entity an opportunity to cure such breach within ten (10) Days of the date of notice from County to Design-Build Entity providing notice of the default; or, if such breach is curable but not curable within such ten-Day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Design-Build Entity to avail itself of a time period in excess of ten (10) Days, Design-Build Entity must provide County within the ten-Day period with a written plan acceptable to County to cure said breach which includes, for example, evidence of necessary resources, Subcontractor commitments, schedules and recovery schedules meeting Contract Document requirements and showing a realistic and achievable plan to cure the breach. Design-Build Entity must then diligently commence and continue such cure according to the written plan); or
 3. Should Design-Build Entity violate or allow (by a Subcontractor or other person or entity for which Design-Build Entity is responsible) a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency applicable to the Project or Work and does not cure (or cause to be cured) such violation within ten (10) Days of the date of the notice from County to Design-Build Entity demanding such cure; or, if such violation is curable but not curable within such ten-Day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Design-Build Entity to avail itself of a time period in excess of ten (10) Days, Design-Build Entity shall provide County within

the ten-Day period with a written plan to cure said violation acceptable to County, and then diligently commence and continue performance of such cure according to the written plan.)

- B. If County at any time reasonably believes that Design-Build Entity is or may be in default under the Contract Documents as provided above, County may in its sole discretion notify Design-Build Entity of this fact and request written assurances from Design-Build Entity of performance of Contract Documents and a written plan from Design-Build Entity to remedy any potential default under the terms of Contract Documents which County may advise Design-Build Entity of in writing. Design-Build Entity shall, within ten (10) Days of County's request, deliver a written cure plan which meets the requirements of the written plan deliverable under this subparagraph above. Failure of Design-Build Entity to provide such written assurances of performance and the required written plan, within ten (10) Days of request, will constitute a material breach of Contract Documents sufficient to justify termination for cause.
- C. In event of termination for cause, County will immediately serve written notice thereof upon Surety and Design-Build Entity. Surety shall have the rights and obligations set forth in Document 00 6113.13 (Construction Performance Bond). Subject to the Surety's rights under the Performance Bond (which rights are waived upon a default thereunder), County may take over the Work and prosecute it to completion by contract or by any other methods it may deem advisable.
- D. In the event of termination by County:
1. County will compensate Design-Build Entity for the value of the Work delivered to County upon termination as determined in accordance with the Contract Documents, subject to all rights of offset and back charges, and provided that Design-Build Entity provides County with updated as-builts and Project Record Documents showing the Work performed up to the date of termination. However, County will not compensate Design-Build Entity for its costs in terminating the Work or any cancellation charges owed to third parties.
 2. Design-Build Entity shall deliver to County possession of the Work in its then condition including, but not limited to, all designs, architectural and engineering, Project records, Project Record Documents, cost data of all types, Bridging Documents and contracts with vendors and Subcontractors, all other documentation associated with the Project, and all construction supplies and aids dedicated solely to performing the Work which, in the normal course of construction, would be consumed or only have salvage value at the end of the construction period. Design-Build Entity shall remain fully liable for the failure of any Work completed and materials and equipment provided through the date of such termination to comply with the provisions of the Contract Documents. The provisions of this subparagraph shall not be interpreted to diminish any right which County may have to claim and recover damages for any breach of Contract Documents or otherwise, but rather, Design-Build Entity shall compensate County for all loss, cost, damage, expense, and/or liability suffered by County as a result of such termination and failure to comply with Contract

Documents.

3. County's rights under this paragraph shall be specifically enforceable to the greatest extent permitted by law. County shall, to the extent applicable, have all other rights and remedies set forth in the Contract Documents.
- E. County may terminate portions or parts of the Work for cause, provided these portions or parts (a) have separate geographic areas from parts or portions of the Work not terminated or (b) are limited to the work of one or more specific trades or Subcontractors. In such case, Design-Build Entity shall cooperate with a completing Design-Build Entity as required under Article 6 of this Document 00 7253.
- F. In the event a termination for cause is later determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Design-Build Entity shall have the recovery rights as specified below. Any Design-Build Entity claim arising out of a termination for cause, however, shall be made in accordance with Article 12 of this Document 00 7253. No other loss cost, damage, expense, or liability may be claimed, requested, or recovered by Design-Build Entity.

13.07 Termination Of Contract For Convenience

- A. County may terminate performance of the Work under the Contract Documents for convenience in accordance with this clause in whole, or from time to time in part, whenever County shall determine that termination is in County's best interest. Termination shall be effected by County delivering to Design-Build Entity notice of termination specifying the extent to which performance of the Work under the Contract Documents is terminated and the effective date of the termination.
- B. After receiving a notice of termination for convenience, and except as otherwise directed by County, Design-Build Entity shall:
 1. Stop Work under the Contract Documents on date and to extent specified in notice of termination;
 2. Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete portion of Work under the Contract Documents which is not terminated;
 3. Terminate all orders and subcontracts to extent that they relate to performance of Work terminated by the notice of termination;
 4. Assign to County in manner, at times, and to extent directed by County, all right, title, and interest of Design-Build Entity under orders and subcontracts so terminated. County shall have the right, in its sole discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
 5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of County to extent

County may require. County's approval or ratification shall be final for purposes of this paragraph;

6. Transfer title to County, and deliver in the manner, at the times, and to the extent, if any, directed by County, all fabricated or unfabricated parts, Work in process, completed Work, supplies, and all other material produced as part of, or acquired in connection with performance of, Work terminated by the notice of termination, and completed or partially completed drawings, drawings, specifications, information, and other property which, if the Project had been completed, would have been required to be furnished to County;
 7. Use its best efforts to sell, in manner, at times, to extent, and at price or prices that County directs or authorizes, any property of types referred to in this subparagraph, but Design-Build Entity shall not be required to extend credit to any purchaser, and may acquire any such property under conditions prescribed and at price or prices approved by County. Proceeds of transfer or disposition shall be applied to reduce payments to be made by County to Design-Build Entity under the Contract Documents or shall otherwise be credited to the price or cost of Work covered by Contract Documents or paid in such other manner as County may direct;
 8. Complete performance of the part of the Work which was not terminated by the notice of termination; and
 9. Take such action as may be necessary, or as County may direct, to protect and preserve all property related to Contract Documents which is in Design-Build Entity's possession and in which County has or may acquire interest.
- C. After receipt of a notice of termination for convenience under this subparagraph, Design-Build Entity shall submit to County its termination claim, in form and with all certifications required by Article 12 of this Document 00 7253. Design-Build Entity's termination claim shall be submitted promptly, but in no event later than six (6) months from effective date of the termination. Design-Build Entity and County may agree upon the whole or part of the amount or amounts to be paid to Design-Build Entity because of a total or partial termination of Work. If Design-Build Entity and County fail to agree on the whole amount to be paid to Design-Build Entity because of the termination for convenience of the Work under this subparagraph, County's total liability to Design-Build Entity by reason of the termination shall not exceed the total (without duplication of any items) of:
1. The reasonable cost to Design-Build Entity, without profit, for all Work performed prior to the effective date of the termination, including Work done to secure the Project for termination. Reasonable cost may not exceed the applicable percentage completion values derived from the progress schedule and the schedule of values. Deductions shall be made for cost of materials to be retained by Design-Build Entity, cost of Work defectively performed, amounts realized by sale of materials, and for other appropriate credits against cost of Work. Reasonable cost will include reasonable allowance for Project overhead and general administrative overhead not to

exceed a total of ten percent of direct costs of such Work. When, in County's opinion, the cost of any item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, reasonable cost to be allowed will be the estimated reasonable cost of performing the Work in compliance with requirements of Contract Documents and excessive actual cost shall be disallowed.

2. A reasonable allowance for profit on cost of Work performed as determined under this subparagraph, provided that Design-Build Entity establishes to County's satisfaction that Design-Build Entity would have made a profit had the Project been completed, and provided further that the profit allowed shall not exceed 5 percent of cost.
 3. Reasonable costs to Design-Build Entity of handling material returned to vendors, delivered to County or otherwise disposed of as directed by County.
 4. A reasonable allowance for Design-Build Entity's internal administrative costs in preparing termination claim.
 5. Except as provided in this subparagraph, County shall not be liable for costs incurred by Design-Build Entity or Subcontractors after receipt of a notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on Work not performed as of the date of termination, post-termination employee salaries, post-termination general administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting Design-Build Entity's Proposal, attorney's fees of any type, and all costs relating to prosecution of claim or lawsuit.
 6. County shall have no obligation to pay Design-Build Entity under this subparagraph unless and until Design-Build Entity provides County with updated and acceptable as-builts and Project Record Documents for Work completed prior to termination.
- D. In arriving at the amount due Design-Build Entity under this clause, there shall be deducted in whole (or in the appropriate part[s] if the termination is partial):
1. All unliquidated advances or other payments on account previously made to Design-Build Entity, including without limitation all payments applicable to the terminated portion of Contract Documents;
 2. Any claim which County may have against Design-Build Entity in connection with Contract Documents; and
 3. The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Design-Build Entity or sold under provisions of this Document 00 7253, and not otherwise recovered by or credited to County.

13.08 Contingent Assignment of Subcontracts and Design Agreements

- A. Design-Build Entity hereby assigns to County each Subcontract for a portion of the Work and each Design agreement, provided that:
1. The assignment is effective only after County's termination of Design-Build Entity's right to proceed under the Contract Documents (or portion thereof relating to that Subcontract or Designer) for cause or for convenience, under Document 00 7253.
 2. The Assignment is effective only for the Subcontracts and Design agreements which County expressly accepts by notifying the Subcontractor or Designer in writing;
 3. The assignment is subject to the prior rights, if any, of the Surety, obligated by Document 00 6113.13 (Construction Performance Bond) provided under the Contract Documents, where the Surety exercises its rights to complete the Contract;
 4. After the effectiveness of an assignment, Design-Build Entity shall, at its sole cost and expense, sign all instruments and take all actions reasonably requested by County to evidence and confirm the effectiveness of the assignment in County; and
 5. Nothing in this paragraph shall modify or limit any of Design-Build Entity's obligations to County arising from acts or omissions occurring before the effectiveness of any Subcontract or Design agreement assignment, including but not limited to all defense, indemnity, and hold-harmless obligations arising from or related to the assigned Subcontract or Design agreement.

13.09 Remedies and Contract Integration

- A. Subject to Contract Documents provisions regarding Design-Build Entity claims, claim review, and claim resolution, and subject to the limitations therein, the exclusive jurisdiction and venue for resolving all claims, counterclaims, disputes and other matters in question between County and Design-Build Entity arising out of or relating to Contract Documents, any breach thereof or the Project, shall be the applicable court of competent jurisdiction identified in Document 00 5200 (Agreement). All County remedies provided in the Contract Documents shall be taken and construed as cumulative and not exclusive; that is, in addition to each and every other remedy herein provided; and in all instances County shall have any and all other equitable and legal rights and remedies which it would have according to law.
- B. The Contract Documents, any Contract Modifications and Change Orders shall represent the entire and integrated agreement between County and Design-Build Entity regarding the subject matters hereof and thereof and shall constitute the exclusive statement of the terms of the parties' agreement. The Contract Documents, and any Contract Modifications and Change Orders, shall supersede any and all prior negotiations, representations or agreements, written or oral, express or implied, that relate in any way to the subject matter of the Contract Documents or written modifications. County and Design-Build Entity represent and

agree that, except as otherwise expressly provided in the Contract Documents, they are entering into the Contract Documents and any subsequent written modification in sole reliance upon the information set forth or referenced in the Contract Documents or Contract Modifications and the parties are not and will not rely on any other information.

- C. In any proceeding to enforce the Contract Documents, Design-Build Entity and County agree that the finder of fact shall receive detailed instructions on the meaning and operation of the Contract Documents, including their conditions, limitations of liability and remedies clauses, claims procedures and any other provisions impacting major defenses and theories of liability of the parties. Detailed findings of fact shall be requested, to verify Contract enforcement.
- D. Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of the Contract Documents at any time shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition, or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

13.10 Patents

- A. Fees or claims for any patented invention, article or arrangement that may be used upon or in any manner connected with performance of the Work or any part thereof shall be included in the Proposal price for doing the Work. To the greatest extent permitted by law, Design-Build Entity shall defend, indemnify, and hold harmless County and each of its officers, employees, consultants and agents, including, but not limited to, the Board, Bridging Architect and each County representative, from all damages, claims for damages, costs or expenses in law or equity, including attorney's fees, arising from or relating to any claim that any article supplied or to be supplied under the Contract Documents infringes on the patent rights, copyright, royalties, trade name, trademark, service mark, trade secret or other intellectual property right of any person or persons or that the person or entity supplying the article does not have a lawful right to sell the same. Such costs or expenses for which Design-Build Entity agrees to indemnify and hold harmless the above indemnities include but are not limited to any and all license fees, whether such fees are agreed by any indemnitee or ordered by a court or administrative body of any competent jurisdiction.

13.11 Substitution For Patented And Specified Articles

- A. Except as noted specifically in Bridging Documents, whenever in Bridging Documents, material or process is designated by patent or proprietary name or by name of manufacturer, such designation shall be deemed to be used for purpose of facilitating description of material and process desired, and shall be deemed to be followed by the words "or equal." Design-Build Entity may offer any substitute material or process that Design-Build Entity considers equal in every respect to that so designated and if material or process offered by Design-Build Entity is, in opinion of County, equal in every respect to that so designated, its use will be approved. However, Design-Build Entity may utilize this right only by timely submitting Document 00 6325 (Substitution Request Form) as provided in

Document 00 0119 (Instructions to Proposers), or as otherwise provided in Contract Documents. A substitution will be approved only if it is a true "equal" item in every aspect of its design and quality, including but not limited to its dimensions, weights, service requirements, durability, functioning, impact on contiguous construction elements, overall schedule, and design.

13.12 Interest Of Public Officers

- A. No representative, officer, or employee of County, no member of the governing body of the locality in which the Project is situated, no member of the locality in which County was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during the tenure of the official or for one (1) year thereafter, shall, as principal, agent, attorney or otherwise, be directly or indirectly interested, in the Contract Documents or the proceeds thereof.

13.13 Limit Of Liability

- A. COUNTY, AND EACH OF ITS OFFICERS, BOARD MEMBERS, EMPLOYEES, CONSULTANTS AND AGENTS INCLUDING, BUT NOT LIMITED TO, BRIDGING ARCHITECT AND EACH OTHER COUNTY REPRESENTATIVE, SHALL HAVE NO LIABILITY TO DESIGN-BUILD ENTITY FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, EXCEPT TO THE LIMITED EXTENT THAT THESE CONTRACT DOCUMENTS OR APPLICABLE PUBLIC CONTRACTING STATUTES MAY SPECIFY THEIR RECOVERY.

13.14 Severability

- A. Any provisions or portions thereof of Contract Documents that are prohibited by, unlawful, or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be ineffective without affecting other provisions or portions thereof in the Contract Documents.

13.15 Ownership Of Results/Works For Hire

- A. The architectural and/or engineering analysis, Design Development Documents and Construction Documents, that are prepared pursuant to the Contract Documents are and shall remain the property of County. Design-Build Entity hereby does and shall cause all Subcontractors and others who prepared such design documents for the Project to transfer, convey, and assign to County all rights throughout the world in the nature of copyright and trademark in and to all versions of such design documents, including but not limited to the Contract Documents, but only to the extent such materials apply to County and/or to the Project. (County shall not have the copyright in an architect's or engineer's standard details, however, other than a license as necessary for this Project). County shall have the right to distribute, copy or to cause the distribution and copying of such Construction Documents to third parties as may reasonably be necessary in connection with the Project.
- B. Any and all artwork, copy, posters, billboards, photographs, video recordings, audio recordings, systems designs, software, reports, diagrams, surveys, source

codes or any original works of authorship created by Design-Build Entity or its Subcontractors or designers in connection with services performed under the Contract Documents shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of County. In the event that it is ever determined that any works created by Design-Build Entity or its Subcontractors or designers under this Contract are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to County. With the prior written approval of County, Design-Build Entity may retain and use copies of such works for reference and as documentation of its experience and capabilities.

13.16 Free Of Liens

- A. Design-Build Entity shall at all times keep the Site and all areas where Work is to be performed free and clear of all liens, claims and encumbrances arising by or through Design-Build Entity, including without limitation any lien arising by virtue of any labor or materials provided by any laborer, materialman, mechanic, employee, supplier or other ("Lien"). Should Design-Build Entity not either pay or cause to be released (pursuant to a mechanics lien release bond or otherwise) any Lien by any date within five (5) business Days after notice from County, County may, at its sole election, either pay the Lien in an amount determined by County in its sole discretion, or purchase a release bond for the Lien in the required statutory amount, in either case with funds obtained by setting off any amounts otherwise due or to become due Design-Build Entity, and reduce the Contract Sum by such amount. If funds are insufficient, Design-Build Entity shall promptly pay the deficiency to County.

End of Article

ARTICLE 14 - MODIFICATIONS OF CONTRACT DOCUMENTS

14.01 Alterations, Modifications and Force Account Work

- A. As provided in the latest edition of Title 24, California Code of Regulations, no modification or deviation from the Fresno County approved Drawings and Specifications will be permitted except by written addenda, written Change Order or written Supplemental Instruction. As appropriate, Change Orders are subject to approval by Fresno County.
- B. County may, without notice to the sureties, make alterations, deviations, additions to, or deletions from Contract Documents; increase or decrease the quantity of any item or portion of the Work; expand, contract, or otherwise change the Contract Time; delete any item or portion of the Work; and require extra Work. Design-Build Entity shall perform such Work under applicable provisions of the Contract Documents, unless specifically provided otherwise at the time the change is ordered. As appropriate, such Change Orders are subject to approval by Fresno County. Refer to Title 24, California Code of Regulations. In the case of any ordered extra Work, County reserves the right to furnish all or portions of associated labor, material, and equipment, which Design-Build Entity shall accept and use without payment for costs, markup, profit, or otherwise for such County-furnished labor, materials, and equipment.
- C. County may make changes to the Work during the course of construction to bring the Work into compliance with environmental requirements or standards established by state and federal statutes and regulations enacted after the Contract has been awarded. Design-Build Entity shall be compensated for changes affecting the Contract Time or Contract Sum of the Work as set forth in this Article 14 and in Section 01 2600 (Modification Procedures and Pricing of Changed Work).
- D. Changes affecting the Contract Time or Contract Sum of the Work shall be set forth in a written Change Order that shall specify:
 1. The Work performed in connection with the change to be made;
 2. The amount of the adjustment of the Contract Sum, if any, and the basis for compensation for the Work ordered; and
 3. The extent of the adjustment in the Contract Time, if any.
- E. A Change Order will become effective when signed by County and Design-Build Entity. If County exercises its right to decide disputed issues pertaining to changed Work as set forth in Articles 12 and 14 of this Document 00 7253, then the resulting Change Order shall be effective when signed by County, notwithstanding that Design-Build Entity has not signed it.
- F. Changes not affecting the Contract Time or Contract Sum of the Work, in County's discretion, may be set forth in a written RFC-Reply executed by County. Execution of such an RFC-Reply constitutes Design-Build Entity's agreement to make the specified change without change to the Contract Sum or the Contract Time.

- G. Changes or deviations from Contract Documents affecting the Contract Time or Contract Sum of the Work shall not be made without the authority of an effective Change Order or Construction Change Directive as provided in Section 01 2600 (Modification Procedures and Pricing of Changed Work), except in cases of emergency discussed in Article 16 of this Document 00 7253.
- H. If changes ordered in design, workmanship or materials are of such a nature as to increase or decrease the cost of any part of the Work, the price fixed in the Contract Documents shall be increased or decreased by the amount that Design-Build Entity and County may agree upon as a reasonable and proper allowance for the cost increase or decrease. If an agreement cannot be reached, then County will reach a determination, which shall be final, subject to Design-Build Entity's rights under Article 12 of this Document 00 7253. In all cases Design-Build Entity shall perform the changed Work as directed by County subject to Design-Build Entity's rights under Article 12 of this Document 00 7253.
- I. Design-Build Entity shall, upon County's request, permit inspection of the original unaltered Proposal estimate, subcontract agreements, purchase orders relating to the change, and documents substantiating all costs associated with its cost proposal or claims arising from changes in the Work.
- J. Changes in the Work made pursuant to this Article 14 and extensions of Contract Time necessary by reason thereof shall not in any way release the guaranties and warranties given by Design-Build Entity pursuant to provisions of the Contract Documents, nor shall such changes in the Work relieve or release the Sureties of bonds executed pursuant to said provisions. The Sureties, in executing such bonds, shall be deemed to have expressly agreed to any such change in the Work and to any extension of time made by reason thereof.
- K. Procedures for Modifications of Contract Documents and for calculating the cost of extra Work are given in Section 01 2600 (Modification Procedures and Pricing of Changed Work). Regarding delay and impact costs of any nature, Design-Build Entity may not seek delay compensation for on-Site or off-Site costs based on formulas, e.g., "Eichlay" or other formula. Rather, Design-Build Entity shall prove actual costs resulting from such delays. If Design-Build Entity requests compensation for delay to the construction, then Design-Build Entity shall prove and document actual costs plus markup per the cost categories and procedures in Section 01 2600 (Modification Procedures and Pricing of Changed Work) in order to request, claim or prove compensation for delay.
- L. Change Orders in excess of County's approved limit must be approved by County's Board and a performance bond rider covering the changed Work executed before proceeding with the changed Work. Design-Build Entity is charged with knowledge of County's approved Change Order limits and procedures in effect at the applicable time.

End of Article

ARTICLE 15 - TIME ALLOWANCES

15.01 Entitlement To Change Of Contract Time

- A. The Contract Time may only be changed by Change Order or by Contract Modification, and all time limits stated in the Contract Documents are of the essence of Contract Documents.
- B. The Contract Time will be adjusted in an amount equal to the time lost due to:
 - 1. Changes in the Work ordered by County; or
 - 2. Acts or neglect by County, Architect/Engineer, any County representative, utility owners or other contractors performing other work, in breach of their responsibilities established in the Contract Documents, provided that Design-Build Entity has fully and completely performed its responsibilities under the Contract Documents; or
 - 3. Fires, floods, epidemics, abnormal weather conditions beyond the parameters otherwise set forth in this subparagraph, earthquakes, civil or labor disturbances, strikes, or acts of God, provided damages resulting therefrom are not the result of Design-Build Entity's failure to protect the Work as required by Contract Documents.
- C. The Contract Time shall not be extended for any cause identified above, however, unless:
 - 1. Design-Build Entity actually has been prevented from completing any part of the Work within the Contract Time due to delay that is beyond Design-Build Entity's control and due to reasons for which Design-Build Entity is not responsible (delays attributable to and within the control of a Subcontractor, or its subcontractors, or supplier shall be deemed to be delays within the control of Design-Build Entity); or
 - 2. A claim for delay is made as provided herein; and
 - 3. Design-Build Entity submits a Time Impact Evaluation as required under Section 01 3230 (Progress Schedules and Reports) that demonstrates actual delay to critical Work activities that actually delay the progress of the Work in the amount of time requested.
- D. Where Design-Build Entity is prevented from completing any part of the Work within the Contract Time due to delay beyond the control of both County and Design-Build Entity (including, but not limited to, adverse weather of all types and acts of other contractors or utilities), an extension of Contract Time, in an amount equal to the time lost due to such delay (without compensation), shall be Design-Build Entity's sole and exclusive remedy for such delay.
- E. Delays due to abnormal or adverse weather conditions shall not exceed thirty-six (36) calendar Days per year. Adverse weather delays may be allowed only if the number of workdays of adverse weather exceeds these parameters on a monthly

basis, and Design-Build Entity proves that adverse weather actually caused delays to work that is on the critical path. Design-Build Entity shall give written notice of intent to claim an adverse weather day within one (1) Day of the adverse weather day occurring.

- F. In order to qualify as an adverse weather delay with respect to the foregoing parameters, daily rainfall must exceed 0.1 of an inch or more as measured by the National Oceanic & Atmospheric Administration weather station closest to the Project.
- G. Adverse weather delay for precipitation shall be recognized for the actual period of time Design-Build Entity proves it was delayed by precipitation exceeding the specified parameters. For example, and not by way of limitation, if precipitation exceeding the specified parameters does not in fact delay Design-Build Entity's progress on the critical path, then no time extension shall be recognized; and conversely, if Design-Build Entity proves to County's satisfaction that precipitation exceeding the specified parameters causes delay to Design-Build Entity for a period longer than the number of precipitation days incurred (e.g., if it rains or snows during grading work), then Design-Build Entity shall be entitled to a time extension equal to the actual period of such delay.
- H. Design-Build Entity shall include the foregoing precipitation parameters as a monthly activity in its progress schedule. As Work on the critical path is affected by precipitation, Design-Build Entity shall notify County and request that the days be moved to the affected activities. Any adverse weather days remaining shall be considered Project float.
- I. Design-Build Entity shall take reasonable steps to mitigate potential weather delays, such as dewatering the Site, and covering Work and material that could be affected adversely by weather. Failure to do so shall be cause for County to not grant a time extension due to adverse weather, where Design-Build Entity could have avoided or mitigated the potential delay by exercising reasonable care.

15.02 Notice Of Delay

- A. Within seven (7) Days of the beginning of any delay, Design-Build Entity shall notify County in writing, by submitting a notice of delay, of all anticipated delays resulting from the delay event in question. Within seven (7) additional Days, Design-Build Entity shall provide a written schedule document that demonstrates delay to the critical path using a Time Impact Evaluation as specified in Section 01 3230 (Progress Schedules and Reports). County will determine all claims and adjustments in the Contract Time. No claim for an adjustment in the Contract Time will be valid and such claim will be waived if not submitted in accordance with the requirements of this paragraph.

15.03 Time Extensions And/ Or Damages Entitlements For Delays

- A. Design-Build Entity may receive a time extension and be compensated for delays caused directly and solely by County.
- B. Design-Build Entity may receive a time extension without compensation for delays

resulting in whole or in part from causes beyond the reasonable control of Design-Build Entity and County, e.g. adverse weather conditions exceeding Contract Documents parameters, earthquakes, acts of God, and epidemics. In such cases, a time extension without compensation shall constitute Design-Build Entity's sole and exclusive remedy for such delays.

- C. Design-Build Entity shall not be entitled to any time-related damages or compensation including, but not limited to, extended field or home office overhead, field supervision, costs of capital, interest, escalation charges, acceleration costs or other impacts for any delays caused in whole or in part by Design-Build Entity's failure to perform its obligations under the Contract Documents, or during periods of delay concurrently caused by Design-Build Entity and either County or others.
- D. Design-Build Entity shall not be entitled to damages for delay to the Work caused by the following reasons:
 - 1. County's right to sequence the Work in a manner which would avoid disruption to County's tenants and their contractors or other prime contractors and their respective subcontractors, exercised as a result of Design-Build Entity's failure to perform its cooperation and coordination responsibilities required by Contract Documents; County's enforcement of any government act or regulation; or the provisions of the Contract Documents; or
 - 2. For changed Site conditions that are beyond the parties' contemplation, except that County may approve direct costs associated with unknown conditions (but not costs or damages which result from such delays); and
 - 3. Extensive requests for clarifications to Contract Documents or Contract Modifications thereto, provided such clarifications or Contract Modifications are processed by County or its consultants in a reasonable time commensurate with Contract Documents requirements.

15.04 Liquidated Damages

- A. Time is of the essence. Execution of Contract Documents by Design-Build Entity shall constitute acknowledgement by Design-Build Entity that Design-Build Entity understands, has ascertained, and agrees that County will actually sustain damages in the amount fixed in the Contract Documents for each and every Day during which completion of Work required is delayed beyond expiration of time fixed for completion or extensions of time allowed pursuant to provisions hereof. Design-Build Entity and County agree that specified measures of liquidated damages shall be presumed to be the damages actually sustained by County as defined below, and that because of the nature of the Project, it would be impracticable or extremely difficult to fix the actual damages.
- B. Liquidated damages shall be considered not as a penalty but as agreed monetary damage sustained by County for increased Project administration expenses, including extra inspection, construction management, and architectural and engineering expenses related to the Project and Contract Documents because Design-Build Entity failed to perform and complete Work within time fixed for

completion or extensions of time allowed pursuant to provisions hereof. Liquidated damages shall not be deemed to include within their scope additional damages or administrative costs arising from Defective Work, lost revenues, interest expenses, cost of completion of the Work, cost of substitute facilities, claims and fines of regulatory agencies, damages suffered by others or other forms of liability claimed against County as a result of delay (e.g., delay or delay related claims of other contractors, subcontractors or tenants), and defense costs thereof. Design-Build Entity shall be fully responsible for the actual amount of any such damages it causes, in addition to the liquidated damages otherwise due County.

- C. County in its sole discretion may deduct from any money due or to become due to Design-Build Entity subsequent to time for completion of entire Work and extensions of time allowed pursuant to provisions hereof, a sum representing then-accrued liquidated damages. Should Design-Build Entity fall behind the approved Progress Schedule, County may deduct liquidated damages based on its estimated period of late completion. County need not wait until Final Completion to withhold liquidated damages from Design-Build Entity's progress payments. Should money due or to become due to Design-Build Entity be insufficient to cover aggregate liquidated damages due, then Design-Build Entity forthwith shall pay the remainder of the assessed liquidated damages to County.

End of Article

ARTICLE 16 - WORKING CONDITIONS AND PREVAILING WAGES

16.01 Use of Site/Sanitary Rules

- A. All portions of the Work shall be maintained at all times in neat, clean and sanitary condition. Design-Build Entity shall furnish toilets for use of Design-Build Entity's and Subcontractors' employees on the Site where needed, and their use shall be strictly enforced. All toilets shall be properly secluded from public observation, and shall be located, constructed, and maintained subject to County's approval.
- B. Design-Build Entity shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Site and land areas identified in and permitted by Contract Documents and other land and areas permitted by applicable laws and regulations, rights of way, permits and easements or as designated by County, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Design-Build Entity shall assume full responsibility for any damage to any such land or area, any improvement located thereon, or to the County or occupant thereof resulting from the performance of Work.
- C. During the progress of the Work, Design-Build Entity shall keep the Site and the Project free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, Design-Build Entity shall remove all waste materials, rubbish, and debris from and about the Site as well as all tools, appliances, construction equipment and machinery and surplus materials. Design-Build Entity shall leave the premises clean and ready for occupancy by County at Substantial Completion of Work. Design-Build Entity shall restore to original condition all property not designated for alteration by Contract Documents.
- D. Design-Build Entity shall not load nor permit any part of any structure or pavement to be loaded in any manner that will endanger the structure or pavement, nor shall Design-Build Entity subject any part of Work or adjacent property to stresses or pressures that will endanger it. Design-Build Entity shall conduct all necessary existing conditions investigation regarding structural, mechanical, electrical or any other system existing, shall perform Work consistent with such existing conditions, and shall have full responsibility for insufficiencies or damage resulting from insufficiencies of existing systems, equipment, or structures to accommodate performing the Work.

16.02 Protection Of Work, Persons, Property And Operations

- A. Design-Build Entity shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with Work. Design-Build Entity shall comply with all safety requirements specified in any safety program established by County, or required by state, federal or local laws and ordinances. Design-Build Entity shall be responsible for all damage to Work, property or structures, all injuries to persons, and all damage and interruptions to County's operations, arising from the performance of Work of the Contract Documents. Except as otherwise expressly approved by County in writing, Design-Build Entity shall at all times perform all Work in a manner which does not interrupt, damage or otherwise adversely impact any facilities, operations, or real or personal

property of County, its officers, employees, agents, invitees, licensees, lessees or contractors.

- B. Design-Build Entity shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design-Build Entity shall notify the County of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Design-Build Entity shall remedy all damage, injury, loss or interruption to any property or operations referred to above, caused, directly or indirectly, in whole or in part, by Design-Build Entity, any Subcontractor, supplier, or any other person or organization directly or indirectly employed by any of them to perform or furnish any Work or anyone for whose acts any of them may be liable. Design-Build Entity's duties and responsibility for safety and for protection of Work shall continue until such time as all the Work is completed and Final Acceptance of the Work. County and its agents do not assume any responsibility for collecting any indemnity from any person or persons causing damage to Design-Build Entity's Work.
- D. Design-Build Entity shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- E. County may, at its option, retain such moneys due under the Contract Documents as County deems necessary until any and all suits or claims against Design-Build Entity for injury to persons, property or operations shall be settled and County receives satisfactory evidence to that effect.

16.03 Responsibility For Safety And Health

- A. Design-Build Entity shall ensure that its and each tier of Subcontractors' employees, agents and invitees comply with applicable health and safety laws while at the Site. These laws include the Occupational Safety and Health Act of 1970 and rules and regulations issued pursuant thereto, and County's safety regulations as amended from time to time. Design-Build Entity shall comply with all County directions regarding protective clothing and gear.
- B. Design-Build Entity shall be fully responsible for the safety of its and its Subcontractors' employees, agents, and invitees on the Site. Design-Build Entity shall notify County, in writing, of the existence of hazardous conditions, property or equipment at the Site that are not under Design-Build Entity's control. Design-Build Entity shall be responsible for taking all the necessary precautions against injury to persons or damage to the property of Design-Build Entity, Subcontractors, or persons from recognized hazards until the responsible party corrects the hazard. Design-Build Entity shall provide protective clothing and gear to all visitors to the Site.
- C. Design-Build Entity shall confine all persons acting on its or its Subcontractors'

behalf to that portion of the Site where Work under the Contract Documents is to be performed: County designated routes for ingress and egress thereto and any other County designated area. Except those routes for ingress and egress over which Design-Build Entity has no right of control, within such areas, Design-Build Entity shall provide safe means of access to all places at which persons may at any time have occasion to be present.

16.04 Emergencies

- A. In emergencies affecting the safety or protection of persons or Work or property at the Site or adjacent thereto, Design-Build Entity, without special instruction or authorization from County, is obligated to act to prevent threat and damage, injury, or loss, until directed otherwise by County. Design-Build Entity shall give County prompt written notice if Design-Build Entity believes that any significant changes in Work or variations from Contract Documents have been caused thereby. If County determines that a change in the Contract Documents is required because of the action taken by Design-Build Entity in response to such an emergency, a Change Order or Construction Change Directive will be issued to document the consequences of such action. Emergency contact names & phone numbers, where Design-Build Entity's Superintendent and Project Manager can be reached at any time, are to be provided to the County, within ten (10) Days after issuance of a Notice to Proceed for any construction.

16.05 Use Of Roadways And Walkways

- A. Design-Build Entity shall not unnecessarily interfere with use of any roadway, walkway, or other facility for vehicular or pedestrian traffic. Before beginning any interference and only with County's prior concurrence, Design-Build Entity may provide detour or temporary bridge for traffic to pass around or over the interference, which Design-Build Entity shall maintain in satisfactory condition as long as interference continues. Unless otherwise provided in the Contract Documents, Design-Build Entity shall bear the cost of these temporary facilities.

16.06 Nondiscrimination

- A. No person or entity shall discriminate in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sexual preference, or gender of such persons, except as provided in Section 12940 of the Government Code. Every Design-Build Entity for public works violating the provisions of Section 1735 of the Labor Code is subject to all the penalties imposed for a violation of Chapter 1, Part 7, Division 2 of the Labor Code.

16.07 Prevailing Wages

- A. Design-Build Entity shall pay to persons performing labor in and about Work provided for in the Contract Documents an amount equal to or more than the general prevailing rate of per diem wages for (a) work of a similar character in the locality in which the Work is performed and (b) legal holiday and overtime work in said locality. The per diem wages shall be an amount equal to or more than the stipulated rates contained in a schedule that has been ascertained and determined

by the Director of the State Department of Industrial Relations (DIR) and County to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this Contract.

- B. Design-Build Entity shall comply with Labor Code section 1775. In accordance with said Section 1775, the Design-Build Entity shall forfeit, as a penalty to the County, Fifty Dollars (\$50.00) for each laborer, workman, or mechanic employed in performing labor in and about the Work provided for in the Contract Documents for each Day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under the Contract Documents, by him or her or by any Subcontractor under him or her. 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 Design-Build Entity. The sums and amounts which shall be forfeited pursuant to this paragraph and the terms of the Labor Code shall be withheld and retained from payments due to Design-Build Entity under the Contract Documents, pursuant to this Document 00 7253 and the Labor Code, but no sum shall be so withheld, retained or forfeited except from the final payment without a full investigation by either the State DIR or by County. The Labor Commissioner pursuant to Labor Code section 1775 shall determine the final amount of forfeiture.
- C. Design-Build Entity shall insert in every subcontract or other arrangement which Design-Build Entity may make for performance of work or labor on Work provided for in the Contract, provision that Subcontractor shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed in the Labor Code. The Design-Build Entity shall pay all laborers, workers, and mechanics not less often than once weekly. The Design-Build Entity, to whom the Contract is awarded, shall post a copy of the determination of prevailing wages at the Site. The Design-Build Entity 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.
- D. Design-Build Entity stipulates that it shall comply with all applicable wage and hour laws, including without limitation Labor Code section 1813. Failure to so comply, including without limitation Labor Code section 1776, shall constitute a default under this Contract.
- E. Design-Build Entity and its Subcontractors shall be responsible for compliance with Labor Code section 1776.
1. Design-Build Entity and Subcontractors must keep or cause to be kept an accurate payroll 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 him or her in connection with the Work of the Contract documents. Each payroll record shall contain or be verified by a written declaration as required by Labor

Code section 1776.

2. The payroll records enumerated above must be certified and shall be available for inspection at all reasonable hours, at the principal office of Design-Build Entity, to the inspection of the County, to its officers and agents, and to the Division of Labor Law Enforcement of the State DIR, its deputies and agents, or as otherwise provided by applicable law (including but not limited to Labor Code 1776).
 - a. Design-Build Entity shall inform County of the location of records enumerated above, including the street address, city, and County, and shall, within five (5) working Days, provide a notice of a change of location and address.
 - b. Design-Build Entity or Subcontractor has ten (10) Days in which to comply subsequent to receipt of a written notice requesting the records enumerated above. In the event that Design-Build Entity or Subcontractor fails to comply with the ten (10) Day period, he or she shall, as a penalty to County on whose behalf the contract is made or awarded, forfeit Twenty-Five Dollars (\$25.00) for each calendar Day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. Design-Build Entity is not subject to a penalty assessment pursuant to this paragraph due to the failure of a Subcontractor to comply with this paragraph.
 3. Design-Build Entity shall deliver certified payrolls to the County with each Application for Payment as described in Section 00 2000 (Measurement and Payment). The Design-Build Entity shall also submit certified payroll records of the Design-Build Entity, Subcontractors, and all Sub-subcontractors of any tier to the Inspector of Record at least monthly.
- F. County has established a labor compliance program. This Project is subject to compliance monitoring and enforcement by the DIR, including the obligation to submit certified payroll records directly to the DIR Compliance Monitoring Unit (CMU) at least monthly using the CMU's eCPR system. Detailed information may be obtained on the State of California's Department of Industrial Relations website, www.dir.ca.gov/dlse/cmu/CMU.
1. Design-Build Entity will be fully responsible for reporting to and providing all documentation and other information required by the DIR, and for paying all resulting penalties, fines, and other amounts due on account of any prevailing wage or other labor, wage, or hour violation.
 2. Pursuant to Section 1770 of the Labor Code of the State of California, the Director of the DIR has determined the general prevailing rates of wages and rates for legal holidays and overtime in the locality in which this work is to be performed, which under Labor Code section 1773.1 are deemed to include employer payments for health and welfare, pension, vacation,

travel time and subsistence pay, and apprenticeship or other authorized training programs, for each craft or type of worker or mechanic needed to perform this contract. Said wage rates are available only at the Fresno County Department of Public Works and Planning, Design Division, and will be made available to any interested person upon request. Minimum wage rates for this Project, as predetermined by the Secretary of Labor, are set forth in the Special Provisions. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the Prevailing Wage Rates predetermined by the Director of the DIR of the State of California for similar classifications of labor, the contractor and his subcontractors shall pay not less than the higher wage rate.

3. In case it becomes necessary for the Design-Build Entity 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 Design-Build Entity shall immediately notify the County who shall promptly thereafter 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.

16.08 Environmental Controls

- A. Design-Build Entity shall comply with all rules, regulations, ordinances, and statutes that apply to any work performed under the Contract Documents including, without limitation, any toxic, water and soil pollution controls and air pollution controls specified in Government Code, section 11017 and as required by applicable Air Quality Management District, California Water Quality Control Board, and Best Management Practices. Design-Build Entity shall be responsible for ensuring that Design-Build Entity's employees, Subcontractors and the public are protected from exposure to airborne hazards or contaminated water, soil or other toxic materials used during or generated by activities on the Site or associated with the Project.

16.09 Shoring Safety Plan

- A. At least five (5) Days in advance of excavating any trench five (5) feet or more in depth, Design-Build Entity shall submit to County a detailed plan showing the shoring, bracing, and sloping design and other provisions to be made for worker protection from the hazard of caving ground during the excavation, as required by Labor Code section 6705. A civil or structural engineer registered in California shall prepare and sign any plan that varies from the shoring system standards established by the State Construction Safety Orders.
- B. During the course of the Work, Design-Build Entity shall be responsible for determining where sloping, shoring, and/or bracing is necessary and the adequacy of the design, installation, and maintenance of all shoring and bracing for all excavation, including any excavation less than five (5) feet in depth. Design-Build Entity will be solely responsible for any damage or injuries that may result from excavating or trenching. County's acceptance of any drawings showing the shoring or bracing design or work schedule shall not relieve Design-Build Entity of its

responsibilities under this paragraph.

- C. Fresno County must review and approve shoring of structures prior to commencement of shoring operations. Design-Build Entity shall submit shoring design sufficiently in advance of the Work as necessary to avoid delay.
- D. Cal/OSHA Permit. Design-Build Entity shall comply with Labor Code section 6500 and shall obtain, as applicable, a permit as required by Cal/OSHA for each of the following:
 - 1. Construction of trenches or excavations that are five (5) feet or more in depth and into which a person is required to descend.
 - 2. Construction or demolition of any building, structure, or scaffolding for falsework more than three (3) stories high, or the equivalent height (thirty-six (36) feet).
 - 3. Erection or dismantling of vertical shoring systems more than three (3) stories high, or the equivalent height (thirty-six (36) feet).
 - 4. The underground use of diesel engines in mines or tunnels.

End of Article

DOCUMENT 00 7316

SUPPLEMENTARY CONDITIONS – INSURANCE

1. Required Policies

Without limiting the County's right to obtain indemnification from the Design-Build Entity or any third parties, Design-Build Entity, at its sole expense, must maintain in full force and effect the following insurance policies throughout the term of this Agreement.

- A. **Commercial General Liability.** Commercial General Liability Insurance with limits not less than those shown in the following table herein. If a general aggregate limit applies, either the general aggregate limit must apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit must be three times the required occurrence limit.
- a. The policy must provide coverage at least as broad as the Insurance Services Office's (ISO) most recent CG 00 01 policy form. Coverage must include coverage for liabilities arising out of premises, operations, independent contractors, products/completed operations, personal and advertising injury, property damage, bodily injury, and liability assumed under an insured agreement. Such coverage must not contain a limitation or exclusion of prior work.
 - b. The Design-Build Entity must obtain an endorsement to this policy naming the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, as additional insureds, but only insofar as the operations under this Agreement are concerned. Said endorsement must be provided using one of the following three options: (i) on ISO form CG 20 10 11 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 11 85.
 - c. Coverage for products and completed operations, including the County's additional insured status, must be maintained for not less than five years after the project is completed and accepted by the County (Document 00 6530 (Agreement and Release of Any and All Claims)).
 - d. Such coverage for additional insureds will apply as primary insurance and any other insurance, or self-insurance, maintained by the County is excess only and not contributing with insurance provided under the Design-Build Entity's policy. Coverage must be as least as broad as ISO CG 20 01 04 13.

Commercial General Liability Insurance Requirements

Total bid	For each occurrence	Aggregate for products/completed operation	General aggregate	Umbrella or excess liability
≤ \$1,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$5,000,000
> \$1,000,000 ≤ \$10,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$10,000,000
> \$10,000,000 ≤ \$25,000,000	\$2,000,000	\$2,000,000	\$4,000,000	\$15,000,000
> \$25,000,000	\$2,000,000	\$2,000,000	\$4,000,000	\$25,000,000

Amounts under review; subject to change

- B. **Automobile Liability.** Automobile liability insurance with limits of not less than Five Million Dollars (\$5,000,000) per occurrence for bodily injury and for property damages.
 - a. The policy must provide coverage at least as broad as the Insurance Services Office’s most recent CA 00 01 policy form, including, but not limited to, automatic additional insured coverage for the County.
 - b. Coverage must include any auto used in connection with this Agreement.
 - c. Should the scope of this Agreement involve transportation of hazardous materials, evidence of an MCS-90 endorsement is required as applicable under 49 C.F.R. § 387.3.
- C. **Workers’ Compensation.** Workers’ Compensation insurance as required by the State of California, with Statutory Limits, and Employers’ Liability insurance with a limit of no less than One Million Dollars (\$1,000,000) per accident for bodily injury or disease.
- D. **Employer’s Liability.** Employer’s liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for disease.
- E. **Professional Liability.** Professional liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and an aggregate of Two Million Dollars (\$2,000,000). If this is a claims-made policy, then (i) the retroactive date must be prior to the date on which services began under this Agreement; (ii) the Design-Build Entity must maintain the policy and provide to the County annual evidence of insurance for not less than five years after completion of services under this Agreement; and (iii) if the policy is canceled or not renewed, and not replaced with another claims-made policy with a retroactive date prior to the date on which services begin under this Agreement, then the Design-Build Entity must purchase extended reporting coverage on its claims-made policy for a minimum of five years after completion of services under this Agreement.
- F. **Builder’s All Risk.** The Builder’s Risk (Course of Construction) policy must be an “All Risk” (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions. All subcontractors must be insured to the

extent of their portion of the work under the Design-Build Entity. The Design-Build Entity must request, and is responsible to confirm with its insurer, that the County of Fresno and all subcontractors are named, both as additional insured and as additional loss payees, on the Builder's Risk insurance policy. The Design-Build Entity and all subcontractors waive all rights, each against the others, for damages arising from perils covered by the insurance required under the terms of this article, except such rights as they may have to the proceeds of the Builder's Risk insurance obtained and maintained by the Design-Build Entity.

- G. Contractor's Pollution Liability. Contractor's Pollution Liability Insurance on an occurrence basis, with limits of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) policy term aggregate for bodily injury, property damage, cleanup costs, and claim expenses, arising at or emanating from the Project Site arising from all operations performed on behalf of the County of Fresno.

2. Additional Requirements

- A. **Subcontractors.** Design-Build Entity must include all subcontractors as insured under Design-Build Entity's insurance program (Contractor Controlled Insurance Program - "CCIP") within five days of executing a subcontract or must require and verify that all subcontractors used by Design-Build Entity to provide services under this Agreement maintain insurance insured as required herein to the extent of its portion of the work under the Design-Build Entity. Design-Build Entity must obtain County's prior review and approval of any subcontractors' request for modification of the required insurance. Design-Build Entity must provide proof of such upon request to County. In connection with the subcontractors' commercial general liability insurance policies, Design-Build Entity must also require its subcontractors provide endorsements (i) naming County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, as additional insureds and (ii) agreeing that the subcontractor's coverage must be primary and must not require contribution from County's. Design-Build Entity must require subcontractors provide an endorsement at least as broad as ISO policy form CG 20 38 for additional insureds.
- a. Disclosure of CCIP Pricing. Design-Build Entity must separately identify its projected costs to provide the CCIP Coverages as provided in Document 00 4200 (Proposal Form), as part of the RFP response. If requested, Design-Build Entity must also disclose to County all credits, offsets, or cost reductions obtained from any eligible Subcontractor to recoup or defray the cost of the CCIP Coverages.
 - b. Audits. County must have the right to audit the records of Design-Build Entity, General Contractor (if different from Design-Build Entity) or any Subcontractor, including but not limited to payroll records, project accounting records, insurance coverages, and insurance cost information related to the implementation of the CCIP.
 - c. Design-Build Entity must acknowledge, and require subcontractors to acknowledge, in writing: that County is not an agent, partner or guarantor of the insurance companies providing coverage under the CCIP (each such insurer, an "CCIP Insurer"); that County is not responsible for any claims or disputes between or among Design-Build Entity, or any subcontractor, and any CCIP Insurer(s); and that County does not guarantee the solvency or the availability of

limits of any CCIP Insurer(s).

- B. **Contractual Liability.** All insurance required herein must include contractual liability.
- C. **Self-Insured Retentions/Deductibles.** Self-insured retentions “SIRs” and deductibles which apply to Design-Build Entity’s insurance must be declared to the County on a certificate of insurance. The County retains the right to require Design-Build Entity to (ii) provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention, (ii) reduce or eliminate such deductibles or self-insured retentions as they apply to the County, or, (iii) require Design-Build Entity to provide a bond (or other acceptable financial instrument) guaranteeing payment of all deductibles and SIRs, including all related claims investigation, administration, and defense expenses. Such bond must be executed by a corporate surety licensed to transact business in the State of California. The policy language must provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County. Any and all deductibles and SIRs must be the sole responsibility of Design-Build Entity or subcontractor who procured such insurance and must not apply to the additional insured parties. County may deduct from any amounts otherwise due Design-Build Entity to fund the SIR/deductible. Policies must not contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the County. The policy must also provide that defense costs, including the allocated loss adjustment expenses, will satisfy the SIR or deductible.
- D. **Primary Clause.** Design-Build Entity’s insurance policies, with respect to any claims related to this Agreement, must be primary with respect to all other sources of coverage available to Design-Build Entity and/or County. Any County maintained insurance or self-insurance coverage must be in excess of and not contribute to any Design-Build Entity coverage.
- E. **Excess/Umbrella Liability Insurance.** Excess/Umbrella policies must be “following form” of the underlying policy coverage, terms, conditions, and provisions and must meet all of the insurance requirements stated in this Agreement, including, but not limited to, the additional insured, contractual liability & “insured contract” definition for indemnity, occurrence, no limitation of prior work coverage, indemnity and defense, Self-Insured Retentions (SIRs), and primary & non-contributory insurance requirements stated therein.
- F. **Endorsements.** Endorsements must be supplied under form acceptable to the County.
- G. **Waivers of Subrogation.** To the fullest extent permitted by law, Design-Build Entity waives its rights and its insurer(s)’ right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under any of Design-Build Entity’s insurance policies required by this Agreement, including, but not limited to the Commercial General Liability and Workers’ Compensation policies. Design-Build Entity is solely responsible to obtain any policy endorsement that may be necessary to accomplish that waiver, but Design-Build Entity’s waiver of subrogation under this paragraph is effective whether or not Design-Build Entity obtains such an endorsement. To the greatest extent permitted by law, Design-Build Entity must require written express waivers and insurance clauses from all subcontractors.
- H. **Acceptability of Insurers.** All insurance policies required under this Agreement must be issued by admitted insurers licensed to do business in the State of California and

possessing at all times during the term of this Agreement an AM Best, Inc. rating of no less than A-: VII.

- I. **Notice of Cancellation or Change.** For each insurance policy required under this Agreement, the Design-Build Entity must provide to the County or ensure that the policy requires the insurer to provide to the County, written notice of any cancellation or change in the policy as required in this paragraph. For cancellation of the policy for nonpayment of premium, the Design-Build Entity must, or must cause the insurer to, provide written notice to the County not less than ten (10) days in advance of cancellation. For cancellation of the policy for any other reason, and for any other change to the policy, the Design-Build Entity must, or must cause the insurer to, provide written notice to the County not less than thirty (30) days in advance of cancellation or change. The County in its sole discretion may determine that the failure of the Design-Build Entity or its insurer to timely provide a written notice required by this paragraph is a breach of this Agreement.
- J. **County's Entitlement to Greater Coverage.** If the Design-Build Entity has or obtains insurance with broader coverage, higher limits, or both, than what is required under this Agreement, then the County requires and is entitled to the broader coverage, higher limits, or both. To that end, the Design-Build Entity must deliver, or cause its broker or producer to deliver, to the County's Risk Manager certificates of insurance and endorsements for all of the coverages that have such broader coverage, higher limits, or both, as required under this Agreement.
- K. **County's Remedy for Design-Build Entity's Failure to Maintain.** If the Design-Build Entity fails to keep in effect at all times any insurance coverage required under this Agreement, the County may, in addition to any other remedies it may have, suspend or terminate this Agreement upon the occurrence of that failure, or purchase such insurance coverage, and charge the cost of that coverage to the Design-Build Entity. The County may offset such charges against any amounts owed by the County to the Design-Build Entity under this Agreement.
- L. **Compensation for County Costs.** In the event that Design-Build Entity fails to comply with any of the indemnification or insurance requirements of this Agreement, and such failure to comply results in any costs to County, Design-Build Entity will pay full compensation for all costs incurred by County.
- M. **Inadequate Insurance.** Inadequate or lack of insurance must not negate Design-Build Entity's obligations under this Agreement.
- N. **Incident Reporting.** Design-Build Entity must report to County any injury or property damage accident or incident, including any injury to a Design-Build Entity employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Design-Build Entity within seventy-two (72) hours. Design-Build Entity also must notify County of any third-party claim or suit filed against Design-Build Entity or any of its subcontractors which arises from or relates to this Agreement and could result in the filing of a claim or lawsuit against Design-Build Entity and/or County within seventy-two (72) hours.
- O. **Separation of Insureds.** All liability policies must provide cross-liability coverage as would be afforded by the standard ISO CG 00 01 separation of insureds provision with no insured versus insured exclusions or limitations.

P. **County Review and Approval of Insurance Requirements.** The County reserves the right to review and adjust the Insurance Requirements provisions, conditioned upon County's determination of changes in risk exposures.

3. **Verification of Coverage.** Within eight (8) days after the Design-Build Entity signs this Agreement, thirty (30) calendar days prior to Design-Build Entity's policy expiration dates, and as requested by County, Design-Build Entity must mail and email DesignServices@fresnocountyca.gov, or cause its broker or producer to mail and email, the person identified to receive notices under this Agreement, or their designee, certificates of insurance and related documentation for all of the coverages required under this Agreement. Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-compliant insurance certificate or endorsement, or any other insurance documentation or information provided by Design-Build Entity, its insurance broker(s) and/or insurer(s), must be construed as a waiver of any of the required insurance provisions.

- A. The insured party named on the certificate must match the name of Design-Build Entity identified as the contracting party in this Agreement.
- B. Claims-made policies must state the retroactive date of the policy, which must be prior to the date on which services began under this Agreement.
- C. Certificates must provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, and its financial rating.

END OF DOCUMENT