

# **APPENDIX**

- w. The term "Substantial Completion" means when the Work is sufficiently completed in accordance with the Contract so that the applicable governmental authority can and does issue a permanent Certificate of Occupancy (if applicable), and the County may occupy and/or fully use the Work for its intended use, as evidenced by a certificate to such effect from the Architect.
- x. The term "Warranty Bond" shall have the meaning set forth in the Agreement.
- y. The term "Work" shall have the meaning set forth in the Agreement.

**2. Contract Documents:**

The Contract Documents shall not be construed to create a contractual relationship of any kind between (i) the Architect and Contractor, (ii) the County and a Subcontractor or Sub-subcontractor, or (iii) any persons or entities other than the County and the Contractor.

**3. Architect:**

- a. The Architect will provide for the administration of the Contract as described in the Contract. The Architect will have authority to act on behalf of the County only to the extent provided in the Contract, unless otherwise modified by written instrument signed by the County. The Architect has authority to stop the Work whenever such stoppage may be necessary to insure the proper administration of the Contract and compliance with the Contract.
- b. In the event that no Architect is retained by the County for the Work, the County shall perform the functions of the Architect under this and every other section of the Contract.

**4. Construction Manager:**

- a. General:
  - (1) Owner has employed the services of Massaro Corporation to serve as the Owner's project representative. In case of termination of employment of Massaro Corporation, Owner may, at its sole discretion, employ a substitute project representative whose status under the contract document shall be that of the former project representative. The project documents shall not be construed to create a contractual relationship of any kind between Owner's project representative and contractor, or between the Architect and Owner's project representative. Owner's project representative,

however, shall be entitled to performance of the obligations of the contractor intended for its benefit and to enforcement thereof. Nothing in the contract documents shall create any contractual relationship between Owner's project representative and any subcontractor or sub-subcontractors and Owner's project representative shall not communicate with subcontractors or sub-subcontractors unless authorized by the Contractor. Owner's employment of a project representative shall not relieve Contractor or Architect of their responsibilities under the contract documents.

b. Limitations of County:

(1) The project representative shall NOT:

- (a) Authorize deviations from the contract documents.
- (b) Approve substitute materials or equipment except as authorized in writing by Architect.  
superintendent or of subcontractors.
- (d) Issue directions concerning aspects of construction means, methods, techniques, sequences, or procedures, or safety precautions and programs in connection with the work.
- (e) Authorize that the Owner occupy the project in whole or in part.
- (f) Issue a certificate for payment or certificate of substantial completion.
- (g) Prepare or certify to the preparation of record drawings.
- (h) Order the contractor to stop the work or any portion thereof.

5. Inspector:

- a. An Inspector may be put upon the Work by the County. The Inspector's duty will be to observe whether the Work is being performed according to the Plans and Specifications, and such other duties as the County may assign.
- b. The Inspector, the County and any of its other representatives, shall at all times have access to and the right to inspect the work site and the Work. If the Inspector, County or any other representative of the County

above or persistently fails to carry out the Work in accordance with the Contract, the County, by written order signed by the County, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The Contractor may not claim any damages for injury caused by delay due to a stoppage of the Work in accordance with Section 23.

**24. County's Right to Carry Out Work:**

If the Contractor defaults and neglects to carry out the Work in accordance with the Contract and fails within a three (3) day period after receipt of written notice from the County to commence and continue correction of such default or neglect with diligence and promptness, the County may after such three (3) day period give the Contractor a second written notice to correct such deficiencies within a second three (3) day period. If the Contractor fails to commence and continue to correct any deficiencies within such second three (3) day period, the County may, without prejudice to other remedies the County may have, correct such deficiencies. In such case the County shall deduct from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including,

payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the County within thirty (30) days of notice from the County that such amounts are due and owing.

**25. Other Contracts:**

The County reserves the right to let other contracts in connection with the Work. The Contractor shall cooperate with the other contractors with regard to storage of materials and execution of their work, and shall properly connect and coordinate its work with theirs. If any part of the Work is dependent upon or is affected by the work of any other contractor, the Contractor shall inspect such work and promptly report to the Architect any defects in the other contractor's work, including, without limitation, any discrepancy between the executed work and the Plans or Specifications. Failure to so inspect and report defects shall constitute acceptance of the other contractor's work as satisfactory and proper for the reception of the Work, except as to defects which may develop in the other contractor's work after the execution of the applicable portion of the Work.

**26. Work Performed by the County or Other Parties:**

Wherever work being done by the County or its agents or by other contractors is contiguous to the Work, the respective rights of the various interests involved shall be established by the Architect. The goal of the Architect shall be to secure the completion of the various portions of the Work in general harmony.

**27. Delays and Extension of Time:**

If the Contractor is delayed in the performance and completion of the Work by an act or neglect of the County, Architect, or Construction Manager or an employee of either, or by fire, flood, or other causes beyond the control of the Contractor, or by other causes which the Architect determines may justify delay, the deadline for the completion of the Work set forth in the Agreement may be extended by the County for a period equivalent to the actual number of calendar days lost by reason of any or all causes aforementioned if the request for extension is presented in writing to the County within seven (7) calendar days after the commencement of the cause of the delay. The length of time of the extension shall be determined and fixed by the County. The Contractor may not claim any damages for injury caused by a delay caused by an event described in Section 27.

**28. Concealed or Unknown Conditions:**

If subsurface or other latent physical conditions are encountered at the Work site which: (i) differ materially from the conditions expressly represented in the Contract; or (ii) if no express representation is made in the Contract, differ in such an extreme and unusual nature from what reasonably could have been anticipated, then notice by the Contractor shall be given to the Construction Manager and Architect promptly before conditions are disturbed and in no event later than fourteen (14) days after first observance of the conditions. The Architect will promptly investigate such conditions to determine whether they differ materially from those conditions that were expressly represented in the Contract or which reasonably could have been anticipated, and shall notify the Contractor and the County of his/her determination. If the Architect determines that the conditions at the Work site are not materially different, the Architect shall so notify the County and the Contractor in writing, stating his/her reasons. If the Architect determines that the conditions at the Work site are materially different and the County disagrees, the County shall promptly notify the Contractor and Architect and the County, Contractor and Architect shall attempt to reach a mutually agreeable determination. The County shall not be obligated to modify the Contract unless the parties reach such determination. If the Architect determines and the County agrees that the conditions at the site are materially different and will materially affect the cost of performing the Work, the Contractor shall be entitled to a Change Order equitably adjusting the Contract Price or Contract Time, or both. In any request for a Change Order or other claim for an equitable adjustment in the Contract Price as a result of differing Work site conditions, the Contractor shall be required to document and substantiate the request or claim by producing the relevant portions of its bid sheets or estimates to show the amount he/she reasonably expected to pay for the Work based upon the conditions that were expressly represented in the Contract or which reasonably could have been anticipated.

**29. Change Orders:**

**29.1 Restrictions on Ability to Undertake Change:** Changes to the Work may be undertaken by the Contractor only upon receipt of a Change Order issued and executed by the County in accordance with Section 29. Notwithstanding the foregoing, in an Emergency, the Contractor, without obtaining a signed Change Order, may undertake only such changes to the Work as are necessary to alleviate the Emergency, after which time the Contractor shall immediately seek a Change Order pursuant to the procedures outlined in Section 29.2(e) prior to undertaking any further changes to the Work. The parties understand and agree that the unit prices set forth in the Contract Documents shall be employed in determining whether to approve a Proposed Change Order.

**29.2 Procedure to be Followed when Change to the Work is Required:** The County, the Architect, the Construction Manager and the Contractor shall follow the following procedures whenever a change to the Work is required.

- a. **Notice of Change Required:** Whenever any party determines that a change to the Work is required, that party shall immediately notify the Construction Manager in writing of the need for the change, describing in reasonable detail the responsibility of the Construction Manager to notify the other parties of its receipt of any such notice.
- b. **Preparation of Design and Proposed Change Order:** Within a Reasonable Time after the Construction Manager receives the notice of change required, the Architect and Construction Manager shall evaluate the situation, prepare any needed designs for the requested change, and request that the Contractor prepare a Proposed Change Order which includes the Contractor's estimate of any additional costs, time required to complete the requested change and/or any extension of the Contract Time, or any credit to the County, based upon the design provided by the Architect. Additional costs in the Contractor's Proposed Change Order must be limited to direct costs of any additional labor, materials, tools and equipment necessary to perform the change, plus a maximum amount of ten percent (10%) of the aforesaid additional costs to cover all other expenses to the Contractor, including without limitation insurance, bonding costs, supervision, Overhead, profit and taxes. If a Subcontractor or Sub-subcontractor will perform any of the Work included in the Change Order, the Subcontractor's and Sub-subcontractor's additional costs, including without limitation insurance, bonding costs, Overhead, profit and taxes, shall be limited to five percent (5%) of the cost of the Work to be performed by that Subcontractor or Sub-subcontractor.
- c. **Submission of Proposed Change Order:** The Contractor shall sign and submit to the Construction Manager the Proposed Change Order within a

Reasonable Time following delivery of the design described in Section 29.2(b).

- d. Review of Cost Estimate and Preparation of Change Order: If, in the Architect's or Construction Manager's opinion, the amount of any additional costs and/or time requested by the Contractor in the Proposed Change Order is excessive or otherwise unreasonable, the Architect or Construction Manager shall have the right to request that the Contractor revise the Proposed Change Order before it is submitted to the County for approval.
- e. Process for Approval or Disapproval of Change Orders by the County: The following procedures shall be followed without exception whenever the approval of the County is required for a Change Order:
  - (1) All Other Changes: The approval or disapproval of the Board of Commissioners shall be required for all Change Orders reflecting a change to the original Contract price.
  - (2) Execution of Change Order: In the event the County approves a Change Order in accordance with this Section 29.2(e), the Board of Commissioners shall execute and deliver the Change Order. The Contractor and Architect by their execution hereof are hereby notified of the procedures contained in this Section 29.2(e) and understand that no Change Order shall be binding upon the County unless approval is obtained as required herein.
- f. Time in which County Must Act Upon Change Order Requests: The County shall either approve or disapprove a Proposed Change Order within seven (7) days after submission to the County by the Architect.
- g. Procedures to be Followed in the Event of Disapproval of a Change Order as Submitted by the Contractor: In the event the County disapproves a Proposed Change Order prepared by the Contractor, the County shall have the right to select one of the following procedures:
  - (1) The County, with the assistance of the Architect and the Construction Manager, shall prepare, execute and issue its own Change Order stating the amount of additional costs and/or time required to complete the requested Change, and the Contractor shall proceed promptly to undertake the change to the Work described therein. All changes in the Work pursuant to Change Orders issued by the County shall be performed under applicable provisions of the Contract Documents and shall not invalidate the Contract. The Contractor shall be deemed to accept the additional costs and/or time set forth in the Change Order issued by the

County unless the Contractor notifies the County in writing within seven (7) days of its receipt of the Change Order that the Work is being performed under protest. Contractor's protest shall not excuse Contractor from promptly undertaking the change to the Work described in such Change Order.

- (2) If the Change Order increases the Contract Price more than 20% or constitutes a substantial change in the Work ("Substantial Change Order"), the County shall have the right, if not the duty under the County's enabling statute, to terminate the Contract. The Contractor recognizes that the County, under state law, may be obligated to terminate and re-bid this Contract upon the occurrence of a Substantial Change Order. Contractor agrees not to hold the County responsible for any losses or damages that it may incur due to a termination under this provision.

**29.3 Unit Prices [ If Applicable ]:** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a Proposed Change Order that application of such unit prices to

**30. Payment:**

**30.1 Schedule of Values:** Upon notification of award, the Contractor must submit to the Construction Manager a schedule of values, or multiple schedules if deemed necessary by the Construction Manager, on AIA Form G703 allocated to various portions of the Work, giving a complete breakdown of the price of the various items of the Work (the sum of which shall equal the total Contract Price) and otherwise prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager may require. The Construction Manager will notify the Contractor in advance if multiple schedule of values are necessary and will specify the various portions of the Work that must be addressed in each schedule of value. These schedules, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

**30.2 Application for Payment:**

- a. The Contractor shall submit to the Construction Manager and the Architect once each calendar month, four (4) notarized copies of an Application for Payment (AIA For G702/Cma) in accordance with the schedule of values for (i) operations completed as of the last day of the previous calendar month; and (ii) payments made on account of materials delivered and suitably stored and insured at the site for subsequent incorporation in the Work, provided such storage was approved in