

TERMINATION FOR DEFAULT

1. The County may, by written notice to the Contractor, terminate the whole or any part of this Contract, if, in the judgment of County's Project Director:
 - Contractor has materially breached this Contract;
 - Contractor fails to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required either under this Contract; or
 - Contractor fails to demonstrate a high probability of timely fulfillment of performance requirements under this Contract, or of any obligations of this Contract and in either case, fails to demonstrate convincing progress toward a cure within five (5) working days (or such longer period as the County may authorize in writing) after receipt of written notice from the County specifying such failure.
2. In the event that the County terminates this Contract in whole or in part as provided in Sub-paragraph 1, the County may procure, upon such terms and in such manner as the County may deem appropriate, goods and services similar to those so terminated. The Contractor shall be liable to the County for any and all excess costs incurred by the County, as determined by the County, for such similar goods and services. The Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this sub-paragraph.
3. Except with respect to defaults of any subcontractor, the Contractor shall not be liable for any such excess costs of the type identified in Sub-paragraph 2 if its failure to perform this Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not limited to: acts of God or of the public enemy, acts of the County in either its sovereign or contractual capacity, acts of Federal or State governments in their sovereign capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any such excess costs for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule. As used in this Sub-paragraph 3, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.
4. If, after the County has given notice of termination under the provisions of this Paragraph, it is determined by the County that the Contractor was not in default under the provisions of this Paragraph, or that the default was excusable under the provisions of Sub-paragraph 3, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience Paragraph.
5. In the event the County terminates this Contract in its entirety due to the Contractor's default as provided in Sub-paragraph 1, the Contractor and the County agree that the County will have actual damages, which are extremely difficult to calculate and impracticable to fix and which will include, but are not limited to, the County's costs of procurement of replacement services and costs incurred due to delays in procuring such services. Therefore, the Contractor and

the County agree that the County shall, at its sole option and in lieu of the provisions of Sub-paragraph 2, be entitled to liquidated damages from the Contractor, pursuant to California Civil Code Section 1671, in the amount of Five Thousand Dollars (\$5,000) or five percent (5%) of the applicable year's Contract sum, whichever is less, as equitable compensation to the County for such actual damages. This amount of liquidated damages shall be either paid by the Contractor to the County by cash payment upon demand or, at the sole discretion of the (Department), or designee, deducted from any amounts due to the Contractor by the County, whether under this Contract or otherwise.

These liquidated damages shall be in addition to any credits, which the County is otherwise entitled to under this Contract, and the Contractor's payment of these liquidated damages shall not in any way change, or affect the provisions of the Indemnification Paragraph.

6. The rights and remedies of the County provided in this Paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.