

October 17, 2019
Addendum #11 TO RFP Y19-815-JS
ORANGE COUNTY, FLORIDA
CONSTRUCTION MANAGER AT RISK SERVICES FOR
THE ORANGE COUNTY CONVENTION CENTER
PHASE V MULTI-PURPOSE VENUE AND GRAND CONCOURSE IMPROVEMENTS

This addendum is intended to be incorporated into the bid documents of the project referenced above. The following items are clarifications, corrections, additions, deletions and/or revisions to and shall take precedence over the original documents. Underlining indicates additions, deletions are indicated by ~~strikethrough~~.

- A. The RFP due date is changed from ~~October 17, 2019~~ to **November 19, 2019 at 2:00p.m.**
- B. The RFI deadline has been extended to October 25, 2019 at 5:00p.m.
- C. The attached Restated RFP Document and Revised Addendum Summary incorporates the changes noted in all previous addendums, addresses outstanding concerns and includes additional changes.
Also attached are all of the revised RFP Forms, the Draft Contract and the Contract Exhibits.

D. ATTACHMENTS:

- 1. REVISED ADDENDUM SUMMARY**
- 2. RESTATED RFP DOCUMENT**
- 3. RFP FORMS**
 - Form A:** Request for Proposals
 - Form B:** Project Team
 - Form C:** Location
 - Form D:** Senior Project Manager Similar Projects
 - Form E:** Project Manager Similar Projects
 - Form F:** Skills and Experience of the Project Team
 - Form G:** --NOT BEING USED--
 - Form H:** Project Scope, Approach, and Understanding
 - Form I:** Conflict and Litigation Statements
 - Form J:** Equal Employment Workforce Schedule
 - Form K:** --NOT BEING USED--
 - Form L:** Drug-Free Workplace
 - Form M:** --NOT BEING USED--
 - Form N:** Orange County Specific Project Expenditure Report
 - Form O:** Relationship Disclosure
 - Form P:** E-Verification Certification
 - Form WR:** Dislocated Workers

4. ATTACHMENT I: DRAFT CONTRACT

5. CONTRACT EXHIBITS

Exhibit A: Scope of Services

Exhibit B: Payment/Performance Bond Forms

Exhibit C: Insurance Documents

Exhibit D: Segment Completion Schedule

Exhibit E: Draft GMP Proposal

Exhibit F: Owner Direct Purchase Provision

Exhibit G: Final Release of Lien Form; and

Exhibit H: Stored Materials Forms.

- E. The Proposer shall acknowledge receipt of this addendum by completing the applicable section in the solicitation or by completion of the acknowledgement information on the addendum. Either form of acknowledgement must be completed and returned not later than the date and time for receipt of the proposal.

Receipt acknowledged by:

Authorized Signature

Date Signed

Title

Name of Firm

RFP Y19-815-JS

ADDENDUM NO. 11

ATTACHMENT 1: REVISED ADDENDUM SUMMARY

October 17, 2019
BOARD OF COUNTY COMMISSIONERS
ORANGE COUNTY, FLORIDA
RFP Y19-815-JS/REVISED ADDENDUM SUMMARY
CONSTRUCTION MANAGER AT RISK SERVICES FOR THE ORANGE COUNTY CONVENTION
CENTER PHASE V MULTI-PURPOSE VENUE AND GRAND CONCOURSE IMPROVEMENTS

Addendum #1 (Originally Issued: May 13, 2019)
Revised Questions/Responses

Add 1, Q1

This project includes a parking garage (or expansion of an existing garage) and I would like to confirm the following information:

- 1) –is design of the garage underway now?
- 2) –who is the design consultant designing the garage?
- 3) –does the current bid include construction of the garage?
- 4) –If not, when do you expect to advertise construction bids for the garage?

Revised Response 1: The project does not include the construction of a new garage, or the expansion of an existing garage.

Add 1, Q2

The RFP references a “Weighted Criteria” that totals to “100”. In that same section, it says “Proposers achieving a minimum of 400 points shall be qualified to advance to Phase II”.

In other sections we see the ability to obtain up to 5 points for exceeding all three goals for MWBE at the JV level, MWBE at the subcontractor level, and the Minority/Workforce requirements.

We also see the ability to obtain up to 5 bonus points for a commitment to hiring dislocated workers in Orange County.

We also see the ability to earn 5 points if we have a service-disabled veteran on the prime contractor team, and an ability to earn up to an additional 10 points (2 per subcontractor) for hiring service-disabled veteran firms prior to submission of the response.

We also interpret that we can earn up to 4 points for the Senior PM position, and put to another 4 points for the PM position, providing certain requirements are met.

So all in all, we are able to account for up to 32 points (mix of base points and bonus points).

Could you please clarify the total number of available base points

and bonus points, and how they are achieved? Is the “100” referenced in the “Weighted Criteria” points or a percentage?

In the description of points above totaling “up to 32 points”, have we interpreted each element correctly?

Revised Response 2: Raw score can be up to 32 points. Applying the raw score to the weighted criteria can achieve up to 500 points. The SDV and Dislocated Workers are bonus points. Scoring is calculated using Weighted Criteria. Below are some examples for reference:

If Similar Projects Completed by the Proposed Senior Project Manager (Form D) scores 1 point for each of the four (4) similar projects, then 4×15 (Weighted Criteria) = 60 Similar Projects Completed by the Proposed Senior Project Manager points.

If a Proposer scores 5 M/WBE points, then 5×20 (Weighted Criteria) = 100 M/WBE Participation points.

Bonus points are added to the Score after all the Weighted Criteria scoring is completed. If you scored 390 points overall and you included 4 Dislocated Workers ($4 \times 1 = 4$ points) and 3 Service Disabled Veterans ($3 \times 2 = 6$ points) your new score would be 400 points.

See RFP Scoring References:

- **Section 4, B, 3 (“M/WBE Goal Scoring”)**
- **Section 5, D (“SDV Bonus Point Scoring”)**
- **Section 6 (“Bonus Points for Hiring of Dislocated Workers”)**
- **Section 8, B (“Phase I: Qualification”)**
- **Section 9 (“Qualification Evaluation”)**

Add 1, Q3

We understand that the definition of “Dislocated Workers” is “unemployed workers registered with Career Source Central Florida.” Would you please confirm?

Response 3: Yes, this is correct.

Add 1, Q4

Please confirm the statement made during the May 1, 2019 Pre-Proposal Conference “the MWBE credit program outlined in the RFP does not apply to this project”?

Revised Response 4: There is no MWBE credit program for this RFP.

Add 1, Q5

On Form J, please confirm it is your intent that the information provided is the CM's **plan** to achieve the workforce goals as stated in the May 1, 2019 Pre-Proposal Conference?

Revised Response 5: Form J is not for a plan to achieve the workforce goals. Form J should reflect the current workforce of each entity that is a part of the Proposer. Please see the revised Form J with instructions attached to the Restated RFP for more information.

**Addendum #2 (Originally Issued: May 15, 2019)
Revised Questions/Responses**

Add 2, Q1

I represent a company that is a sub consultant for the OCCC insurance RFP that is currently in procurement. If their prime is selected are they then precluded from proposing entirely different services (no scope overlap) on the CMR RFP?

Revised Response 1: If a subconsultant or subcontractor is currently working on a contract related to Orange County Convention Center Phase V Multi-Purpose Venue and Grand Concourse Improvements in any capacity, they are not eligible to participate in this RFP. See the revised language in the Restated RFP, Section 10B ("Award Restrictions").

Add 2, Q2

Form B (Project team) asks us to list Architecture, Mechanical, Electrical, Structural, Civil, Landscape engineering personnel- Since we are the CM@R and not providing design services are these required?

Response 2: Proposers can disregard the discipline-specific subcontractor roles outlined on Form B. Proposers shall still identify other key members both at the prime and subcontractor level in the areas provided on Form B, and identify each role within the respective parenthesis.

Add 2, Q3

Form C (Location) asks us to provide subcontractor names, locations and work % - At this stage we do not know which subcontractors will be awarded work since the bid process does not occur until much later. How should we address this?

Revised Response 3: Please see revised Form C attached to the Restated RFP. Proposers are asked to provide all subcontractor information known and available at the time of Proposal Submittal.

Add 2, Q4

Form I (Conflict of Interest) states we need to provide 20 years of

past Litigation. Our corporate records only go back for a period of 10 years. Will Orange County reduce their requirement to accept only the past 10 years?

Response 4: If submitting past litigation of less than twenty (20) years, the Proposer shall submit a notarized statement affirming why it is unable to comply with this requirement. The Procurement Division at their sole discretion shall determine if the documentation submitted sets forth and acceptable reason for non-compliance with this requirement.

Add 2, Q5

Would other similar projects built in campus environments meet the criteria of “University Campus”?

Revised Response 5: Yes, a multipurpose complex that belongs to a given academic or non-academic institution that includes meeting spaces, libraries, lecture halls, theaters, food service facilities and/or dining halls will count provided that it meets all other “Similar Project” requirements.

Add 2, Q6

Would you consider extending the time we have to ask questions? We may have additional questions after reading the responses.

Revised Response 6: This question was asked as part of Addendum 2 and the extension of time to ask questions until May 20, 2019 was granted.

Add 2, Q7

The term construction manager at risk has different definitions in different jurisdictions across the country. Generally, the delivery method includes these processes:

- A. Preconstruction services where the construction manager works with the owner and the designer to develop a design within the budget, provide constructability reviews, material availability reviews, phasing alternatives, and a master design, procurement, and construction schedule,
- B. At the end of preconstruction, the construction manager proves the owner with a guaranteed maximum price (GMP) and construction schedule, and
- C. At the completion of the project, the construction manager provides the owner with its share of the project savings.

Is it your intent that similar projects include projects delivered as described above?

Response 7: Yes, with the inclusion of Enabling Work as

outlined in the RFP Scope of Services.

Add 2, Q8

Would you consider adding “hospitals” to the category of “similar projects”? These projects are typically large, complex, and often located in campus environments. Frequently, they are also delivered under a construction manager at risk method where the construction manager is engaged early to work with the owner and the designer on budget, constructability, phasing, schedule, etc. prior to a GMP being established. Additionally, most hospital projects are expansions of existing facilities which require significant coordination with the building users during the construction phase.

Response 8: Yes, a hospital facility will be considered provided that it meets all other “Similar Project” requirements.

Add 2, Q9A

On Form B, the RFP lists “Architecture”, “Mechanical Engineering”, and other design related firms under the “Subcontractor” block. Would you please confirm it is not your intent for the construction manager to hire these firms?

Response 9A: Please refer to Response 2 above.

Add 2, Q9B

Additionally, would you please confirm it is your intent for the construction manager to list only subcontractors with whom we have executed letters of intent prior to submission? If not, could you please clarify?

Revised Response 9B: Proposers are asked to provide all subcontractor information known and available at the time of Proposal Submittal.

Add 2, Q10

On Form A, please confirm it is your intent for the “Name of the Firm” to be the name of the joint venture, team, or other partnership?

Revised Response 10: Please see the revised Form A attached to the Restated RFP. “Name of Firm” has been replaced with “Name of Proposer.” If the Proposer is a Joint Venture or Partnership, the name of the Proposer should be the name of that Joint Venture or Partnership entity.

Add 2, Q11

On Form C, is it your intent for the prime contractor and all joint venture partners’ information is to be listed in items 1–3 under “Prime Contractor/Contractor”, and any subcontractors with whom we have executed letters of intent prior to submission of the response are listed in items 1-7 under “Subcontractor/Subcontractor”? If not, could you please clarify?

Revised Response 11: Please see the revised Form C where the

PRIME/CONTRACTOR” section has been replaced with “Section 1: Proposer.” The intention of Form C, Section 1 is for the information for all Joint Venture members or Partnership partners to be provided.

Add 2, Q12

The RFP outlines a very specific set of requirements for the SPM and PM positions. Our experience is that the best candidates for these positions often do not fit neatly into every box that is outlined in the RFP.

While we understand Orange County’s interest in assuring the most qualified individuals lead the project for the construction manager, the criteria outlined in the RFP prevents some of the most qualified professionals from being considered. In effect, the strict criteria limit its access to the most qualified professionals. Such criteria listed in the RFP may be appropriate for design professionals and program managers (such as the PE or Architectural license), but in the case of the construction manager, we believe it is most important that the construction manager’s professionals have demonstrated successful experience in delivering preconstruction services and construction services on projects of similar size and scale with client references to back them up.

This concept ensures Orange County gets the best candidates.

With that backdrop, we have two questions:

- A. Would you consider changing the SPM/PM requirements to be a minimum of BS degree in engineering, architecture, or other building science, in lieu of the current PE, Registered Architect, and/or CM degree with professional certifications?
- B. If not, would you consider ranking the 4 mandatory criteria by what is most important to you?

Revised Response 11: Please see the following Restated RFP sections for the County’s revised requirements for the Senior Project Manager and Project Manager roles:

- **Section 9A (“Key Personnel”)**
- **Section 9C9.(a) (“Definition: Senior Project Manager”)**
- **Section 9C9.(b) (“Definition: Project Manager”)**
- **Revised Form D (“Senior Project Manager’s Similar Projects”)**
- **Revised Form E (“Project Manager’s Similar Projects”)**
- **Revised Form F (“Skills and Experience of the Project Team”)**

Add 2, Q13

The Professional Architect and Professional Engineer requirement for the Senior Project Manager and/or Project Manager were incidentally carried over from the Design and Program Manager RFP requirements. These specific professional licenses are significantly less common among construction professionals. Consider removal of this requirement in its entirety as not to exclude qualified construction professionals with relevant “Similar Project” experience.

Revised Response 13: See Revised Response 12.

Add 2, Q14

Consider replacing the “Bachelor Degreed Construction Manager” requirement for the Senior Project Manager and/or Project Manager with the wording “Bachelor’s Degree”, as not to exclude qualified construction professionals with relevant “Similar Project” experience and applicable degrees.

Revised Response 14: See Revised Response 12.

Add 2, Q15

Please remove the Senior Project Manager and/or Project Manager individual general contractor’s license requirement. Contractor licensing is customarily provided by the proposing construction management firm/entity, rather than an individual of a proposed team.

Revised Response 15: See Revised Response 12.

Add 2, Q16

Please remove the Senior Project Manager and/or Project Manager certification requirements of Certified Construction Manager (CCM) or Project Management Professional (PMP, PgMP, PfMP) as not to exclude qualified construction professionals with relevant “Similar Project” experience.

Revised Response 16: See Revised Response 12.

Add 2, Q17

Please expand the Project Manager certifications requirement options to include “professional certification” by the Design Build Institute of America (DBIA). Refer to link for professionals and requirements. https://www.fldb.org/dbia_designation.php

Response 17: No, this will not be accepted.

Add 2, Q18

Permit the “Similar Project” **public assembly** project description type to include: attractions, entertainment facilities, theatres, and theme parks.

Response 18: An entertainment facility that include professional sports stadiums and arenas, exhibition and convention centers, assembly halls and auditoriums, theaters and live performance

venues will be included provided that it meets all other ‘Similar Project’ requirements.

Add 2, Q19

In order to maximize M/WBE and SDV participation and increase opportunity to achieve the desired stated goals, prohibit construction management firms from exclusive teaming agreements with M/WBE and SDV firms.

Revised Response 19: There is no prohibition against exclusive agreements with M/WBE and SDV firms.

Add 2, Q20

If a Senior Project Manager or a Project Manager candidate meets and/or exceeds the “Similar Project” requirements, but is NOT a Professional Licensed Engineer or Professional Licensed Architect, are they deemed disqualified and NO project experience (Form D & E) will be accepted for that individual?

Revised Response 20: See Revised Response 12.

Add 2, Q21

If a Senior Project Manager or a Project Manager candidate meets and/or exceeds the “Similar Project” requirements, but does NOT hold a General Contractor’s License, a Certified Construction Manager (CCM), or a Project Management Professional (PMP, PgMP, PfMP) certification, are they deemed disqualified and NO project experience (Form D & E) will be accepted for that individual?

Revised Response 21: See Revised Response 12.

Add 2, Q22

If a Senior Project Manager or a Project Manager candidate meets and/or exceeds the “Similar Project” requirements, but is NOT a Professional Licensed Engineer, Professional Licensed Architect, or a Bachelor Degreed Construction Manager, are they deemed disqualified and NO project experience (Form D & E) will be accepted for that individual?

Revised Response 22: See Revised Response 12.

Add 2, Q23

If the Senior Project Manager and/or Project Manager do not meet all the identified licensing and certification requirements on **page 20 of the RFP** under the heading “Definitions,” will the submitting firm be deemed disqualified?

Revised Response 23: See Revised Response 12.

Add 2, Q24

Could you please confirm that, as stated in the Pre-Proposal Conference held on May 1, 2019, that it is not your intent for the CM to have MWBE subcontractor commitments at the time of submission? We understand that you require the proposers to

commit to making good faith efforts to achieve the goals, but you are not looking for executed subcontracts at the time of submission. Please confirm this understanding.

Revised Response 24: There is no expectation that there will be M/WBE subcontractor commitments at the time of submission. Please see the following Restated RFP section for information regarding the revised M/WBE subcontracting utilization goal:

- **Section 4B.1. (“M/WBE Goal #1”)**

Add 2, Q25

On page 4 item 9.B, the RFP states that “Proposers must include a minimum of 24% MWBE inclusion at the management level. This can be achieved by having a MWBE Joint Venture (JV), Partnership, or Teaming Agreement.

On what basis is the 24% calculated? Is the 24% multiplied by the amount of “General Conditions and General Requirements” related items (i.e. non-subcontracted items such as staff costs, trucks, trailers, office supplies, insurance, fee, bond, etc) or is it multiplied by some other figure? What is the denominator?

Revised Response 25: Pursuant to Section 4A. of the Restated RFP: “Proposers must include a minimum of 24% M/WBE inclusion at the management level. This 24% M/WBE inclusion at the management level shall be calculated based upon the M/WBE(s) involved at the management level receiving a minimum of 24% of the GMP for the Project.”

Please see the following Restated RFP section for information regarding the M/WBE Management Level Requirement:

- **Section 4A. (“M/WBE Management Level Requirement”)**

Add 2, Q26

On page 6 item B, the RFP references a “Credit Program”. Could you explain what this program is and how that might impact a proposer?

Revised Response 26: There is no MWBE credit program for this RFP.

Add 2, Q27

Most subcontractors will not be procured for some time. Will you consider expanding the time limit for subcontractors unaffiliated with the Prime Contractor to obtain certification? This could help attract new Orange County subcontractors to the marketplace.

Revised Response 27: See Revised Response 24 and Revised Response 9B.

Add 2, Q28

It is our understanding that the Senior Project Manager and Project Manager have to meet just one of the 3 educational requirements listed in the RFP. Please advise if this statement is correct.

- 1) Professional Licensed Architect
- 2) Professional Licensed Engineer
- 3) Bachelor Degreed Construction Manager with one of the following certifications: General Contractor's (GC) License, Certified Construction Manager (CCM), or a Project Management Professional (PMP, PgMP, PfMP)

Revised Response 28: See Revised Response 12.

Add 2, Q29

After finishing our review of the proposed contract it appears there might be some carry over from the Architect of Record and/or Program Management contracts as it relates to responsibilities. In some cases we are referred to as Consultant in lieu of Contractor- Would the County be open to using another contract form more aligned with CM@R services, such as the ConsensusDoc 500?

Revised Response 29: Please see the Revised Draft Contract attached to the Restated RFP as Attachment "I."

**Addendum #3 (Originally Issued: May 28, 2019)
Revised Questions/Responses**

Add 3, Q1

Please clarify which Forms will be required for our Management Team MWBE commitment to prove we have a minimum of 24%.

Revised Response 1: Please see the following Restated RFP section for information regarding the M/WBE Management Level Requirement:

- **Section 4A. ("M/WBE Management Level Requirement")**

Add 3, Q2

Which form will be required to support our MWBE subcontractor commitment of at least 27%?

Revised Response 2: Please see the following Restated RFP section for information regarding the revised M/WBE subcontracting utilization goal:

- **Section 4B.1. ("M/WBE Goal #1")**

Add 3, Q3

Which form will be required to show our workforce commitment of at least 26%?

Revised Response 3: Please see revised Form J (“Equal Employment Workforce Schedule”) and instructions as attached to the Restated RFP. Additionally, please see the following Restated RFP section for information regarding the revised M/WBE Minority/Women Employment Workforce goal:

- **Section 4B.2. (“M/WBE Goal #2”)**

Add 3, Q4

Under section 21. Bonus Points for Hiring Registered Service-Disabled Veterans section A. states that;

“Registered service-disabled veteran business enterprise proposers competing as a prime contractor shall receive five (5) points.”

Does this statement mean that the proposer is a veteran owned business proposing alone as the CMAR (management team) or do these additional five (5) points count if you have a service-disabled veteran firm on your management team (CMAR)?

Revised Response 4: If one of the members of a proposing Joint Venture or a Partnership:

- (1) Is a County registered Service-Disabled Veteran; **and**
- (2) Will be performing services within the area(s) of certification for which they are registered with the County,

...then the Proposer will receive the bonus points as described in **Section 5 (“Bonus Points for Hiring Service-Disabled Veterans”)** the Restated RFP.

Add 3, Q5A

Under section 21. Bonus Points for Hiring Registered Service-Disabled Veterans section B. and C. states that;

“Registered service-disabled veteran business enterprise proposers with registered service-disabled veteran business enterprise subcontractors on their team shall receive two points for each subcontractor up to a maximum of ten (10) points;” and,

“Proposers with registered service-disabled veteran business enterprise subcontractors on their team shall receive two points for each subcontractor up to a maximum of ten (10) points.”

Do the service-disabled veteran businesses mentioned in sections B. and C. have to be members of the proposing management team, or can they be subcontractors counted through the construction goal?

Revised Response 5A: The point scheme in question 5A is for contracting with County registered service-disabled veteran *subcontractors*, not management team membership. Please see the following Restated RFP section for information regarding the Bonus Points for SDVs:

- **Section 5 (“Bonus Points for Hiring Service-Disabled Veterans”)**

Add 3, Q5B

Further, if SDV’s can be counted as subcontractors in the proposal, what is Orange County’s disposition regarding award of work without a bid. For example: Some municipalities allow a CM to negotiate the price of small scopes of work if it falls under a certain dollar amount. Can that scenario apply in the cases where the proposer wants to award scopes without bidding?

Revised Response 5B: All scopes of work must go through a competitive process. Additionally, please see Section 5 (“Bonus Points for Hiring Service-Disabled Veterans”) to see what a Proposer must submit with its Proposal to have its proposed SDV subcontracting counted for bonus points.

Add 3, Q6

Per Addendum 2 - The answer to question 24 states “at the submission of the proposal, the CM should have a total estimate of M/WBE commitments. This will be documented including signed letters of intent”.

When we asked the original question, our intent was to address M/WBE subcontractors who were not participating at the Joint Venture, Partnership, or Teaming Agreement level (i.e we were asking about M/WBE participation plan at the trade subcontractor level). If we sign letters of intent with subcontractors for trade related scopes of work at this stage, prior to design being completed, there will be no competition for the scopes of work for which we sign letters of intent. We believe it is your intent for the Construction Manager to present a plan to achieve the goal, but the actual subcontracting vehicle would be executed after design and after a competitive bid at the subcontract level.

Please confirm that Letters of Intent are not required for subcontractors who are not participating at the Joint Venture, Partnership, or Teaming Agreement level.

Revised Response 6: Please see the following Restated RFP section for information regarding the revised M/WBE subcontracting utilization goal:

- Section 4B.1. (“M/WBE Goal #1”)

Add 3, Q7

Please allow us to submit our Organizational Chart on 2 - 11x17 landscaped pages.

Revised Response 7: This was approved. Please see revised Form F (“Skills and Experience of the Project Team”) attached to the Restated RFP for more information.

Add 4, Q8

Where do you want us to include “Volume of Work Previously Awarded by the County” in our response?

Response 8: Information for scoring for Volume of Work Previously Awarded by the County is provided by the Procurement Division.

Add 3, Q9

If an M/WBE firm is teamed with a prime Designer on this project for a specified scope of work - is this M/WBE firm allowed to team with a Construction Manager for a different scope of work listed on his or her certification?

Revised Response 9: If a subconsultant or subcontractor is currently working on a contract related to Orange County Convention Center Phase V Multi-Purpose Venue and Grand Concourse Improvements in any capacity, they are not eligible to participate in this RFP. See the revised language in the Restated RFP, Section 10B (“Award Restrictions”).

Add 3, Q10

Addenda 2 Response states that The Senior Project Manager and the Project Manager shall be a Bachelor Degreed Engineer, Architect or Construction Manager, do they need to be licensed?

Response 10: A license is not required. The Senior Project Manager and the Project Manager shall have a Bachelor Degree in Engineering, Architecture, or Construction Management.

Should the Senior Project Manager or Project Manager not be a Professional Licensed Architect or Professional Licensed Engineer, the proposer needs to identify a Professional Licensed Architect or Professional Licensed Engineer on the Project Team in response to Form F (“Skills and Experience of the Project Team”) and identified on the Organizational Chart.

**Addendum #8 (Originally Issued: August 5, 2019)
Revised Questions/Responses**

Add 8, Q1

We are planning to utilize a firm to assist our Team as Small Business

Manager SBM. The firm is also on the Architect Team of Populous/C.T. Hsu that was brought back into contention for Architecture Services last week. We wish to keep the firm as part of our CM submission June 20th and believe it is appropriate do so for one or more of the following reasons:

1. We do not know how the Architect selection will conclude. The team they are on may not get selected.
2. We question if the County would consider it to be a conflict of interest under the RFP definition if the firm were to be the SBM under separate agreements in a consultant role to both the Architect and PCL.
3. To avoid any conflict, one option might be to name the firm as our SBM in our proposal as well as list an Alternate firm to be used if their Architect team is selected by the County.

Revised Response 1: If a subconsultant or subcontractor is currently working on a contract related to Orange County Convention Center Phase V Multi-Purpose Venue and Grand Concourse Improvements in any capacity, they are not eligible to participate in this RFP. See the revised language in the Restated RFP, Section 10B (“Award Restrictions”).

It is the Proposer’s responsibility to ensure that its subcontractor(s) do not violate the Award Restrictions.

**Addendum #11 (Issued: October 17, 2019)
Questions/Responses**

Add 11, Q1

Reference is made to Page 3, Item 2.c.(1).k of Supplement Y19-815-JS – 8/5/19, issued with Addendum 8. This is regarding the JV, Partnership, and Teaming Requirements existing at the Prime Level.

The first paragraph of this item reads, “A fully binding provision in the agreement that the participating certified M/WBE(s) shall receive a minimum of **twenty-four percent (24%) of the GMP**”. We believe the County’s intent is that this sentence should read, “... a minimum of **twenty-four percent (24%) of the GMP Fee.**”

This would be consistent with the County's response and answer to Question 25 on Page 7 of 9 of Addendum 2 dated May 15, 2019. This clarification is needed to be sure the intended language is included in the Agreements. Please advise.

Response 1: The referred to verbiage of Addendum #8 was copied over to the Restated RFP and will remain unchanged as stated as twenty-four percent (24%) of the GMP. Please see the following Restated RFP section for information regarding the M/WBE Management Level Requirement:

- **Section 4A. ("M/WBE Management Level Requirement")**

Add 11, Q2A

Since the Letters of Intent (Form M-1 and M-2) are no longer part of the submission requirements, per Addendum 8 we believe that Form C - Location needs to be revised to reflect the following changes.

- 1) Form C - Location states that we have to list Subcontractors and a percent of the work to be performed at each location. This is no longer possible since the LOI's are not required. Please take this section off the form. See the attached example.

Response 2A: Please see the revised Form C attached to the Restated RFP.

Add 11, Q2B

- 2) In Form C it references a Participation Plan. Where do we include this information? In Form H - Project Scope, Approach, and Understanding?

Response 2B: This plan should be attached to your proposal, as a stand-alone document in response to Section 4B.1. ("M/WBE Goal #1") of the Restated RFP.

Add 11, Q3

Does Form J: Equal Opportunity Workforce Schedule need to be signed by the firm filling it out?

Response 3: Yes. Additionally, please note the language on page 4 of 5 of the instructions attached to Form J which states:

"If proposing or bidding as a Joint Venture or Partnership:

- a. Each separate firm must submit a copy of FORM J with the proposal/bid for consideration; and
- b. Each separate firm must individually meet both the

woman and minority workforce employment levels or submit evidence of a good faith effort as discussed above in order for the overall proposal/bid to be considered as meeting this goal. If any of the firms does not individually do so, the entire Joint Venture or Partnership's proposal may be considered nonresponsive."

Add 11, Q4

OCCC has made numerous modifications in an attempt to clarify the RFQ requirements, particularly with the MWBE, SDV, and other requirements. In order to ensure nothing gets lost in translation, we recommend that you host another pre-solicitation conference. In fact, we believe some of our questions are better asked in person while we review specific forms with procurement officials. We believe that the addendum will be clearer, and the responders will more accurately respond to OCCC's needs if one on one sessions could be held. Is this at all possible?

Response 4: There will be no additional pre-solicitations meetings scheduled.

Add 11, Q5

Form J: Equal Opportunity Workforce Schedule – Should our team compile and submit one form? Or would you like separate forms completed for each team partner?

Response 5: Separate forms are required to be submitted per JV member or Partnership Partner. Please refer to Revised Form J, Page 4 of 5:

“(5) If proposing or bidding as a Joint Venture or Partnership:

a. Each separate firm must submit a copy of Form J with the proposal/bid for consideration; and

b. Each separate firm must individually meet both the woman and minority workforce employment levels or submit evidence of a good faith effort as discussed above in order for the overall proposal/bid to be considered as meeting this goal. If any of the firms does not individually do so, the entire Joint Venture or Partnership's proposal may be considered nonresponsive.”

Add 11, Q6

Please provide a schedule for shortlist and presentations.

Response 6: A schedule timeline has not yet been finalized. All meetings related to this RFP are public meetings and will be

posted as such once the dates are finalized.

Add 11, Q7

Please note: Form B - Project Team will have to be revised as well. Form B is asking us to list subcontractors and Addendum 8 removed the LOI's from the submission requirements.

Response 7: Please see the revised Form B attached to the Restated RFP.

RFP Y19-815-JS

ADDENDUM NO. 11

ATTACHMENT 2: RESTATED RFP DOCUMENT

ISSUE DATE: April 19, 2019
RESTATED DATE: October 17, 2019

NOTICE

REQUEST FOR PROPOSALS

FOR

**CONSTRUCTION MANAGER AT RISK SERVICES FOR THE ORANGE COUNTY
CONVENTION CENTER PHASE V MULTI-PURPOSE VENUE AND GRAND
CONCOURSE IMPROVEMENTS**

RFP #Y19-815-JS

The Board of County Commissioners, Orange County, Florida, is accepting sealed Proposals to be received **NO LATER THAN 2:00 P.M. (local time) on November 19, 2019, for CONSTRUCTION MANAGER AT RISK SERVICES FOR THE ORANGE COUNTY CONVENTION CENTER PHASE V MULTI-PURPOSE VENUE AND GRAND CONCOURSE IMPROVEMENTS.**

Proposals will be accepted at:

Orange County Procurement Division
Internal Operations Centre II
400 East South Street, Second Floor
Orlando, Florida 32801
(407) 836-5635

Copies of the Request for Proposals may be obtained from the Orange County Procurement Division at the above address, requested by phone (407) 836-5635, or downloaded from the internet at www.orangecountyfl.net.

Carrie Mathes, MPA, CFCM, CPPO, C.P.M.
Manager, Procurement Division

NOTICE TO PROPOSERS

To ensure that your Proposal is responsive, you are urged to request clarification or guidance on any issues involving this solicitation before submission of your response. Your point-of-contact for this solicitation is Jacqueta Scott at (407) 836-5456. **You may contact Jacqueta Scott at any time during this process, including during the blackout period.**

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RFP FORMS

- Form A:** Request for Proposals
- Form B:** Project Team
- Form C:** Location
- Form D:** Senior Project Manager Similar Projects
- Form E:** Project Manager Similar Projects
- Form F:** Skills and Experience of the Project Team
- Form G:** --NOT BEING USED--
- Form H:** Project Scope, Approach, and Understanding
- Form I:** Conflict and Litigation Statements
- Form J:** Equal Employment Workforce Schedule
- Form K:** --NOT BEING USED--
- Form L:** Drug-Free Workplace
- Form M:** --NOT BEING USED--
- Form N:** Orange County Specific Project Expenditure Report
- Form O:** Relationship Disclosure
- Form P:** E-Verification Certification
- Form WR:** Dislocated Workers

ATTACHMENT I: DRAFT CONTRACT

CONTRACT EXHIBITS

- Exhibit A:** Scope of Services
- Exhibit B:** Payment/Performance Bond Forms
- Exhibit C:** Insurance Documents
- Exhibit D:** Segment Completion Schedule
- Exhibit E:** Draft GMP Proposal
- Exhibit F:** Owner Direct Purchase Provision
- Exhibit G:** Final Release of Lien Form; and
- Exhibit H:** Stored Materials Forms.

**REQUEST FOR PROPOSALS
FOR
CONSTRUCTION MANAGER AT RISK SERVICES FOR THE ORANGE COUNTY
CONVENTION CENTER PHASE V MULTI-PURPOSE VENUE AND GRAND
CONCOURSE IMPROVEMENTS
RFP #Y19-815-JS**

Section 1: Purpose.

The Board of County Commissioners, Orange County, Florida, is soliciting Proposals to provide **CONSTRUCTION MANAGER AT RISK SERVICES FOR THE ORANGE COUNTY CONVENTION CENTER PHASE V MULTI-PURPOSE VENUE AND GRAND CONCOURSE IMPROVEMENTS.**

Orange County is fully committed to supporting the economic development of minority- and women-owned businesses through our Business Development Division. This project aims to construct an exceptional Orange County Convention Center that benefits a broad spectrum of the community and develops a business environment that fosters innovation, collaboration, inclusiveness and equal opportunity for businesses certified by Orange County.

FAILURE OF ANY PROPOSER TO COMPLY WITH ANY TERM OF THIS RFP MAY RENDER THEIR PROPOSAL NON-RESPONSIVE.

Section 2: Definitions.

- A. The words and expressions (or pronouns used in their stead) defined in this Request for Proposals shall, for the purposes of this **RFP #Y19-815-JS** (the "**RFP**"), be construed as follows:
1. **"Addenda"** shall mean any additional provisions, amendments, or corrections to the Request for Proposals issued in writing by the County prior to the Submittal Deadline.
 2. **"Board of County Commissioners"** shall mean the Board of County Commissioners, Orange County, Florida, or their duly authorized representative(s), for whom the Services are being performed.
 3. **"Contract"** shall mean the written agreement between the County and the Proposer covering the services to be provided and work to be performed. The **Draft Contract** is attached to this RFP as **Attachment "I"**.

4. **"County"** shall mean the Board of County Commissioners, Orange County, Florida, or their duly authorized representative(s), for whom the Services are being performed.
5. **"Day"** shall mean one calendar day, unless otherwise specifically stated.
6. **"Project"** shall mean the Orange County Convention Center Phase V Multi-Purpose Venue and Grand Concourse Improvements, as further specified for the purposes of this RFP in the **Scope of Services** attached as **Exhibit "A."**
7. **"Proposal"** shall mean the proposal of the Proposer submitted on the Official Proposal Form.
8. **"Proposer(s)"** shall mean any person, firm, or corporation (whether Sole Proprietorship/Corporation, Joint Venture, or Partnership) submitting a Proposal.
9. **"Services"** shall mean the services and work required in order to complete all elements of the **Scope of Services** attached to this RFP as **Exhibit "A."**
10. **"Subcontractor"** shall mean any person, firm or corporation other than employees of the Proposer who the Proposer intends to subcontract with in order to complete the Project.

Section 3: Terms and Conditions.

A. Draft Contract.

1. The contract that the County intends to use for award is attached as **Attachment "I"** (the **"Draft Contract"**) for reference.
 - a. **Any exceptions to this Draft Contract must be clearly indicated by return of the standard contract with the Proposal, with exceptions clearly noted.**
 - b. The County has no obligation to acquiesce to any requested changes by the awarded Proposer if such awarded Proposer did not clearly make its exceptions to the Draft Contract known to the County at the time of Proposal submittal.

- c. All terms of the Draft Contract, and the Exhibits listed, are considered terms of this RFP. By submitting a Proposal, Proposers are accepting and acknowledging the terms of the Draft Contract and are expressly acquiescing to its terms and provisions.
- d. The County has the right to require the selected Proposer to sign the Contract or to negotiate revisions to the Contract language prior to execution of the Contract, at its sole discretion.

B. Insurance Requirements.

For the insurance requirements related to this RFP, review **Section 23 (“Indemnity/Insurance and Safety Requirements”)** of the Draft Contract found in **Attachment “I.”**

C. Anti-Discrimination.

Pursuant to Chapter 22 (“Human Right Ordinance”), Orange County Code, Proposers must not discriminate against any employee or applicant for employment because of age, race, color, religion, national origin, disability, marital status, familial status, sex, or sexual orientation.

D. Public Entity Crime Statement (FS 287.133).

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid or Proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, subcontractor or Consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Florida State Statutes Section 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

Section 4: Minority/Women Owned Business Enterprise.

A. M/WBE Management Level Requirement.

Proposers must include a minimum of 24% M/WBE inclusion at the management level. **This 24% M/WBE inclusion at the management level shall be calculated based upon the M/WBE(s) involved at the management level receiving a minimum of 24% of the GMP for the Project.** M/WBE inclusion at

the management level can be accomplished by the Proposer:

1. Being a single firm that is an Orange County Certified Minority/Woman Owned Business Enterprise that will represent one hundred percent (100%) of the Project's management level participation; **or**
2. Through a fully-executed Joint Venture (JV) or Partnership Agreement where M/WBE(s) represent no less than twenty-four percent (24%) of the Project's management level participation. Each agreement type listed below must be executed by all participating entities and **must be submitted with the Proposal for the Proposal to be considered responsive.**

[NOTE: A "letter of intent" is insufficient to meet this requirement, a Proposer's submitted agreement must be binding pending award and in final form.]

- a. **Joint Venture agreement:** A contractual relationship established through a written and executed agreement that joins together two or more business enterprises, one of which is an Orange County certified minority/woman owned business enterprise, for the purpose of performing an Orange County contract. All parties agree to share in the profits and losses of the business endeavor according to their percentage of equitable interest. **In the event that a Proposer selects to use a Joint Venture, then:**
 - (1) The Joint Venture must submit evidence to the County that the Joint Venture has been officially registered with the Florida Department of Corporations before the contract award; and
 - (2) The name of the Joint Venture registered with the Florida Department of Corporations must reflect the same name used in the proposal.
- b. **Partnership agreement:** A written and executed agreement between two or more partners. One of the partners must be an Orange County certified minority/woman owned business enterprise. The agreement explains the relationship each partner has with the partnership business. All partners share ownership, as well as the responsibility for managing the project and the profits or losses generated. The partnership agreement also details the rights and obligations each individual has to the business.
- c. **State Business Registration, Licensing, and Certification Requirements:** It is the Proposer's sole responsibility to meet any

obligations it has under Florida law to offer the Services contemplated in the **Scope of Work** attached as **Exhibit “A”** to the County including, if necessary, registration of the Joint Venture and obtaining any necessary licensure or certificates of authority.

3. **Joint Venture and Partnership Agreement Requirements.**

a. **All Agreements:** At a minimum, the following items must be included in the selected Joint Venture or Partnership Agreements:

- (1) The name and type (ie: Joint Venture or Partnership) of agreement;
- (2) The parties in the agreement;
- (3) Place(s) of business of each party;
- (4) The term (which cannot terminate prior to Project completion);
- (5) Capital account information;
- (6) Accounting book information;
- (7) Work responsibilities for each party;
- (8) Dispute resolution language;
- (9) Insurance/Fidelity bond/Surety information;
- (10) Event of a loss; and
- (11) **A fully binding provision in the agreement that the participating certified M/WBE(s) shall receive a minimum of twenty-four percent (24%) of the GMP.**

[NOTE: If there are more than one participating certified M/WBEs, the breakdown of that minimum twenty-four percent (24%) between the participating certified M/WBEs must be included.]

b. **Partnership:** If proposing as a Partnership, the Partnership Agreement must additionally identify:

- (1) Which firm shall serve as the fiscal agent to which the County shall make payment; and
- (2) Which firm shall be the contracting entity with which any

Project-related contracts shall be executed.

4. The County reserves the right to confirm that the signatures provided in any agreement submitted by a Proposer are binding upon each entity that is a party to such agreement. The County additionally reserves the right to require that amendments be made to any such agreement that is submitted by a Proposer prior to entering negotiations with any Proposer. **No right reserved by the County in this provision imposes an obligation upon the County to execute such a right prior to deeming a Proposer non-responsive.**

B. M/WBE Goals.

Proposers must address how they intend to comply with the Orange County M/WBE Enterprise Ordinance found in Chapter 17, Article III, Division 4 of the Orange County Code.

1. **M/WBE Goal #1.** Certified minority/women business enterprise subcontract utilization goal: 27% of the Guaranteed Maximum Price (“GMP”) for the project.
 - a. This goal may be met only by using firms on the County’s ***Complete Minority Vendor Listing*** found at the following website:

<http://apps.ocfl.net/orangeproposals/minorityvendorlisting/>
 - b. Firms listed on the County’s *Complete M/WBE Graduate Firms Listing* (also found on the website above) may be used to count toward this goal, so long as the Project meets the requirements of Section 17-332(b).
 - c. To obtain goal credit for its response to this RFP, the Proposer must submit a M/WBE Subcontractor Utilization Plan (M/WBE Utilization Plan) with its proposal that addresses how the Proposer intends to meet the County’s certified M/WBE utilization goal. **This M/WBE Utilization Plan must include both of the following:**
 - (1) A notarized commitment from an authorized individual that can bind the Proposer that the Proposer shall:
 - a. Meet the certified M/WBE subcontracting utilization goal through the exclusive use of the County’s ***Complete Minority Vendor Listing*** and, if applicable, the ***M/WBE Graduate Firms Listing***; **and**
 - b. Submit the appropriate letter(s) of intent with such

Subcontractors to the Business Development Division for validation no later than with its submission of its GMP Proposal to the County.

- (2) A detailed plan to measure and monitor M/WBE Subcontractor participation to ensure that the Proposer shall meet the County's M/WBE subcontracting goals. This plan must include a proposed outline setting anticipated benchmarks at the Design Assist, Enabling, and GMP phases of work.
 - (3) **The M/WBE Utilization Plan submitted shall be incorporated into the awarded contract.**
2. **M/WBE Goal #2. Minority/Women Employment Workforce Levels:** 18% minority and 6% women. This goal may be met through the submission of **Form J** demonstrating employment workforce levels that meet the goal above.
3. **M/WBE Goal Scoring.** This RFP awards a total of 100 weighted points for meeting the County's M/WBE Program's goals. These points shall be awarded as followed:
 - a. **50 weighted points** for the meeting the County's certified M/WBE subcontract utilization goal; and
 - b. **50 weighted points** for meeting the County's Minority/Women employment workforce goal.
4. Post-Award Validation of Certified M/WBE Subcontract Utilization Goal.
 - a. If the awarded Proposer certified that it would meet the Certified M/WBE Subcontract Utilization Goal, then the awarded Proposer must:
 - (1) Submit signed Letter(s) of Intent on a form to be provided by the County with their Design Assist Proposal for all current Orange County certified M/WBE Subcontractors being utilized.
 - (2) Submit signed Letter(s) of Intent on a form to be provided by the County with their Enabling Proposal for all Orange County certified M/WBE Subcontractors being utilized once Construction Enabling Drawings are issued.
 - (3) Submit signed Letter(s) of Intent on a form to be provided by

the County with their GMP Proposal for all Orange County certified M/WBE Subcontractors that shall be utilized once 100% Construction Drawings are issued.

[NOTE: These Letters of Intent must indicate the scope of Work to be performed by every M/WBE plus the percentage of the overall contract fees to be contracted to the listed Subcontractor. Letters of Intent must be signed by both the CMAR and the certified M/WBE Subcontractor.]

- b. The County shall not permit the GMP phase of the Project to proceed until the Business Development Division validates that the awarded Proposer is projected to meet or exceed the certified Minority/Women Business Enterprise subcontract utilization goal. This validation shall be finalized through the submission of the awarded Proposer's subcontracts with the certified M/WBEs for which it submitted letters of intent.
- c. Such subcontracts shall include the following terms:
 - (1) "Payment shall be made to the Subcontractor/Suppliers within 72 hours of the CMAR's receipt of payment from the County."
 - (2) "It is the certified M/WBE Subcontractor's responsibility to submit the required payment verification reports to the CMAR quarterly and the Final M/WBE Payment Verification form directly to the Orange County Business Development Division. The certified M/WBE Subcontractor understands that its failure to submit the required documents to the Orange County Business Development Division could negatively impact its M/WBE certification."
 - (3) "The CMAR shall not substitute, replace, or terminate the certified M/WBE Subcontractor without prior written authorization from the Business Development Manager, nor shall the CMAR reduce the Scope of Work or monetary value of the overall contract value of a the certified M/WBE Subcontractor without written authorization of the Business Development Division Manager."
- d. The sub-contract agreement shall additionally include:
 - (1) The percentage of the overall contract value to be sub-contracted; and

- (2) The dollar amount based on the percentage of the contract value to be sub-contracted (if available at time of sub-contract agreement).

5. The awarded Proposer shall also be expected to:

- a. File copies of all executed Subcontractor contracts between the CMAR and each certified M/WBE Subcontractor on the Project at the Design Assist, Enabling, and Construction phases to the Orange County Business Development Division.
- b. Furnish written documentation evidencing actual dollars paid to each certified M/WBE Subcontractor utilized by the CMAR on the project. This includes, but is not limited to: copies of cancelled checks, approved invoices, and signed affidavits certifying the accuracy of payments so that the County may determine the actual participation achieved by the CMAR prior to the issuance of final payment.
- c. Submit an updated monthly certified MWBE utilization report, Equal Opportunity Workforce Schedule, Joint Venture or Partnership status report and certified M/WBE payment verification forms for all professional service contracts. It is the responsibility of the CMAR to submit the payment verification forms with the referenced reports. The required reports shall be submitted to the Business Development Division no later than the fifth day after end of reporting period. Payment applications, task authorizations and contract renewals may be delayed if these reports are not submitted every quarter in a timely manner until completion of project indicating final report. Failure of the certified M/WBE to comply with the submittal of the payment verification forms to the CMAR could negatively affect their re-certification.
- d. Not substitute, replace or terminate any certified M/WBE firm without prior written authorization from the Business Development Manager, nor shall the prime reduce the scope of Work or monetary value of a Subcontractor without prior written authorization of the Business Development Division.
- e. Expeditiously advise all certified M/WBE's and the Business Development Division of all change orders, contract modifications, additions and deletions to any and all contracts issued to the certified M/WBE firm on their team.

Section 5: Bonus Points for Hiring Service-Disabled Veterans

- A. Pursuant to Section 17-355, Orange County Code, additional point consideration shall be available for those proposing to hire certified Orange County registered service-disabled veteran business enterprises (“**SDV**”).
- B. This goal may be met only by using firms on the County’s *Complete Service Disabled Veteran Listing* found at the following website:

<http://apps.ocfl.net/orangeproposals/minorityvendorlisting/>
- C. To obtain credit for its proposal for agreeing to meet this goal, the Proposer must submit a SDV Utilization Plan (SDV Utilization Plan) with its proposal that addresses how the Proposer intends to earn the SDV points. **This SDV Utilization Plan must include both of the following:**
1. A notarized commitment from an individual that can bind the Proposer that the Proposer shall:
 - a. Utilize a number between 1 and 5 Orange County registered SDV Subcontractors through the exclusive use of the County’s *Complete Disabled Veteran Listing*; and
 - b. Submit the appropriate letter(s) of intent with such Subcontractors to the Business Development Division for validation no later than with its submission of its GMP Proposal to the County.
 2. A detailed plan to measure and monitor Orange County registered SDV Subcontractor participation to ensure that the proposer utilizes its committed number of Orange County registered SDV Subcontractors. This plan must include a proposed outline setting anticipated benchmarks at the Design Assist, Enabling, and GMP phases of work.
 3. The SDV Utilization Plan submitted shall be incorporated into the awarded contract.
- D. **SDV Bonus Point Scoring.** The registered SDV bonus points shall be awarded as followed:
1. **5 weighted points** for Proposers that are Orange County registered service-disabled veteran business enterprises.
 2. **2 weighted points per Orange County registered SDV Subcontractor with a maximum of 10 weighted points** for all Proposers.
 3. Proposers that are Orange County registered SDVs and utilize at least 5

registered SDV sub-contractors can obtain no more than 15 points. Proposers that are not Orange County registered SDVs and utilize at least 5 registered SDV sub-contractors can obtain no more than 10 points.

4. When considering two (2) or more proposals, or replies for the procurement of commodities or contractual services, where at least one is from a County registered service-disabled veteran business enterprise but which are otherwise equal with respect to all relevant considerations, including price, quality, and service, the Procurement Division Manager shall award such procurement or contract to the registered service-disabled veteran business enterprise.
5. If an Orange County registered SDV, entitled to the vendor preference and one (1) or more other M/WBE businesses also entitled to this preference, or another vendor preference provided by the Orange County Code, submits proposals, proposals, or replies for the procurement of goods or services which are otherwise equal with respect to all relevant considerations, including price, quality and service, then the Procurement Division Manager shall award the procurement or contract to the business having the smallest net worth.

E. Post-Award Validation of Orange County Registered SDV Subcontract Utilization Commitment.

1. If the awarded Proposer committed to utilize a certain number of Orange County registered SDVs, then the awarded Proposer must:
 - a. Submit signed Letter(s) of Intent(s) on a form to be provided by the County with their Design Assist Proposal for all current Orange County registered SDV Subcontractors being utilized.
 - b. Submit signed Letter(s) of Intent on a form to be provided by the County with their Enabling Proposal for all Orange County registered SDV Subcontractors being utilized once Construction Enabling Drawings are issued.
 - c. Submit signed Letter(s) of Intent on a form to be provided by the County with their GMP Proposal for all Orange County Orange County registered SDV Subcontractors that shall be utilized once 100% Construction Drawings are issued.

[Note: These Letters of Intent must indicate the scope of Work to be performed by every Orange County registered SDV plus the percentage of the overall contract fees to be contracted to the listed Subcontractor. Letters of Intent must be signed by

both the CMAR and the Orange County registered SDV Subcontractor.]

2. The County shall not permit the GMP phase of the Project to proceed until the Business Development Division validates that the awarded Proposer is projected to meet or exceed its Orange County registered SDV utilization commitment. This validation shall be finalized through the submission of the awarded Proposer's subcontracts with the Orange County registered SDV(s) for which it submitted letters of intent. Such subcontracts shall include the following terms:
 - a. "Payment shall be made to the Subcontractor/Suppliers within 72 hours of receipt of payment from Orange County, Florida."
 - b. "The CMAR shall not substitute, replace or terminate the Orange County registered SDV Subcontractor without prior written authorization from the Business Development Manager, nor shall the CMAR reduce the scope of Work or monetary value of the overall contract value of a the Orange County registered SDV Subcontractor without written authorization of the Business Development Division Manager."
3. If the awarded Proposer made a SDV utilization commitment, then it shall also be expected to:
 - a. File copies of all executed Subcontractor contracts between the CMAR and each Orange County registered SDV Subcontractor on the Project at the Design Assist, Enabling, and Construction phases to the Orange County Business Development Division.
 - b. Furnish written documentation evidencing actual dollars paid to each Orange County registered SDV Subcontractor utilized by the CMAR on the project. This includes, but is not limited to: copies of cancelled checks, approved invoices, and signed affidavits certifying the accuracy of payments so that the County may determine the actual participation achieved by the CMAR prior to the issuance of final payment.
 - c. Submit an updated monthly Orange County registered SDV utilization report and the "Equal Opportunity Workforce Schedule" report for subcontracts. The required reports are to be submitted to the Business Development Division no later than the fifth day of each month.
 - d. Not substitute, replace or terminate any Orange County registered SDV firm without prior written authorization from the Business

Development Manager, nor shall the CMAR reduce the scope of Work or monetary value of a Subcontractor without prior written authorization of the Business Development Division.

- e. Expediently advise all Orange County registered SDVs and the Business Development Division of all change orders, contract modifications, additions and deletions to any and all contracts issued to the Orange County registered SDV firm on their team.

Section 6: Bonus Points for Hiring of Dislocated Workers

- A. Proposers may be awarded a maximum of five (5) bonus points for a commitment to hire dislocated workers residing in Orange County, Florida as full-time employees for the duration of the contract. One point will be awarded for each new full-time hire up to and including a maximum of five (5) points.
- B. To be eligible for bonus points, Proposers must complete **Form WR** – Section I (attached) listing the number of dislocated workers to be hired full-time and submit with the Proposal. Bonus points shall only be awarded once for any one individual hired. Individuals hired may be employed in any position within the firm but must be hired on a full-time basis.
- C. Within five (5) days after the contract award, the Proposer shall contact the Business Development Division Liaison, at (407) 836-5485 to assist with meeting this requirement.

[Note: The failure of the CONTRACTOR to comply with these hiring commitments after contract award shall be grounds for termination of the contract for default.]

- D. During performance of the contract, the Contractor shall take appropriate steps to ensure that individuals hired under this program are retained. However, if it becomes necessary to replace an employee, the Contractor shall contact the Business Development Division (BDD) Liaison. At its discretion, the County may periodically request submission of certified payrolls to confirm the employment status of program participants.

Section 7: Proposal Submittal.

A. Proposal Requirements.

1. Proposal Drafting.

- a. Proposers must utilize the attached forms when drafting their

Proposals. Failure to submit a required form will result in a Proposal being deemed non-responsive. **Unless additional information or Proposer-drafted documents are explicitly requested in the RFP, the Proposal shall contain only the attached forms as completed by the Proposer.**

[Note: The forms attached to this RFP are periodically updated, Proposers are advised not to rely on forms from any previous submission when drafting their Proposal.]

- b. The County shall not be responsible for re-calculation or interpretations of information provided on any form.
- c. Modification or alteration of the documents contained in this solicitation or the contract resulting from this solicitation shall only be made upon receipt of prior written consent of the County.
- d. The submission of GSA Forms 254 or 255 are not acceptable. The submission of these forms shall result in disqualification of your Proposal as non-responsive.
- e. Proposers are instructed NOT to include pictures, drawings, graphs, dividers or table of contents. Submittal of pictures, drawings, graphs, dividers and/or table of contents may result in disqualification of your Proposal as non-responsive. Do not use a cover or binder. Use one (1) staple in UPPER left-hand corner only.
- f. With respect to **Forms D, E, F and H**, no sideways printing on pages will be permitted. Also with respect to **Forms D, E, F and H**, print must be no smaller than 12 point when using a computer, or must be 10 pitch when using a typewriter.
- g. Conflict/Non-Conflict of Interest and Litigation Statement shall be completed and signed. Additional requested information shall be attached, if applicable.

2. **Proposal Package.**

- a. A complete Proposal Package will contain the following:

- (1) 1 Proposal (clearly marked as original);
 - (2) 16 copies (for a total of 17 paper proposals); and
 - (3) 1 electronic copy on a USB drive.
- b. Proposers must indicate the following on their Proposal Package envelope:

Request for Proposals Number Y19-815-JS
Date of Opening – November 19, 2019
Name of Proposer
Return Address of the Proposer

B. Submittal Deadline.

1. Proposers must hand deliver their complete Proposal Package to: Orange County Procurement Division, Internal Operations Centre II, 400 E. South Street, 2nd Floor, Orlando, Florida 32801;
2. Such Proposal Package hand delivery must be no later than 2:00PM on November 19, 2019; and
3. Faxed or electronically delivered Proposals shall be rejected as non-responsive, regardless of where the fax or electronic transmission is received.

C. Late Submissions.

1. The County shall not accept any excuses for late Proposal Package submissions.
2. Proposers are responsible for delivery to the location specified. If a Proposal is delivered by an express mail carrier or by any other means, it is the Proposer's responsibility to ensure delivery to the correct address. **This office will not be responsible for deliveries made to any place other than the specified address.**
3. The time and date for receipt of Proposals will be strictly observed. The County shall not be responsible for late deliveries or mail delays. The time/date stamp clock in the Procurement Division shall serve as the official authority to determine timeliness of the Proposal.
4. **The decision to refuse to consider a proposal that was received**

beyond the date/time established in the solicitation shall not be the basis for a protest pursuant to the Orange County (Procurement Ordinance).

5. Proposals received after the specified time and date shall be returned unopened. All Proposals will be opened publicly and the names of all Proposers shall be read aloud.

D. Proposal Preparation Costs.

By submission of a Proposal, the Proposer agrees that all costs associated with the preparation of his/her Proposal will be the sole responsibility of the Proposer. The Proposer also agrees that the County bears no responsibility for any costs associated with the preparation of the Proposal and/or any administrative or judicial proceedings resulting from the solicitation process.

E. Proprietary Information.

In accordance with Chapter 119 of the Florida Statutes (Public Records Law), and except as may be provided by other applicable State or Federal Law, all bidders/proposers should be aware that formal solicitations and the responses thereto are in the public domain. Requests for confidential treatment will not supersede the County's legal obligation to provide records to the public consistent with public records law. Bidders/proposers must cite specific, applicable legal grounds to support a request for confidential treatment, of any portion of a bid/proposal. Requests by bidders/proposers to keep entire bids/proposals confidential are generally not supported by public records laws. At a minimum, the County will disclose the successful bidder's/proposer's name, the substance of the bid/proposal, and the price.

If the bidder/proposer requests confidential treatment, bidder/proposer must submit an additional copy of the bid/proposal with the proposed confidential information redacted. This copy must include a general description of the information redacted, and shall only be redacted in the least expansive manner necessary to effectuate the requested exemption(s). In a separate attachment, bidder/proposer shall supply a listing of the provisions identified by section number for which it seeks confidential treatment and identify the statutory basis under Florida law, including a detailed justification for exempting the information from public disclosure.

Bidder/proposer shall hold harmless and indemnify the County for all claims,

actions, suits, judgments, fines, costs or damages the County may incur as a result of bidder's/proposer's request for confidential treatment of its bid/proposal. Bidder/proposer agrees and understands that the County may make copies of, and distribute, the bid/proposal without any requested redactions, to facilitate evaluation. Bidder/proposer warrants that such copying will not violate the rights of any third party.

F. **Confidential Information.**

If a Proposer's Proposal contains any information deemed confidential, in accordance with Chapter 119 of the Florida Statutes, the Proposer shall provide an additional USB drive with a redacted version of its Proposal labeled REDACTED. This electronic copy shall be in Portable Document Format (PDF).

G. **Lobbying Blackout Period.**

1. A lobbying blackout period shall commence upon issuance of the solicitation until the Board selects the successful Proposer. For procurements that do not require Board approval, the blackout period commences upon solicitation issuance and concludes upon Contract award. Additional information relative to lobbying can be found at: <http://www.orangecountyfl.net/OpenGovernment/LobbingAtOrangeCounty.aspx>
2. The Board of County Commissioners may void any Contract where the County Mayor, one or more County Commissioners, or a County staff person has been lobbied in violation of the blackout period restrictions of Ordinance No. 2002-15.
3. Proposers shall not contact any member of the Orange County Procurement Committee or any staff (except as provided below) regarding this Proposal until such time as a contract is awarded. All inquiries pertaining to this Request for Proposals must be directed through the Procurement Division.

H. **Procurement Committee Information.**

Information regarding Procurement Committee scheduling and Board approvals are available by calling the Procurement Division Reception Desk at (407) 836-5635 or by accessing the Procurement Committee schedule at <http://apps.ocfl.net/OrangeBids/Procurement/default.asp>. Also, an email notice of

the Procurement Committee meeting will be sent to all Proposers.

I. **Proposal Questions.**

1. Technical concerns/questions regarding the RFP shall be submitted in writing, no later than **4:00 p.m., on October 25, 2019** to:

Jacqueta Scott, Contracting Agent
Procurement Division
400 E. South Street, 2nd Floor
Orlando, Florida 32801
Jacqueta.Scott@ocfl.net

2. Any Proposer who initiates any discussions with staff in any manner other than that described above is subject to disqualification from this procurement.
3. **You may contact Jacqueta Scott at any time during this process, including during the blackout period, however, technical questions regarding the RFP shall only be responded to if submitted prior to the deadline indicated above.**

J. **Oral Interpretation.**

No oral interpretation of this RFP shall be considered binding. The County shall be bound by information and statements only when such statements are written and executed under the authority of the Manager of the Procurement Division.

K. **Solicitation Cancellations.**

Orange County reserves the right, and the Manager of the Procurement Division has absolute and sole discretion, to cancel a solicitation at any time prior to approval of the award by the Board of County Commissioners when such approval is required. The decision to cancel a solicitation cannot be the basis for a protest pursuant to the Orange County Code.

L. **Withdrawal of Proposal.**

Any Proposal may be withdrawn until the Submittal Deadline has passed.

M. **Development or Assistance In Development Of Specifications / Requirements / Statements Of Work.**

Firms and/or individuals that assisted in the development or drafting of the specifications, requirements, statements of work, or solicitation documents contained in this RFP are excluded from competing for this solicitation.

Section 8: Selection Process.

A. Selection Process.

1. Selection shall be in accordance with F.S. 287.055 (“Consultants’ Competitive Negotiation Act”), the County’s adopted selection procedures, and the terms of this RFP. If there is conflict between the County’s adopted selection procedures and the terms of this RFP, the terms of this RFP shall prevail.
2. The County reserves the right to accept or reject any or all Proposals that it may in its sole discretion deem non responsive, to waive technicalities, or to accept the Proposal which, in its sole judgment, is most advantageous and best serves the over-all interests of the County.
3. The County reserves the right to request clarification of information submitted and to request additional information of one or more Proposers after the deadline for receipt of Proposals.
4. The selection process shall have three phases:
 - a. **Phase I:** Initial Qualification;
 - b. **Phase II:** Presentations; and
 - c. **Phase III:** Final Qualification Determination.

B. Phase I: Initial Qualification.

Proposals will be evaluated, scored, and short-listed by a Procurement Committee based on the following weighted criteria:

Criteria	Weight
Similar Projects Completed by the Proposed Senior Project Manager (Form D)	15
Similar Projects Completed by the Proposed Project Manager (Form E)	10
Skills and Experience of the Project Team (Form F)	15
M/WBE Goal Commitment	20

Location (Form C)	10
Volume of Work Previously Awarded by the County	5
Approach, Understanding, Scope Response	25
TOTAL:	100

C. **Phase II: Presentations.**

1. Following the evaluation by the Procurement Committee, the Procurement Committee shall select no fewer than three responsive and responsible Proposers to be “short-listed” and provided an opportunity to make a final presentation to the Orange County Board of County Commissioners. Should there be fewer than three responsive and responsible Proposers, only those responsive and responsible Proposers shall be short-listed.
2. The Procurement Committee may, but is under no obligation to, advance more than three responsive and responsible Proposers if doing so would be in the best interest of the County.
3. **Final presentations shall count toward the County’s final determination of Proposer qualification as further described in “Phase III: Final Qualification Determination.”**
4. Presentations shall be provided in strict accordance with the following conditions:
 - a. Order of presentation of “short-listed” firms shall be as determined by random draw at the time of the Procurement Committee.
 - b. Presentations shall be a maximum of fifteen minutes (15:00) in total run length. Any presentation that exceeds the fifteen minute maximum shall be stopped prior to completing. Embedded videos are permitted, providing each video does not exceed a two minute (2:00) maximum length. Embedded videos will count against the 15 minute total presentation time. The presentation must focus on concepts, innovative ideas, and potential challenges with solutions specific to the Phase V North-South Building Multipurpose Venue and Grand Concourse Improvements Project. This presentation should be specific, tailored to the North-South Building Improvements, and not be a portfolio of similar projects.
 - c. Each presenting Proposer’s presentation shall:

- (1) Provide a general overview of the Proposer, its experience and capabilities.
 - (2) Provide potential challenges with recommended solutions during the construction period.
 - (3) Connectivity between North and South Concourses should be creatively demonstrated.
 - (4) Describe the Proposer's intended efforts to limit impact on the Orange County Convention Center's guests on an active fully operational general assembly facility using innovative phasing or screening techniques.
5. Following each presentation, the Board reserves the right to conduct a question and answer session with that presenting firm. A Proposer's responses during the question and answer session are expressly limited solely to the firm's corporate executive "C-level" personnel or those specific Key Personnel as listed in the Proposer's RFP response.

D. Phase III: Final Qualification Determination.

1. After all presentations and associated question and answer periods are concluded, the Board shall – by consensus – rank the Proposers in order of "most qualified" to "least qualified."
2. In so doing, the Board shall take into account:
 - a. The Proposer's initial qualification score as assigned by the Procurement Committee;
 - b. The Proposer's presentation and response to questions asked; and
 - c. The best interest of the County.
3. Once the Board has ranked the Proposers, the Board will direct staff to begin negotiations with the Proposer that the Board deemed to be the most qualified, with the remaining Proposers serving as alternates in descending order should negotiations with the Proposer deemed most

qualified fail.

Section 9: Qualification Evaluation.

A. Key Personnel.

The Senior Project Manager and Project Manager must be two different individuals, one of the individuals shall be currently employed by the Proposer. **The Senior Project Manager and the Project Manager shall both be a Bachelor Degreed Engineer, Architect, or Construction Manager prior to the due date of proposals submitted for this RFP.** A diploma must be submitted as back up for validation of any degree. Other Key Personnel must be clearly identified on the organizational chart submitted with the Proposal.

B. Key Subcontractor.

A Key Subcontractor is one who will perform a substantial scope of work that is critical to the success of the project. This work may require managerial and organizational skills, construction specialties or project specific resources to achieve a successful project outcome. Key Subcontractors must be clearly identified on the organization chart submitted with the proposal.

C. Similar Projects.

1. **“Similar Projects”** for the proposed Construction Manager at Risk (CMAR) Senior Project Manager and the proposed Project Manager for the Request for Proposals (RFP) has been defined as a single project, (if a phased project all phases shall be *substantially completed*), successfully completed and construction of the entire project certified substantially complete, within the past twenty (20) years prior to the due date of proposals submitted for this RFP within the contiguous United States, Alaska, and Hawaii that included Construction Manager at Risk Services as follows:

- a. **Project Type A:** Two (2) Similar Projects that are renovation or expansion of building space of at least 350,000 contiguous square feet within a 750,000 square feet facility, on an **ACTIVE** fully operational general assembly facility (airports, arenas, convention centers, university campus facilities, hotels, stadiums),

AND

- b. **Project Type B:** Two (2) Similar Projects that are expansion or new construction of building space of at least 750,000 contiguous square feet, on general assembly facility (airports, arenas, convention centers, university campus facilities, hotels, stadiums),

AND

- c. Each Similar Project shall include the following elements: foundation, structural elements, HVAC and primary electrical components, plumbing, site civil, audio/visual and security installations, dynamic signage and data communication elements. Descriptions should include proposed key personnel's roles in coordination and cutover procedures for existing utilities, screening of construction activities and phasing of construction to minimize operational disruption. Both Project Type A and B should include experience with premium architectural finishes, truss curtainwall systems, and computer-controlled building systems.
- 2. **In order to receive consideration as a "Similar Project" each project shall fully meet the above similar project description. Failure to meet these requirements will result in the project not considered as a similar project and receive a score of zero for that project.**
 - 3. Each "Similar Project" will be scored based on the following elements:
 - a. Construction costs in excess of \$175 million for two (2) projects and in excess of \$200 million for the remaining two (2) of the four (4) projects for the **Senior Project Manager** and Construction costs in excess of \$100 million for all four (4) projects for the **Project Manager**.
 - b. Participated in a Construction Manager at Risk Contract with Guaranteed Maximum Price delivery method.
 - c. Management and oversight of project construction of deep pile construction, structural steel and concrete framing, mechanical and electrical installations, hydronic piping systems, programmable building automation systems.

- d. Performance of design assist in project design services including, but not limited to, schematic through construction documents, architectural, electrical, plumbing, mechanical, and structural design categories. Providing constructability reviews and assistance in developing phasing and logistic plans.
- e. Performance of value engineering reviews, constructability and analysis at all stages of programming, design and construction following a structured approach to developing, evaluating and selecting alternatives to provide best value.
- f. Performing and Coordinating Project Estimates using standard CSI categories, identifying and reconciling cost discrepancies.
- g. Development and maintenance of project schedule utilizing industry standard computer scheduling software, integration of several independent schedules into a single master construction schedule. Experience with design schedules, procurement of long lead items and analysis of delays or other interruptions.
- h. Development of LEED or Green Sustainable Project Requirements. Development with Owner Project Requirement documentation, impact of LEED upon project costs and creative methods for achieving LEED certification.

4. **Similar Project Scoring Criteria.**

- a. **Senior Project Manager Scoring Criteria:** Element “1”, “2”, “3”, and “4” are mandatory elements. Those “Similar Projects” with less than the first four (4) mandatory elements will not be considered similar and receive a score of zero. In order to receive consideration for one-half (1/2) point, a “Similar Project” must contain elements “1”, “2”, “3”, and “4” and at least three (3) of the remaining elements 5 through 8. In order to receive one (1) full point, a “Similar Project” must contain all eight (8) total elements including all four (4) mandatory elements.
- b. **Project Manager Scoring Criteria:** Element “1”, “2”, “3”, and “4” are mandatory elements. Those “Similar Projects” with less than the four (4) mandatory elements will not be considered similar and

receive a score of zero. In order to receive consideration for one-half (1/2) point, a "Similar Project" must contain elements "1", "2", "3", and "4" and at least two (2) of the remaining elements. In order to receive one (1) full point, a "Similar Project" must contain eight (8) total elements including all four (4) mandatory elements.

5. All elements of the project must have been successfully completed and construction of the entire project certified substantially complete. The "Similar Projects" must have been certified "Substantial Completion" prior to the due date of proposals submitted for this RFP.
6. Under this similar project description, the project may have been performed under a specific contract. Also, a specific project (task authorization) performed under a continuing contract may be submitted. However, the continuing contract is not acceptable as a similar project. If a specific project (task authorization) is submitted to represent any similar project, all details on the similar project form shall be limited to the specific project (task authorization). All elements of a similar project shall be demonstrated within the specific project (task authorization) and not the continuing contract. Continuing contracts submitted as a similar project will receive a score of zero points. Task authorizations completed under a continuing contract may be submitted as a similar project.
7. **The Proposer shall ensure that the basic descriptions of the similar project, including all required performance requirements and/or dimensions are identified and that the elements are adequately explained in the text. The description shall document how the particular element was performed in conjunction with the overall project. The mere listing of elements without specific details in the body of the description will negatively impact the scoring for the project.**
8. **Failure to identify the specific performance requirements and/or dimensions of the project to ensure it meets the similar project description shall negatively impact that project's score.**

[Note: Determination of a project as similar shall be at the sole discretion of the County.]

9. **Definitions.**

- a. **Senior Project Manager:** Individual who managed the administrative elements of the similar project, was the primary point of contact for the client, directed the production of the planning/design/construction work products, while performing those services from initial design to substantial completion of the project. **The Senior Project Manager shall be a Bachelor Degreed Engineer, Architect, or Construction Manager. A diploma must be submitted as backup for validation of any degree.**

- b. **Project Manager:** Defined as the Individual who assisted the Senior Project Manager as the lead technical supervisor of the project planning/design/construction activities from initial design to substantial completion of the project as described in the similar project criteria. The position served as the point of contact for the client in the Senior Project Manager's absence. **The Project Manager shall be a Bachelor Degreed Engineer, Architect, or Construction Manager. A diploma must be submitted as backup for validation of any degree.**

[Note: To be credited as "Similar Projects" for the proposed Senior Project Manager and Project Manager, the individual must have served in the role as defined above from initial design to substantial completion of the project design and construction activities, budget, and schedule duration. If the proposed Senior Project Manager and Project Manager did not manage from initial design to substantial completion, that project shall receive a score of zero (0).]

- c. **Key Subcontractor:** A Key Subcontractor is one who will perform a substantial scope of work that is critical to the success of the project. This work may require managerial and organizational skills, construction specialties or project specific resources to achieve a successful project outcome. Key Subcontractors must be clearly identified on the organization chart submitted with the proposal. The CMAR shall not substitute any Key Subcontractor without the prior written approval of the Manager of the Procurement Division and the Manager of Business Development.

- d. **Substantial Completion:** Completion of 90% of the Work in

accordance with the construction contract documents, so that the owner may use or occupy the project or designated portion for the intended purpose. If a phased Project, all phases shall be substantially completed. The date of substantial completion must be prior to the due date of proposals for this RFP.

- e. **Successfully Completed/Final Completion:** Completion of the Work and the Owner has accepted the Work.

D. **Experience of the Project Team.**

It is the responsibility of the Proposer to verify subcontractors and other team member's satisfactory performance on previous Orange County projects (see **Form F**). Substitution of the Senior Project Manager, Project Manager or Other Key Personnel: The CMAR shall not substitute any key personnel without the prior written approval of the Manager of the Procurement Division and the Manager of the Business Development Division for M/WBE participation. Any such requests shall be supported by comprehensive documentation outlining the reason(s) for the proposed substitution to include the specific qualifications of the proposed substitute. Approval of the request shall be at the discretion of the County. Further, the County, in lieu of approving a substitution, may initiate other actions under the contract, including termination.

E. **Volume of Work.**

1. The county shall evaluate information in its "Volume of Work" database to determine the Proposers' scores for the Volume of Work criteria. This information is available on-line at:

<http://www.orangecountyfl.net/VendorServices/VolumeofWorkReport.aspx>

2. **This database includes only the award amounts specifically attributable to the contractor, either as a prime or as a subcontractor or as a member of a joint venture under previously awarded contracts, contract amendments, purchase orders, task authorizations, and change orders to those purchase orders and task authorizations. In the case of mergers between two or more firms or a parent subsidiary relationship the combined fee for all companies involved will be considered. Fees will be counted towards the Volume of Work at the time of award (not invoices paid). Total fees under negotiation are based on the budget amount for professional**

services. The end date for volume of work calculation is the date set for receipt of proposals.

3. Volume of Work is calculated using the following formula:

CONTRACT PERIOD	TOTAL FEE AWARDED TO PRIME CONTRACTOR		FACTOR		ADJUSTED FEE AMOUNT
(1) From October 1, 2018 - April 1, 2020	\$	X	1.0	=	\$
(2) First Year Past: 10/01/17- 9/30/18	\$	X	0.75	=	\$
(3) Second Year Past: 10/01/16-09/30/17	\$	X	0.50	=	\$
(4) Third Year Past: 10/01/15-09/30/16	\$	X	0.25	=	\$
(5) Total Fees Under Negotiation	\$	X	0.90	=	\$
TOTAL FEE CONSIDERED:					\$

4. Proposers are cautioned that they are responsible for confirming the accuracy of their volume of work data prior to the time and date set for receipt of proposals.

5. Points will be awarded as follows:

Firms with no previous work with the County as a prime contractor or subcontractor during the current fiscal year <u>and</u> previous fiscal years	5 Points
Firms with adjusted fees of \$1 through \$2,000,000	4 Points
Firms with adjusted fees of \$2,000,001 through \$3,000,000	3 Points
Firms with adjusted fees of \$3,000,001 through \$4,000,000	2 Points
Firms with adjusted fees of \$4,000,001 through \$5,000,000	1 Point
Firms with adjusted fees exceeding \$5,000,000	0 Points

6. When a Joint Venture or Partnership submits a proposal, the volume of work awarded by the County to each Joint Venture or Partnership firm will be multiplied by the percentage of participation in the Joint Venture or Partnership by that firm and those adjusted figures totaled to determine the total dollar amount to be used in the category.

F. Reference Checks.

1. The contact person listed as a reference shall be someone who has personal knowledge of the Proposer's performance during the referenced project. Contact persons must have been informed that they are being used as a reference and that the County may be calling or emailing them. More than one person can be listed but all must have knowledge of the project.
2. DO NOT list principals or officers who will not be able to answer specific questions regarding the project.
3. Failure of references listed to respond to the County's inquiries may negatively impact the rating of the Proposal. **The reference shall be the owner or a representative of the owner.** An owner's representative is defined as a firm or individual hired by the owner to oversee the design or construction oversight services performed by the prime contractor. Consultants or Consultants who provided services under the referenced project (contract) shall not be accepted as references unless they were hired as the owner's representative for the referenced project (contract).

Section 10: Additional Information.

A. **Contract Award Criteria.**

The County will award a single contract for this requirement.

B. **Award Restriction.**

Contractor(s) and subcontractor(s) under contract for any other solicitation regarding the Orange County Convention Center Phase V Multi-Purpose Venue and Grand Concourse Improvements (by way of example: Owner's Representative contract, the Design Contract, etc.) shall be ineligible to participate in this RFP. Additionally, the awarded Proposer for this RFP and any of its subcontractor(s) shall be ineligible to participate in any future contracts to be solicited for the Orange County Convention Center Phase V Multi-Purpose Venue and Grand Concourse Improvements.

C. **Shortlist Publication.**

The recommended short list of Proposers, ranked by score, highest to lowest, will be posted for review by interested parties at the Procurement Division and at <http://apps.ocfl.net/OrangeBids/AwardsRec/default.asp> prior to advancement to Phase II and will remain for a period of five (5) full business days.

D. **Protests.**

Failure to file a protest to the Procurement Division Manager by 5:00 PM on the fifth (5th) full business day **after the posting date of the recommended short list of Proposers** shall constitute a waiver of protest proceedings. **No protests shall be heard after the Board of County Commissioners makes their selection of most qualified.** Additional information relative to protests can be found at the following site:

<http://www.orangecountyfl.net/VendorServices/VendorProtestProcedures.aspx>

E. **Debriefing of Proposers.**

1. Not later than thirty (30) days after Board approval of a selection, a Proposer may submit a written request to the applicable contract administrator or purchasing agent for a debriefing on the evaluation of their proposal. The contracting agent will schedule a meeting with the Proposer for the debriefing. However, at the Proposer's request, the debriefing may be conducted via telephone conference. Untimely debriefing requests will also be considered.
2. The debriefing shall include the following minimum information:
 - a. Key requirements of the solicitation.
 - b. The overall ranking of all proposals. The significant weaknesses or deficiencies in the proposal in response to the requirements of the solicitation.
 - c. If requested, an explanation of the score received for each evaluation criteria will be provided, including costs, if applicable.
 - d. If applicable, a summary of the rationale for award.
 - e. Responses to any relevant questions of the proposer.

F. **Post Award Cost and Pricing Data.**

1. The County will require the selected Contractor to provide the following documentation to support the negotiated fee Proposal as a condition

precedent to the execution of the Contract:

- a. A current audited statement for the most recently completed fiscal year clearly showing the costs (not percentage) of direct labor, indirect labor, fringe benefits, general administrative and overhead costs and a statement of profit or operating margin requested. **A detailed general ledger that is reconciled to the statement of direct labor, indirect labor, fringe benefits, general administrative and overhead costs shall be furnished upon request of the County.**

[NOTE: All indirect costs shall be computed in accordance with 48 CFR Federal Acquisition Regulations.]

- b. A detailed summary of any transactions between organizations under common control that are included in the indirect costs reported in paragraph “(a)” above.
- c. Raw labor rates by labor classification certified as accurate by an officer of the company.
- d. Breakdown of the fee by task/labor classification and raw or billable hourly rate/number of hours.
- e. Summary of fees for services to be provided by subcontractors.
- f. Scope of work and fee Proposal from each sub supporting the above summary, on the subcontractors’ letterhead. The scope of work for each sub must support the scope of work of the prime Consultant’s contract.
- g. Breakeven multiplier statement from each subcontractor (breakeven multiplier includes direct and indirect labor, general administrative and overhead costs) and the profit or operating margin clearly indicated.
- h. Project schedule.
- i. Breakdown of all out-of-pocket and/or direct expenses.

- j. If any costs for local travel are included, there must be compelling reasons for such costs that must be adequately supported with specific justification.

G. **Post Award Supporting Documentation.**

1. The County will require the selected Contractor to provide the following documentation to support the negotiated Proposal.
 - a. Scope of service as revised during contract negotiations. Note that changes should serve to clarify the scope and not add or delete from the scope of work as contained in the Request for Proposals.
 - b. Billable hourly rates for each proposed subcontractor developed by multiplying the raw labor rates by the breakeven multiplier. This information must be certified by an officer of the firm. Breakeven multiplier includes direct and indirect labor, general administrative and overhead costs. The profit or operating margin must be clearly indicated
 - c. Valid insurance certificate(s) evidencing contractually required coverage.

RFP Y19-815-JS

ADDENDUM NO. 11

ATTACHMENT 3: RFP FORMS

FORM A: REQUEST FOR PROPOSALS

#Y19-815-JS

CONSTRUCTION MANAGER AT RISK SERVICES FOR THE ORANGE COUNTY CONVENTION
CENTER PHASE V MULTI-PURPOSE VENUE AND GRAND CONCOURSE IMPROVEMENTS

DUE 2:00 P.M. – November 19, 2019

Section 1: Proposer Information

Name of Proposer (Entity Name):	
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NOTE: Proposer’s name must match the legal name assigned to the TIN number provided below.

Proposer Principal Place of Business (Chapter 607, Florida Statutes)	
Street:	
P.O. Box:	
City, County, State, Zip:	

Phone:		Fax:	
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NOTE: As part of its proposal to the County for the Project, the Proposer must certify that it will include a minimum of 24% M/WBE inclusion at the management level. This 24% M/WBE inclusion at the management level is calculated based upon the M/WBE(s) involved at the management level receiving 24% of the GMP for the Project. This may be accomplished by the Proposer being a M/WBE Sole Proprietorship/Corporation or a Joint Venture or Partnership where at least 24% of the GMP for the Project is being paid to M/WBE(s) functioning at the management level.

Identification of Business Organization:

Tax Identification Number (TIN#):	
State of Incorporation:	
Entity Type:	<input type="checkbox"/> Joint Venture <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietorship/Corporation
Check all that apply*:	<input type="checkbox"/> Merger <input type="checkbox"/> Parent Company <input type="checkbox"/> Subsidiary <input type="checkbox"/> N/A

***If a Merger, Parent Company, or Subsidiary relationship exists, list all entities in the relationship below:**

NOTE: It is the Proposer’s sole responsibility to make sure that whatever Joint Venture, Partnership, Sole Proprietorship, or Corporation that is submitting a Proposal is doing so pursuant to all of its obligations under Florida Law.

Proposer Name: _____

Section 2: Proposer's Authorized Signatory Information

The Proposer represents that the following principal(s) are authorized to sign and submit this Proposal and any and all related documents to Proposer will be duly bound:

Principal #1 Name:	
Title:	
Phone Number:	
Email Address:	

Principal #2 Name:	
Title:	
Phone Number:	
Email Address:	

Principal #3 Name:	
Title:	
Phone Number:	
Email Address:	

NOTE: Proposers **must** submit appropriate evidence of delegated signature authority to the Principal(s) listed above. (For example: If the Proposer is an LLC, the Operating Agreement showing that the Principal listed is authorized to sign and bind the LLC must be submitted.)

Section 3. Addendum Acknowledgment

By submitting this Proposal, the Proposer acknowledges:

1. The receipt of the addenda issued to this solicitation as stated in the table below;
2. That Addendum 11, issued on October 17, 2019, was a Restated Request for Proposals that incorporated the previous addenda as applicable for this solicitation;
3. Any addenda issued previous to Addendum 11 that conflict with Addendum 11, shall be considered superseded by Addendum 11; and
4. Failure to acknowledge an addendum that has a material impact on the solicitation may negatively impact the responsiveness of a Proposer's Proposal. Material impacts include but are not limited to changes to scope of work, delivery time, performance period, quantities, bonds, letters of credit, insurance, qualifications, etc.

Proposer Name: _____

Addendum No. 1	Date: May 13, 2019	Addendum No. 8	Date: August 5, 2019
Addendum No. 2	Date: May 15, 2019	Addendum No. 9	Date: August 29, 2019
Addendum No. 3	Date: May 28, 2019	Addendum No. 10	Date: September 11, 2019
Addendum No. 4	Date: June 5, 2019	Addendum No. 11	Date: October 17, 2019
Addendum No. 5	Date: June 17, 2019	Addendum No. ____	Date:
Addendum No. 6	Date: June 28, 2019	Addendum No. ____	Date:
Addendum No. 7	Date: July 29, 2019	Addendum No. ____	Date:

Section 4. Attachments Required

- Current W9;
- Evidence of delegated signature authority to the Principal(s) listed in **Form A, Section 2** above;
- Organizational chart (See **Form F** for more details);
- Relevant diplomas (See **Form F** for more details);
- M/WBE Subcontractor Utilization Plan (See Restated RFP **Section 4**);
- Registered SDV Utilization Plan (if applicable, see Restated RFP **Section 5**);
- **Form B:** Project Team;
- **Form C:** Location;
- **Form D:** Senior Project Manager Similar Projects;
- **Form E:** Project Manager Similar Projects;
- **Form F:** Skills and Experience of the Project Team;
- **Form H:** Project Scope, Approach, and Understanding
- **Form I:** Conflict and Litigation Statements;
- **Form J:** Equal Opportunity Workforce Schedule;
- **Form L:** Drug-Free Workplace Form;
- **Form N:** Orange County Specific Project Expenditure Report;
- **Form O:** Relationship Disclosure Form;
- **Form P:** E-Verification Certification;
- **Form WR:** Dislocated Workers; and
- **Any specific information not here listed but explicitly requested to be attached pursuant to the language of the RFP.**

NOTE: Forms **G**, **K**, and **M** are not being used.

[FORM A CONTINUES ON NEXT PAGE]

Proposer Name: _____

Section 5: Proposer's Notarized Affirmation

I swear and affirm that: (1) I have read Form A (**Sections 1, 2, 3, and 4**) in its entirety; and (2) the statements and representations that the Proposer has made in completing Form A and all attachments to Form A are true and correct to the best of my information, knowledge, and belief.

Under penalties of perjury, I swear affirm that the preceding information and all information attached to **Form A**, or submitted as part of the Proposer's Proposal, is true and correct. **I also acknowledge that any material misrepresentation will be grounds for terminating for default any contract, which may have been awarded due in whole or part to such misrepresentation.** I also understand that false statements may result in criminal prosecution for a felony of the third degree per Section 92.525(3), Florida Statutes.

AUTHORIZED SIGNATORY:

Signature

Printed Name

Official Title

Date

NOTARY:

STATE OF: _____)

COUNTY OF: _____)

The foregoing instrument was acknowledged before me: on this ____ day of _____, 20____, by _____, in their official capacity as _____ for the above-stated Proposer. The affiant certified to me that they were duly empowered to bind the Proposer.

Personally Known

Produced Identification. ID Type: _____

Signature Notary Public

Print, Type/Stamp Name of Notary

Proposer Name: _____

FORM B: PROJECT TEAM

Section 1: Proposer				
Role	Name and City of Residence of Individual Assigned to the Project	Experience (# Years)	Education, Degree(s)	Florida Active Registration Numbers
Principle-in-Charge				
Senior Project Manager				
Project Manager				
Project Construction Administrator				
Other Key Member (_____)				
Other Key Member (_____)				
Section 2: Subcontractors/Subconsultants (List any known at time of submitting Proposal)				
Role	Company Name and Address of Office Handling this Project	Projected % of Overall work on the entire project	Name of Individual Assigned to the Project	
Architecture				
Mechanical Engineering				
Electrical Engineering				
Structural Engineering				
Civil Engineering				
Landscape Architecture				
Other Key Member (_____)				
Other Key Member (_____)				
Other Key Member (_____)				
Other Key Member (_____)				

Use additional pages as necessary.

Proposer Name: _____

FORM C: LOCATION

Proposers shall complete and submit the information below to clearly identify the location and applicable percentage of the work to be performed at each location listed.

Section 1: Proposer			
Name	Full Address	County	Percentage of Work Assigned

Section 2: Subcontractors/Subconsultants (List any known at time of submitting Proposal)			
Name	Full Address	County	Percentage of Work Assigned

Proposer Name: _____

Section 3: Senior Project Manager Domicile Information					
Name:					
City:		County:		State:	

1. Will the Senior Project Manager re-locate Orange County address to facilitate contract performance? Yes No N/A

- If “no,” because the Senior Project Manager will not relocate, explain how the Senior Project Manager will manage the project and maintain close communication with the County:

- If “yes,” please explain when relocation will occur in relationship to contract award:

- If “N/A” because the Senior Project Manager is already domiciled in Orange County, Florida, skip to next page.

Proposer Name: _____

Section 4: Project Manager Domicile Information					
Name:					
City:		County:		State:	

1. Will the Project Manager re-locate to an Orange County address to facilitate contract performance? Yes No N/A

- If “no,” because the Project Manager will not relocate, explain how the Project Manager will manage the project and maintain close communication with the County:

- If “yes,” please explain when relocation will occur in relationship to contract award:

- If “N/A” because the Senior Project Manager is already domiciled in Orange County, Florida, skip to next page.

Proposer Name: _____

Section 5: Proposer's Notarized Affirmation

I swear and affirm that: (1) I have read **Form C (Sections 1, 2, 3, and 4)** in its entirety; and (2) the statements and representations that the Proposer has made in completing Form C and all attachments to Form C are true and correct to the best of my information, knowledge, and belief.

Under penalties of perjury, I swear affirm that the preceding information is true and correct. **I also acknowledge that any material misrepresentation will be grounds for terminating for default any contract, which may have been awarded due in whole or part to such misrepresentation.** I also understand that false statements may result in criminal prosecution for a felony of the third degree per Section 92.525(3), Florida Statutes.

AUTHORIZED SIGNATORY:

Signature

Printed Name

Official Title

Date

NOTARY:

STATE OF: _____)

COUNTY OF: _____)

The foregoing instrument was acknowledged before me: on this ____ day of _____, 20____, by _____, in their official capacity as _____ for the above-stated Proposer. The affiant certified to me that they were duly empowered to bind the Proposer.

Personally Known

Produced Identification. ID Type: _____

Signature Notary Public

Print, Type/Stamp Name of Notary

Proposer Name: _____

FORM D: SENIOR PROJECT MANAGER'S SIMILAR PROJECTS

Using the pages provided in **Form D** only, list up to **Four (4) "Similar Projects"** (two pages per project) for which services have been **successfully completed within the past twenty (20) years, immediately preceding the due date for proposals in response to this RFP**, which most closely match the scope of work in this RFP. For more information as to what qualifies as a "similar project," please refer to Section # of the RFP entitled "Similar Projects."

Notes:

1. The proposed Senior Project Manager had to have performed **in the same capacity** with the Proposer, or other firms, in order for a Similar Project to be counted.
2. LIST THE **ONE (1) SENIOR PROJECT MANAGER INDICATED ON FORM B**. Proposers must explain and emphasize how each element of the similar project description was performed in conjunction with the project listed.
3. The Senior Project Manager shall be a Bachelor Degreed Engineer, Architect, or Construction Manager. A diploma must be submitted as backup for validation of any degree.
4. The Proposer shall ensure that the basic description of the similar projects (if a phased project all phases shall be *substantially completed, and construction of the entire project certified substantially complete*), including all required performance requirements and/or dimensions, is *identified* and that the elements are adequately explained in the text. The description shall document how the particular element was performed in conjunction with the overall project. The mere listing of elements without specific details in the body of the description will negatively impact the scoring for the project.
5. In addition, the Proposer should provide a narrative of what skills were used that are similar in nature to what is required in the scope of services for this RFP. The Proposer should also describe in detail how the Senior Project Manager was responsive to the client's needs and requests.

Proposer Name: _____

Proposer Name: _____

Proposer Name: _____

[Empty rectangular box for content]

Proposer Name: _____

Proposer Name: _____

Proposer Name: _____

Proposer Name: _____

Form D: Senior Project Manager Similar Projects Information (Project Type B – 2)

Senior Project Manager Name:	
Select the applicable option:	<input type="checkbox"/> Bachelor Degreed Architect <input type="checkbox"/> Bachelor Degreed Engineer <input type="checkbox"/> Bachelor Degreed Construction Manager

Section 4: Project Type B

Project Name:	
Project Owner:	

Square Feet of ACTIVE fully operational general assembly facility improvement (university campus facility, airport, convention center, arena, stadium, or hotel):	
--	--

Project Reference (Must be Owner of Project)

Reference Name:	
Address:	
Phone Number:	
Fax Number:	
Email Address:	

Design/Consulting Firm Name:	
Design/Consulting Start Date:	
Design/Consulting Completion Date:	

Construction Cost:	
Substantial Completion Date:	
Construction Completion Date:	

Summary of Services/Work:

--

Proposer Name: _____

Proposer Name: _____

Proposer Name: _____

FORM E: PROJECT MANAGER'S SIMILAR PROJECTS

Using the pages provided in **Form E** only, list up to **Four (4) "Similar Projects"** (two pages per project) for which services have been **successfully completed within the past twenty (20) years, immediately preceding the due date for proposals in response to this RFP**, which most closely match the scope of work in this RFP. For more information as to what qualifies as a "similar project," please refer to Section # of the RFP entitled "Similar Projects."

Notes:

1. The proposed Project Manager had to have performed **in the same capacity** with the Proposer, or other firms, in order for a Similar Project to be counted.
2. LIST THE **ONE** (1) PROJECT MANAGER INDICATED ON **FORM B**. Proposers must explain and emphasize how each element of the similar project description was performed in conjunction with the project listed.
3. Identify if the Project Manager shall be a Bachelor Degreed Engineer, Architect, or Construction Manager. A diploma must be submitted as backup for validation of any degree.
4. The Proposer shall ensure that the basic description of the similar projects (if a phased project all phases shall be *substantially completed, and construction of the entire project certified substantially complete*), including all required performance requirements and/or dimensions, is *identified* and that the elements are adequately explained in the text. The description shall document how the particular element was performed in conjunction with the overall project. The mere listing of elements without specific details in the body of the description will negatively impact the scoring for the project.
5. In addition, the Proposer should provide a narrative of what skills were used that are similar in nature to what is required in the scope of services for this RFP. The Proposer should also describe in detail how the Project Manager was responsive to the client's needs and requests.

Proposer Name: _____

Proposer Name: _____

Proposer Name: _____

Proposer Name: _____

Proposer Name: _____

Proposer Name: _____

Proposer Name: _____

Proposer Name: _____

Proposer Name: _____

FORM F: SKILLS AND EXPERIENCE OF THE PROJECT TEAM

Using a maximum of ten (10) pages, 8 1/2" X 11", labeled "Form F-1" through "Form F-10" describe the experience of the entire project team as it relates to this Project. Title the first page "Skills and Experience of the Project Team" and label each page as described above. Include the experience of the Prime Contractor team as well as other members of the project team; i.e., additional personnel, subcontractors, branch offices, team members, and other resources anticipated to be utilized for this project; staff's professional titles, licenses, certifications, and accomplishments; qualifications and years of experience and number of years prime and subcontractors worked together. Name specific projects, **successfully completed within the past twenty (20) years**, which involved Construction Manager at Risk Services where the team members have performed similar projects previously.

Qualifications of Other Key Personnel. Identify the key personnel who will have primary responsibility for the following areas of service if the firm is selected. **Should the Senior Project Manager or Project Manager not be a Professional Licensed Architect or Professional Licensed Engineer, the Proposer needs to identify a Professional Licensed Architect or Professional Licensed Engineer resource on the Project team and Organizational Chart.** For each individual identified, provide name, office address, title, current employer, brief resume indicating the individual's experience (including the number of years of experience) in the area of responsibility below, and showing project related experience in Active fully operational general assembly facility (university campus facility, airport, convention center, arena, stadium, or hotel) that involved Construction Manager at Risk Services for at least three (3) projects.

- a. Construction
- b. Engineering
- c. Value Engineering
- d. Design Review (Constructability, Maintainability)
- e. Cost Estimating
- f. Quality Assurance/Quality Control
- g. Construction Administration
- h. Construction Schedule
- i. Project Safety
- j. Operations Planning and Assistance

Specifically identify the construction management plan. The construction plan shall describe, at a minimum, the Proposer's basic approach to the engineering and

Proposer Name: _____

construction of the project, to include reporting hierarchy of staff and subcontractors, clarify the individual(s) responsible for the coordination of the separate components of the scope of work, and describe the Quality Assurance/Quality Control plan.

Provide an organizational chart for the team to provide the required construction and engineering services using a maximum of two (2) pages, 11" X 17", labeled "Form F-11a" and "Form F-11b"; the organizational chart will be in addition to the ten (10) page maximum. Identify staff on organizational chart by Prime Contractor and Sub-contractor firm affiliation.

When submitting a diploma as back up for validation of the Bachelor Degrees for the Senior Project Manager and the Project Manager, please label the document(s) "Form F-12(a)" and "Form F12-(b)" respectively. The backup will be in additional to the ten (10) page maximum.

Proposer Name: _____

FORM G: NOT BEING USED

Proposer Name: _____

FORM H: PROJECT SCOPE, APPROACH, AND UNDERSTANDING

Using a maximum of five (5) pages, 8½" x 11", labeled "Form H-1" through "Form H-5", delineates your firm's understanding of the project scope and approach(es) to successful completion, specialized skills available, special considerations and possible difficulties in completing the project as specified. Describe alternate approaches to the project, if applicable. In addition, briefly describe your approach to each of the bullets below, a through e:

- a. **Business Outreach:** How do you intend to maximize participation from the business community in this contract?
- b. **Construction Requirements:** One of the critical components from the user's perspective is to maintain operations and provide an Outstanding Customer Experience? What type of processes will you follow to insure this happens?
- c. **Quality Assurance/Quality Control:** How do you provide QA/QC for Construction? Describe the review process, individuals involved, peer review?
- d. **Partnering with Team Members:** Have you worked with an Architect on prior projects that were design assist projects? What processes helped you work cooperatively with the A/E Design Team?
- e. **On Time and Within Budget:** How will your firm ensure project(s) is completed on time and how will your firm ensure that the project(s) are designed and constructed within budget?

Title the first page "Project Scope, Approach and Understanding" and label each page as described above.

Proposer Name: _____

FORM I: CONFLICT AND LITIGATION STATEMENTS

Section 1: Conflict/Non-Conflict of Interest Statement

CHECK ONE:

- To the best of our knowledge, the undersigned firm has no potential conflict of interest due to any other clients, contracts, or property interest for this project.

OR

- The undersigned firm, by attachment to this form, submits information which may be a potential conflict of interest due to other clients, contracts, or property interest for this project.

Section 2: Litigation Statement

CHECK ONE:

- The undersigned firm has had no litigation and/or judgments entered against it by any local, state or federal entity and has had no litigation and/or judgments entered against such entities during the past ten (10) years.
- The undersigned firm, **BY ATTACHMENT TO THIS FORM**, submits a summary and disposition of individual cases of litigation and/or judgments entered by or against any local, state or federal entity, by any state or federal court, during the past twenty (20) years.

Section 3: Failure to Complete

Failure to check the appropriate blocks above may result in disqualification of your proposal. Likewise, failure to provide documentation of a possible conflict of interest, or a summary of past litigation and/or judgments, may result in disqualification of your proposal.

Section 4: Proposer's Notarized Affirmation

I swear and affirm that: (1) I have read **Form I (Sections 1, 2, and 3)** in its entirety; and (2) the statements and representations that the Proposer has made in completing

Proposer Name: _____

Form I and all attachments to Form I are true and correct to the best of my information, knowledge, and belief.

Under penalties of perjury, I swear affirm that the preceding information is true and correct. **I also acknowledge that any material misrepresentation will be grounds for terminating for default any contract, which may have been awarded due in whole or part to such misrepresentation.** I also understand that false statements may result in criminal prosecution for a felony of the third degree per Section 92.525(3), Florida Statutes.

AUTHORIZED SIGNATORY:

Signature

Printed Name

Official Title

Date

NOTARY:

STATE OF: _____)
COUNTY OF: _____)

The foregoing instrument was acknowledged before me: on this ____ day of _____, 20____, by _____, in their official capacity as _____ for the above-stated Proposer. The affiant certified to me that they were duly empowered to bind the Proposer.

- Personally Known
- Produced Identification. ID Type: _____

Signature Notary Public
Print, Type/Stamp Name of Notary

Proposer Name: _____

FORM J: EQUAL EMPLOYMENT WORKFORCE SCHEDULE

INSTRUCTIONS FOR COMPLETING FORM J

Please read the following carefully. These are the instructions for how to complete and submit **FORM J, the Equal Opportunity Workforce Schedule.**

Failure to meet the minority and women workforce levels provided, or to provide evidence of a good faith effort (employment) to meet such levels, **may result in the Proposer being deemed non-responsive.**

I. Minority/Women Workforce Employment Goal. Through its M/WBE Enterprise Ordinance, the County has established the following:

Sec. 17-322. - Establishment of goals; employment.

The goals for minority and women employment levels to be achieved by contractors with the county are hereby set at **twenty-four (24) percent, with minority employment levels being established at eighteen (18) percent, and women employment levels being established at six (6) percent.**

- (1) Contractors submitting bids to the county may comply with **minority group employment levels and percentages** as established pursuant to this division or may, in the event such levels and percentages are not achieved, provide evidence of a good faith effort (employment) to achieve such levels and percentages. **If such levels and percentages are not achieved and if it is deemed that a good faith effort (employment) for compliance has not been shown, then the contractor's bid may be rejected as nonresponsive.**
- (2) Contractors submitting bids to the county may comply with **female employment levels and percentages** as established pursuant to this division or may, in the event such levels and percentages are not achieved, provide evidence of a good faith effort (employment) to achieve such levels and percentages. **If such levels and percentages are not achieved and it is deemed that a good faith effort (employment) for compliance has not been shown, then the contractor's bid may be rejected as nonresponsive.**

II. Definitions. When filling out **FORM J**, the following definitions apply:

American means a person who is a citizen or a permanent resident of the United States.

Good faith effort (employment) means an honest attempt to meet the County's minority and women employment goals. Factors to be considered in determining good faith effort (employment) are as follows:

- (1) The equal employment opportunity work force schedule complete and in the

Proposer Name: _____

bid package;

- (2) Where the level of employees does not meet the county minority and women employment goals, the contractor has set forth its plans to meet those goals;
- (3) Nonworking training hours of minority/women apprentices and trainees can be counted toward the goals, if such minority/women apprentices or trainees are employed by the contractor during the training period and the contractor has made a commitment to employ the minority/women apprentices or trainees at the completion of their training, subject to the availability of employment opportunities;
- (4) A diversification plan that outlines specific actions to ensure equal employment opportunity to include, but not be limited to: a work environment free from harassment, intimidation or coercion; a current list of minority and women recruitment sources and community sources and a provision for written notification to these sources when employment opportunities are available; a current file of applicants and the action taken with respect to each applicant; written notification when the union referral process has impeded the contractor's effort to meet its obligation; on the job training opportunities and/or training programs, within the contractor's firm, for the area which expressly includes minorities and women;
- (5) The contractor has provided notice of these training programs and employment opportunities to the recruitment sources and the County minority/women business enterprise department;
- (6) The contractor disseminates the equal employment opportunity policy and requests assistance in meeting these equal employment opportunity obligations by including it in any policy manual and collective bargaining agreement, by publicizing it in the company newspaper, annual report, by specific review of the policy with all management personnel and with all minority and female employees and by posting the equal employment opportunity policy on bulletin boards accessible to all employees;
- (7) The contractor's recruitment efforts, both oral and written, have been directed to minority and female organizations, schools, and to its own minority and female employees; and
- (8) The contractor has designated a responsible official to monitor all employment related activity to ensure that the equal employment opportunity policy is being carried out.

Minority means:

- (1) **"African Americans,"** which includes persons having origins in any of the black racial groups of Africa;

Proposer Name: _____

- (2) **"Hispanic Americans,"** which includes persons of Spanish or Portuguese culture with origins in Mexico, Puerto Rico, Cuba, Central or South America or the Caribbean Islands;
- (3) **"Native Americans,"** which includes persons residing in the United States or its territories, who are descendants of any of the Indian tribes with origins in the North and South American continents and other islands or lands to include the countries of the United States, Canada and Mexico;
- (4) **"Asian Americans,"** which includes persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands.
 - a. **"Far East"** is defined to include China, Hong Kong, Macao, Japan, Korea, Taiwan and the Philippines.
 - b. **"Southeast Asia"** is defined to include Burma, Kampuchea, Laos, Thailand, Vietnam, Malaysia, Brunei, Borneo, Indonesia and Cambodia.
 - c. **"Pacific Islands"** is defined to include Micronesia, Polynesia, Melanesia and the area consisting of the Hawaiian Islands prior to 1778.
 - d. **"Indian Subcontinent"** is defined to include India, Bangladesh, Sikkim, Nepal, Pakistan and Bhutan.

III. **Equal Opportunity Workforce Schedule [FORM J].** The County uses the attached **FORM J**, the *Equal Opportunity Workforce Schedule*, in its calculation of whether or not a proposer/bidder meets the County's Minority/Women Workforce Employment Goal. When filling out this form, please note that:

- (1) **Failure to meet the Minority/Women Workforce Employment Goal, or to provide adequate evidence of a good faith effort to meet both the minority and the women workforce employment levels may result in the proposal/bid being deemed nonresponsive.**
- (2) Both 18% minority and 6% women workforce employment levels must be met in order to meet or exceed the total 24% goal. **If a proposer/bidder fails to meet either, or both, workforce employment levels, the proposer/bidder must attach evidence of a good faith effort (employment) to this form for each level it failed to meet.**
- (3) Proposers/bidders who are Orange County Certified M/WBEs **must** complete **FORM J** and meet the Workforce Employment Goal.

Proposer Name: _____

- (4) A woman who is also a minority counts toward both the woman and minority employment levels when calculating the total percentage of minority and women workforce levels.
- (5) If proposing or bidding as a Joint Venture or Partnership:
 - a. Each separate firm must submit a copy of **FORM J** with the proposal/bid for consideration; and
 - b. Each separate firm must individually meet both the woman and minority workforce employment levels or submit evidence of a good faith effort as discussed above in order for the overall proposal/bid to be considered as meeting this goal. **If any of the firms does not individually do so, the entire Joint Venture or Partnership's proposal may be considered nonresponsive.**
- (6) For the duration of the awarded proposer/bidder's contract with the County, and for any work performed pursuant to the proposer/bidder's contract with the County, the awarded proposer/bidder will be expected to:
 - a. Continue to maintain minority and women workforce levels at or above the levels provided for in the Orange County M/WBE Enterprise Ordinance, or
 - b. Continue to provide evidence of a good faith effort to maintain those minority and women workforce levels.
- (7) **Failure of an awarded proposer/bidder to comply with its above-stated continuing obligations may result in the penalties provided for in Section 17-326, Orange County Ordinance, being applied. These penalties include *but are not limited to*:**
 - a. Permanent debarment from bidding on County contracts;
 - b. Suspension from submitting proposals/bids on County contracts for up to two (2) years; and
 - c. Termination of any present contract(s) with the County.

IV. M/WBE Enterprise Ordinance. Please review the Orange County M/WBE Enterprise Ordinance found in Chapter 17, Article III, Division 4 of the Orange County Code for more information.

FORM J: EQUAL OPPORTUNITY WORKFORCE SCHEDULE

Proposer Name: _____ RFP/IFB No. _____

Workforce Position	African American		Asian American		Hispanic American		Native American		Caucasian/ Other		Total Workforce
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	
Officials, Managers, and Supervisors											
Professionals											
Technicians											
Sales Workers											
Office and Clerical											
Craftsman (Skilled)											
Operatives (Semi-Skilled)											
Laborers (Unskilled)											
Service Workers											
Apprentice											
Interns/Co-Ops											
TOTAL											

Workforce Employment Goal Criteria	Raw Number	Total Workforce	Actual Percentage	Workforce Employment Level	Met Level? ¹
Total Female Workforce:			_____ %	Meet or exceed 6%	<input type="checkbox"/> Yes <input type="checkbox"/> No
Total Minority Workforce:			_____ %	Meet or exceed 18%	<input type="checkbox"/> Yes <input type="checkbox"/> No

¹ If the answer to meeting either, or both, workforce employment level is “no,” attach to this form the Proposer’s evidence of good faith effort (employment) for each workforce employment level not met.

Proposer Name: _____

FORM K: NOT BEING USED

Proposer Name: _____

FORM L: DRUG-FREE WORKPLACE FORM

The undersigned vendor, in accordance with Florida Statute 287.087, hereby certifies that
_____(the “Proposer”) does:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in Paragraph 1.
4. In the statement specified in Paragraph 1, notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any convictions of, or plea of guilty or nolo contendere to, any violation of Chapter 1893 or of any controlled substance law of the United States or any state, for any violation occurring in the workplace, no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in, a drug abuse assistance or rehabilitation program, if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free work-place through implementation of Paragraphs 1 through 5.

As the person authorized to sign this statement, I certify that this firm complies fully with the above requirements.

Authorized Signatory: _____

Printed Name: _____

Date: _____

Proposer Name: _____

FORM M: NOT BEING USED

Proposer Name: _____

FORM N: ORANGE COUNTY SPECIFIC PROJECT EXPENDITURE REPORT

This lobbying expenditure form shall be completed in full and filed with all application submittals. This form shall remain cumulative and shall be filed with the department processing your application. Forms signed by a principal's authorized signatory must be signed by an authorized individual listed on Form "A" and with supporting evidence of such delegated signature authority as required on Form "A."

(Check the Option that Applies)

- This is the initial Form
- This is a Subsequent Form

PART I: PLEASE COMPLETE ALL OF THE FOLLOWING

Name and Address of Principal (legal name of entity or owner per Orange County tax rolls): _____

Name and Address of Principal's Authorized Agent, if applicable: _____

List the name and address of all lobbyists, contractors, contractors, subcontractors, individuals or business entities who will assist with obtaining approval for this project. (Additional forms may be used as necessary.)

1. Name and address of individual or business entity: _____
Are they registered Lobbyist? Yes or No
2. Name and address of individual or business entity: _____
Are they registered Lobbyist? Yes or No
3. Name and address of individual or business entity: _____
Are they registered Lobbyist? Yes or No
4. Name and address of individual or business entity: _____
Are they registered Lobbyist? Yes or No
5. Name and address of individual or business entity: _____
Are they registered Lobbyist? Yes or No
6. Name and address of individual or business entity: _____
Are they registered Lobbyist? Yes or No
7. Name and address of individual or business entity: _____
Are they registered Lobbyist? Yes or No
8. Name and address of individual or business entity: _____
Are they registered Lobbyist? Yes or No

Proposer Name: _____

PART II: EXPENDITURES

For this report, an "expenditure" means money or anything of value given by the principal and/or his/her lobbyist for the purpose of lobbying, as defined in section 2-351, Orange County Code. This may include public relations expenditures including, but not limited to, petitions, fliers, purchase of media time, cost of print and distribution of publications. However, the term "expenditure" **does not** include:

1. Contributions or expenditures reported pursuant to chapter 106, Florida Statutes;
2. Federal election law, campaign-related personal services provided without compensation by individuals volunteering their time;
3. Any other contribution or expenditure made by or to a political party;
4. Any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4), in accordance with s.112.3215, Florida Statutes; and/or
5. Professional fees paid to registered lobbyists associated with the project or item.

The following is a complete list of all lobbying expenditures and activities (including those of lobbyists, contractors, contractors, etc.) incurred by the principal or his/her authorized agent and expended in connection with the above-referenced project or issue. **You need not include *de minimus* costs (under \$50) for producing or reproducing graphics, aerial photographs, photocopies, surveys, studies or other documents related to this project.**

Date of Expenditure	Name of Party Incurring Expenditure	Description of Activity	Amount Paid
TOTAL EXPENDED THIS REPORT:			\$

Part III: ORIGINAL SIGNATURE AND NOTARIZATION REQUIRED

I hereby certify that information provided in this specific project expenditure report is true and correct based on my knowledge and belief. I acknowledge and agree to comply with the requirement of section 2-354, of the Orange County Code, to amend this specific project expenditure report for any additional expenditure(s) incurred relating to this project prior to the scheduled Board of County Commissioner meeting.

Proposer Name: _____

I further acknowledge and agree that failure to comply with these requirements to file the specific expenditure report and all associated amendments may result in the delay of approval by the Board of County Commissioners for my project or item, any associated costs for which I shall be held responsible. In accordance with s. 837.06, Florida Statutes, I understand and acknowledge that whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor in the second degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

AUTHORIZED SIGNATORY:

Signature

Printed Name

Official Title

Date

NOTARY:

STATE OF: _____)
COUNTY OF: _____)

The foregoing instrument was acknowledged before me: on this ____ day of _____, 20____, by _____, in their official capacity as _____ for the above-stated Proposer. The affiant certified to me that they were duly empowered to bind the Proposer.

- Personally Known
- Produced Identification. ID Type: _____

Signature Notary Public
Print, Type/Stamp Name of Notary

Proposer Name:

**FREQUENTLY ASKED QUESTIONS (FAQ) ABOUT THE SPECIFIC PROJECT
EXPENDITURE REPORT**

Updated 3-1-11

WHAT IS A SPECIFIC PROJECT EXPENDITURE REPORT (SPR)?

A Specific Project Expenditure Report (SPR) is a report required under Section 2-354(b) of the Orange County Lobbying Ordinance, codified at Article X of Chapter 2 of the Orange County Code, reflecting all lobbying expenditures incurred by a principal and his/her authorized agent(s) and the principal's lobbyist(s), contractor(s), subcontractor(s), and consultant(s), if applicable, for certain projects or issues that will ultimately be decided by the Board of County Commissioners (BCC).

Matters specifically exempt from the SPR requirement are ministerial items, resolutions, agreements in settlement of litigation matters in which the County is a party, ordinances initiated by County staff, and some procurement items, as more fully described in 2.20 of the Administrative Regulations.

Professional fees paid by the principal to his/her lobbyist for the purpose of lobbying need not be disclosed on this form. (See Section 2-354(b), Orange County Code.)

WHO NEEDS TO FILE THE SPR?

The principal or his/her authorized agent needs to complete and sign the SPR and warrant that the information provided on the SPR is true and correct.

A principal that is a governmental entity does not need to file an SPR.

HOW ARE THE KEY RELEVANT TERMS DEFINED?

Expenditure means "a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. This may include public relations expenditures (including but not limited to petitions, flyers, purchase of media time, cost of print and distribution of publications) but does not include contributions or expenditures reported pursuant to Chapter 106, Florida Statutes, or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4)." (See Section 112.3215, Florida Statutes.) Professional fees paid by the principal to his/her lobbyist for the purpose of lobbying are not deemed to be "expenditures." (See Section 2-354, Orange County Code.)

Proposer Name:

Lobbying means seeking “to encourage the approval, disapproval, adoption, repeal, rescission, passage, defeat or modification of any ordinance, resolution, agreement, development permit, other type of permit, franchise, vendor, consultant, contractor, recommendation, decision or other foreseeable action of the [BCC],” and “include[s] all communications, regardless of whether initiated by the lobbyist or by the person being lobbied, and regardless of whether oral, written or electronic.” (See Section 2-351, Orange County Code.) Furthermore, *lobbying* means communicating “directly with the County Mayor, with any other member of the [BCC], or with any member of a procurement committee.” (See Section 2-351, Orange County Code.) *Lobbying* also means communicating “indirectly with the County Mayor or any other member of the [BCC]” by communicating with any staff member of the Mayor or any member of the BCC, the county administrator, any deputy or assistant county administrator, the county attorney, any county department director, or any county division manager. (See Section 2-351, Orange County Code.) *Lobbying* does not include the act of appearing before a Sunshine Committee, such as the Development Review Committee or the Roadway Agreement Committee other than the BCC.

Principal means “the person, partnership, joint venture, trust, association, corporation, governmental entity or other entity which has contracted for, employed, retained, or otherwise engaged the services of a lobbyist.” *Principal* may also include a person, partnership, joint venture, trust, association, corporation, limited liability corporation, or other entity where it or its employees do not qualify as a lobbyist under the definition set forth in Section 2-351 of the Orange County Code but do perform lobbying activities on behalf of a business in which it has a personal interest.

DOES THE SPR NEED TO BE UPDATED IF INFORMATION CHANGES?

Yes. It remains a continuing obligation of the principal or his/her authorized agent to update the SPR whenever any of the information provided on the initial form changes.

WHERE DO THE SPR AND ANY UPDATES NEED TO BE FILED?

The SPR needs to be filed with the County Department or County Division processing the application or matter. If and when an additional expenditure is incurred subsequent to the initial filing of the SPR, an amended SPR needs to be filed with the County Department or County Division where the original application, including the initial SPR, was filed.

WHEN DO THE SPR AND ANY UPDATES NEED TO BE FILED?

In most cases, the initial SPR needs to be filed with the other application forms. The SPR and any update must be filed with the appropriate County Department or County Division not less than seven (7) days prior to the BCC hearing date so that they may be incorporated into the BCC agenda packet. (See Section 2-354(b), Orange County Code.) When the matter is a discussion agenda item or is the subject of a public hearing, and any additional expenditure occurs less than 7 days prior to BCC meeting date or updated information is not included in the BCC agenda

Proposer Name:

packet, the principal or his/her authorized agent is obligated to verbally present the updated information to the BCC when the agenda item is heard or the public hearing is held. When the matter is a consent agenda item and an update has not been made at least 7 days prior to the BCC meeting or the update is not included in the BCC agenda packet, the item will be pulled from the consent agenda to be considered at a future meeting.

WHO WILL BE MADE AWARE OF THE INFORMATION DISCLOSED ON THE SPR AND ANY UPDATES?

The information disclosed on the SPR and any updates will be a public record as defined by Chapter 119, Florida Statutes, and therefore may be inspected by any interested person. Also, the information will be made available to the Mayor and the BCC members. This information will accompany the other information for the principal's project or item.

CONCLUSION:

We hope you find this FAQ useful to your understanding of the SPR. Please be informed that in the event of a conflict or inconsistency between this FAQ and the requirements of the applicable ordinance governing specific project expenditure reports, the ordinance controls.

Also, please be informed that the County Attorney's Office is not permitted to render legal advice to a principal, his/her authorized agent, or any other outside party. Accordingly, if after reading this FAQ the principal, his/her authorized agent or an outside party has any questions, he/she is encouraged to contact his/her own legal counsel.

Proposer Name: _____

FORM O: RELATIONSHIP DISCLOSURE FORM

(FOR USE WITH PROCUREMENT ITEMS, EXCEPT THOSE WHERE THE COUNTY IS THE PRINCIPAL OR PRIMARY APPLICANT)

For procurement items that will come before the Board of County Commissioners for final approval, this form shall be completed by the bidder, offerer, quoter or respondent and shall be submitted to the Procurement Division by the bidder, offerer, quoter or respondent. In the event any information provided on this form should change, the applicant must file an amended form on or before the date the item is considered by the appropriate board or body.

Part I: INFORMATION ON APPLICANT (BIDDER, OFFEROR, QUOTER, PROPOSER, OR RESPONDENT):

Legal Name of Applicant: _____

Business Address (Street/P.O. Box, City and Zip Code):

Business Phone (____) _____

Facsimile (____) _____

**INFORMATION ON APPLICANT'S AUTHORIZED AGENT, IF APPLICABLE:
(Agent Authorization Form also required to be attached)**

Name of Applicant's Authorized Agent: _____

Business Address (Street/P.O. Box, City and Zip Code): _____

Business Phone (____) _____

Facsimile (____) _____

[FORM O CONTINUES ON NEXT PAGE]

Proposer Name: _____

Part II: Relationship Disclosure Questions

1. Is the applicant a relative of the Mayor or any member of the BCC?
 YES NO

2. Is the Mayor or any member of the BCC the Applicant's employee?
 YES NO

3. Is the Applicant or any person with a direct beneficial interest in the outcome of this matter a business associate of the Mayor or any member of the BCC?
 YES NO

4. If you responded "YES" to any of the above questions, please state with whom and explain the relationship:

(Use additional sheets of paper if necessary)

Proposer Name: _____

Part III: ORIGINAL SIGNATURE AND NOTARIZATION REQUIRED

I hereby certify that information provided in this relationship disclosure form is true and correct based on my knowledge and belief. If any of this information changes, I further acknowledge and agree to amend this relationship disclosure form prior to any meeting at which the above-referenced project is scheduled to be heard. In accordance with s. 837.06, Florida Statutes, I understand and acknowledge that whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor in the second degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

AUTHORIZED SIGNATORY:

Signature

Printed Name

Official Title

Date

NOTARY:

STATE OF: _____)

COUNTY OF: _____)

The foregoing instrument was acknowledged before me: on this ____ day of _____, 20____, by _____, in their official capacity as _____ for the above-stated Proposer. The affiant certified to me that they were duly empowered to bind the Proposer.

Personally Known

Produced Identification. ID Type: _____

Signature Notary Public
Print, Type/Stamp Name of Notary

Staff signature and date of receipt of form: _____

Staff review does not attest to the accuracy or veracity of the information provided.

Proposer Name: _____

FREQUENTLY ASKED QUESTIONS (FAQ)
ABOUT THE RELATIONSHIP DISCLOSURE FORM

Updated 6-28-11

WHAT IS THE RELATIONSHIP DISCLOSURE FORM?

The Relationship Disclosure Form (form OC CE 2D and form OC CE 2P) is a form created pursuant to the County's Local Code of Ethics, codified at Article XIII of Chapter 2 of the Orange County Code, to ensure that all development-related items and procurement items presented to or filed with the County include information as to the relationship, if any, between the applicant and the County Mayor or any member of the Board of County Commissioners (BCC). The form will be a part of the backup information for the applicant's item.

WHY ARE THERE TWO RELATIONSHIP DISCLOSURE FORMS?

Form OC CE 2D is used only for development-related items, and form OC CE 2P is used only for procurement-related items. The applicant needs to complete and file the form that is applicable to his/her case.

WHO NEEDS TO FILE THE RELATIONSHIP DISCLOSURE FORM?

Form OC CE 2D should be completed and filed by the owner of record, contract purchaser, or authorized agent. Form OC CE 2P should be completed and filed by the bidder, offeror, quoter, or respondent, and, if applicable, their authorized agent. In all cases, the person completing the form must sign the form and warrant that the information provided on the form is true and correct.

WHAT INFORMATION NEEDS TO BE DISCLOSED ON THE RELATIONSHIP DISCLOSURE FORM?

The relationship disclosure form needs to disclose pertinent background information about the applicant and the relationship, if any, between, on the one hand, the applicant and, if applicable, any person involved with the item, and on the other hand, the Mayor or any member of the BCC.

In particular, the applicant needs to disclose whether any of the following relationships exist: (1) the applicant is a business associate of the Mayor or any member of the BCC; (2) any person involved with the approval of the item has a beneficial interest in the outcome of the matter *and* is a business associate of the Mayor or any member of the BCC; (3) the applicant is a relative of the Mayor or any member of the BCC; or (4) the Mayor or any member of the BCC is an employee of the applicant. (See Section 2-454, Orange County Code.)

HOW ARE THE KEY RELEVANT TERMS DEFINED?

Applicant means, for purposes of a development-related project, the owner, and, if applicable, the contract purchaser or owner's authorized agent. *Applicant* means, for purposes of a procurement item, the bidder, offeror, quoter, respondent, and, if applicable, the authorized agent

Proposer Name: _____

of the bidder, offeror, quoter, or respondent.

Business associate means any person or entity engaged in or carrying on a business enterprise with a public officer, public employee, or candidate as a partner, joint venture, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owner of property. In addition, the term includes any person or entity engaged in or carrying on a business enterprise, or otherwise engaging in common investment, with a public officer, public employee, or candidate as a partner, member, shareholder, owner, co-owner, joint venture partner, or other investor, whether directly or indirectly, whether through a Business Entity or through interlocking Parent Entities, Subsidiary Entities, or other business or investment scheme, structure, or venture of any nature. (See Section 112.312(4), Florida Statutes, and Section 2-452(b), Orange County Code.)

Employee means any person who receives remuneration from an employer for the performance of any work or service while engaged in any employment under any appointment or contract for hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes, but is not limited to, aliens and minors. (See Section 440.02(15), Florida Statutes.)

Relative means an individual who is related to a public officer or employee as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, step great grandchild, person who is engaged to be married to the public officer or employee or who otherwise holds himself or herself out as or is generally known as the person whom the public officer or employee intends to marry or with whom the public officer or employee intends to form a household, or any other natural person having the same legal residence as the public officer or employee. (See Section 112.312(21), Florida Statutes.)

DOES THE RELATIONSHIP DISCLOSURE FORM NEED TO BE UPDATED IF INFORMATION CHANGES?

Yes. It remains a continuing obligation of the applicant to update this form whenever any of the information provided on the initial form changes.

WHERE DO THE RELATIONSHIP DISCLOSURE FORM AND ANY SUBSEQUENT UPDATES NEED TO BE FILED?

For a development-related item, the Relationship Disclosure Form and any update need to be filed with the County Department or County Division where the applicant filed the application. For a procurement item, the Relationship Disclosure Form and any update need to be filed with the Procurement Division.

Proposer Name: _____

WHEN DO THE RELATIONSHIP DISCLOSURE FORM AND ANY UPDATES NEED TO BE FILED?

In most cases, the initial form needs to be filed when the applicant files the initial development-related project application or initial procurement-related forms. However, with respect to a procurement item, a response to a bid will not be deemed unresponsive if this form is not included in the initial packet submitted to the Procurement Division.

If changes are made after the initial filing, the final, cumulative Relationship Disclosure Form needs to be filed with the appropriate County Department or County Division processing the application not less than seven (7) days prior to the scheduled BCC agenda date so that it may be incorporated into the BCC agenda packet. When the matter is a discussion agenda item or is the subject of a public hearing, and an update has not been made at least 7 days prior to BCC meeting date or is not included in the BCC agenda packet, the applicant is obligated to verbally present such update to the BCC when the agenda item is heard or the public hearing is held. When the matter is a consent agenda item and an update has not been made at least 7 days prior to the BCC meeting or the update is not included in the BCC agenda packet, the item will be pulled from the consent agenda to be considered at a future meeting.

WHO WILL REVIEW THE INFORMATION DISCLOSED ON THE RELATIONSHIP DISCLOSURE FORM AND ANY UPDATES?

The information disclosed on this form and any updates will be a public record as defined by Chapter 119, Florida Statutes, and may therefore be inspected by any interested person. Also, the information will be made available to the Mayor and the BCC members. This form and any updates will accompany the information for the applicant’s project or item.

However, for development-related items, if an applicant discloses the existence of one or more of the relationships described above and the matter would normally receive final consideration by the Concurrency Review Committee or the Development Review Committee, the matter will be directed to the BCC for final consideration and action following committee review.

CONCLUSION:

We hope you find this FAQ useful to your understanding of the Relationship Disclosure Form. Please be informed that if the event of a conflict or inconsistency between this FAQ and the requirements of the applicable ordinance or law governing relationship disclosures, the ordinance or law controls.

Also, please be informed that the County Attorney’s Office is not permitted to render legal advice to an applicant or any other outside party. Accordingly, if the applicant or an outside party has any questions after reading this FAQ, he/she is encouraged to contact his/her own legal counsel.

Proposer Name: _____

FORM P: E VERIFICATION CERTIFICATION

RFP and Contract #Y19-815-JS

NAME OF CONSULTANT: _____ (the "Consultant")

ADDRESS OF CONSULTANT: _____

The undersigned does hereby certify that the above named Consultant:

1. Is registered and is using the E-Verify system; or
2. Does not have any employees and does not intend to hire any new employees during the period of time that the contractor will be providing services under the contract and consequently is unable to register to use the E-Verify system; or
3. Employs individuals that were hired prior to the commencement of providing labor on the contract and does not intend to hire any new employees during the period of time that the Consultant will be providing labor under the contract, and consequently is unable to use the E-Verify system.

The undersigned acknowledges the use of the E-Verify system for newly hired employees is an ongoing obligation for so long as the Consultant provides labor under the contract and that the workforce eligibility of all newly hired employees will be properly verified using the E-Verify system.

In accordance with Section 837.06, Florida Statutes, Consultant acknowledges that whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duties shall be guilty of a misdemeanor in the second degree, punishable as provided in Section 775.082 or Section 775.083, Florida Statutes.

AUTHORIZED SIGNATURE: _____

NAME: _____

TITLE: _____

DATE: _____

Proposer Name: _____

FORM WR: DISLOCATED WORKERS
PROPOSED HIRING INFORMATION

Section I: To be Submitted with Proposal

Firm: _____

Address: _____

Phone Number: _____

Email Address: _____

Number of Individuals to be Hired: _____

Signature of Authorized Representative of Above Firm: _____

Printed Name: _____

Section II: For CareerSource Central Florida Use Only (To be Completed After Contract Award)

Verification: I certify that the above individuals are dislocated workers

Individual Complete Name:

1. _____

2. _____

3. _____

4. _____

*5. _____

*6. _____

CareerSource Central Florida
390 North Orange Avenue, Suite 700
Orlando, FL 32805
407-531-1222

Signature: _____

Printed Name: _____

Date: _____

*CareerSource Participants who do not meet specific job qualifications

RFP Y19-815-JS

ADDENDUM NO. 11

ATTACHMENT 4: DRAFT CONTRACT

**CONTRACT NO: Y19-815
ORANGE COUNTY, FLORIDA
CONSTRUCTION MANAGER AT RISK (“CMAR”) CONTRACT**

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**CONTRACT NO: Y19-815
ORANGE COUNTY, FLORIDA
CONSTRUCTION MANAGER AT RISK (“CMAR”) CONTRACT**

This Contract (the “**CONTRACT**”) is made by and between **ORANGE COUNTY, FLORIDA**, a political subdivision of the State of Florida, with its principal place of business located at 201 South Rosalind, Avenue, Orlando, Florida, 32801 (the “**COUNTY**”), and [*Name of Construction Manager at Risk*], a [*Entity Type*], with its principal place of business located at [*Construction Manager at Risk’s Principal Place of Business Address*] (the “**CMAR**”). The COUNTY and the CMAR may be referred to in this CONTRACT individually as “party” or collectively as “parties.”

RECITALS

WHEREAS, the CMAR shall perform all the Work required by the Contract Documents for the proper execution and completion of **CONSTRUCTION MANAGER AT RISK SERVICES FOR THE ORANGE COUNTY CONVENTION CENTER PHASE V MULTI-PURPOSE VENUE AND GRAND CONCOURSE** in full accordance with this CONTRACT, the Contract Documents, the drawings and as elaborated in the specifications of **Request for Proposals No. Y19-815-JS**.

NOW, THEREFORE, the COUNTY and the CMAR, for the consideration set forth within this CONTRACT, hereby agree as follows:

Section 1: Definitions.

- A. The words and expressions (or pronouns used in their place) defined in this Section shall, wherever they appear in the Contract Documents, be construed as follows unless a different meaning is clear from the context.
1. **"A/E Design Team"** shall mean the professional independent Architectural/Engineering firm designated to assist the COUNTY in the Work by a prior agreement entered into by the COUNTY and the said firm. The terms "Engineer" and "Architect", where used in the Contract Documents, refer to the A/E Design Team.
 2. **"Change Order"** shall mean a written order to the CMAR, signed by the COUNTY, authorizing an addition, deletion or revision in the Work, or an adjustment in the Contract Amount or the Contract Time issued after execution of the CONTRACT.
 3. **"Change Order – Cost Plus"** shall mean a written order to the CMAR for defined change in the scope, the Change Order will be issued for the Actual Cost of Work and a mutually acceptable fixed amount for overhead and profit.
 4. **"Change Order – Lump Sum"** shall mean a written order to the CMAR where a defined change in the scope can be quantified by a mutually acceptable lump sum.

5. **“Change Order Request”** shall mean an A/E Design Team Change Order Request (**“COR”**) generated document which describes a change in the scope of Work, including a detailed description, Drawings and Specifications, and a request for a proposal of changes to costs or time from the CMAR.
6. **“Change Order – Unit Price”** shall mean a written order to the CMAR where a defined change in the scope is covered by unit prices in the Contract Documents.
7. **“Claim”** shall mean a written demand or written assertion by one of the contracting parties seeking as a matter of right, the payment of a certain sum of money, the adjustment or interpretation of Contract Time.
8. **“CONTRACT”** shall mean the written agreement between the COUNTY and the CMAR covering the Work to be performed; the Contract Documents shall be made part of the CONTRACT and the CONTRACT shall be made part of the Contract Documents.
9. **“Construction Change Directives”** shall mean a written order directing the CMAR to perform additional Work to the CONTRACT when time and/or Cost of Work is not in agreement between the COUNTY and the CMAR performing the Work.
10. **“Construction Documents”** shall mean the Plans and Specifications for the Construction of the PROJECT.
11. **“Contract Documents”** shall mean the written documents that define the roles, responsibilities, and “Work” under the construction CONTRACT, and are legally-binding on the parties.
12. **“CMAR Contingency”** shall mean contingency included in the GMP set aside for the CMAR’S use. The CMAR Contingency shall be used for unpredictable changes in the scope of Work and only at the direction of the COUNTY.
13. **“Construction Schedule”** shall mean the time table of predicted tasks, milestones, task durations, deadlines and the start and end dates of the Work indicated in the Construction Progress Schedule accepted by the COUNTY and provided to the COUNTY prior to the first progress payment. The COUNTY’S acceptance of a revised or updated Construction Progress Schedule shall result in a revised Construction Schedule, if so noted in the COUNTY’S written acceptance, that shall be used to evaluate progress and delays occurring after the acceptance of the revised Construction Schedule.
14. **“Contract Amount”** shall mean the total monies payable to the CMAR under the Contract Documents. The term "Contract Price" where used in the Contract Documents refers to the Contract Amount.
15. **“Contract Float”** shall mean the number of days that an activity or a sequence of activities does not necessarily have to start or end on the scheduled dates

to maintain the schedule, or as a minimum, the number of days that an activity may be delayed from its early start date without delaying completion of the Work beyond the Contract Time for Substantial Completion or Final Acceptance.

16. **"Contract Time"** shall mean the number of calendar days stated in the Agreement for the completion of the Work.
17. **"Cost of Work"** shall mean all costs necessarily and reasonably incurred by the CMAR in the proper performance of the Work.
18. **"COUNTY"** shall mean Orange County, Florida, or its duly authorized representative(s), for whom the Work is being performed.
19. **"Day"** shall mean one calendar day when used in the Contract Documents. When any period of time is referenced by days in this CONTRACT, it shall be computed to exclude the first day and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the laws of Florida, such day shall be omitted from the computation, and the last day shall become the next succeeding day which is not a Saturday, Sunday or legal holiday.
20. **"Defective Work"** shall mean: (a) Work that is unsatisfactory, deficient, or damaged, does not conform to the Contract Documents, or does not meet the requirements of any inspection, test, or approval; or (b) Work associated with punch list items that the CMAR fails to complete within a reasonable time after issuance of the punch list by the OCC Project Manager.
21. **"Design Services Agreement"** shall mean the contract between the COUNTY and the A/E Design Team.
22. **"Drawings"** shall mean the drawings that will be issued after the CONTRACT prior to the Enabling Construction and the Construction phases.
23. **"Final Acceptance"** shall mean acceptance of the Work by the COUNTY upon the expiration of the correction period required by the Contract Documents.
24. **"Final Completion"** shall mean acceptance of the Work by the COUNTY as evidenced by its signature upon Final Certificate of Completion and approval thereof by the Orange County Board of County Commissioners. The Final Certificate of Completion shall be signed only after the COUNTY has assured itself by tests, inspection, or otherwise, that all of the provisions of the CONTRACT have been carried out to its satisfaction.
25. **"General Conditions Costs"** shall mean the indirect costs required to manage, oversee, and supervise the construction of the PROJECT. These costs include but are not limited to project management staff salaries and expenses, bonds and insurance, jobsite office and trailer facilities, temporary fencing and screening, safety, and security, sanitation, temporary utilities and

roadways, general hoisting, Site maintenance and clean up, storm water management, and traffic and parking management.

26. **“Guaranteed Maximum Price”** shall mean a cost-type contract where the CMAR is compensated for actual costs incurred plus a fixed fee subject to a ceiling price. The CMAR is responsible for cost overruns, unless the Guaranteed Maximum Price (**“GMP”**) has been increased via formal Change Order (only as a result of additional scope from the client, not price overruns, errors, or omissions). Savings resulting from cost underruns are returned to the COUNTY.
27. **“May”** denotes the permissive.
28. **“Notice”** shall mean written Notice. Notice shall be served as provided in the Notice provision of this CONTRACT.
29. **“Notice to Proceed”** shall mean the written Notice to Proceed (**“NTP”**) given by the COUNTY to the CMAR fixing the date the Contract Times shall commence to run.
30. **“OCCC”** shall mean the Orange County Convention Center (**“OCCC”**).
31. **“OCCC Project Administrator”** shall mean the duly authorized representative of the COUNTY.
32. **“Owner”** shall mean Orange County, Florida.
33. **“Owner Project Team”** shall mean the OCCC Project Administrator, the COUNTY Risk Management Division, and the AECOM Owner Representative Team.
34. **“Potential Change Order”** shall mean a CMAR Potential Change Order (**“PCO”**) generated document due to the receipt of a COR or a field condition which describes a proposed change in the Scope of Work, including a detailed description cost and schedule impact.
35. **“PROJECT”** shall mean the entire improvement of which this CONTRACT forms a part.
36. **“Proposal”** shall mean the offer or proposal of the CMAR submitted on the Request for Proposal Form and Attachments setting forth the prices for the Work to be performed.
37. **“Shall”** denotes the imperative.
38. **“Shop Drawings”** shall mean all drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the CMAR, a Subcontractor, a manufacturer, Supplier or distributor and which illustrate the equipment, material and/or some portion of the Work.

39. **"Site"** shall mean the area upon or in which the CMAR'S operations are carried on and such other areas adjacent thereto as may be designated as such by the OCCC Project Administrator.
40. **"Specifications"** shall mean parts of the Contract Documents identified as "Specifications" and organized into Divisions. The specifications include general requirements and technical descriptions of materials, equipment, construction systems, standards and workmanship. The term "Technical Provisions" where used in the Contract Documents refers to the Specifications.
41. **"Subcontractor"** shall mean any person, firm, or corporation other than employees of the CMAR who or which contracts with the CMAR to furnish, or actually furnishes labor, materials and/or equipment for the Work.
42. **"Substantial Completion"** shall mean the completion of the Work by the CMAR to the point where the COUNTY may make beneficial use of the Work.
43. **"Surety"** shall mean any corporation that executes, as Surety, the CMAR'S Payment Bond and Performance Bonds securing the performance of this CONTRACT.
44. **"Will"** denotes the imperative.
45. **"Work"** shall mean any and all obligations, duties, and responsibilities necessary to the successful completion of the construction assigned to or undertaken by the CMAR under the Contract Documents, including the furnishing of all labor, materials, equipment, and other incidentals.

Section 2: Contract Documents.

- A. The following documents are the "Contract Documents" which are hereby incorporated by reference or attachment and therefore are made a material part of this CONTRACT:
 1. This CONTRACT and any duly executed and issued Addenda or Amendments to this CONTRACT, Permits, Change Orders, and Construction Change Directives;
 2. Request for Proposals RFP #Y19-815-JS and the CMAR'S associated Proposal;
 3. All Drawings, Plans, and Specifications for the construction of the PROJECT (the **"CONSTRUCTION DOCUMENTS"**) being prepared by the A/E Design Team, but only after said Construction Documents have been completed by the A/E Design Team and approved in writing by the COUNTY;
 4. All bond documentation, insurance documentation, and any other documentation necessary for the COUNTY and the CMAR to fulfill their obligations pursuant to this CONTRACT;

5. Upon the COUNTY'S acceptance of the CMAR'S Guaranteed Maximum Proposal ("**GMP Proposal**"), the Contract Documents shall also be amended to include the executed GMP Amendment and all attachments thereto; and

6. The following **Exhibits**:

- Exhibit A:** Scope of Work;
- Exhibit B:** Payment/Performance Bond Forms;
- Exhibit C:** Insurance Documents;
- Exhibit D:** Segment Completion Schedule;
- Exhibit E:** Draft GMP Proposal;
- Exhibit F:** Owner Direct Purchase Provision;
- Exhibit G:** Final Release of Lien Form; and
- Exhibit H:** Stored Materials Forms.

B. In the event of conflicts or discrepancies among the Contract Documents, the CMAR shall proceed with the Work that is unaffected by the conflict or discrepancy and interpretations of the conflict shall be based upon the following Contract Documents priority, which are set forth and ranked in order of precedence:

1. Duly executed Amendments, Change Orders, and Construction Change Directives, with those of a later date having precedence over those of an earlier date;
2. Specifications/Technical Provisions (to be issued following design completion);
3. Drawings/Plans (to be issued following design completion);
4. This CONTRACT and **Exhibit "A,"** *Scope of Work*;
5. Request for Proposals RFP#Y19-815-JS;
6. CMAR'S proposal submitted in response to Request for Proposals RFP#Y19-815-JS; and
7. All other Contract Documents, if any.

C. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the COUNTY and the CMAR, with the exception of COUNTY'S third party beneficiary rights under CMAR'S agreements with its Subcontractors and Suppliers.

D. It is the intent of the Contract Documents to describe a functionally complete project (or specified portion thereof) to be constructed in accordance with the Contract Documents. Any Work, materials, or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for in the Contract Documents. The

Contract Documents are complementary; what is called for by one is as binding as if called for by all.

- E. If the Contract Documents include words or terms that have a generally accepted technical or industry meaning, then such words or terms shall be interpreted to have such standard meaning unless otherwise expressly noted in the Contract Documents. Reference to standard specifications, manuals or codes of any technical society, organization or association or to the laws or regulations of any governmental authority having jurisdiction over the PROJECT, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, law or regulation in effect at the time the Construction Documents are permitted, except as may be otherwise specifically stated in the Contract Documents.
- F. If during the performance of the Work, the CMAR discovers a conflict, error, or discrepancy in the Contract Documents, the CMAR immediately shall report same to the A/E Design Team and the OCCC Project Administrator, in writing, and before proceeding with the Work affected thereby, shall obtain a written interpretation or clarification from the A/E Design Team.
- G. Prior to commencing each portion of the Work, the CMAR shall first take all necessary field measurements and verify the applicable field conditions. After taking such measurements and verifying such conditions, the CMAR shall carefully compare such measurements and conditions with the requirements of the Contract Documents, taking into consideration all other relevant information known to the CMAR, for the purpose of identifying and bringing to COUNTY'S attention all conflicts or discrepancies with the Contract Documents.
- H. Drawings are intended to show general arrangements, design, and extent of Work and are not intended to serve as shop drawings. Specifications are separated into divisions for convenience of reference only and shall not be interpreted as establishing divisions for the Work, trades, subcontracts, or extent of any part of the Work. In the event of a discrepancy between or among the drawings, specifications or other Contract Document provisions, the CMAR shall immediately notify the A/E Design Team and the OCCC Project Administrator, and, absent contrary instruction from the COUNTY, comply with the provision which is the more restrictive or stringent requirement upon the CMAR, as determined by COUNTY. Unless otherwise specifically mentioned, all anchors, bolts, screws, fittings, fillers, hardware, accessories, trim, and other parts required in connection with any portion of the Work to make a complete, serviceable, finished, and first quality installation shall be furnished and installed as part of the Work, whether or not called for by the Contract Documents.
- I. **Request for Interpretation.** Written clarifications or interpretations (which shall be consistent with or reasonably inferable from the Contract Documents) shall be issued in response to a CMAR Request for Interpretation (“RFI”) or as the OCCC Project Administrator or the A/E Design Team may otherwise determine necessary. If the CMAR believes a written clarification or interpretation justifies an increase in Contract Amount or Contract Time, the CMAR shall submit a PCO for such increase in accordance with this CONTRACT. If the CMAR is authorized by the COUNTY to

proceed with the Work involved before full agreement is reached on: (a) whether any increases are due at all; or (b) the extent of any such increases (if any are determined to be due), the CMAR shall furnish actual cost records daily to the OCCC Project Administrator.

- J. The CMAR shall provide executed copies of this CONTRACT to all Subcontractors and Suppliers.

Section 3: Ownership of Documents.

- A. It is understood and agreed that all documents, including detailed reports, plans, original drawings, survey field notebooks, and all other data other than working papers, prepared, or obtained by the CMAR in connection with its services hereunder and are the property of the COUNTY upon acceptance of same by the COUNTY.
- B. The COUNTY shall furnish the CMAR with one (1) sealed copy and one (1) reproducible set of the CONSTRUCTION DOCUMENTS. Any additional copies of CONSTRUCTION DOCUMENTS, required by the CMAR for execution of the Work, shall be made by the CMAR from its reproducible set at the CMAR'S sole cost and expense.
- C. All Specifications, Drawings, and copies thereof furnished by the COUNTY shall remain its property. Such documents shall not be used on another PROJECT and, with the exception of those sets which have been signed in connection with the execution of the CONTRACT.
- D. The reproducible set of the Construction Documents shall be returned to the COUNTY upon final acceptance of the Work by the COUNTY or Termination of the CONTRACT, whichever occurs first. The COUNTY is furnishing the CMAR a reproducible set of Construction Documents for the CMAR'S convenience. Such furnishing by the COUNTY shall not be deemed to be a waiver by the COUNTY or the A/E Design Team of any copyright, patent, or license they may have with respect to the Construction Documents. All such copyrights, patents, and licenses are hereby expressly reserved by the COUNTY and the A/E Design Team.

Section 4: Relationship of Parties.

- A. The CMAR accepts the relationship of trust and confidence established by this Agreement. The CMAR covenants with the COUNTY to cooperate with the Owner Project Team and the A/E Design Team; to utilize the CMAR'S best skill, efforts, and judgment in: furthering the interest of the COUNTY; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in the best way and the most safe, expeditious and economical manner, consistent with the interests of the COUNTY.
- B. Further, the CMAR acknowledges that:
 - 1. It has represented to the COUNTY that it has specific expertise in the planning, management and construction of convention center facilities; and

2. That such representation is a material inducement to the COUNTY to enter into the CONTRACT.
- C. Notwithstanding anything to the contrary in the Contract Documents, the CMAR is fully responsible to the COUNTY for all duties of the CMAR under the Contract Documents, including the construction means, methods, techniques, sequences, and procedures in performing the Work, for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the CONTRACT despite the CMAR'S delegation of the responsibility therefor to any of its Subcontractors.
 - D. The Work required under the Contract Documents requires the CMAR to subcontract with any party to provide any professional services constituting the practice of architecture, design, or engineering, the CMAR shall be directly responsible to the COUNTY for any portion of the Work so required.
 - E. The CMAR shall be acting as an independent contractor at all times during the performance of the Work and no provision in the CONTRACT shall create an employment or agent relationship between the parties. In no event shall the COUNTY be deemed to have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the COUNTY in the Contract Documents.
 - F. **OCCC Project Administrator.**
 1. Wherever the terms of the CONTRACT refer to some action, consent, or approval (excluding approvals of Change Orders, Construction Change Directive or amendments to the CONTRACT) to be provided by the COUNTY or some notice, report, or document is to be provided to the COUNTY, such reference to the COUNTY shall mean the OCCC Project Administrator unless otherwise stated in this CONTRACT. The OCCC Project Administrator is the only individual that has the full authority to bind and obligate the COUNTY under this CONTRACT. Any authority to bind and obligate the COUNTY by an individual that is not the OCCC Project Administrator is hereby limited to the extent for which is expressly provided in this CONTRACT.
 2. The COUNTY designates _____ to be the OCCC Project Administrator and reserves the right to change such person by providing notice to the CMAR as provided for in the "Notice" provision of this CONTRACT.
 - G. **Owner's Representative.** The COUNTY shall utilize the services of an Owner's Representative, AECOM, to assist it with the management of the design and construction of the PROJECT.
 1. The Owner's Representative shall be the COUNTY'S representative with respect to the PROJECT, with authority to transmit instructions, receive

information, and interpret and define the COUNTY'S policies and decisions with respect to the Work.

2. The above notwithstanding, except as may be otherwise expressly authorized in writing by the COUNTY, the Owner's Representative is not authorized to issue any verbal or written orders or instructions to the CMAR on behalf of the COUNTY when such orders or instructions would have the effect, or be interpreted to have the effect, of amending or modifying the terms or conditions of the Contract Documents or modifying or amending in any way whatever the:
 - a. Scope or quality of Work to be performed and provided by the CMAR as set forth in the Contract Documents;
 - b. Time within which the CMAR is obligated to complete the Work; or
 - c. Amount of compensation the COUNTY is obligated or committed to pay the CMAR as set forth in the Contract Documents.
3. Any authority to bind the COUNTY that is not specifically and expressly granted to the Owner's Representative in this CONTRACT shall be vested solely in the OCCC Project Administrator unless otherwise provided for in this CONTRACT.

H. Verbal Orders.

1. The OCCC Project Administrator may issue verbal change orders to this CONTRACT only under the following conditions:
 - a. To address bona fide emergency requirements. Emergency requirements are described as those requiring immediate action due to:
 - (1) An imminent or existing threat to the health, safety or welfare of persons or property; and
 - (2) Conditions which poses serious economic damage to the COUNTY.
 - b. To ensure the continuity of critical elements of performance of this CONTRACT.
2. Any such verbal direction shall be confirmed in writing by the OCCC Project Administrator to the CMAR within five (5) days after issuance. Concurrently, a copy of the written direction shall be provided to the Manager, Procurement Division with documentation in the form of an emergency justification to support the action taken.
3. A formal change order and associated contract amendment, if applicable, will be negotiated in conjunction with the Procurement Division and shall succeed

the written confirmation not later than thirty (30) days after issuance of the verbal direction. Board approval, as applicable, shall be obtained.

- I. **Senior Project Manager and Project Manager.** The CMAR hereby designates _____ as its Senior Project Manager and _____ as its Project Manager, with full authority to bind and obligate the CMAR on all matters arising out of, or relating to, the Work or the Contract Documents. Additionally, the CMAR, shall hire a Resident Superintendent (as discussed later in this CONTRACT) which shall also have the full authority to bind and obligate the CMAR on all matters arising out of, or relating to, the Work or the Contract Documents.
1. The CMAR shall ensure that the Senior Project Manager and the Project Manager devote whatever time is required to satisfactorily manage the Work and shall provide for such required amount of time in the Itemized General Conditions Expenses to be attached to the CMAR'S GMP Proposal (the draft form of which is attached to both the Restated RFP #Y19-815-JS and this CONTRACT as **Exhibit "E"**).
 2. The Senior Project Manager and Project Manager shall not be removed or replaced by the CMAR without the COUNTY'S prior written approval which approval shall not be unreasonably withheld.
- J. The OCCC Project Administrator may require in writing that the CMAR remove from the Work any of CMAR'S or its Subcontractor's personnel that the OCCC Project Administrator determines to be incompetent, careless, or otherwise objectionable. No Claims for an increase in Contract Amount or Contract Time based on the OCCC Project Administrator's use of this provision shall be valid. CMAR shall indemnify and hold the COUNTY harmless from and against any Claim by CMAR'S or its Subcontractor's personnel on account of the use of this provision.
- K. The COUNTY shall be represented on the Site by one or more inspectors who are employed by the COUNTY or by a Construction Engineering and Inspection ("**CEI**") firm under contract with the COUNTY. The CMAR shall follow all directions provided by these Inspectors. Provided so long as any such directions do not (and are not in any manner construed to):
1. Authorize any deviation from the Contract Documents that:
 - a. Requires a change in the Contract Amount or Contract Time;
 - b. Materially changes any aspect of the Work covered by a permit to the extent that the regulatory agency having jurisdiction would require modification of the permit;
 - c. Materially changes any aspect of the Work to the extent that the intent of the design is compromised;
 - d. Approves any substitute materials or equipment;

- e. Undertakes any of the responsibilities of the CMAR, Subcontractors or CMAR'S superintendent, or expedite the Work;
- f. Directs the CMAR as to any aspect of the means, methods, techniques, sequences or procedures of construction unless such is specifically called for in the Contract Documents; and
- g. Advises on or issue directions as to safety precautions and programs in connection with the Work.

Section 5: CMAR's Responsibilities.

- A. **Supervision and Superintendence.** The CMAR shall supervise and direct the Work efficiently and with the best skill and attention. The CMAR shall be solely responsible for the means, methods, techniques, sequences, and procedure of construction, unless otherwise specified. The CMAR shall ensure that the finished Work complies accurately with the Contract Documents. The CMAR shall not self-perform work without the explicit written approval of the COUNTY.
- B. **Resident Superintendent.** The CMAR shall keep on the Site at all times during its progress a competent, resident superintendent who shall not be replaced without written notice to the OCCC Project Administrator. The superintendent shall be the CMAR'S representative at the Site and shall have authority to act on behalf of the CMAR. All communications given to the superintendent shall be considered as having been given to the CMAR.
- C. **Labor, Materials, and Equipment.** The CMAR shall provide competent, suitable, qualified personnel to lay out the Work and perform construction as required by the Contract Documents. The CMAR shall at all times maintain good discipline, safety, and order at the Site. The CMAR shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, and any incidentals necessary for the execution, testing, initial operation, and completion of the Work.
 - 1. All materials and equipment shall be new except as otherwise provided in the Contract Documents. If required by the OCCC Project Administrator, the CMAR shall furnish satisfactory evidence as to the kind and quality of materials and equipment furnished.
 - 2. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processors except as otherwise provided in the Contract Documents.
- D. **Substitute Material or Equipment.** If it is indicated in the Specifications that the CMAR may furnish or use a substitute that is equal to any material or equipment specified, and if the CMAR wishes to furnish or use a proposed substitute, the CMAR shall – within thirty (30) days after the effective date of the GMP Amendment – make written application to the OCCC Project Administrator for acceptance of such a substitute, certifying in writing that the proposed substitute shall adequately perform the duties

imposed by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing in an efficient and economic manner as that specified. The application shall include sufficient information to allow the OCCC Project Administrator to evaluate the substitutions.

1. The application shall state the extent, if any, to which the review, acceptance, furnishing, and installation of the proposed substitute shall prejudice the CMAR'S completion of the Work within the Contract Time.
2. If the cost of the review of the substitution is greater than that of the originally specified item, the CMAR shall reimburse the COUNTY for all costs.
3. The COUNTY may require the CMAR to furnish a special performance guarantee or other Surety with respect to any substitute at the CMAR'S expense.
4. The benefit of lower cost items shall be shared between the COUNTY and CMAR as specified in this CONTRACT. No substitute shall be ordered or installed without the written acceptance of the OCCC Project Administrator who shall be the sole judge of acceptability.

E. Use of Premises.

1. The CMAR shall secure and confine the equipment, the storage of materials and equipment, and the operations of its workers to the areas permitted by law, ordinances, permits or the requirements of the Contract Documents and shall not unreasonably encumber the premises with materials or equipment.
2. The CMAR shall confine the operation of workmen and equipment, and the storage of materials and equipment to the COUNTY'S property or to other non-county property or in public right-of-way areas indicated on the Contract Drawings as including Work to be done pursuant to the Contract Documents.

F. Off-Site Work.

1. In the event the CMAR desires to have access to the Site, or perform Work or operations pertaining to the CONTRACT on, over or from non-COUNTY property adjacent to the Site, the CMAR shall obtain written authorization to do so from the respective adjacent property owner(s) prior to using such property.
2. Such written authorization shall include a provision whereby the property owner agrees to hold the COUNTY harmless, and to defend the COUNTY, in the event of any liability, loss, injury, or Claim incurred as a result of the CMAR Work or operations involving the use of the adjacent non-COUNTY property, or made by or on behalf of the adjacent non-COUNTY property owner.
3. The COUNTY shall be provided with a notarized, certified copy of such written authorization(s) before the CMAR commences Work or operations or use of such property in connection with Work or operations pursuant to this CONTRACT.

- G. **Record Drawings.** The CMAR shall keep one (1) record copy of all Specifications, Drawings, Addenda, Change Orders, and Shop Drawings at the Site in good order, which shall be annotated and marked on a current basis to indicate the progress of the Work done and to show all changes made during the construction process or conditions varying from the Construction Documents. These shall be available to the OCCC Project Administrator for inspection throughout construction and shall be delivered to the OCCC Project Administrator upon completion of the PROJECT, but prior to final payment.
- H. **Emergencies.** In emergencies affecting the safety of persons, the Work or property at the Site or adjacent thereto, the CMAR, without special instruction or authorization from the OCCC Project Administrator, is obligated to act at their discretion to prevent threatened damage, injury, or loss. They shall give the OCCC Project Administrator prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby, and a Change Order shall thereupon be issued covering the changes and deviations involved. If the CMAR believes that additional Work done by it in an emergency which arose from causes beyond its control entitles it to an extension of the Contract Time, the CMAR may submit a PCO as provided for in this CONTRACT.
- I. **Shop Drawing and Samples.** After checking and verifying all field measurements, the CMAR shall submit to the OCCC Project Administrator for review, in accordance with the accepted schedule of Shop Drawing submission, five (5) copies (or at the OCCC Project Administrator's option, one (1) reproducible copy) of all Shop Drawings, which shall have been checked by and stamped with the approval of the CMAR and identified as the OCCC Project Administrator may require. The data shown on the Shop Drawings shall be complete with respect to dimensions, design criteria, materials of construction and the like to enable the OCCC Project Administrator to review the information as required.
1. The CMAR shall also submit to the OCCC Project Administrator for review with such promptness as to cause no delay in the Work, all samples required by the Contract Documents. All samples shall be checked by and stamped with the approval of the CMAR, identified clearly as to material, manufacturer, any pertinent numbers and the use for which intended.
 2. At the time of each submission, the CMAR shall, in writing, place the OCCC Project Administrator on notice of any deviations that the Shop Drawing or sample may have from the requirements of the Contract Documents.
 3. The OCCC Project Administrator will review – with reasonable promptness – and take appropriate action with regard to Shop Drawings and samples, but its review shall be only for general conformance with the design concept of the PROJECT and for compliance with the information given in the Contract Documents. The acceptance of a separate item as such shall not indicate approval of the assembly in which the item functions.
 4. The CMAR shall make any corrections required by the OCCC Project Administrator and shall return the required number of corrected copies of Shop

Drawings and re-submit new samples until accepted.

5. The CMAR'S stamp of approval on any Shop Drawing or sample shall constitute a representation to the OCCC Project Administrator that the CMAR has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and Contract Documents and has either:
 - a. Determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers and similar data; or
 - b. Assumed full responsibility for doing so.
6. No Work requiring a Shop Drawing or sample submission shall be commenced until the submission has been accepted by the OCCC Project Administrator. A copy of each accepted Shop Drawing and each accepted sample shall be kept in good order by the CMAR at the Site and shall be available to the OCCC Project Administrator.
7. The OCCC Project Administrator's acceptance of Shop Drawings or samples shall not relieve the CMAR from its responsibility for any deviations from the requirements of the Contract Documents, unless the CMAR has in writing called the OCCC Project Administrator's attention to such deviation at the time of submission and the OCCC Project Administrator has given written acceptance to the specific deviation; nor shall any acceptance by the OCCC Project Administrator relieve the CMAR from responsibility for errors or omissions in the Shop Drawing.
8. Each Shop Drawing or sample submittal or substitution request by the CMAR shall contain a reference identifying the applicable, specific section of the Specifications to which it pertains. Submittals failing to comply with this provision shall be rejected and returned to the CMAR without review.
9. Each Shop Drawing or sample submittal or substitution request shall include the following stamped certification by the CMAR:

"The CMAR has reviewed the Shop Drawing, sample or substitution submitted herewith and has determined and hereby certifies that in all respects this submittal is in full compliance and conformance with the CONTRACT'S Specifications, Drawings and all other CONTRACT requirements pertaining thereto."
10. Failure of the CMAR to include the above stated specification reference number or certification of compliance shall result in the rejection of the submittal. All samples shall have been checked by and stamped with the approval of the CMAR, identified clearly as to material, manufacturer, any pertinent numbers and the use for which intended.
11. In the event that the CMAR, or anyone working for or on behalf of the CMAR on this PROJECT, should commence or do any Work requiring submission of a

Shop Drawing or sample, or involving a substitution or an “or-equal” request without having such submittal accepted by the COUNTY in writing, then any such Work shall be done at the CMAR’S own risk and is subject to rejection and removal at the CMAR’S expense and at no additional cost to the COUNTY.

12. The CMAR shall not receive “progress” or “final” payment for any and all Work commenced or done which requires, but has not received acceptance of, Shop Drawings, samples, substitution requests, or “or-equal” requests or any other required submittal, nor shall the CMAR receive “progress” or “final” payment for any and all Work that has been determined by the A/E Design Team, Owner’s Representative, or the OCCC Project Administrator to not be in compliance or conformance with the established CONTRACT requirements, CONTRACT COs, CCDs, or RFI responses provided to the CMAR, or accepted Shop Drawings, accepted samples, accepted substitutions, or accepted “or-equals.”

J. Cleaning Up.

1. The CMAR shall keep the Site and all areas adjacent to the Site free from accumulations of waste materials, rubbish, and other debris resulting from the Work.
2. At the completion of the Work the CMAR shall remove all waste materials, rubbish, and debris from and about the premises as well as all tools, construction equipment and machinery, and surplus materials, and shall leave the Site clean and ready for occupancy by the COUNTY.
3. The CMAR shall restore those portions of the Site not designated for alteration by the Contract Documents to their original or better condition. If at any time during construction of this PROJECT, the CMAR fails to clean up on a daily basis, the COUNTY may do so.
4. All costs associated with the COUNTY’S cleanup activities on behalf of the CMAR shall be deducted from amounts due to the CMAR.

- K. Rolling Punch List.** Upon completion of a task the CMAR shall schedule a punch walk with the A/E Design Team and OCCC Project Administrator to compile the list of deficient scopes of work. The CMAR shall then notify the A/E Design Team and OCCC Project Administrator of the completion of the punch list items and request an inspection of the Work. The A/E Design Team within a reasonable time will re-walk the area/s and either sign off on each punch list item once verified complete or notify the CMAR of the punch list items that are still outstanding. Retainage will not be released for any scope of Work that has outstanding punch list items.

- L. Owner Provided Equipment (“OPE”)/CMAR Installed.** If the CMAR is provided with owner equipment or material, the CMAR shall install, connect, erect, use, clean and condition, as required, in accordance with the instructions of the applicable manufacturer warranty. The CMAR shall schedule and coordinate with the OCCC Project Administrator the inspections and delivery of equipment or material during normal business hours between 8am - 5pm EST. Any request outside of normal

business hours must be approved by the OCCC Project Administrator at least forty-eight (48) hours in advance. The CMAR shall inspect any and all equipment or material prior to accepting them. After acceptance, the CMAR shall assume and accept full and complete responsibility and liability for the storage, custody, security, care and safe-keeping of the equipment and materials in the event of theft, pilferage, fire, or any other damage or loss until such time as said materials or equipment is incorporated into the Work, and the Work is completed and accepted by the COUNTY. Any delivered equipment/material found to be damaged shall be reported to the OCCC Project Administrator within forty-eight (48) hours (via email with pictures and serial number and description of damages). The COUNTY will contact Suppliers regarding any warranty issues. After installation, the CMAR shall guarantee the workmanship during the equipment/material warranty period.

Section 6: Scope of Work.

A. The Scope of Work to be provided by the CMAR pursuant to the CONTRACT is more specifically detailed in **Exhibit “A,”** as attached to both RFP #Y19-815-JS and this CONTRACT, and shall essentially be performed in three (3) phases; those phases being Design Assist Phase Services, Enabling Construction Phase Services and Construction Phase Services, all of which are defined in this CONTRACT and further discussed in **Exhibit “A”** and the other Contract Documents. At the discretion of the COUNTY, these three (3) phases may overlap or be sequenced.

1. Design Assist Phase Services (See also: Exhibit “A,” Section 2).

- a. The CMAR shall review and comment upon the Construction Documents being developed by the A/E Design Team. The scope of that review shall include reviewing those various documents for:
 - (1) Value Engineering;
 - (2) Cost estimating;
 - (3) Constructability; and
 - (4) Construction schedule.
- b. As the Construction Documents are developed by A/E Design Team through the various design phases set forth in the Design Services Agreement between the A/E Design Team and the COUNTY as may be amended hereafter (“**Design Services Agreement**”), the CMAR shall provide the COUNTY with detailed construction cost estimates with respect to those documents.
- c. The CMAR shall attend all design and Preconstruction Meetings and to otherwise assist and cooperate with the A/E Design Team with respect to the design of the PROJECT.
- d. The CMAR shall provide the foregoing services and all other services during the Design Assist Phase of the PROJECT as set forth in the

Contract Documents (collectively, the “**Design Assist Phase Services**”).

- e. The CMAR shall not incur any cost to be reimbursed as part of the Cost of Work prior to the commencement of the Design Assist Phase, unless the COUNTY provides prior written authorization for such costs.

2. **Enabling Construction Phase Services (See also: Exhibit “A,” Section 4.4).**

- a. After the Enabling Construction Documents have been ninety percent (90%) completed by the A/E Design Team and approved by the COUNTY for all of the Enabling Construction Work (or such portions thereof as may be designated by the COUNTY in writing), and the COUNTY and the CMAR have agreed in writing upon the Enabling Construction price to be paid the CMAR and the CONTRACT Time for the Enabling Construction Phase Work (or designated portions thereof) as hereafter provided, the CMAR shall furnish and pay for all management, supervision, financing, labor, materials, tools, fuel, supplies, utilities, equipment and services of every kind and type necessary to diligently, timely and fully perform and complete in a good and workmanlike manner the construction of the Work (or designated portions thereof) in accordance with all of the terms and conditions of the Contract Documents (collectively, the “**Enabling Construction Phase Services**”).
- b. For the avoidance of doubt, the CMAR shall have the responsibility to perform the Work and build the Enabling Construction Phase Work in accordance with the Construction Documents, except any Work as may specifically be stated in the Contract Documents to be the responsibility of others.
- c. The CMAR shall not incur any cost to be reimbursed as part of the Cost of Work prior to the commencement of the Enabling Construction Phase, unless the COUNTY provides prior written authorization for such costs.
- d. Notwithstanding anything in this CONTRACT to the contrary, as and to the extent expressly directed and authorized by the COUNTY in writing, the CMAR shall commence to construct those portions of the Work designated by the COUNTY even though the GMP or Contract Time for the entire Work has not yet been agreed to by the parties, so long as they have agreed in writing upon the compensation to be paid the CMAR and the performance time for such portion of the Work.

3. **Construction Phase Services (See also: Exhibit “A,” Section 4).**

- a. After the Construction Documents have been ninety percent (90%) completed by the A/E Design Team and approved by the COUNTY for

all of the Work (or such portions thereof as may be designated by the COUNTY in writing), and the COUNTY and the CMAR have agreed in writing upon the GMP to be paid the CMAR and the Contract Time for the Work (or designated portions thereof) as hereafter provided, the CMAR shall furnish and pay for all management, supervision, financing, labor, materials, tools, fuel, supplies, utilities, equipment and services of every kind and type necessary to diligently, timely, and fully perform and complete in a good and workmanlike manner the construction of the Work (or designated portions thereof) in accordance with all of the Terms and Conditions of the Contract Documents (collectively, the “**Construction Phase Services**”).

- b. For the avoidance of doubt, the CMAR shall have the responsibility to perform the Work and build the entire PROJECT in accordance with the Construction Documents, except any Work as may specifically be stated in the Contract Documents to be the responsibility of others.
- c. The CMAR shall not incur any cost to be reimbursed as part of the Cost of Work, as defined in this CONTRACT, prior to the commencement of the Construction Phase, unless the COUNTY provides prior written authorization for such costs.
- d. Notwithstanding anything herein to the contrary, as and to the extent expressly directed and authorized by the COUNTY in writing, the CMAR shall commence to construct those portions of the Work designated by the COUNTY even though the GMP or Contract Time for the entire Work has not yet been agreed to by the parties, so long as they have agreed in writing upon the compensation to be paid the CMAR and the performance time for such portion of the Work.

B. **Miscellaneous Services.** Miscellaneous services may include, but are not limited to, the following types of work:

- 1. Litigation assistance and court testimony;
- 2. Witnessing manufacturer’s shop testing;
- 3. Periodic visits to inspect field conditions;
- 4. Special investigations regarding potential liability suits;
- 5. Preparation of various soils, materials, and geotechnical reports, as required;
- 6. Permitting/negotiations with regulatory agencies;
- 7. Pipe coupon analysis for life cycle determination or the forensic investigations of pipeline failure including camera inspection; and
- 8. Ground penetrating radar investigations (soils, concrete, asphalt, subsurface).

Section 7: Changes in the Work.

- A. Without invalidating the CONTRACT, the COUNTY may, at any time or from time to time, order additions, deletions or revisions in the Work authorized by written Change Orders or directive. Upon receipt of a Change Order, the CMAR shall proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Contract Amount or any extension or shortening of the Contract Time, an equitable adjustment shall be made as provided in this CONTRACT.
- B. Additional Work performed by the CMAR without authorization of a Change Order shall not entitle it to an increase in the Contract Amount or any extension of the Contract Time, except in the case of an emergency.
- C. The CMAR shall notify its Surety of any changes affecting the general scope of the Work or change of the Contract Amount and the amount of the applicable bonds shall be adjusted accordingly, and an amended bond document furnished to the COUNTY.
- D. In the event the COUNTY directs the CMAR to make a change in the Work, and if the COUNTY and the CMAR do not arrive at a mutually acceptable increase or decrease in the Contract Amount, the CMAR shall not use any such lack of mutual acceptance as a basis or cause to stop or otherwise delay the progress or the execution and completion of any of the Work ordered, directed or required pursuant to the Contract Documents.
- E. If the CMAR believes an event or situation has occurred which justifies a change in the Contract Amount or Contract Time, the CMAR shall deliver a written notice to the OCCC Project Administrator. Each such written notice shall be delivered promptly, and in any event no later than fifteen (15) days after the CMAR first discovered the occurrence. The CMAR shall be deemed to have waived the right to collect any and all costs incurred more than fifteen (15) days prior to the date of delivery of the written notice, and shall be deemed to have waived the right to seek an extension of the Contract Time with respect to any delay in the Progress Schedule which accrued more than fifteen (15) days prior to the date of delivery of the written notice.
- F. Any such notice shall include sufficient detail to explain the basis of entitlement to a request for an adjustment to the Contract Amount and/or Contract Time. When requested by the OCCC Project Administrator, the CMAR shall furnish any additional information and details as may be required to determine the facts or allegations involved, which shall be provided within fifteen (15) days of the request unless a longer time period is allowed by the OCCC Project Administrator.
- G. The CMAR shall submit PCOs detailing proposed adjustments to Contract Amount, Contract Time, or both, in accordance with this CONTRACT.
- H. The CMAR'S PCO shall be irrevocable for a period of at least sixty (60) days after receipt by the COUNTY. Any delay in the submittal of a complete, adequate and acceptable proposal shall not justify an increase in Contract Amount or Contract Time.

- I. The CMAR shall give the COUNTY access to all of the CMAR'S and Subcontractors' books, records and other materials relating to proposed requests for adjustment to Contract Amount and/or Contract Time.

Section 8. Progress Reporting.

- A. **Construction Progress Schedule.** The CMAR's Construction Progress Schedule shall utilize the Critical Path Method ("CPM"). The CMAR's Construction Progress Schedule shall be prepared using software approved by the COUNTY; the software shall be specifically intended for the preparation of construction schedules incorporating a critical path.
 1. The software used by the CMAR must be approved in advance by the COUNTY.
 2. The CMAR shall submit a Construction Progress Schedule CPM (both in hard printed copy with Gantt Chart and electronic disc files) no later than twenty (20) days after receipt of the NTP, and prior to commencing Work on the PROJECT.
 3. The Construction Progress Schedule CPM shall clearly identify all controlling items of Work and activities defined as the critical path, which if delayed or prolonged, shall delay the time of completion of the CONTRACT. The critical path shall include a minimum ten percent (10%) float time as part of the Contract Time for unforeseen conditions.
 4. The CMAR shall provide additional float time above the required minimum ten percent (10%) based on its experience, understanding of the scope, and inspection of the Site. All float is owned by the PROJECT.
- B. **Construction Progress Schedule Updates.** The CMAR shall submit an updated Construction Progress Schedule to the OCCC Project Administrator concurrent with each Application for Payment.
 1. The Construction Progress Schedule update shall focus on the period from the last Construction Progress Schedule update to the current Construction Progress Schedule update submitted with the Application for Payment. Activities that have either started or finished shall be reported as they actually occurred and designated as complete, if actually completed.
 2. For activities in progress that are forecasted to complete longer than planned, the remaining durations shall be revised, not the original durations. All out of sequence activities are to be reviewed and their relationships either verified or changed.
 3. The CMAR'S failure to submit a Construction Progress Schedule update and the CMAR's Monthly Report with an Application for Payment shall be sufficient reason for rejection of the Application for Payment request.
 4. If the OCCC Project Administrator rejects the Construction Progress Schedule

update or the CMAR's Monthly Report, the entire Application for Payment request will be rejected and shall be resubmitted with the corrected Construction Progress Schedule update and CMAR's Monthly Report.

C. **Progress Payment Narrative Report.** When requested by the Owner's Representative or the OCCC Project Administrator, each Update Schedule CPM shall be accompanied by a written Narrative Report.

1. The Narrative Report shall describe the physical progress during the report period, plans for continuing the Work during the forthcoming report period, actions planned to correct any delays, and a detailed explanation of potential delays or problems and their estimated impact on performance, milestone completion dates, the forecasted completion date, and the forecasted substantial completion date. In addition, alternatives for possible schedule recovery to mitigate any potential delays shall be discussed.
2. If required by the Owner's Representative or the OCCC Project Administrator, the CMAR Progress Payment Narrative Report shall include a detailed list of all outstanding Contract Claims with a detailed description of each Contract Claim.
3. The Narrative Report shall follow the outline set forth below:
 - a. The CMAR'S dated transmittal letter.
 - b. Work completed during the report period.
 - c. Description of the current critical path.
 - d. Description of problem areas.
 - e. Current and anticipated delays:
 - (1) Cause of the delay; and
 - (2) Corrective action and schedule adjustments to correct the delay.
 - f. Impact of the delay on other activities, milestones, and completion dates.
 - g. Changes in construction sequences.
 - h. Pending items and status thereof:
 - (1) Permits;
 - (2) Change Orders; and
 - (3) Time extensions.
 - i. A list of all outstanding Contract Claims and a detailed description of each Contract Claim.
 - j. Contract completion date status:
 - (1) Ahead of schedule and number of days; and
 - (2) Behind schedule and number of days.

- D. **Schedule and Report Format.** The CMAR shall submit the Progress Schedule CPM, Progress Payment Update Schedules CPM, and the Progress Payment Narrative Report to the Project Manager on both:
1. Electronic disc files; and
 2. Printed copies of the network diagrams and narrative reports.
- E. **Project Manager Review.** The Project Manager shall review the CMAR's Progress Schedule CPM, Progress Payment Update Schedules CPM, and Progress Payment Narrative Reports.
- F. The Project Manager may accept or reject Update Schedule CPMs or Narrative Reports. Rejected Update Schedule CPMs and Narrative Reports shall be corrected and re-submitted to the Project Manager.
- G. **Final Schedule Update.** The CMAR within fifteen (15) days after substantial completion shall submit a final update of the schedule with actual start and actual finish dates for all activities and controlling items of Work identified as the critical path. The Final Schedule Update shall be accompanied by a certification signed by the CMAR stating:
- “To the best of my knowledge, the enclosed final update of the project schedule reflects the actual start and completion dates of the activities and controlling items of Work on the critical path.”
- H. **CMAR's Monthly Report.** Each month a written CMAR's Monthly Report shall be provided to the OCCC Project Manager and Owner's Representative along with the Application for Payment (as described in the "Application for Payment" provision of this CONTRACT).
1. The CMAR's Monthly Report shall describe the physical progress during the report period, plans for continuing the Work during the forthcoming report period, actions planned to correct any delays, and a detailed explanation of potential delays or problems and their estimated impact on performance, claims, milestone completion dates, the forecasted completion date, and the forecasted substantial completion date. In addition, alternatives for possible schedule recovery to mitigate any potential delays shall be discussed.
 2. The Monthly Report shall follow the outline set forth below:
 - a. **Construction Progress Review.**
 - (1) Construction Last Month
 - (2) Construction Next Month
 - (3) Construction Review by Areas (including Permits)
 - (4) Construction Overall
 - b. **Schedule Analysis.**

- (1) Construction Schedule Percent Complete
- (2) PROJECT is on Schedule (including days ahead or behind)
- (3) Areas Behind Schedule and How Much
- (4) Schedule Recovery Plan

c. **Cost Analysis.**

- (1) Current Contract Value
- (2) Invoiced to Date
- (3) Percent Invoiced to Date
- (4) Proposed Change Order Log

d. **Administrative Review.**

- (1) RFI Log
- (2) RFI Critical Items
- (3) Submittal Log
- (4) Submittal Critical Items

e. **Safety Review.**

- (1) Site Safety Meetings
- (2) Safety Inspections
- (3) Safety Issues/Incidents Log
- (4) Corrective Actions

f. **M/WBE Participation Review.**

- (1) Total Amount to Date
- (2) Total M/WBE Subcontractor Payments to Date
- (3) Projected Participation %
- (4) Current Participation %
- (5) All forms and reports as required in this CONTRACT.

g. **Critical Issues/Action Items.**

- (1) Critical Issues/Action Items (including Claims)

I. Construction Progress Schedule Update and CMAR's Report Submission.

1. The CMAR shall submit the Construction Progress Schedule Gantt Chart Update and the CMAR's Monthly Report to the OCCC Project Administrator in both of the following formats:

- a. One (1) electronic disc files; and
- b. Three (3) printed copies.

2. The Construction Progress Schedule Gantt Chart shall include Baseline Start, Baseline Finish, Actual Start, Actual Finish, and Percent Complete.

Section 9: Project Costs.

A. Costs to be Reimbursed.

1. The Cost of Work shall be all costs necessarily and reasonably incurred by CMAR in the proper performance of the Enabling Construction and Construction Phase Services portion of the Work.
2. Cost of Work shall not include any costs or expenses incurred by the CMAR related to or incurred during the performance of the Design Assist Phase Services. Such costs shall be incurred at rates not higher than the standard industry rates paid at the place of the PROJECT except with the prior written consent of the COUNTY only after the CMAR has provided sufficient support in writing that exceptional circumstances exist, which justify the payment of rates higher than the industry standard.
3. Items of Work not included in this Subsection are compensable only as part of the Construction Management Fee and are otherwise not reimbursable. The Cost of Work shall include only those items set forth below:

a. Labor Costs.

- (1) Wages of construction workers directly employed by the CMAR to perform the construction of the Work at the Site or, with the COUNTY'S written agreement, at off-Site workshops. Costs to be reimbursed shall be the actual wages paid to the individuals performing the Work.
- (2) Wages or salaries of the CMAR'S supervisory and administrative personnel who are stationed at the Site with the COUNTY'S written agreement.
- (3) Wages and salaries of the CMAR'S supervisory and administrative personnel engaged at factories, workshops or on the road in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and only with COUNTY'S written agreement.
- (4) The parties shall establish a fixed markup rate for all labor burden, including all taxes, insurance (except workers compensation and general liability), contributions, assessments and benefits required by law and collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such markup is to apply only upon those wages and salaries included

in the Project Cost. Further, such labor burden shall not include amounts for items specified in this CONTRACT that are to be excluded from the Project Cost.

- (5) The CMAR shall promptly report to the COUNTY any occasion in which the labor/payroll rates paid to personnel is lower than the estimated price included in the GMP Attachment for the General Conditions expense. Further, the COUNTY reserves the right to audit the CMAR'S payroll. The CMAR shall promptly make available to COUNTY all records necessary for such purpose.
- b. **General Conditions Costs.** The CMAR'S "General Conditions" expenses, that are to be more particularly itemized in an attachment to the GMP Proposal and incorporated therein by reference, are a lump sum to be paid as the Work progresses with each Application for Payment based on the percentage of completion.
 - c. **Subcontract Costs.** Payments made by the CMAR to Subcontractors in accordance with the requirements of the applicable written subcontracts.
 - d. **Cost of Materials and Equipment Incorporated into the Completed Construction.**
 - (1) Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
 - (2) Costs of materials in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the COUNTY at the completion of the Work or, at the COUNTY'S option, shall be sold by the CMAR; amounts realized, if any, from such sales, shall be credited to the COUNTY as a deduction from the Costs of the Work.
 - e. **Costs of Other Materials and Equipment, Temporary Facilities and Related Items.**
 - (1) Costs, including transportation, installation, maintenance, dismantling and removal, of materials, supplies, temporary facilities (including project field offices, furniture and fixtures), temporary utilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the CMAR at the Site and fully consumed in the performance of the Work; and costs less salvage value on such items if not fully consumed, whether sold to others or retained by the CMAR or others, shall be subject to the COUNTY'S prior written approval.

- (2) Rental charges, at standard industry rates for the area, for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the CMAR at the Site, whether rented from the CMAR or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of all equipment rented, whether from the CMAR or others, shall be subject to the COUNTY'S prior written approval.
- (3) Cost of removal and proper disposal or recycling of debris from the Site.

f. **Miscellaneous Costs.**

- (1) That portion of any separate premiums for: (a) bonds directly attributable to the CONTRACT; and (b) any additional insurance coverages which are purchased by the CMAR, with the COUNTY'S prior written approval, beyond the level of coverage specified herein.
- (2) Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the CMAR is liable.
- (3) Fees and assessments related to the permits, licenses, and inspections for which the CMAR is required by the Contract Documents to pay. All of such expenses and charges shall be subject to the prior written approval of the COUNTY. See: The "Licenses/Permits/Fees" provision below for more information.
- (4) Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded pursuant to the terms of the CONTRACT.
- (5) Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents. All of such expenses and charges shall be subject to the prior written approval of the COUNTY.
- (6) Deposits lost for causes other than the CMAR'S fault or negligence. All of such expenses and charges shall be subject to the prior written approval of the COUNTY.
- (7) Other costs necessarily and reasonably incurred in performance of the Work if and to the extent approved in advance in writing by the COUNTY.

B. **Costs Not to be Reimbursed.** The Cost of Work shall not include the following items:

1. Salaries and other compensation of the CMAR'S personnel stationed at the CMAR'S principal office or offices other than the Site office.
2. Expenses of the CMAR'S principal office and offices other than the Site office.
3. Discretionary bonuses, incentive compensation, and other discretionary payments paid to anyone hired by the CMAR or paid to any Subcontractor or Supplier.
4. Overhead and general expenses, except as may be expressly included in this CONTRACT.
5. The CMAR'S capital expenses, including interest on the CMAR'S capital employed for the Work.
6. Rental costs of machinery and equipment, except as specifically provided for in this CONTRACT.
7. Costs due to the fault or negligence of the CMAR, Subcontractors, or anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including costs for the correction of damaged, defective, or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and repairing or remedying damage to property not otherwise included in the Work.
8. Any costs not specifically and expressly described in this CONTRACT as Costs to be Reimbursed.
9. Costs which would cause the GMP to be exceeded (as the GMP may be adjusted pursuant to the terms herein for Change Order and Construction Change Directive).
10. Any costs associated with insurance coverage, including deductibles or retentions that will be specifically covered under the Owner Controlled Insurance Program ("**OCIP**"). This includes but is not limited to the cost to insure any materials stored offsite that will become part of the Work. For underwriting purposes the COUNTY shall be immediately notified of the physical address and replacement value of all materials stored offsite.

C. **Licenses, Permits, and Fees.** The COUNTY will pay for all applicable Orange County Building, Florida Department of Health, and Storm Water Prevention Plan ("**SWPP**") Permits and Fees. The CMAR shall pay all other Fees and Assessments for the building permit and for other permits, licenses, and inspections. All of such expenses and charges shall be subject to the prior written approval of the COUNTY.

D. **Discounts, Rebates, and Refunds.**

1. Cash discounts obtained on payments made by the CMAR shall accrue to the CMAR with the following exceptions:

- a. If, before making the payment, the CMAR included such cash discounts in an application for payment and received payment therefore from the COUNTY, such cash discounts shall accrue to the COUNTY; or
 - b. If the COUNTY deposited funds with the CMAR with which to make the payments from which such cash discounts accrued, such cash discounts shall accrue to the COUNTY.
2. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the COUNTY, and the CMAR shall make provisions so that they can be secured.
 3. The CMAR shall use its best efforts to obtain all available discounts, rebates, and refunds for the benefit of the COUNTY.
 4. Amounts which accrued to the COUNTY shall be credited to the COUNTY as a deduction from the Cost of Work.

E. Owner Direct Purchase.

1. Pursuant to Section 212.08(6), Florida Statutes, and Section 12A-1.094, Florida Administrative Code, the COUNTY is exempt from Florida Sales Tax for the purchase of construction materials, supplies, and equipment incorporated into a construction project.
2. For construction contracts valued at \$10,000,000, or lesser amounts as determined by the COUNTY, the COUNTY may, at its discretion, use the direct purchase method for large dollar value equipment and materials.
3. Direct purchases shall be negotiated with the CMAR based on those items identified by the Owner's Representative. The final determination as to whether to direct purchase any materials or equipment shall be made by the Manager of the Procurement Division after consultation with the OCCC Project Administrator.
4. When it has been determined that the use of direct purchases is warranted, the *Orange County Owner Direct Purchase Provision*, which is attached to both the Restated RFP #Y19-815-JS and this CONTRACT as **Exhibit "F,"** shall govern.

Section 10: Guaranteed Maximum Price Proposal and Amendment.

- A. **GMP Proposal.** Once the construction documents have been certified as 90% complete, the CMAR shall prepare and submit a Guaranteed Maximum Price Proposal ("**GMP Proposal**"), taking into consideration Section 3.8 of **Exhibit "A,"** and by use of the *Draft GMP Proposal* as attached to this CONTRACT as **Exhibit "E."** The COUNTY, at its sole option and discretion, may specify different requirements for the GMP Proposal. The CMAR shall not withdraw its GMP Proposal

for ninety (90) days following its submission to the COUNTY.

- B. **Coordination with A/E.** In developing the GMP Proposal, the CMAR shall coordinate efforts with the A/E to identify qualifications, clarifications, assumptions, exclusions, value engineering, and any other factors relevant to the establishment of a GMP. The CMAR shall review development of the GMP Proposal with the COUNTY on an ongoing basis from the beginning of the CMAR'S work on the PROJECT.
- C. **GMP to Incorporate Contract Terms.** The GMP Proposal shall adopt and incorporate all of the terms and conditions of this CONTRACT, attachments to this CONTRACT, and any other Contract Documents. Any proposed deviation from the terms and conditions of this CONTRACT shall be clearly and conspicuously identified to the COUNTY in writing and specifically accepted by the COUNTY. In the event of a conflict between any term of the GMP Proposal that was not clearly and conspicuously identified and approved by the COUNTY and the terms of this CONTRACT, attachments to this CONTRACT, and any other Contract Documents, the terms of this CONTRACT, attachments to this CONTRACT, and any other Contract Documents shall govern.
- D. **Acceptance or Rejection by the COUNTY.** The COUNTY may accept or reject the GMP Proposal or attempt to negotiate its amount and its terms and conditions with the CMAR. When the COUNTY accepts the GMP Proposal in writing, or a negotiated variant of it, both parties shall execute an Amendment to this CONTRACT that incorporates the GMP Proposal and its supporting documents into this CONTRACT. If the COUNTY rejects the GMP Proposal or the parties are unable or unwilling to agree on a negotiated variant of it, the COUNTY may terminate this CONTRACT. If this CONTRACT is terminated for this reason, the COUNTY shall pay the CMAR for that portion of Work that has already been completed pursuant to this CONTRACT and the COUNTY shall then have no further duties, responsibilities, or financial obligations to the CMAR. After such a termination of this CONTRACT, the COUNTY shall be free to abandon or pursue the PROJECT in any manner it sees fit without any obligations to the CMAR.
- E. **CMAR'S Responsibilities Following Acceptance of the GMP Proposal.** Following the COUNTY'S acceptance of the GMP Proposal, the CMAR shall continue to monitor the development of the Construction Documents so that, when complete, the Construction Documents adequately incorporate and resolve all qualifications, assumptions, clarifications, exclusions, and value engineering issues embodied in the GMP Proposal.

Section 11: Payment.

- A. In consideration of the full and faithful performance by the CMAR of the covenants in the CONTRACT, the COUNTY agrees to pay, or cause to be paid, the Contract Amount to the CMAR in accordance with the terms of this CONTRACT, and as is provided for in **Exhibit "A."**
- B. **Local Government Prompt Payment Act.** The COUNTY shall make payments to the CMAR for payment-eligible work performed, or services provided, pursuant to this

CONTRACT, in accordance with the Local Government Prompt Payment Act, Section 218.70 et. seq, Florida Statutes.

- C. **Availability of Funds.** The obligations of the COUNTY under this CONTRACT are subject to availability of funds lawfully appropriated for its purpose by the Board of County Commissioners, or other specified funding source for this CONTRACT.
- D. **Schedule of Values.** The CMAR shall submit a Schedule of Values for the Work including quantities and unit prices totaling the total Contract Amount no later than twenty (20) days after receipt of the Notice to Proceed and prior to commencing Work on the PROJECT. The Schedule of Values shall be in a form satisfactory to the COUNTY.
1. The Schedule of Values shall subdivide the Work into sufficient detail to serve as the basis for progress payments during construction. Upon acceptance of the Schedule of Values by the OCCC Project Administrator, it may be incorporated into the form of application for payment prescribed by the COUNTY.
 2. The CMAR shall not imbalance the Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the CMAR shall constitute a material breach of this CONTRACT.
 3. The Schedule of Values shall be submitted reviewed and approved by the OCCC Project Administrator, A/E Design Team, Owner's Representative, and the COUNTY'S Risk Management Division.
- E. **Application for Payment.**
1. The OCCC Project Administrator shall provide written notice to the CMAR identifying the name, address, phone number and email address of the agent or employee to which the CMAR shall submit payment requests or invoices. This notice shall be provided no later than ten (10) days after issuance of the NTP.
 2. Not more often than once a month, on a date established at the Project Preconstruction Meeting, the CMAR shall submit to the OCCC Project Administrator for review the COUNTY'S standard Application for Payment form filled out and signed by the CMAR covering the Work completed as of the date of the Application and supported by such data as the OCCC Project Administrator may reasonably require.
 3. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the application for payment shall also be accompanied by such supporting data, satisfactory to the OCCC Project Administrator, as shall establish the COUNTY'S title to the material and equipment and protect its interest therein, including applicable insurance, partial Consent of Surety, and detailed inventory listing of stored material.
 4. Each such request shall include the submittal by the CMAR of:

- a. A detailed, itemized inventory listing the material stored at the Site or off-Site for which payment is requested;
 - b. Documentation to indicate and substantiate the cost or value attributed to the items included in the stored material inventory list; and
 - c. The COUNTY'S *Stored Materials* forms, as attached to both the Restated RFP #Y19-815-JS and this CONTRACT as **Exhibit "H,"** executed by the CMAR.
5. Failure to provide proper supporting documentation may subject the Application for Payment to rejection. All Applications for Payment shall be subject to the retainage percentage specified in the Contract Documents that shall be issued in the final payment after acceptance by the COUNTY of the Work.
- F. Based upon Applications for Payment submitted to the OCCC Project Administrator by the CMAR and Certificates for Payment issued by the OCCC Project Administrator the COUNTY shall make progress payments on account of the Contract Amount to the CMAR as provided in the Contract Documents as follows:
1. In the timeframes outlined in Section 218.735, Florida Statutes, ninety percent (90%) of the portion of the Contract Amount properly allocable to labor, materials and equipment incorporated in the Work and ninety percent (90%) of the portion of the Contract Amount properly allocable to materials and equipment suitably stored at the Site or at some other location agreed upon in writing, for the period covered by the application for payment, less the aggregate of previous payments made by the COUNTY.
 2. Upon Final Completion of the entire Work, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract Amount, less such amounts as the COUNTY shall determine for all incomplete Work and unsettled Claims as provided in the Contract Documents.
- G. The CMAR may, at the discretion of the OCCC Project Administrator, be required to have Applications for Payments accompanied by Consent of Surety to Partial Payment. The CMAR shall include the following certification on each Application for Progress Payments and the Application for Final Payment:
- "The undersigned CMAR certifies that the Work covered by this Application for Progress Payment has been done, or completed in accordance with the Contract Documents, that all amounts have been paid by the CMAR for Work, supplies, material or equipment for which previous Certificates for Payment were issued and that the current payment shown herein is now due".
- H. **Retainage.** Not later than thirty (30) days following approval of an Application for Payment, ninety percent (90%) of the portion of the Contract Amount properly allocable to labor, materials, equipment and fees incorporated in the Work and ninety percent (90%) of the portion of the Contract Amount properly allocable to materials and equipment suitably stored at the Site or at some other location agreed upon in writing,

for the period covered by the application for payment, less the aggregate of previous payments made by the COUNTY.

- I. **CMAR'S Warranty of Title.** The CMAR warrants and guarantees that title to all work, materials and equipment covered by an Application for Progress Payment, whether incorporated in the PROJECT or not, shall have passed to the COUNTY prior to the making of the Application for Payment, free and clear of all Liens, Claims, security interests and encumbrances; and that no work, materials or equipment covered by an Application for Payment shall have been acquired by the CMAR or by any other person performing the Work at the Site or furnishing materials and equipment for the PROJECT subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the CMAR or such other person.

- J. **Approval of Payments.** The CMAR shall submit a pencil requisition in advance of the Application for Payment to be reviewed during the pencil requisition Site walk with the CMAR, OCCC Project Administrator and A/E Design Team. Once the pencil requisition is agreed upon the CMAR shall submit the certified Application for Payment.
 1. The OCCC Project Administrator will, within twenty (20) business days after receipt of each Application for Payment, either indicate its approval of payment or return the Application for Payment to the CMAR indicating in writing the reason for refusing to approve payment. In the latter case, the CMAR may make the necessary corrections and re-submit the Application for Payment.

 2. In the event the CMAR and the OCCC Project Administrator do not achieve mutual agreement on the basis or amount of the payment, and should the CMAR be unwilling to make the necessary corrections or modifications, and re-submit the Application, then the COUNTY, to avoid delay in paying the CMAR the amount the COUNTY has determined the CMAR is entitled to receive, will approve and process the Application by making such adjustments thereto as the COUNTY deems appropriate so that the CMAR receives, without delay, payment of the amount the COUNTY has determined to have been earned and owing to the CMAR.

 3. In the event a dispute involving payments or invoices that have been rejected by the OCCC Project Administrator and resubmitted by the CMAR that cannot be resolved in accordance with Section 218.735(3), Florida Statutes, occurs, the Orange County Payment/Invoice Disputes Resolution Process Procedures shall be used to resolve the dispute. The procedures can be obtained by contacting the Procurement Division at (407) 836-5635. Failure by the CMAR to request a copy of such procedures prior to its execution of this CONTRACT shall not alleviate the CMAR of its obligations to follow such procedures should the need arise.

 4. The OCCC Project Administrator's approval of any payment requested in an Application for Progress Payment shall constitute a representation by them to the COUNTY, based on the OCCC Project Administrator's on-Site observations of the Work in progress and on its review of the application for payment and the supporting data, that the Work has progressed to the point indicated; that, to the

best of its knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning PROJECT upon Substantial Completion, to the results of any subsequent tests called for in its approval); and that the CMAR is entitled to payment of the amount approved.

5. By approving any such payment, the OCCC Project Administrator will not thereby be deemed to have represented that the CMAR made exhaustive or continuous on-Site inspections to check the quality or quantity of the Work, that the CMAR has reviewed the means, methods, techniques, sequences and procedures of construction nor that the CMAR has made any examination to ascertain how or for what purpose the CMAR has used the moneys paid or to be paid to it on account of the Contract Amount.
6. The OCCC Project Administrator's approval of final payment will constitute an additional representation by it to the COUNTY that the conditions precedent to the CMAR'S belief being entitled to final payment as set forth in this Article have been fulfilled.
7. The OCCC Project Administrator may refuse to approve the whole or any part of any payment if in their opinion the CMAR is unable to make such representations to the COUNTY. They may then refuse to approve any such payment because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously approved, to such extent as may be necessary in their opinion to protect the COUNTY from loss because:
 - a. The Work is defective;
 - b. Claims have been filed or there is reasonable evidence indicating the probable filing thereof;
 - c. The Contract Amount has been reduced because of Change Order(s);
 - d. The COUNTY has been required to correct defective Work or complete the Work in accordance with this CONTRACT; or
 - e. Of unsatisfactory prosecution of the Work, including failure to clean up as required by this CONTRACT.

K. **Substantial Completion.** Prior to the final payment, the CMAR shall certify in writing to the OCCC Project Administrator that the entire Work is Substantially Complete and request that the OCCC Project Administrator issue a Certificate of Substantial Completion. Within a reasonable time thereafter, the OCCC Project Administrator and the CMAR shall make an inspection of the Work to determine the status of completion.

1. If the OCCC Project Administrator does not consider the Work Substantially Complete, the CMAR will be notified in writing giving the reasons therefore. If the OCCC Project Administrator considers the Work Substantially Complete, a Certificate of Substantial Completion will be issued.

2. There will be attached to the Certificate a single punch list of items to be completed or corrected by the CMAR. The punch list will be prepared no later than five (5) days after the punch list has been developed and reviewed by the A/E Design Team, CMAR, OCCC Project Administrator, and the Owner Project Team. Items not included on the punch list cannot be used as a basis to withhold final payment for retainage. In addition, the final contract completion date shall be at least thirty (30) days after the delivery of the punch list to the CMAR. Punch lists not provided to the CMAR by the date agreed upon for delivery shall cause the contract time for completion to be extended by the number of days the local government exceeded the delivery date.
3. Damages may only be assessed against the CMAR in the event the CMAR fails to complete the project within the contract period as was extended by the guidelines set forth in this provision.
4. The final undisputed retainage payment will be made within twenty (20) business days after receipt of a proper payment request. This would be less any amount withheld in accordance with the contract provisions for incomplete or uncorrected Work unless otherwise provided for by written notice to the CMAR specifying the failure of the CMAR to meet contract requirements in the development of the punch list.
5. The COUNTY shall have the right to exclude the CMAR from the Work after achievement of Substantial Completion, but the COUNTY shall allow the CMAR reasonable access to complete items on the punch list.

L. **Partial Utilization.** Prior to Substantial Completion, the OCCC Project Administrator may request the CMAR to permit the use of a specified part of the Work which it believes it may use without significant interference with construction of other parts of the Work.

1. If the CMAR agrees, the CMAR shall certify to the OCCC Project Administrator that said part of the Work is Substantially Complete and request the OCCC Project Administrator issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time thereafter, the OCCC Project Administrator and CMAR shall make an inspection of that part of the Work to determine its status of completion.
2. If the COUNTY and the OCCC Project Administrator consider that part of the Work to be Substantially Complete, the OCCC Project Administrator will deliver to the CMAR a certificate to that effect, fixing the date of Substantial Completion as to that part of the Work, attaching thereto a punch list of items to be completed or corrected before final payment and fixing the responsibility between the COUNTY and CMAR for maintenance, heat and utilities as to that part of the Work.

M. **Final Inspection.** Upon written notice from the CMAR that the Work is complete, including the "punch" listed deficiencies, the OCCC Project Administrator will make a final inspection with the CMAR and shall notify the CMAR in writing of any particulars in which this inspection reveals that the Work is defective. The CMAR shall immediately

make such corrections as are necessary to remedy such defects and to complete all the required work.

N. Final Inspection for Payment.

1. After the CMAR has completed any such corrections to the satisfaction of the OCCC Project Administrator and delivered all maintenance and operating instructions, schedules, guarantees, bonds, Certificates of Inspection and other documents as required by the Contract Documents, the CMAR shall make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied by legally effective Final Release or Waiver of Lien from the CMAR and the consent of Surety to final payment. *The Final Release of Lien*, as attached to both to the Restated RFP #Y19-815-JS and **Exhibit “G”** to this CONTRACT, shall be utilized in all Final Pay Applications.

O. Approval of Final Payment. If, on the basis of its observations and review of the Work during construction, its final inspection and its review of the final Application for Payment (all as required by the Contract Documents), the OCCC Project Administrator is satisfied that the Work has been completed and the CMAR has fulfilled all of its obligations under the Contract Documents, it will, within twenty (20) business days after receipt of the final Application for Payment, indicate in writing its approval of payment. Otherwise, it will return the Application to the CMAR, indicating in writing its reason for refusing to approve final payment, in which case the CMAR shall make the necessary corrections and re-submit the Application.

1. If the final Application of Payment is approved, the COUNTY will, in accordance with the Local Government Prompt Payment Act, pay the CMAR the amount approved by the COUNTY and issue a Certificate of Final Completion.
2. If after Substantial Completion of the Work, Final Completion is materially delayed through no fault of the CMAR, and the OCCC Project Administrator so confirms, the COUNTY will, and without terminating the CONTRACT, make payment of the balance due for that portion of the Work fully completed and accepted.
3. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the CONTRACT, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the CMAR to the OCCC Project Administrator prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

P. CMAR'S Continuing Obligation. The CMAR'S obligation to perform the Work and complete the Work in accordance with the Contract Documents shall be absolute. Neither approval of any progress or final payment by the COUNTY, the issuance of Certificate of Completion, any payment by the COUNTY to the CMAR under the Contract Documents, any use or occupancy of the Work or any part thereof by the

COUNTY, any act of acceptance by the COUNTY, any failure to do so, nor any correction of defective Work by the COUNTY will constitute an acceptance of Work not in accordance with the Contract Documents.

Q. **Waiver of Claims.** The making and acceptance of final payment shall constitute:

1. A waiver of all Claims by the COUNTY against the CMAR other than those arising from unsettled liens, from defective Work appearing after final payment or from failure to comply with the requirements of the Contract Documents, or from the terms of any special guarantees specified therein; and
2. A waiver of all Claims by the CMAR against the COUNTY other than those previously made in writing and still unsettled.

Section 12: Work Commencement/Progress.

A. **Preconstruction Meeting.** Within ten (10) days after the effective date of the CONTRACT, but before the CMAR starts the Work at the Site, a meeting attended by the CMAR, Owner Project Team, A/E Design Team and others as appropriate shall be held to discuss such topics as may include, but not limited to; COUNTY PROJECT goals, objectives, requests, schedules, procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, maintenance of traffic, initiation of coordination with affected utilities, Agreement upon the Notice to Proceed date, and to establish a working understanding among the parties as to the Work.

B. **Commencement and Terms of Work.** The services to be rendered by the CMAR shall be commenced subsequent to the execution of this CONTRACT and upon written Notice to Proceed from the COUNTY. Services shall commence within fourteen (14) days after the Notice to Proceed.

C. **Construction Schedule.**

1. The Orange County Convention Center is an occupied and active space that is operational at all times. Availability of the Site is limited due to the OCCC scheduled show events.
2. During the PROJECT, the CMAR shall sequence their Work to accommodate the scheduled show events. The Site shall be available to the CMAR seven (7) days per week. CMAR Work hours are anticipated to be from 7:00 AM to 6:00 PM, exceptions to the Work hours must be approved in advance by the COUNTY OCCC Project Administrator.
3. Any permissible Work activities during the non-construction Work days will be determined at the OCCC Project Administrator's discretion. With the advance approval of the OCCC Project Administrator, specific dates may be coordinated with the CMAR.
4. The OCCC Project Administrator will provide show schedules, as necessary, to the CMAR. The show schedule shall be for informational purposes only.

The CMAR shall obtain approval from the OCCC Project Administrator for their Work schedule.

5. The non-construction Work Days shall be determined and provided by the COUNTY to the CMAR during the Design Assist Phase of the PROJECT.
 - a. The COUNTY will make every effort to provide the estimated dates for non-construction Work days (no construction activity) based on the most current information available; however, the show event schedule is subject to change based on show activities.
 - b. In the event that the available scheduled Work times/days are cancelled or rescheduled by the COUNTY, the CMAR may submit a request for additional Work times/days, if required to meet the scheduled completion date. This request shall be accompanied by adequate justification. If the CMAR is given or requests additional time that includes nights or weekends in order to meet scheduled completion date, no shift differential costs shall be allowed.

D. **Work Segment Deadlines.** A detailed *Segment Completion Schedule* has been approved by the COUNTY. Said segment completion schedule is attached to both the Restated RFP #Y19-815-JS and this CONTRACT as **Exhibit “D.”** The purpose of this schedule is to:

1. Provide job segment deadlines for the CMAR upon which the COUNTY may rely;
2. Provide guidance for the COUNTY in honoring the CMAR’S monthly Applications for Payment for progress payments called for in this CONTRACT; and
3. Provide a framework against which the COUNTY may suspend progress payments as provided in in this CONTRACT.

E. **Conferences.** The COUNTY shall be entitled at all times to be advised, at its request, as to the status of Work being done by the CMAR and of the details thereof. Coordination shall be maintained by the CMAR with representatives of the COUNTY, or of other agencies interested in the PROJECT on behalf of the COUNTY. Either party to the CONTRACT may request and be granted a conference.

Section 13: Site and Work Restrictions.

- A. The CMAR shall cover exposed Work areas during non-working hours. The Work areas shall be covered to prevent visible exposure from all angles of sight. The CMAR shall obtain approval from the OCCC Project Administrator for covering material prior to installation.
- B. The CMAR shall provide its own equipment and method of construction waste disposal. Accessibility for equipment such as scissor lifts or electric powered

maintenance carts shall be permitted with limited access areas, as coordinated and approved with the OCCC Project Administrator.

- C. The CMAR shall maintain a clean and safe Work environment. Trash shall be disposed of daily, all Work areas shall be kept neat and orderly, halls and floors free of slip and trip hazards and waste materials (e.g., paper, cardboard) and other fire hazards shall be removed from Work areas. Waste materials shall be properly sorted to allow for recycling and possible LEED credits.
- D. The CMAR shall adhere to all OSHA housekeeping and safety requirements. Deviations from these standards shall be corrected at the direction of the COUNTY and the cost of the CMAR. The COUNTY shall retain the right to utilize a third party in the event the CMAR fails to maintain the Site properly.
- E. The construction areas will include construction enclosure, screening, and demising walls during all phases of construction. These walls will be suitable for safety, security, aesthetics, and the installation and display of graphics. The CMAR is responsible for the installation and maintenance of these walls at all times.
- F. Employee facilities need to be adequate, clean, and well maintained. Washroom facilities require cleaning once or more each shift and shall have an adequate supply of soap, towels, and disinfectants, if needed. The CMAR shall supply all facilities as needed for the duration of the PROJECT. In no instance shall contractors be allowed to use operational OCCC facilities.
- G. Availability of space for staging/lay down area shall determine whether the COUNTY will permit the CMAR to set up a staging area. The OCCC Project Administrator will make reasonable staging/storage accommodations on property. The CMAR staging area on the Site shall depend on availability of space; however, relocation of staging area may be required during the project.
- H. After completion of the work, the CMAR shall replace or restore to the original condition all affected areas within the project limits. The CMAR shall, per the finishes information, provide all excess and remaining materials purchased for such replacement and restoration to the COUNTY.

Section 14: Contract Time and Liquidated Damages.

A. Contract Time.

- 1. **Time is of the Essence.** With respect to all dates and time periods set forth or referred to in this CONTRACT and the Contract Documents, time is of the essence. The COUNTY'S provision of an extension of Contract Time or failure to uphold a specific date or time shall not be construed to be a waiver of this "Time is of the Essence" provision.
- 2. The "Design Assist Phase Commencement Date" shall be established in a written "Notice to Proceed" to be issued by the COUNTY. The CMAR shall commence the Design Assist Phase Services portion of the Work within fourteen (14) days after the Design Assist Phase Commencement Date. Any

Work performed by the CMAR prior to the Design Assist Phase Commencement Date shall be at the sole risk and expense of the CMAR.

3. The “Enabling Construction Phase Commencement Date” shall be established in a written “Notice to Proceed” to be issued by the COUNTY. The CMAR shall commence the Enabling Construction Phase Services portion of the Work within five (5) days after the Enabling Construction Phase Commencement Date. Any Work performed by the CMAR prior to the Enabling Construction Phase Commencement Date shall be at the sole risk and expense of the CMAR. No portion of the Work, with respect to the Enabling Construction Phase Services to be provided hereunder, shall be performed prior to the Enabling Construction Phase Commencement Date, unless expressly approved in advance by the COUNTY in writing.
4. The “Construction Phase Commencement Date” shall be established in the GMP Amendment. The CMAR shall commence the Construction Phase Services portion of the Work within five (5) days after the Construction Phase Commencement Date. No portion of the Work, with respect to the Construction Phase Services to be provided hereunder, shall be performed prior to the Construction Phase Commencement Date, unless expressly approved in advance by the COUNTY in writing. The total period of time beginning with the Construction Phase Commencement Date and ending on the date of Substantial Completion, hereinafter defined, of the Work is referred to hereafter as the “Contract Time”.
5. Because the Work is to be completed in three (3) phases, the timely completion of the Design Assist Phase Services is critical to the timely completion of the Enabling Construction Phase and the Construction Phase Services and, therefore, completion of the entire PROJECT. Accordingly, the CMAR shall provide the Design Assist Phase Services in accordance with pertinent milestone deadlines (**Exhibit “A,”** Scope of Work, Table of Deliverables) or additional or different deadlines set forth in a construction schedule hereafter approved by the COUNTY in writing, or otherwise directed by the COUNTY in writing.
 - a. With respect to the Enabling Construction Phase Services, the CONTRACT Amendment will include a schedule of dates outlining when each portion of the Work associated with the Enabling Construction Phase Services must be deemed substantially completed by the CMAR.
 - b. With respect to the Construction Phase Services, the GMP Contract Amendment will include a schedule of dates outlining when each portion of the Work associated with the Construction Phase Services must be deemed substantially completed by the CMAR. That Substantial Completion date shall be established in terms of calendar days after the Enabling Construction and the Construction Phase Commencement Date.

- c. In the event the CMAR and the COUNTY fail to reach an agreement on the Contract Time and the Substantial Completion date, the COUNTY may elect to terminate the CONTRACT.
- d. In the event of any such termination, the CMAR shall be entitled to receive that portion of the Contract Amount attributable to the Design Assist Phase Services and Enabling Construction Phase Services earned to the date of termination plus that portion of any earned compensation associated with any Construction Phase Services provided, to the extent such services were expressly approved in advance in writing by the COUNTY. Notwithstanding the foregoing, the CMAR shall not be entitled to any further or additional compensation from the COUNTY, including damages or lost profits on portions of the Work not performed.
- e. Substantial Completion of the Work shall be achieved when the Work has been completed to the point where the COUNTY can lawfully occupy or utilize the Work for its intended purpose under a Certificate of Occupancy or Temporary Certificate of Occupancy (with conditions acceptable to the COUNTY in its sole discretion) or their equivalent. The A/E Design Team shall certify the date Substantial Completion of the Work is achieved. If the COUNTY has designated portions of the Work to be turned over to the COUNTY prior to Substantial Completion of the entire Work, the A/E Design Team will certify the date as to when Substantial Completion of such designated portions of the Work have been achieved.
- f. The entire Work shall be fully completed and ready for final acceptance by the COUNTY within thirty (30) days after the Substantial Completion date, or within thirty (30) days after the CMAR'S receipt of the punch list, whichever date occurs last ("**Final Completion Date**").

B. Non-Construction Work Days. The Orange County Convention Center ("**OCCC**") is an occupied and active space that is operational at all times. Availability of the Site is limited due to the Convention Center scheduled show events.

- 1. During the PROJECT, the CMAR shall sequence their Work to accommodate the scheduled show events.
- 2. The Site will be available to the CMAR seven (7) days per week.
- 3. With the advance approval of the OCCC Project Administrator, specific non-construction work dates shall be coordinated with the CMAR.
- 4. The COUNTY will provide show schedules, as necessary, to the CMAR. The show schedule will be for informational purposes only.
- 5. The CMAR shall obtain approval from the OCCC Project Administrator for their Work schedule.

6. The non-construction Work days will be determined during each of the three (3) phases. The “non-construction Work days” are included in the number of consecutive days for Substantial and Final Completion dates.
7. The COUNTY will make every effort to provide the estimated dates for non-construction Work days (no construction activity) based on the most current information available; however, the show event schedule is subject to change based on show activities.
8. In the event that the available scheduled Work times/days are cancelled or rescheduled by the COUNTY, the CMAR may submit a request for additional Work times/days, if required to meet the scheduled Final Completion date. This request must be accompanied by adequate justification.
9. If the CMAR is given or requests additional time that includes nights or weekends in order to meet scheduled completion date, no shift differential costs shall be allowed.

C. Liquidated Damages

1. Delay of Substantial Completion.

- a. The COUNTY and the CMAR recognize that, since time is of the essence for the CONTRACT, the COUNTY shall suffer financial loss if the CMAR fails to achieve Substantial Completion of the Work associated with the Construction Phase within the time specified in the GMP Amendment, as said time may be adjusted as provided for in this CONTRACT.
- b. In such event, the total amount of the COUNTY’S damages, shall be difficult, if not impossible, to definitely ascertain and quantify because this is a public construction project that shall, when completed, benefit the constituents of Orange County, Florida.
- c. It is hereby agreed that it is appropriate and fair that the COUNTY receive liquidated damages from the CMAR, if the CMAR fails to achieve Substantial Completion of the Work within the required Contract Time.
- d. Should the CMAR fail to achieve Substantial Completion of the Work within the Contract Time, the COUNTY shall be damaged and shall be entitled to assess, as liquidated damages, but not as a penalty, a daily rate described in this CONTRACT for each calendar day the CMAR fails to achieve Substantial Completion.
- e. Liquidated damages shall be assessed at a daily rate of Five Thousand Dollars (\$5,000.00) for the Grand Concourse and Five Thousand Dollars (\$5,000.00) for the Multi-purpose Venue for each calendar day until Substantial Completion is achieved.

- f. The CMAR hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of the COUNTY'S actual damages at the time of contracting if the CMAR fails to achieve Substantial Completion of the Work within the Contract Time.
- g. The COUNTY may deduct liquidated damages prescribed in this subsection from any unpaid amounts then or thereafter due the CMAR under the CONTRACT and any liquidated damages not so deducted shall be payable to the COUNTY by the CMAR upon demand by the COUNTY plus interest from the date of demand at the maximum legal rate of interest until paid.
- h. The liquidated damages provided for in this provision shall be in lieu of all liability for extra costs, losses, expenses, claims, penalties, and other damages incurred by the COUNTY which are created by the delay in the CMAR'S achieving Substantial Completion within the prescribed timeframe. In no event shall the total liquidated damages exceed the Contract Amount.
- i. It is further mutually understood and agreed that the COUNTY'S assessment of liquidated damages for delays is only intended to compensate the COUNTY for CMAR'S failure to achieve Substantial Completion of the Work within the Contract Time and shall not release the CMAR from liability from any other breach of the CONTRACT requirements.
- j. The above notwithstanding, if the liquidated damages set forth in this provision are deemed unenforceable for any reason, the COUNTY instead shall be entitled to calculate and recover those actual delay damages that it sustained as a result of the CMAR'S failure to achieve Substantial Completion of the Work.

2. Delay of Final Completion.

- a. The COUNTY and the CMAR recognize that, since time is of the essence for the CONTRACT, the COUNTY shall suffer financial loss if the Work associated with the Construction Phase Services fails to achieve Final Completion by the Final Completion Date, as said time may be adjusted as provided for in this CONTRACT.
- b. Final Completion shall mean, for the purposes of this provision, that the CMAR has satisfied all conditions to the A/E Design Team's issuance of a final Certificate for Payment.
- c. The total amount of the COUNTY'S damages should there be a delay of Final Completion is difficult, if not impossible, to definitely ascertain

and quantify because this is a public construction project that shall, when Final Completion is achieved, benefit the constituents of Orange County, Florida.

- d. It is hereby agreed that it is appropriate and fair that COUNTY receive liquidated damages from the CMAR, if the CMAR fails to achieve Final Completion of the Work by the Final Completion Date.
- e. Should the CMAR fail to achieve Final Completion of the Work by the Final Completion Date, the COUNTY shall be entitled to assess, as liquidated damages, but not as a penalty, Two Thousand Five Hundred Dollars (\$2,500.00) for the Grand Concourse and Two Thousand Five Hundred Dollars (\$2,500.00) for the Multi-purpose Venue for each calendar day thereafter until Final Completion of the Work is achieved.
- f. The CMAR hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of the COUNTY'S actual damages at the time of contracting if the CMAR fails to achieve Final Completion of the Work by the Final Completion Date.
- g. The COUNTY may deduct liquidated damages prescribed in this subsection from any unpaid amounts then or thereafter due the CMAR under the CONTRACT and any liquidated damages not so deducted shall be payable to the COUNTY by the CMAR upon demand by the COUNTY plus interest from the date of demand at the maximum legal rate of interest until paid.
- h. The liquidated damages provided for in this provision shall be in lieu of all liability for extra costs, losses, expenses, claims, penalties, and other damages incurred by the COUNTY which are created by the CMAR'S delay and failure to achieve Final Completion within the prescribed timeframe. In no event shall the total liquidated damages exceed the Contract Amount.
- i. It is further mutually understood and agreed that the COUNTY'S assessment of liquidated damages for delays is only intended to compensate the COUNTY for the CMAR'S failure to achieve Final Completion of the Work by the Final Completion Date and shall not release the CMAR from liability from any other breach of the CONTRACT requirements.
- j. The above notwithstanding, if the liquidated damages set forth in this provision are deemed unenforceable for any reason, the COUNTY instead shall be entitled to calculate and recover those actual delay damages that it sustained as a result of the CMAR'S failure to achieve Final Completion of the Work.

Section 15: Change of Contract Amount and Contract Time.

A. Change of Contract Amount.

1. The Contract Amount constitutes the total compensation payable to the CMAR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the CMAR shall be at its expense without change in the Contract Amount.
2. The Contract Amount may only be changed by written Change Order issued by the COUNTY. Any request for an increase in the Contract Amount shall be in writing and delivered to the OCCC Project Administrator within fifteen (15) days of the occurrence of the event giving rise to the request.
3. The CMAR shall be deemed to have waived the right to collect any and all costs incurred more than fifteen (15) days prior to the date of delivery of the written notice, and shall be deemed to have waived the right to seek an extension of the Contract Time with respect to any delay in the Progress Schedule which accrued more than fifteen (15) days prior to the date of delivery of the written notice.

B. Potential Change Order (“PCO”). The CMAR shall submit a PCO, which is a request for an adjustment in the Contract Amount or Contract Time.

1. Any PCO authorization shall be determined by the OCCC Project Administrator.
2. No request for an adjustment to the Contract Amount shall be considered for unforeseeable causes that were beyond the fault or negligence of the CMAR or its Subcontractors or Suppliers such as acts of God, floods, riots, etc. This restriction does not restrict submission of requests for additional Contract Time due to events of this nature.
3. Any change in the Contract Amount shall be incorporated in a Change Order.
4. The CMAR’S PCO proposals or requests shall cover all aspects of the Work involved and shall be fully documented and itemized as to all costs, quantities and charges for overhead and profit. Amounts for Subcontractors or Suppliers at any tier shall be similarly supported. When determining Subcontractors’ costs, the methods to be used shall be those used for the CMAR’S costs, except that the term “Subcontractor” shall replace the term “CMAR,” context permitting.
5. Where the change in Contract Amount arises from changes in the time required to perform any Work, or where a change in Contract Time is sought, the CMAR’s itemized estimates shall detail all productivity and production data, and include an analysis of the Project Construction Schedule demonstrating the schedule status just before and after the occurrence of events on which the request is based (thereby showing the extent of delay resulting from the event involved) and any measures taken or planned to mitigate the impacts.

6. Neither the Contract Time nor Contract Amount shall be changed due to a delay in the CMAR'S early completion date until all the corresponding Contract Float available in the Project Construction Schedule at the start of the delay is used and the performance of the specified Work extends necessarily beyond that Contract Time.
 7. The CMAR shall not recover from the COUNTY (a) acceleration costs incurred to overcome delays which warrant extensions in Contract Time but exclude changes in Contract Amount, (b) escalation costs for any part of the Work having Contract Float or not delayed beyond the late dates in the Record Schedule, or (c) delay costs not expressly allowed as described in this CONTRACT.
 8. Changes in Contract Amount for extensions in Contract Time shall exclude costs that are unaffected or do not relate to the extension in Contract Time, such as: (a) operating costs of construction equipment assigned to the Work on a continuing basis, (b) operating costs and owned/rental costs of construction equipment (crane used for specific lifts, concrete pump used for specific pours, etc.), and (c) fully paid site facilities, tools, etc.
- C. **Change Order Request ("COR").** The A/E Design Team will issue a Change Order Request ("COR") identifying a change in the scope of Work, including a detailed description, Drawings and Specifications, and a request for a PCO of changes to cost or time from the CMAR within ten (10) days of receipt of the COR. The A/E Design Team will maintain a log of all Change Order Requests. Status of the log shall be reviewed as part of each the Construction Progress Meeting.
- D. **Construction Change Directive ("CCD").** The A/E Design Team will review the technical interpretations of the Contract Documents, evaluate requested deviations from the approved design Drawings or Specifications and submit it to the OCCC Project Administrator for approval. The OCCC Project Administrator will review and approve any CCD prior to issuance. The CCD may include a request for a NTE PCO of changes to cost or time from the CMAR. The A/E Design Team will maintain a log of all Construction Change Directives. Status of the log shall be reviewed as part of each the Construction Progress Meeting.
- E. **Change Order ("CO").** The value of any Work covered by a Change Order or of any request for an increase or decrease in the Contract Amount shall be determined in one of the following ways:
1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved. If the quantities of the application of unit prices originally contemplated are so changed in a proposed Change Order that application of the unit prices to the quantities proposed shall cause substantial inequity to the COUNTY or the CMAR, the applicable unit price(s) shall be equitably adjusted by mutual agreement.
 2. By mutual acceptance of a lump sum.

3. By cost and mutually acceptable fixed amount for overhead and profit.
4. If the value of Work covered by a Change Order cannot be established or mutually agreed to utilizing any of the above three methods, the value will be determined by the COUNTY on the basis of an estimate of the out-of-pocket cost and percentages that are acceptable to the COUNTY for overhead and profit. The out-of-pocket cost shall only include those direct costs which are needed to perform the Work such as labor (including payroll taxes, fringe benefits, labor burden and workers' insurance), materials, equipment, and other incidental out-of-pocket construction costs directly involved in the Work, including but not limited to small tools, expendables and material costs but shall not include project management or project supervisory costs unless the Change Order includes an increase in the CONTRACT time.

F. **Methods for Determining Adjustments in Contract Amount.** If the COUNTY directs the CMAR to proceed with the Work involved pursuant to actual out-of-pocket costs plus contractual allowances for overhead and profit and states a Not-to-Exceed price, the CMAR request for costs, overhead or profit beyond the Not-to-Exceed price shall be invalid, unless, prior to incurring those costs, overhead or profit the CMAR provides written notice and the COUNTY increases the Not-to-Exceed price in writing.

1. If payment for the Work involved is to be determined by a court of law, it is agreed by the CMAR that the actual out-of-pocket cost and overhead and profit method contained in the General and Supplemental Conditions shall represent an appropriate method for determining the cost and overhead and profit for the Work involved.
2. In computing Cost of Work involved in a Change Order, costs shall be allowable only to the extent costs: (a) are consistent with those prevailing in the Orlando Metropolitan Statistical Area (which includes Orange, Seminole, Lake and Osceola Counties) and with applicable criteria set forth in 48 CFR Part 31 (federal contract cost principles and procedures); and (b) include only the appropriate items for labor, material, or equipment, construction equipment and special cost items specified in this CONTRACT.
3. In such case, the CMAR shall submit in the form prescribed by the COUNTY an itemized cost breakdown together with supporting data.
4. The amount of credit to be allowed by the CMAR to the COUNTY for any such change which results in a net decrease in cost, shall be the amount of the actual net decrease as determined by the COUNTY. Overhead and profit shall be applied to both additions and credits. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the total of the additions and credits, if any.
5. To be eligible for consideration, the CMAR'S written request for a change in the CONTRACT price, including request(s) from sub-contractors, shall include an itemized cost breakdown with supporting data as described below:

- a. *For labor:* Provide written documentation from the CMAR and Subcontractors or others as appropriate in the form of a detailed breakdown by each labor classification involved indicating the number of hours of Work involved and the hourly payroll rate applicable to each to substantiate the basis and amount of the direct labor cost. The direct labor cost may be increased to provide an allowance for indirect payroll costs (labor burden), such as payroll taxes, fringe benefits, and workers insurance after all premium discounts, rebates and other appropriate reductions have been taken.
- (1) Allowable labor costs shall be limited to craft labor (including foremen) in the direct employ of the CMAR (or Subcontractor) assigned to the Site and engaged in furnishing and incorporating materials or equipment in the Work involved in the Change Order.
 - (2) When determining actual payroll costs, daily time sheets certified by the CMAR and verified by the OCCC Project Administrator along with certified payroll records shall be the valid records.
- b. *For material, supplies, equipment, furnishings, etc., to be installed or included in the Work:* Provide written documentation from the CMAR and Subcontractors, Suppliers, etc., to substantiate the basis and amount of the various cost items involved. Material costs shall reflect the CMAR'S reasonably anticipated net actual cost after consideration of trade discounts and volume rebates.
- c. *For construction equipment:* Provide written documentation in the form of a detailed breakdown by each construction equipment category indicating, the applicable unit rates (i.e., \$'s per hour, \$'s per day etc.) and the number of hours, days, etc. to substantiate the basis and amount of the construction equipment out-of-pocket costs.
- d. *Special cost items (any out-of-pocket cost items not considered to be material, labor or construction equipment as set forth above including but not limited to small tools and expendables):* Provide written documentation in the form of a detailed breakdown or itemization of the costs, fees, charges, hours, hourly rates, etc., to clarify, document and substantiate the basis and amount of the out-of-pocket cost. Special cost items due to the Work or a delay involved in a Change Order may include a proportion of the following indirect costs, to the extent those indirect costs increase or decrease on account of (a) the Cost of Work involved for labor, Subcontractor or Supplier furnished materials or equipment, or (b) an extension in Contract Time as follows (provided that no cost shall be paid for holidays or weather days during the delay):
- (1) Costs of office and temporary facilities at the Site, including utilities, fuel and sanitary facilities, telephone and internet service at the Site, materials, supplies, equipment, other minor

expenses (e.g. expressage and petty cash), if those costs arise solely from an extension in Contract Time;

- (2) Costs of consultants not in the direct employ of the CMAR, if those costs are or were authorized by the COUNTY before proceeding with the Work involved;
- (3) Taxes on the Work involved, and for which the CMAR is liable; and royalty payments and charges and fees for permits, if any of them relate solely to the Work involved;
- (4) Physical losses, damages and expenses to the Work, not compensated by property insurance, or otherwise to be sustained by the CMAR in the prosecution of the Work (except losses and damages within the deductible amounts of property insurance, if any), but only if the losses, damages and expenses result from the fault or negligence of the COUNTY, or
- (5) Bond premiums and insurance premiums not included as part of the indirect labor cost, if they relate solely to the Work involved.

6. Construction Equipment Costs.

a. *For equipment owned by CMAR (or Subcontractor) or rented or leased from lessors associated with or owned by them:*

- (1) Allowable costs shall be limited to equipment required for the Work involved in a Change Order or Claim with individual replacement values exceeding \$1,000.00. Transportation, loading/unloading, installation, dismantling and removal costs shall be allowed only if prior written consent is obtained from the OCCC Project Administrator, and if the equipment is, or was, transported to the Site solely for the Work involved. Shipping costs shall be allowed only if the equipment is not available in the Orlando Metropolitan Statistical Area.
- (2) CMAR shall be entitled to ownership and operation costs of the equipment based on the CMAR'S normal accounting practices, but in no event shall equipment ownership or operation costs exceed the applicable hourly rates listed in a mutually acceptable current cost reference guide. For multiple shifts, the equipment rate shall not exceed the shift Work adjustments recommended in the agreed upon cost reference guide.
- (3) Equipment costs shall be computed using the same accounting and estimating rules and prices, whether related to added or deleted Work, and shall cease when the equipment is no longer needed for the Work involved.

b. *For equipment rented or leased from lessors not associated with or*

owned by the CMAR (or Subcontractor), the CMAR:

- (1) Shall be entitled to rental or lease rates, but in no event shall the rates or hourly operating costs exceed applicable rates in a mutually acceptable current cost reference guide for rental equipment.
- (2) Hourly rates for equipment previously in use at the Site for at least a month shall be based on the monthly rate divided by 176 hours.
- (3) Equipment previously in use for only one week or not previously in use at the Site shall not be invoiced to the COUNTY at rates higher than the following schedule correlating equipment usage to payment category:

Less than 8 hours	Hourly Rate
1 day but less than 7 days	Daily Rate
1 week but less than 30 days	Weekly Rate
30 days or more (when in use)	Monthly Rate

- c. Rented (or owned) equipment idled by actions of the COUNTY for reasons under the sole control of the COUNTY shall not be paid. Rented (or owned) equipment idled by actions of the CMAR shall not be paid.
 - d. When determining actual construction equipment costs, daily logs of the equipment, operators and actual usage, verified by the OCCC Project Administrator, shall be the valid records.
7. The Cost of the Work involved in a Change Order or claim shall not include any of the following costs (considered administrative costs or contingencies covered by the overhead and profit):
- a. Payroll costs and other compensation of (a) executives, general and administrative managers, estimators, claim consultants, attorneys, accountants, labor relation coordinators, contract and subcontract administrators, purchasers, expeditors and other administrative staff, whether employed at the Site or in the CMAR'S (or its Subcontractor's) principal or branch offices; and (b) project managers, CMARs, engineers, architects, schedulers, detailers, safety personnel, clerks and other administrative staff employed in his principal or branch offices;
 - b. Costs in the preparation of Change Orders or claims (whether or not ultimately authorized by the County);
 - c. Costs of engineers, architects, accountants, consultants, attorneys and

others, in the direct employ of the CMAR or otherwise, utilized for services related to a controversy or claim about the acceptability of the Work;

- d. Any part of the CMAR'S capital expenses, including interest on capital for the Work involved, lost interest on unpaid retainage, and charges for delinquent payments; and
- e. Any other expenses of the CMAR'S principal and branch offices, including storage and yard facilities; and any costs not specifically and expressly allowed in this CONTRACT.

D. Overhead and Profit.

1. Overhead and profit shall be limited to the amounts established in this CONTRACT.

- a. Overhead is defined as cost of administrative and field office costs, general and project superintendence above the level of general foreman, surveying, office engineering and estimating costs, other required insurance, materials used in temporary structures (not including for Work), the use of small tools, scheduling costs, and all other costs incidental and non-direct to the performance of the change or the cost of doing business. Small tools are defined as any tool with a replacement value less than \$1,000.00.
- b. Regardless of the manner in which the adjustment to the contract for extra Work is determined, such adjustments shall include all amounts, direct or indirect or consequential, resulting from the performance of the extra Work, including but not limited to, overhead, profit, taxes, allowances made to any Subcontractors or Suppliers, rent for tools and equipment (whether from use in performing the extra Work, licenses, fees, or other charges related to the cost of doing business.
- c. The resulting adjustment to the GMP, if any, made by the approved Change Order shall constitute full and mutual accord and satisfaction for all costs related to the charge.

2. Overhead for Subcontractors.

- a. A first tier Subcontractor may apply a maximum of seven and a half percent (7.5%) for overhead and profit for the Work performed by that first tier Subcontractor only when there is no lower tier Subcontractor Work.
- b. Any lower tier Subcontractor may apply a maximum of seven and a half percent (7.5%) for overhead and profit when all extra work is performed by the lower tier Subcontractor.
- c. The maximum cumulative overhead and profit percentage for Work involving two or more tiers of Subcontractors shall be fifteen percent (15%), with no one tier exceeding seven and a half percent (7.5%) for

overhead and profit.

- G. The Change Order markups allowed for the CMAR shall be the COUNTY-approved additional General Conditions Cost necessary to manage the additional Subcontractor Work and the CMAR'S Fee percentage.
- H. CMAR Contingency Change Order shall not include CMAR Fee. Fee shall be calculated on the entire GMP which includes CMAR Contingency. The CMAR shall only receive a maximum mark-up of seven and a half percent (7.5%) for self-performance of the Work.
- I. Owner Contingency Change Order shall include CMAR Fee but no seven and a half percent (7.5%) self-performance mark-up unless the CMAR self performs the Work.
- J. If deemed necessary, the overhead and profit allowance schedule shown above may be adjusted by the OCCC Project Administrator.
- K. **Allowances.** It is understood that the CMAR has included in the Contract Amount any Allowances so named in the Contract Documents and shall cause the Work so covered to be done by such Subcontractors or Suppliers and for such sums within the limit of the Allowances as the COUNTY may accept. Prior to final payment, the Contract Amount shall be adjusted as required and an appropriate Change Order issued. The CMAR agrees that the original Contract Amount includes such sums as the CMAR deems proper for cost and profit on account of allowances. No demand for additional cost or profit in connection therewith shall be allowed.

Section 16: Delays and Extension of Time.

- A. **County Obligation.** The COUNTY owes no duty, obligation, damages, change in the Contract Amount, or liability to the CMAR as a result of any delay, interference, suspension, or other event which may impact the CMAR'S Construction Progress Schedule.
- B. **Extension of Time Sole Remedy.**
 - 1. The CMAR, by execution of this CONTRACT, hereby waives any claim for damages on account of any delay, obstruction, or hindrance for any cause whatsoever, whether or not anticipated.
 - 2. Should the CMAR'S performance, in whole or in part, be interfered with, delayed, re-sequenced, disrupted, or be suspended in the commencement, prosecution, or completion, for reasons beyond the CMAR'S control, and without any fault or negligence on its part contributing thereto, the CMAR'S sole remedy shall be an extension of Contract Time in which to complete the CONTRACT.
- C. **Change of Contract Time.**
 - 1. The Contract Time may only be changed by written Change Order. Any PCO for an extension in the Contract Time shall be in writing and include an analysis of the Progress Schedule as further described in the Specifications, and shall be

delivered to the OCCC Project Administrator within fifteen (15) days of the occurrence of the event giving rise to the PCO.

- a. All Claims for adjustment in the Contract Time shall be determined by the OCCC Project Administrator. Any change in the Contract Time resulting from any such PCO shall be incorporated in a Change Order.
- b. The Contract Time may be extended for an amount equal to time lost due to unforeseeable causes beyond the control of the CMAR (and its Subcontractors and Suppliers) if the CMAR makes a PCO therefore. Such delays shall include, but not be restricted to, acts or neglect by any other contractor employed by the COUNTY; fires; floods; labor disputes; epidemics or acts of God.
- c. Extensions of Contract Time will not be granted for delays due in whole or in part, to the fault or negligence of the CMAR or entity or person for whom the CMAR is responsible.

2. **Contract Time Extension.** The COUNTY may grant an extension of the Contract Time when a controlling item of Work on the critical path of the CMAR'S progress schedule is delayed by factors not reasonably anticipated or foreseeable at the time of the COUNTY'S acceptance of the GMP Proposal. Such time extension may be allowed only for delays occurring during the time for performance set forth in the progress schedule. Extensions of the Contract Time shall not be granted for delays due, in whole or in part, to the fault or negligence of the CMAR or any entity or person for whom the CMAR is responsible.

3. All time limits stated in the Contract Documents are of the essence to the CONTRACT. The stated time limits are agreed to be adequate to complete the work, including the procurement, manufacture, and delivery of all material and equipment required, and account for any and all potential impact, delays, disruptions, and costs that may be expected.

D. Delays not Fault of the CMAR, Discretionary Extensions of Completion Time by the COUNTY.

1. In the event there are delays on the part of the COUNTY as to the approval of any of the materials submitted by the CMAR, or if there are delays occasioned by circumstance beyond the control of the CMAR which delay the Project Schedule completion date, the COUNTY may grant to the CMAR, an extension of the Contract Time or revision to the Project Schedule, equal to the aforementioned delays, provided there are no changes in compensation or the *Scope of Work* in **Exhibit "A."**

2. The CMAR shall ensure that sufficient Contract Time remains within which to complete services on the PROJECT at all times. In the event there have been delays which would affect the Project Completion Date, the CMAR shall submit a written request to the COUNTY which identifies the reason(s) for the delay and the amount of time related to each reason.

3. The COUNTY shall review the request and make a determination as to granting all or part of the requested extension.
4. **Hurricane and Disaster Preparedness.**
 - a. During such periods of time as are designated by the United States Weather Bureau as being a hurricane warning or alert, the CMAR, except as specified below, shall take all reasonable precautions necessary to secure the Site in response to all threatened storm events, regardless of whether the COUNTY or Owner's Representative has given notice of same.
 - b. Any costs to repair damage to the Site caused by the CMAR'S failure to take such reasonable and necessary precautions to secure the Site shall be the responsibility of the CMAR.
 - c. Compliance with any specific hurricane warning or alert precautions will not constitute additional work.
 - d. Suspension or delay of the work caused by a threatened or actual storm event, regardless of whether the COUNTY has directed such suspension, shall qualify the CMAR to utilize the "Force Majeure" provision below, so long as the CMAR follows the procedures therein.
5. **Force Majeure.**
 - a. The CMAR shall not be held responsible for any delay or failure in performance of any part of this CONTRACT to the extent such delay or failure is caused by explosion, war, embargo, government requirement, civil or military authority, act of God, or other similar causes beyond the CMAR'S control so long as:
 - (1) The CMAR'S delay is not caused by the CMAR'S own fault or negligence; and
 - (2) The CMAR'S Float Days have been fully and reasonably expended.
 - b. That notwithstanding, in order to claim delay pursuant to this "Force Majeure" provision, the CMAR shall notify the COUNTY in writing within ten (10) days after the beginning of any such cause that would delay its performance under this CONTRACT.
 - c. Failure to notify the County in a timely manner of any claim of Force Majeure made pursuant to this "Force Majeure" provision is cause for rejection of such claim.

- d. If the CMAR'S performance is delayed pursuant to this "Force Majeure" provision for a period exceeding thirty (30) days from the date the COUNTY receives the required Force Majeure notice, the COUNTY shall have the right to terminate this contract thereafter and shall only be liable to the CMAR for any work performed pursuant to this CONTRACT prior to the date of the COUNTY'S termination.
- e. Delays that qualify for this "Force Majeure" provision will entitle the CMAR to additional Contract Time as non-compensable, excusable delay, and shall not give rise to a claim for compensable delay.
- f. Nothing in this provision shall prevent the COUNTY from terminating this CONTRACT for any purpose otherwise explicitly stated in this CONTRACT or as provided by law.

E. Suspension of Work by the COUNTY.

- 1. **Right of COUNTY to Suspend Work and Order Resumption.** The performance of CMAR'S services hereunder may be suspended by the COUNTY at any time. However, in the event the COUNTY suspends the performance of CMAR'S services hereunder, it shall so notify the CMAR in writing, with such suspension becoming effective upon the date of its receipt by CMAR.
 - a. The COUNTY will promptly pay to the CMAR all fees which have become due and payable to the CMAR prior to the effective date of such suspension.
 - b. The COUNTY will thereafter have no further obligation for payment to the CMAR unless and until the COUNTY notifies the CMAR that the services of the CMAR called for pursuant to this CONTRACT are to be resumed.
 - c. Upon receipt of written notice from the COUNTY that CMAR'S services pursuant to this CONTRACT are to be resumed, CMAR shall complete the services of the CMAR called for in this CONTRACT and CMAR, shall, in that event, be entitled to payment of the remaining unpaid compensation which becomes payable to the CMAR under this CONTRACT, same to be payable in the manner specified in this CONTRACT.
- 2. **Renegotiation by the CMAR; Right to Terminate.** If the aggregate time of the COUNTY'S suspension or suspension of the CMAR'S services exceeds one hundred twenty (120) days, then the CMAR and the COUNTY shall, upon request of the CMAR, meet to assess the services remaining to be performed and the total fees paid to the CMAR pursuant to this CONTRACT.
 - a. The parties shall then have the opportunity of negotiating a change in

fees to be paid to the CMAR for the balance of the services to be performed hereunder.

b. No increase in fees to the CMAR shall be allowed unless based upon clear and convincing evidence of an increase in CMAR'S costs attributable to the aforesaid suspensions.

c. If an increase in the CMAR'S cost is demonstrated by clear and convincing evidence and the COUNTY refuses to increase said fees, CMAR may terminate this CONTRACT by delivering written notice thereof to the COUNTY within ten (10) days after the COUNTY has given notice of its refusal to increase said fees.

3. In no event shall the compensation or any part thereof become due or payable to CMAR under this CONTRACT unless and until CMAR has attained that stage of Work where the same would be due and payable to CMAR under the provision of this CONTRACT.

F. **Limitation on Damages.** In the event the above provision regarding an extension of time as being the sole remedy is not legally enforceable and the CMAR is not limited to the sole remedy of an extension of time, the CMAR shall not under any circumstances be allowed to recover any of the following items of damage against the COUNTY: (1) profit; (2) loss of profit; (3) Work inefficiencies; (4) loss of productivity; (5) overtime premiums; (6) escalation; (7) home office overhead, including but not limited to costs of any kind for home office personnel; (8) indirect damages; and (9) consequential damages, including but not limited to loss of bonding capacity, loss of bidding opportunities, and insolvency.

Section 18: Work by Others and Utilities Coordination.

A. Work by Others.

1. The COUNTY may perform additional Work related to the PROJECT by itself, or it may let other direct contracts which shall contain General Conditions similar to these. The CMAR shall afford the other contractors who are parties to such direct contracts (or the COUNTY, if it is performing the additional Work itself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of Work, and shall properly connect and coordinate its Work with theirs.

2. Should the CONTRACT entail relocation of facilities not a part of this CONTRACT, the CMAR shall coordinate and cooperate with the applicable entity responsible for this portion of the Work.

3. If any part of the CMAR'S Work depends (for proper execution of results) upon Work of any such other contractor (or the COUNTY), the CMAR shall inspect and promptly report to the OCCC Project Administrator in writing any defects, deficiencies, or delays in such Work that render it unsuitable for such proper execution and results.

4. The CMAR'S failure to report shall constitute an acceptance of the other Work, except as to defects, deficiencies, and delays which may appear in the other Work after the execution of the Work.
5. The CMAR shall do all cutting, fitting, and patching of its Work that may be required to make its several parts come together properly, and fit it to receive or be received by such other work. The CMAR shall not endanger any Work of others by cutting, excavating, or otherwise altering such other Work and shall only cut or alter such other Work with the written consent of the OCCC Project Administrator.
6. If the performance of additional Work by other contractors or the COUNTY is not noted in the Contract Documents prior to the execution of the CONTRACT, written notice thereof shall be given to the CMAR prior to starting any such additional work. If the CMAR believes that the performance of such additional Work by the COUNTY or others involves it in additional expense or entitles it to an extension of the Contract Time, the CMAR may submit a PCO therefore as provided in this CONTRACT.

B. Utility Coordination.

1. Section 337.401(1), Florida Statutes, and other applicable law allows utility owners to install and maintain along, above, under, across or on any road or right-of-way any electric transmission or distribution facilities, telephone, telegraph, pole lines, poles, railway structures, ditches, sewers, water, heat, gas mains, pipelines, fences, gasoline tanks and pumps, waterlines, gas lines, wire lines, utility service connections, water and gas meter boxes, valve boxes, light standards, cable lines, cable ways, signals, signal boxes, and all other utility installations, improvements and utility appurtenances to be installed and maintained in the right-of-way.
2. The CMAR understands and agrees that the lands upon which the Work is to be performed may consist of prior existing right-of-way, as well as, recently acquired right-of-way. The CMAR acknowledges and agrees that utility installations and appurtenances are located within the limits of the planned construction Work. The utility installations and appurtenances may be in conflict with the CMAR'S Work or require relocation or adjustments. All utility conflict resolutions, relocations, or adjustments are to be moved by the utility owners at their expense, unless otherwise provided in the Contract Documents.
3. The CMAR, by submission of a proposal, agrees that prior to proposal the CMAR has studied, performed field inspections, and evaluated all potential utility conflicts, the locations of permanent and temporary utility appurtenances in their present and relocated positions as may be shown on the plans. The CMAR acknowledges and agrees that the CMAR'S proposal has considered all potential utility conflicts, the locations of permanent and temporary utility appurtenances in their present and relocated positions including those shown on the plans, not shown on the plans, and those identified during the CMAR'S

pre-proposal study or that should have been identified during the CMAR'S field inspections, and evaluation of the limits of the planned construction Work.

4. The A/E Design Team may show surface or subsurface utility conflicts, relocations, or adjustments in the drawings and plans. The surface and subsurface utility information shown in the drawings and plans was obtained and used by the A/E Design Team to establish design criteria for the design plans. The accuracy as to location and the identification of all surface or subsurface utility information is not warranted or guaranteed and is not to be construed as part of the construction plans governing the construction Work. The CMAR shall solely make its own determinations as to surface and subsurface conditions.
5. The CMAR shall be solely responsible for utility coordination including all utility conflict resolutions, relocations, and adjustments. The concept of "utility coordination" means that the CMAR shall, at a minimum:
 - a. Investigate both subsurface and aboveground conditions to identify potential conflicts far enough in advance of its planned construction operations to allow the CMAR to coordinate with utility owners and responsible parties any necessary conflict resolutions, relocations, or adjustments such that they can occur without delay to the CMAR'S operations and Progress Schedule.
 2. Conduct regularly scheduled Utility Coordination Meetings with all affected utilities, and shall maintain detailed minutes of the discussions.
 3. Contact all utility owners in advance of any needed conflict resolutions, relocations, or adjustments.
 4. Contact the OCCC Project Administrator as to all CMAR scheduled utility conflict resolutions, relocations, or adjustments.
 5. Schedule all Work to be performed by the utility owners related to utility conflict resolutions, relocations, or adjustments.
 6. Schedule all Work to be performed by the utility owners so as not to delay or disrupt in any way the CMAR'S own performance of the CMAR'S Performance Schedule.
 7. Assure the proper connection of the CMAR'S Work with the Work of the utility owners.
 8. Assure that the schedule, contacts, and proper connections between the CMAR'S Work and the utility owner's Work harmonize the Work of both in a common action to achieve resolution of utility conflicts, relocations, and adjustments.
6. The CMAR shall, at no cost to the COUNTY, adjust the project schedule to allow the Work to proceed in such a manner that delays to the progress of the

Work are minimized.

7. As discussed more fully in this CONTRACT, delays to the CMAR'S Construction Progress Schedule resulting from the resolution of utility conflicts, relocations, and adjustments to utilities shall not be considered as the basis for granting a change in Contract Amount or Contract Time.

Section 19: Qualifications of Subcontractor and Suppliers.

- A. The CMAR shall not employ any Subcontractor, other person or organization (whether initially or as a substitute) against whom the COUNTY or the OCCC Project Administrator may have reasonable objections, nor shall the CMAR be required to employ any Subcontractor against whom the CMAR has reasonable objection.
- B. The CMAR shall not make any substitution for any Subcontractor who has been accepted by the OCCC Project Administrator, unless the COUNTY and the OCCC Project Administrator determine that there is good cause for a substitution.
- C. The CMAR shall be fully responsible for all acts and omissions of its Subcontractors and of persons directly or indirectly employed by them and of persons for whose acts any of them may be liable to the same extent that they are employed by it.
- D. Nothing contained in the Contract Documents shall create, nor be interpreted to create, privity, or any other contractual relationship whatsoever between the COUNTY and any Subcontractor or any person except the privity, or any obligation on the part of the COUNTY to payor to see to the payment of any monies due any Subcontractor, except as may otherwise be required by law.
- E. The COUNTY may furnish to any Subcontractor, to the extent practicable, evidence of amounts paid to the CMAR on account of specific Work done.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control the CMAR in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade.
- G. The CMAR shall bind specifically every Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the COUNTY.
- H. All Work performed for the CMAR by Subcontractors shall be pursuant to an appropriate agreement between the CMAR and the Subcontractor which shall contain provisions that waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by insurance held by the COUNTY as the Owner.
- I. The CMAR shall pay each Subcontractor a share of any insurance monies received by the CMAR under such insurance. Priority of payment of insurance proceeds for any claim submitted to or adjusted by the OCIP shall be governed by the applicable policies and as addressed in the OCIP Manual.
- J. The OCCC Project Administrator will notify the CMAR in writing if the OCCC Project Administrator, after due investigation, has reasonable objection to any Subcontractor or

Supplier on the Subcontractor or Supplier Page.

1. If the OCCC Project Administrator has reasonable objection to any Subcontractor or Supplier, the CMAR shall submit another acceptable one to the COUNTY.
 2. No increase in Contract Amount or Contract Time shall be allowed under this article, unless the CMAR can prove substantial increase due to the change, in which case the CMAR may request that the COUNTY consider an equitable adjustment to the Contract Amount or Contract Time.
 3. If the CMAR requests an equitable adjustment as a result of a requested change, the CMAR shall make available to the COUNTY all documents necessary, as requested by the COUNTY, to substantiate such adjustment.
- K. The failure of the OCCC Project Administrator to make objections to any Subcontractor or Supplier on the list shall not constitute a waiver of any right of the COUNTY to reject defective Work, material or equipment; or work, material, or equipment not in conformance with the requirements of the Contract Documents.
- L. Should the CMAR desire to add, change, or delete a Subcontractor or Supplier previously listed, the CMAR shall submit written justification for said change to the OCCC Project Administrator and the COUNTY'S Business Development Division for approval prior to the new Subcontractor or Supplier performing any Work on the PROJECT.

Section 20: Compliance with M/WBE Requirements and Goals

A. M/WBE Management Level Requirement.

1. As part of its proposal to the COUNTY for the Project, the CMAR certified that it would include a minimum of 24% M/WBE inclusion at the management level. This 24% M/WBE inclusion at the management level is calculated based upon the M/WBE(s) involved at the management level receiving 24% of the GMP for the project.
2. As such, the following documents are incorporated into this CONTRACT either by attachment or by reference and therefore serve as material parts of this CONTRACT:
 - a. The Joint Venture, Partnership, or Teaming agreement submitted by the CMAR with its Proposal reflecting that the participating certified M/WBE(s) shall receive a minimum of 24% of the GMP (if there is more than one participating certified M/WBE, the breakdown of that 24% between the participating certified M/WBEs must be included in such agreement); and
 - b. The Minority/Women Owned Business Enterprises provisions of the RFP #Y19-815-JS.

3. By executing this CONTRACT, the CMAR hereby certifies that the CMAR:
 - a. Shall meet its obligation to have a minimum of 24% MWBE inclusion at the management level (as defined in this CONTRACT and RFP #Y19-815-JS);
 - b. Shall meet and comply with its obligations under the COUNTY'S Minority/Women Owned Business Enterprises and the M/WBE provisions of the RFP #Y19-815-JS; and
 - c. Understands and agrees that failure by the CMAR to meet the letter and intent of sub-provisions "a." and "b." above shall damage the County and shall constitute a material breach of this CONTRACT.

4. The CMAR shall obtain written authorization from the COUNTY'S Business Development Division Manager prior to:
 - a. Substituting, replacing, or terminating any M/WBE management level firm; or
 - b. Reducing the percentage of the GMP to be provided to the management level M/WBE(s).

B. M/WBE Goals.

1. As part of its proposal to the COUNTY for the Project, the CMAR certified that it would meet or exceed the following of the COUNTY'S M/WBE goals:

Orange County M/WBE Goals <i>(Select Applicable Below)</i>	
<input type="checkbox"/>	M/WBE Goal #1. Certified minority/women business enterprise subcontract utilization goal: 27% of the GMP for the project.
<input type="checkbox"/>	M/WBE Goal #2. Minority/Women employment workforce levels: 18% minority and 6% women.

2. As such, the following documents are incorporated into this CONTRACT either by attachment or by reference and therefore serve as material parts of this CONTRACT:
 - a. The M/WBE Utilization Plan submitted by the CMAR with its proposal; and
 - b. The Minority/Women Owned Business Enterprises provisions of the Request for Proposals for Y19-815-JS.

3. By executing this CONTRACT, the CMAR hereby certifies that it will meet its

obligations and comply with its MWBE Utilization Plan, as well as all of the Minority/Women Owned Business Enterprises provisions of the RFP #Y19-815-JS.

4. The CMAR shall obtain written authorization from the COUNTY'S Business Development Division Manager prior to:
 - a. Substituting, replacing, or terminating any M/WBE firm;
 - b. Reducing the Scope of Work or monetary value of any subcontract, regardless of whether such subcontract is with an M/WBE firm; or
 - c. Modifying any and all subcontracts issued to M/WBEs in any manner.
5. The CMAR shall expeditiously advise all M/WBEs and the Business Development Division Liaison of all Change Orders, contract modifications, additions, and deletions to any and all contracts issued to such M/WBEs.
6. In order to assist the COUNTY in ensuring prompt payment of all Subcontractors working on this PROJECT, the CMAR shall:
 - a. Submit copies of executed contracts between the CMAR and all of its M/WBE Subcontractors to the Business Development Division.
 - b. The COUNTY may at its discretion require copies of subcontracts/purchase orders for the non-M/WBE's listed on **Form "B"** of the CMAR'S Proposal to RFP #Y19-815-JS or that are otherwise utilized on the PROJECT. However, if this option is not exercised the awarded Proposer shall provide a list of all non-M/WBE Subcontractors certifying that a prompt payment clause has been included in that CONTRACT or Purchase Order.
 - c. Incorporate a prompt payment assurance provision and payment schedule in all contracts between the CMAR and Subcontractors (including those with non-M/WBEs) stating that payment shall be made to the Subcontractor within seventy-two (72) hours of receipt of payment from the COUNTY. The CMAR shall pay each Subcontractor for all Work covered under an invoice within the seventy-two (72) hour time frame.

C. Monthly Reports.

1. For the duration of this CONTRACT, and any outstanding work or services performed pursuant to this CONTRACT (or while invoices related for any work or services performed pursuant to this CONTRACT are still outstanding), the CMAR shall submit:
 - a. An M/WBE status report of the minimum of 24% M/WBE Management Level participation requirement;

- b. A Monthly Workforce Report that includes the CMAR'S current field employment data, the number of new jobs created and obtained from the structured Central Florida apprenticeship program referrals received from Career Source Central Florida, and the number of recruitment efforts completed with Minority/Women organizations providing specialized training);
 - c. A Monthly Workforce Report (with the same information as above) for all Subcontractors/Suppliers with contracts over \$50,000; and
 - d. A Monthly CMAR'S Report including M/WBE Utilization Reports.
2. The required reports shall be submitted to the Business Development Division no later than the fifth day of each month beginning one month after the Work begins and to continue until Final Completion of the CONTRACT. The Business Development Division has the authority to delay CMAR'S Progress Payments if reports are not submitted in a timely manner.
3. The CMAR shall furnish written documentation evidencing actual dollars paid to each Subcontractor/Supplier listed and/or utilized by the CMAR. This shall include, but not be limited to: copies of canceled checks, approved invoices, and signed, sworn affidavits certifying the accuracy of payments so that the COUNTY may determine actual participation achieved by the CMAR prior to issuance of final payment.
4. Approval of the final Application for Payment is contingent upon the COUNTY'S receipt of the final CMAR'S report which shall be signed by the CMAR'S authorized agent and certify that:
- a. The M/WBE Management Level participation was consistent with the Proposal and Contract Documents; and
 - b. All information contained in such final report is a true and accurate account of the CMAR'S:
 - (1) M/WBE Management Level participation;
 - (2) M/WBE utilization per the Proposal and Contract Documents; and
 - (3) Employment Workforce Levels.

D. Liquidated Damages.

1. The purpose of the M/WBE requirements and goals for this PROJECT is to provide a prompt remedy for the effects of the COUNTY'S past discrimination. As such, the COUNTY shall be damaged should the CMAR fail to adhere to its M/WBE commitments and obligations in its Proposal, this CONTRACT, or the provisions of the COUNTY'S Minority/Women Enterprise Ordinance.

2. Because the actual amount of such damage is not reasonably calculable, the COUNTY shall assess liquidated damages equal to the dollar value of the utilization by certified M/WBEs loss as a result of the CMAR'S failure to adhere to its M/WBE commitments and obligations in its Proposal, this CONTRACT, or the provisions of the COUNTY'S Minority/Women Enterprise Ordinance, not to exceed ten percent (10%) of the Contract Amount.
3. The CMAR shall also be liable to the COUNTY for such liquidated damages in the event that one of its Subcontractors fails to perform a commercially useful function or operates as a front, conduit, or pass-through as defined in the COUNTY'S Minority/Women Enterprise Ordinance.
4. It is further mutually understood and agreed that the COUNTY'S assessment of liquidated damages under this provision is only intended to compensate the COUNTY for the CMAR failure to adhere to its M/WBE commitments and obligations in its Proposal, this Contract, or the provisions of the County's Minority/Women Enterprise Ordinance and shall not release the CMAR from liability from any other breach of the CONTRACT requirements. Nor shall the COUNTY'S assessment of such liquidated damages prevent the COUNTY from penalizing the CMAR as contemplated below.

E. **Penalties.** The CMAR may be subjected to penalties as outlined in Section 17-326, Orange County Code, should the CMAR fail to adhere to its commitments in its Proposal, this CONTRACT, or the provisions of the COUNTY'S Minority/Women Enterprise Ordinance. These penalties include:

1. Suspension or permanent debarment from proposer;
2. Termination of any present contracts;
3. Withholding retainage;
4. A negative evaluation of good-faith effort on future proposals; and
5. Withholding of payments.

F. Any questions the CMAR has regarding meeting or complying with its obligations pursuant to Minority/Women Business Enterprises should be directed to the Orange County Business Development Division at (407) 836-7317.

Section 21: Dislocated Workers.

A. As part of its proposal to the COUNTY for the Project, the CMAR committed to hiring the following number of Career Source Central Florida Dislocated Worker Program participants residing in Orange County, Florida:

CMAR'S Orange County Dislocated Workers Commitment
(Insert Number 1 – 5 Below)

<u> </u> Dislocated Workers (Number)
--

- B. As such, within five (5) days after Contract Award, CMAR shall contact the Orange County Business Development Division at (407) 836-5484 to assist with meeting this requirement.
- C. The COUNTY’S Business Development Division will work with the CareerSource Central Florida staff and the CMAR to ensure that the process is properly adhered until all requirements have been met. Career Force Central Florida participants may be employed in any position within the firm but must be hired on a full-time basis.
- D. During performance of the CONTRACT, the CMAR shall take appropriate steps to ensure that individuals hired under this program are retained.
- E. If it becomes necessary to replace an employee, the CMAR shall provide verification of the replacement worker’s status from the CareerSource Central Florida.
- F. At its discretion, the COUNTY may periodically request submission of certified payrolls to confirm the employment status of program participants.
- G. By executing this Contract, the CMAR hereby certifies that it will meet its obligations and comply with all of the Dislocated Workers provisions of the RFP #Y19-815-JS and agrees that a failure by the CMAR to do so constitutes a material breach of this Contract.
- H. Any questions the CMAR has regarding meeting or complying with its obligations pursuant to Dislocated Workers should be directed to the Orange County Business Development Division at (407) 836-7317.

Section 22: Registered Service-Disabled Veteran (“SDV”) Participation.

- A. As part of its proposal to the COUNTY for the Project, the CMAR committed to hiring the following number of Orange County Registered SDVs:

CMAR’S Orange County Registered SDV Commitment <i>(Insert Number 1 – 5 Below)</i>
<u> </u> Orange County Registered SDV Firms (Number)

- B. As such, the following documents are incorporated into this CONTRACT either by attachment or by reference and therefore serve as material parts of this Contract:

1. The SDV Utilization Plan submitted by the CMAR with its proposal; and
 2. The Bonus Points for Hiring Registered Service-Disabled Veterans provisions of the RFP #Y19-815-JS.
- C. By executing this CONTRACT, the CMAR hereby certifies that it will meet its obligations and comply with all of the Bonus Points for Hiring Registered Service-Disabled Veterans provisions of RFP #Y19-815-JS and agrees that a failure by the CMAR to do so constitutes a material breach of this CONTRACT.
- D. The CMAR shall report Registered SDVs Subcontractor Contract dollar amount(s) for the registered SDV Subcontractor(s) listed in this document, by submitting the appropriate documents, which shall include but not limited to fully executed subcontract agreements and/or purchase orders evidencing contract award of work, to the Business Development Division. Submittal of these subcontract agreements/purchase orders is a condition precedent to execution of the prime contract with the COUNTY. Monthly updated SDV utilization reports and Schedule of Minorities and Women reports are to be submitted every quarter during the term of the CONTRACT. Additionally, the CMAR shall ensure that the SDV participation percentage proposed in the CMAR's Proposal submitted for this CONTRACT is accomplished.
- E. Subsequent amendments to this CONTRACT shall be submitted with the appropriate documentation evidencing contractual change or assignment of work to the Business Development Division, with a copy to the COUNTY'S designated representative, within ten (10) days after COUNTY'S execution.
- F. The CMAR shall furnish written documentation evidencing actual dollars paid to all Subcontractors utilized by the CMAR on the project. This shall include, but not limited to: copies of cancelled checks, approved invoices, and signed affidavits certifying the accuracy of payments so that the COUNTY may determine actual SDV participation achieved by the CMAR prior to the issuance of final payment.
- G. The CMAR shall not substitute, replace or terminate any M/WBE firm without prior written authorization from the Business Development Division Manager. In the event a registered SDV Subcontractor's subcontract is terminated for cause, the CMAR shall justify the replacement of that Subcontractor with another registered SDV firm, in writing to the Business Development Division, accompanied by the OCCC Project Administrator's recommendation or consent to Termination.
- H. It is the intent of the COUNTY to ensure prompt payment of all Subcontractors working on COUNTY projects. The CMAR shall:
- d. Submit copies of executed contracts between the CMAR and all of its SDV Subcontractors to the Business Development Division.
 2. The COUNTY may at its discretion require copies of subcontracts/purchase orders for the non-SDV's listed on **Form "B"** of the CMAR'S Proposal to RFP

#Y19-815-JS or that are otherwise utilized on the PROJECT. However, if this option is not exercised the awarded Proposer shall provide a list of all non-SDV Subcontractors certifying that a prompt payment clause has been included in that CONTRACT or Purchase Order.

3. Incorporate a prompt payment assurance provision and payment schedule in all contracts between the CMAR and Subcontractors (including those with non-SDV's) stating that payment shall be made to the Subcontractor within seventy-two (72) hours of receipt of payment from the COUNTY. The CMAR shall pay each Subcontractor for all Work covered under an invoice within the seventy-two (72) hour time frame.
- I. Any questions the CMAR has regarding meeting or complying with its obligations pursuant to Registered Service-Disabled Veterans should be directed to the Orange County Business Development Division at (407) 836-7317.

Section 23: Indemnity/Insurance and Safety Requirements.

A. Indemnification.

1. Subject to the limitations in the sixth paragraph under this heading, the CMAR will defend, indemnify, and hold harmless the COUNTY, its agents and employees from and against all liabilities, claims, damages, losses, costs and expenses (including attorney's fees) arising out of or resulting from the performance of the Work, provided that any such liability, claim, damage, loss, cost or expense is:
 - a. Attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting there from and,
 - b. Caused in whole or in part by any act or omission of the CMAR, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in whole or in part by a party indemnified hereunder.
2. The CMAR hereby acknowledges receipt of One Hundred Dollars (\$100.00) and other good and valuable consideration from the COUNTY as consideration for the indemnification provisions in this CONTRACT.
3. In any and all claims against the COUNTY, its agents, or employees; employees of the CMAR and Subcontractor; all persons directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under the previous paragraph shall not be limited in any way as to the amount or type of damages, compensation or benefits payable by or for the CMAR or any Subcontractor under workers' compensation acts (except those amounts covered under an owner-controlled insurance program), disability benefit acts or other employee benefit acts.

4. The indemnification obligations of the CMAR under this section shall not extend to the liability of the A/E Design Professional and its agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or the giving or the failure to give requested interpretations by the A/E Design Professional and their agents or employees, provided such giving or failure to give is the primary cause of injury or damage.
5. The CMAR shall defend, indemnify and hold harmless the COUNTY and anyone directly or indirectly employed by it from and against all claims, damages, losses and expenses (including attorney's fees) arising out of any infringement of patent rights or copyrights held by others during or after completion of the Work, and shall defend all such claims in connection with any alleged infringement of such rights.
6. If this CONTRACT is deemed by a court of competent jurisdiction to be a construction contract under Section 725.06, Florida Statutes, any obligation of the CMAR to defend, indemnify, or hold harmless the COUNTY, its officers, and employees shall be limited to an obligation to indemnify and hold harmless to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CMAR and persons employed or utilized by the CMAR in the performance of the CONTRACT.
7. The indemnification provisions contained herein shall survive the termination of this CONTRACT.

B. Payment and Performance Bonds.

1. The CMAR shall execute and deliver to the COUNTY the Payment and Performance Bonds included herein as security for the faithful performance and completion of the Work and payment for all materials and labor furnished or supplied in connection with all Work included in the Contract Documents. These Bonds shall be initially in amounts at least equal to the Design Assist portion of the Work. Immediately prior to notice to proceed with construction (enabling or otherwise) or within ten (10) days of a request to produce by the COUNTY, the CMAR shall furnish such other Bonds, to sufficiently ensure payment and performance of the entire construction phase of the Work.
2. All Bonds shall comply with the provisions of Section 255.05, Florida Statutes, shall name the COUNTY as obligee, and shall be in such form and with such Surety companies that meet the following qualifications:
 - a. A.M. Best Company (or other equivalent rating company) financial strength rating equal to or better than A- ClassVI;
 - b. Included on the approved list of sureties issued on the latest revision of the Federal Register, Part V, by the United States Department of Treasury;

- c. Authorized or eligible to conduct business in the State of Florida;
3. Attorneys-in-fact who sign bonds or other Surety instruments shall attach with each Bond or instrument a signed, certified and effectively dated copy of their power of attorney.
4. Should any Bond be issued by co-sureties, each surety listed on the Bond shall meet the requirements specified above. In addition, each surety shall submit a power of attorney and all signatures of the co-sureties representatives shall be notarized. The “lead” surety shall be identified for the purposes of underwriting and claims management.
5. If such Bonds are required by written instructions given prior to opening of the Proposals, the premium shall be paid by the CMAR. If the Contract Amount is increased by Change Order, the CMAR shall ensure that the Payment and Performance Bonds be amended accordingly and a copy of the amendment is forwarded to the COUNTY.
6. If the Surety on any bond furnished by the CMAR is declared bankrupt or becomes insolvent or its right to do business is terminated in any State where any part of the Work is located or it ceases to meet the requirements imposed by the Contract Documents, the CMAR shall within five (5) days thereafter substitute another Bond with another Surety both of which shall be acceptable to the COUNTY.
7. **The CMAR shall record the payment and performance bonds in Orange County public records as required by Section 255.05, Florida Statutes. Before commencing the Work the CMAR shall provide to the Manager of the Procurement Division a certified copy of the recorded bonds. No payment will be made to the CMAR until the CMAR has provided a copy of the recorded bonds.**

C. Insurance Requirements.

1. The CMAR shall maintain on a primary basis and at its sole expense, at all times throughout the duration of this CONTRACT the following types of insurance coverage with limits and on forms (including endorsements) as described herein. These requirements, as well as the COUNTY’S review or acceptance of insurance maintained by CMAR is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by CMAR under this CONTRACT. Insurance carriers providing coverage shall be authorized and/or eligible to do business in the State of Florida and shall possess a current A.M. Best’s Financial Strength Rating of A- Class VIII or better.

[Note: State licenses can be checked via www.floir.com/companysearch/ and A.M. Best Ratings are available at www.ambest.com]

2. The CMAR shall require and ensure that each of its Subcontractors not covered under the OCIP to maintain insurance until the completion of their Work under any contract associated with this CONTRACT. Failure of the CMAR to maintain

insurance coverage for itself or for any other persons or entities for whom it is responsible or to ensure that its Subcontractors maintain coverage shall not relieve the CMAR of any contractual responsibility, obligation or liability.

3. **If the CMAR proposed on this CONTRACT as a Joint Venture then all insurance coverage required herein shall include the Joint Venture as “named insured.” If the Joint Venture has no employees then this requirement is waived for workers’ compensation. The Joint Venture shall also purchase discontinued completed operations coverage for any Claims made after the dissolution of the Joint Venture. This coverage shall be for a period of two years following final completion of the project or continuing service contract.**
4. **If the CMAR proposed on this CONTRACT using a Partnership or Teaming approach then these insurance requirements shall be applied equally to each of the partners or participants as their interests may appear. Liability shall be clearly addressed in all Partnership or Teaming Agreements and memorandums of understanding.**
5. The minimum types and amounts of insurance inclusive of any amount provided by an umbrella or excess policy, shall be as follows:
 - a. Commercial General Liability - The CMAR shall maintain coverage issued on an ISO form CG 00 01 or its equivalent, with a limit of liability of not less than \$10,000,000 per occurrence. CMAR further agrees coverage shall not contain any endorsement(s) excluding or limiting Product/Completed Operations, Independent Contractors, Broad Form Property Damage, X-C-U Coverage, Contractual Liability, or Separation of Insureds. The General Aggregate limit shall either apply separately to this CONTRACT or shall be at least twice the required occurrence limit. All projects with a Contract Amount greater than \$20,000,000 shall be written on a Designated Premises or PROJECT basis. Commercial umbrella and excess coverage shall include liability coverage for damage to the CMAR’S completed work equivalent to that provided under ISO Form CG 00 01 12 04.

Required Endorsements:

- (1) Additional Insured- CG 20 26 or CG 20 10/CG 20 37 or their equivalents.
[Note: CG 20 10 must be accompanied by CG 20 37 to include products/completed operations.]
- (2) Waiver of Transfer of Rights of Recovery- CG 24 04 or its equivalent.
[Note: If blanket endorsements are being submitted please include the entire endorsement and the applicable policy number.]

- b. Business Automobile Liability - The CMAR shall maintain coverage for all owned; non owned and hired vehicles issued on ISO form CA 00 01 or its equivalent, with limits of not less than \$5,000,000 per incident. In the event the CMAR does not own automobiles the CMAR shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Required Endorsements:

- (1) Waiver of subrogation.

- c. Workers' Compensation - The CMAR shall maintain coverage for its employees with statutory workers' compensation limits, and no less than \$1,000,000 (one million dollars) for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the COUNTY. The COUNTY shall not accept elective exemptions. Any contractor using an employee leasing company shall complete the Leased Employee Affidavit.

Required Endorsements:

- (1) Waiver of Subrogation – WC 00 03 13 or its equivalent

- d. Professional Liability – The CMAR shall maintain Professional Liability with limits of not less than \$10,000,000 per incident and on a per-project basis.

- e. Tools and Equipment Insurance –

- (1) The COUNTY shall have no liability with respect to protection against loss of the CMAR'S, or any of its Subcontractor's, owned, rented, leased, or borrowed capital equipment and tools, including but not limited to any tools owned by mechanics, and any tools equipment scaffolding, staging trailers, cranes, towers and forms owned, rented or borrowed by it or its Subcontractors.

- (2) The CMAR and its Subcontractors of any tier may, at their option, obtain insurance coverage protecting such equipment and tools.

- (3) Failure of the CMAR or any of its Subcontractors to secure such insurance or to maintain adequate levels of coverage shall not obligate the COUNTY or its agents and employees to reimburse the CMAR or any of its Subcontractors for any losses on owned, rented, or borrowed equipment

- f. Pollution Liability Insurance – If the CMAR or its Subcontractors of any

tier haul hazardous waste they must carry contractor's pollution liability insurance with a minimum of \$10,000,000 per occurrence/aggregate.

6. When a self-insured retention or deductible exceeds \$100,000 the COUNTY reserves the right to request a copy of the CMAR'S most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis the CMAR shall maintain a retroactive date prior to or equal to the effective date of this contract. In the event the policy is canceled, non-renewed, switched to occurrence form, or any other event which triggers the right to purchase a Supplemental Extended Reporting Period ("**SERP**") during the life of this contract the CMAR shall purchase the SERP with a minimum reporting period consistent with Florida Statute of Repose law. Purchase of the SERP shall not relieve the CMAR of the obligation to provide replacement coverage.
7. The CMAR shall be responsible for all risk of loss whether insured or not until final acceptance of the project by the COUNTY. The CMAR shall be fully and solely responsible for any costs or expenses resulting from a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the application of said deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. The COUNTY has the right to request that the CMAR procure and maintain a Surety bond for any deductible amounts that exceed any amount stated herein in such amount and on such form that are acceptable to the COUNTY.
8. The COUNTY reserves the right, but not the responsibility to periodically review any and all policies of insurance and to reasonably adjust the limits and/or types of coverage required herein, from time to time throughout the term of this CONTRACT. In such event, the COUNTY shall provide the CMAR written notice of such adjustments and the CMAR shall comply within thirty (30) days of receipt thereof. Any request for an exception to these insurance requirements must be submitted in writing to the COUNTY for approval.
9. The CMAR shall specifically include the COUNTY as an Additional Insured on the Commercial General Liability policy with a CG 20 10 – Additional Insured – COUNTY'S, Lessees, Contractors and the or CG 20 37 – Additional Insured-COUNTY'S, Lessees, or Contractors- Completed Operations endorsement, or their equivalent. The CMAR shall also specifically include the COUNTY as an Additional Insured on any Commercial Umbrella or Excess policies unless the COUNTY is automatically defined under the policy as an Additional Protected Person. The name of the organization identified in each Additional Insured endorsement's schedule shall read Orange County, Florida.
10. The CMAR agrees by entering into this written CONTRACT to provide a Waiver of Subrogation in favor of the COUNTY for each required policy providing coverage during the life of this CONTRACT. When required by the insurer, or should a policy condition not permit an endorsement, the CMAR shall notify the insurer and request that the policy(ies) be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or an equivalent

endorsement. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition that specifically prohibits such an endorsement or voids coverage should the CMAR enter into such an agreement on a pre-loss basis.

11. Before execution of this CONTRACT by the COUNTY and the start of any Work and for the duration of this CONTRACT, the CMAR shall provide the COUNTY with current certificates of insurance evidencing all required coverage. The certificates shall clearly indicate that the CMAR has obtained insurance of the type, amount and classification as required for strict compliance with this insurance section. No material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the COUNTY. Certificates shall specifically reference the project title and contract number. The certificate holder shall read:

Orange County, Florida
Procurement Division
400 E. South Street
Orlando, Florida 32801

12. Prior to commencement of any Work performed by Subcontractors (if any), the CMAR shall obtain certificates of insurance evidencing coverage from each of its Subcontractors and shall furnish within five days, copies of said certificates upon request by the COUNTY. In addition to the certificate(s) of insurance the CMAR shall also provide a specific additional insured endorsement and all waivers of subrogation or transfer of rights of recovery endorsements for each policy. Failure of the COUNTY to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the COUNTY to identify a deficiency from evidence provided shall not be construed as a waiver of the CMAR'S obligation to maintain such insurance.
13. Further, to the extent the CMAR is required to name the COUNTY as an additional insured under any insurance policy not covered in the Owner Controlled Insurance Program ("OCIP") to be maintained by the CMAR pursuant to the terms of the Contract Documents, the CMAR shall cause the Owner's Representative, AECOM, to also be named as an additional insured party under all such policies.

D. Owner Controlled Insurance Program ("OCIP").

1. The COUNTY has decided to implement and use an OCIP to cover many of the exposures associated with this project. The CMAR shall cooperate in the implementation of the OCIP and shall include language in each of its contracts with all contractors and sub-contractors requiring each to abide by the Terms and Conditions of the OCIP Manual.
2. Builders Risk Insurance – The COUNTY will be securing a Builder's Risk insurance policy on an "All Risk" non-reporting and completed value basis in an amount up to the full replacement cost of the project improvements with

a deductible not to exceed \$ [REDACTED]. Coverage shall be provided for so-called “Soft Costs” including Delayed Opening, include permission to partially occupy the Property and include an agreed amount endorsement waiving any co- insurance provisions. Coverage may include coverage for Earthquake and Flood. The policy shall include as Named Insureds the project owner, each member, the general contractor, and sub-contractors of all tiers.

3. Environmental Liability Insurance – The COUNTY may purchase an owner controlled contractor’s pollution liability (“**CPL**”) insurance policy that covers third party bodily injury, property damage, and clean-up costs claims arising from pollution conditions that are a result of the construction of the Project including mold. The policy would include an extended reporting period/completed operations period for the applicable statute of limitations. The CPL policy would include minimum limits up to \$10,000,000 each claim/\$10,000,000 policy aggregate, and a \$ [REDACTED] each incident self-insured retention. The policy shall include as Named Insureds the project owners, each member, the general contractor, and sub-contractors of all tiers.

E. Safety and Protection of Property.

1. The CMAR shall initiate, maintain, and supervise all safety precautions and programs in connection with the Work. The CMAR shall take all necessary precautions for the safety of and shall provide the necessary protection to prevent damage, injury or loss to:
 - a. All employees on the PROJECT and other persons who may be affected thereby;
 - b. All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the Site; and
 - c. Other property at the Site or adjacent thereto including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
2. The CMAR shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body or public or private utility service organization having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. This includes but is not limited to:
 - a. Occupational Safety and Health Act (“**OSHA**”);
 - b. National Institute for Occupational Safety & Health (“**NIOSH**”)
 - c. Florida State Fire Marshal – Florida Fire Prevention Code (“**FFPC**”); and
 - d. American Society of Heating, Refrigeration & Air-Conditioning Engineers (“**ASHRAE**”).

3. The CMAR shall erect and maintain, as required by the conditions and the progress of the Work, all necessary safeguards for safety and protection and, in addition, the CMAR shall comply with all applicable recommendations of the Manual of Accident Prevention in Construction of the Associated General Contractors of America, Inc., and the Manual on Uniform Traffic Control Devices for Streets and Highways (“MUTCD”) and subsequent revisions and addenda as published by the U.S. Department of Transportation, Federal Highway Administration and adopted by the Florida Department of Transportation. The CMAR shall notify owners of adjacent utilities when prosecution of the Work may affect the utilities.
4. All damage, injury, or loss to any property or all damage, disruption, discontinuance or other loss to any utility system or roadways caused directly or indirectly, in whole or in part by the CMAR, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall be remedied by the CMAR, except damage or loss attributable to the fault of the Drawings or the Specifications or to the acts or omissions of the COUNTY, and not attributable, directly or indirectly, in whole or in part, to the fault of negligence of the CMAR. The CMAR shall comply with the guidelines set forth in the Orange County Safety & Health Manual. The manual can be accessed online at the address below:

<http://www.orangecountyfl.net/VendorServices/OrangeCountySafetyandHealthManual.aspx>
5. The CMAR shall designate a responsible member of its organization whose duty shall be the prevention of accidents at the Site. This person shall be the CMAR’S superintendent unless otherwise designated in writing by the CMAR to the OCCC Project Administrator.

Section 24: Contract Claims.

- A. “Claim” as used in this provision means a written demand or written assertion by one of the contracting parties seeking as a matter of right, the payment of a certain sum of money, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract.
- B. Claims made by the CMAR against the COUNTY relating to this CONTRACT shall be submitted to the Procurement Division Manager in writing clearly labeled “Contract Claim” requesting a final decision. The CMAR also shall provide with the claim a written and notarized certification as follows:

“I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the CMAR believes the COUNTY is liable; and that I am duly authorized to certify the claim on behalf of the CMAR.”

- C. **Failure to document a claim in this manner shall render the claim null and void. Moreover, no claim shall be accepted after final payment of the contract.**
- D. The decision of the Procurement Division Manager will be issued in writing and furnished to the CMAR. The decision will state the reasons for the decision reached. The Procurement Division Manager will render the final decision within sixty (60) days after receipt of CMAR'S written request for a final decision. The Procurement Division Manager's decision shall be final and conclusive.
- E. The CMAR shall proceed diligently with performance of this CONTRACT pending final resolution of any request for relief, claim, appeal or action arising under the contract and shall comply with any final decision rendered by the Manager of the Procurement Division.

Section 25: Representations and Warranties.

- A. **Representation and Warranty.** The CMAR represents and warrants the following to the COUNTY (in addition to any other representations and warranties contained in the Contract Documents) as an inducement to the COUNTY to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the Final Completion (hereinafter defined) of the Work:
 - 1. That it and, to the best of its knowledge, its Subcontractors are financially solvent and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;
 - 2. That it is authorized to do business in the State in which the PROJECT is located and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the PROJECT;
 - 3. That its execution of this Agreement and all of the Contract Documents, and its performance thereof is within its duly authorized power;
 - 4. That its duly authorized representative has visited, or prior to the submission of the CMAR'S GMP proposal, shall have visited the Site of the PROJECT and is, or prior to the submission of the GMP proposal shall be, familiar with the local and special conditions under which the Work is to be performed and has, or prior to the submission of the GMP proposal shall have, correlated onsite observations with the requirements of the Contract Documents;
 - 5. That in presenting the COUNTY with its GMP Proposal, it shall use the *Draft GMP Proposal* as to both the Restated RFP #Y19-815-JS and to this CONTRACT as **Exhibit "E"**; and
 - 6. That it possesses a high level of experience and expertise in the construction of projects of the size, complexity and nature of this particular PROJECT and that it shall perform the Work with the care, skill, and diligence of such CMAR.

7. That all materials and equipment shall be new unless otherwise specified and that all Work shall be of good quality, free from faults or defects and in accordance with the requirements of the Contract Documents including any required inspections, tests, or approvals.
 8. That all goods and items offered for sale or shipped by the CMAR pursuant to the requirements imposed upon said CMAR by this CONTRACT or the Contract Documents, shall be new and in first class condition; all related containers being new and suitable for storage and shipment; all prices including the cost of standard commercial packaging.
 9. That the CMAR shall be solely responsible for making any and all Claims against carriers as concerns missing or damaged items.
- B. All warranty and guarantee coverage periods shall commence from the Final Completion date of the project as determined by the OCCC Project Administrator. The coverage commencement date of warranties and guarantees shall, in accordance with the provisions stated above, be entered on each warranty or guarantee document.
- C. In the event the coverage commencement date entered on the warranty or guarantee document is not in accordance with the provisions stated in this CONTRACT or the Contract Documents, the coverage commencement date shall nonetheless be the date determined by applying the provisions stated above.
- D. **Truth in Negotiation.** The CMAR hereby represents, covenants and warrants that wage rates and other factual unit costs supporting the compensation provided for in this CONTRACT are accurate, complete and current as of the date of contracting. It is further agreed that the Contract Amount shall be adjusted to exclude any amounts where the COUNTY determines the Contract Amount was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs.
- E. **Asbestos-Free Materials.**
1. The PROJECT shall be constructed with Asbestos-Free Materials. A written, notarized statement on company letterhead shall be submitted with the final payment request. Final payment shall be withheld until such statement is submitted.
 2. The CMAR hereby agrees that if materials containing asbestos are subsequently discovered at any future time to have been included in the construction done by the CMAR, or any of its Subcontractors or agents and were not specified in the design or required by the Contract Document, the CMAR shall be liable for all costs related to the abatement of such asbestos and damages or Claims against the COUNTY.

Section 26: Reference Points.

- A. **Availability of Lands.** The COUNTY will furnish, as indicated in the Contract

Documents and not later than the date when needed by the CMAR, the lands upon which the Work is to be done, rights-of-way for access thereto, and such other lands which are designated for the use of the CMAR.

1. Easements for permanent structures or permanent changes in existing facilities will be obtained by the County unless otherwise specified in the Contract Documents.
2. If the CMAR believes that any delay in the County's furnishing these lands or easements entitles him to an extension of the Contract Time, he may make a claim therefore as provided in this CONTRACT.
3. The CMAR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.
4. The Project Manager will, upon request, furnish to the CMAR copies of all available boundary surveys and subsurface test.

B. Unforeseen Subsurface Conditions. The CMAR shall promptly notify the OCCC Project Administrator in writing of any subsurface or latent physical conditions at the Site which may differ materially from those indicated in the Contract Documents. The CMAR shall promptly investigate those conditions and advise the OCCC Project Administrator in writing if further surveys or subsurface tests are necessary. Promptly thereafter, if needed, the CMAR shall obtain the necessary additional surveys and tests, and furnish copies to the OCCC Project Administrator. If the OCCC Project Administrator finds that the results of such surveys or tests indicate subsurface or latent physical conditions differing significantly from those indicated in the Contract Documents, a Change Order will be issued incorporating the necessary revisions, in accordance with the terms of this CONTRACT.

C. Reference Points. The CMAR shall be responsible for all field survey Work coincidental with initiation and completion of this Work as specified herein. All survey Work shall be done under the supervision of a Registered Professional Surveyor and Mapper. The COUNTY will furnish, one time, a set of permanent reference markers along the line of Work to form the basis for the above CMAR'S survey.

1. All Section Corners and Quarter Section corners falling within the limits of this Work shall be perpetuated by a Florida Registered Surveyor and Mapper.
2. All such corners falling within or on the boundaries of this project shall have reference ties made, certified to and submitted to the COUNTY Surveyor, Orange County, Florida, prior to the commencing of construction.
3. Upon completion of construction and prior to Final Completion, certified corner records shall be submitted to the Department of Natural Resources in compliance with Florida Statutes, Chapter 177.507 and a copy of said certified corner record shall also be submitted to the Orange County Surveyor. Said corner records shall reflect the corner as perpetuated and which shall meet these minimum standards.

- a. If the corner falls in asphalt or concrete construction, the corner shall be a 2 1/4" metal disc marked according to standard government practices and set in concrete no less than 18" in depth and shall be encased in an adjustable 5 1/4" diameter or larger valve box raised to the finished surface of construction.
 - b. If the corner falls at any other location, it shall be a 4" x 4" concrete monument no less than 23" long with a 2 1/4" metal disc marked according to standard government practices. The top of said monument shall be set flush with the ground ($\pm 0.5'$ depending on conditions).
4. Any U.S.C. and G.S. monument within limits of construction are to be protected. If monuments are in danger of damage, the CMAR shall contact the OCCC Project Administrator and the Orange County Surveyor prior to the commencing of construction.
 5. Payment for all necessary survey Work shall be included in the proposal as part of other items of Work.

Section 27: Acceptance of Defective Work.

- A. All unsatisfactory Work, all faulty Work, and all Work not conforming to the requirements of the Contract Documents or such inspections, tests or approvals shall be considered defective. Prompt notice of all defects will be given to the CMAR. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this CONTRACT and the Contract Documents.
- B. **Tests and Inspections.** If the Contract Documents, laws, ordinances, rules, regulations or order of any public authority having jurisdiction require any Work to specifically be inspected, tested, or approved by someone other than the CMAR, the CMAR shall give the OCCC Project Administrator timely notice of readiness therefore.
 1. The CMAR shall furnish the OCCC Project Administrator with the required certificates of inspection, testing, or approval.
 2. All such tests shall be in accordance with the methods prescribed by the American Society for Testing Materials or such other applicable organizations as may be required by law or the Contract Documents.
 3. If any such Work required to be inspected, tested or approved is covered without written approval of the OCCC Project Administrator, it shall, if requested by the OCCC Project Administrator, be uncovered for observation at the CMAR'S expense.
 4. The cost of all such inspections, tests and approvals shall be borne by the CMAR unless otherwise provided. Neither observations by the CMAR nor inspections, tests or approvals by persons other than the CMAR shall relieve the CMAR from its obligations to perform the Work in accordance with the requirements of the Contract Documents.

C. **Access to Work.** The OCCC Project Administrator and its representative and other representatives of the COUNTY and the A/E Design Team shall at all times have access to the Work. The CMAR shall provide proper facilities for such access and observation of the Work and also for any inspection or testing thereof by others.

D. **Uncovering Work.** If any Work is covered contrary to the request of the OCCC Project Administrator it shall, if requested by the OCCC Project Administrator be uncovered for observation and replaced at the CMAR'S expense.

1. If any Work has been covered which the OCCC Project Administrator has not specifically requested to observe prior to its being covered, or if the OCCC Project Administrator considers it necessary or advisable that covered Work be inspected or tested by others, the CMAR, at the OCCC Project Administrator's request, shall uncover, expose or otherwise make available for observation, inspection, or testing as the OCCC Project Administrator may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

2. If it is found that such Work is defective, the CMAR shall bear all the expense of such uncovering, exposure, observation, inspection and testing, and of satisfactory reconstruction.

3. If such Work is not found to be defective, the CMAR shall be allowed an increase in the Contract Amount or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and re-construction, if the CMAR makes a Claim therefore as provided in in this CONTRACT.

E. **Notice to Cure Defective or Deficient Work.**

1. If the COUNTY determines the Work is defective or deficient; if the CMAR fails to supply sufficient skilled workers or suitable materials or equipment; if the CMAR fails to make prompt payments to Subcontractors for labor, materials, or equipment; if the Work is not progressing in a safe, orderly or well-coordinated manner; or if the general progress and quality of the Work is not adequate to ensure continuation or completion of the Work in accordance with the Contract Completion time requirements, then the Procurement Division Manager will issue a Notice to Cure Defective or Deficient Work, giving the CMAR a specific period of time in which to:

a. Submit to the OCCC Project Administrator a written Plan of Action including a schedule setting forth a recovery plan by which the deficiencies shall be corrected, and

b. Correct the deficiencies.

2. If the CMAR does not submit a Plan of Action to indicate how and when the deficiencies indicated in the notice to cure shall be cured within the specified time

frame that is acceptable to the OCCC Project Administrator, and if those deficiencies are not corrected within that time frame, then the COUNTY will take further action, up to and including Contract Termination.

3. The CMAR shall not be entitled to any delay Claims as a result of the COUNTY'S issuance of the Notice to Cure.

F. Correction or Removal of Defective Work.

1. If required by the OCCC Project Administrator prior to approval of final payment, the CMAR shall, promptly, without cost to the COUNTY and as specified by the OCCC Project Administrator, either correct any defective Work whether or not fabricated, installed or completed or, if the Work has been rejected by the OCCC Project Administrator, remove it from the Site and replace it with non-defective Work.
2. If the CMAR does not correct such defective Work or remove and replace such rejected Work within a reasonable time, or as specified in a written notice from the OCCC Project Administrator, the COUNTY may have the deficiency corrected or the rejected Work removed and replaced. All direct and indirect costs of such correction or removal and replacement shall be paid by the CMAR.
3. The CMAR shall also bear the expense of making good all Work of others destroyed or damaged by this correction, removal, or replacement of its defective Work.

- G. One (1) Year Correction Period.** The CMAR shall be responsible for the timely correction of any deficiencies in the Work for a period of one (1) year after final acceptance or such longer period of time as may be prescribed by law or by any other terms required by the CONTRACT. The CMAR shall promptly without cost to the COUNTY and in accordance with the OCCC Project Administrator's written instructions either correct such defective Work or, if it has been rejected by the OCCC Project Administrator, remove it from the Site and replace it with non-defective Work. If the CMAR does not promptly comply with the terms of such instructions, the OCCC Project Administrator may have the defective Work corrected or the rejected Work removed and replaced. All direct and indirect costs of such removal and replacement shall be paid by the CMAR.

- H. Acceptance of Defective Work.** If, instead of requiring correction or removal and replacement of defective Work, the OCCC Project Administrator prefers to accept it, then the CMAR may do so. In such case, if acceptance occurs prior to approval of final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents including an appropriate reduction in the Contract Amount. If the acceptance occurs after approval of final payment, the appropriate amount shall be paid by the CMAR to the COUNTY.

- I. Neglected Work by the CMAR.**

1. If the CMAR should neglect to prosecute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, the COUNTY may, after reasonable written notice to the CMAR – and without prejudice to any other remedy it may have – make good such deficiency and the cost of the COUNTY’S so-doing shall be charged against the CMAR.
2. A Change Order will be issued incorporating the necessary revision in the Contract Documents including an appropriate reduction in the Contract Amount.
3. If the payments then or therefore due the CMAR are not sufficient to cover such amount, the CMAR shall pay the difference to the COUNTY.

J. Testing by the COUNTY.

1. Notice is hereby given that the COUNTY shall retain and pay for an independent materials testing laboratory to perform certain tests as follows:
 - a. Initial concrete test cylinder making and testing (concrete mix design shall be by the CMAR).
 - b. Initial earthwork compaction.
 - c. Initial in-place testing of sub-grade, sub-base and base for roadways including thickness and compaction (soil cement design shall be by CMAR).
2. The COUNTY reserves the right to perform any other tests it deems necessary to ensure that any all construction is adequate for the purposes intended and meets all applicable criteria.
3. Subsurface structural analysis and testing (including standard penetration testing or cone penetration testing), structural and threshold inspections, roofing systems analysis and inspections, structural steel analysis and testing (verifying progress or post construction installation in relation to design intent), steel weld testing and inspections, metals testing and inspections, non-destructive testing and inspection, commissioning, and building envelope analysis and testing.
4. Subsequent tests required after the initial tests to verify compliance with the Contract Documents in areas failing the initial tests shall be paid for by the CMAR by back charge to subsequent Applications for Payment.

Section 28: Termination of Contract.

A. Termination for Default.

1. The COUNTY may, by written notice to the CMAR, terminate this contract for default in whole or in part (task authorizations, if applicable) if the CMAR fails

to:

- a. Provide products or services that comply with the specifications herein or fails to meet the COUNTY'S performance standards;
- b. Deliver the supplies or to perform the services within the time specified in this CONTRACT or any extension;
- c. Make progress so as to endanger performance of this CONTRACT;
- d. Perform any of the other provisions of this CONTRACT;
- e. Adhere to safety practices and regulations; or
- f. Meet M/WBE requirements and goals as outlined in the RFP and this CONTRACT.

2. Prior to Termination for Default, the COUNTY shall provide adequate written notice to the CMAR through the Manager, Procurement Division, affording the CMAR the opportunity to cure the deficiencies or to submit a specific plan to resolve the deficiencies within ten (10) days (or the period specified in the notice) after receipt of the notice. Failure to adequately cure the deficiency shall result in termination action. Such termination may also result in suspension or debarment of the CMAR in accordance with the COUNTY'S Procurement Ordinance. The CMAR shall be liable for any damage to the COUNTY resulting from the CMAR'S default of the contract. This liability includes any increased costs incurred by the COUNTY in completing CONTRACT performance.

B. **Termination for Convenience.** The COUNTY, by written notice, may terminate this CONTRACT, in whole or in part, when it is in the COUNTY'S interest. If this CONTRACT is terminated, the COUNTY will be liable only for goods or services delivered and accepted. The COUNTY Notice of Termination will provide the CMAR thirty (30) days prior notice before it becomes effective. A termination for convenience may apply to individual purchase orders or to the CONTRACT in its entirety.

C. **Payment in Event of Termination.** If this CONTRACT is terminated before performance is completed, the CMAR shall be paid for the Work satisfactorily performed. Payment is to be on the basis of substantiated costs, not to exceed an amount that is the same percentage of the Contract Amount as the amount of Work satisfactorily completed is a percentage of the PROJECT called for by the CONTRACT. Any additional costs incurred by the COUNTY as a result of such termination shall be deducted from the amount due the CMAR, in the event the Contract termination is for cause as described in this CONTRACT.

D. **Termination Notice.** The Manager of the COUNTY'S Procurement Division will issue all notices involving termination of this CONTRACT.

E. **In the Event of Termination.** The CMAR shall not have any Claim against the COUNTY for lost profits or compensation for lost opportunities in the event of termination by the COUNTY, regardless of the cause for such termination. After a

receipt of a Termination Notice, and except as otherwise directed by the COUNTY, the CMAR shall:

1. Stop Work on the date and to the extent specified;
2. Preserve the Work in progress pending disposition instructions by the COUNTY;
3. Terminate and settle all orders and subcontracts relating to the performance of the terminated Work;
4. Transfer all Work in process, completed Work, and other materials related to the terminated Work as directed by the COUNTY;
5. Continue and complete all parts of that work that have not been terminated; and
6. Make arrangements to demobilize from the Site.

F. **In the Event of Wrongful Termination for Cause.** If a court of competent jurisdiction determines that this CONTRACT was wrongfully terminated for cause, then the CMAR'S damages for such termination shall be the same as if the COUNTY terminated this CONTRACT for convenience.

Section 29: Standards of Conduct.

- A. **Prohibition Against Contingent Fees.** The CMAR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CMAR to solicit or secure this CONTRACT and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CMAR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this CONTRACT. For the breach or violation of this provision, the COUNTY shall have the right to terminate the CONTRACT at its sole discretion, without liability and to deduct from the Contract Amount, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.
- B. **Compliance with Laws.** The CMAR shall comply with all Federal, State, and local laws and ordinances in effect on the date of this CONTRACT and applicable to the work or payment for work thereof. The CMAR shall give all notices and comply with all laws, ordinances, rules, and regulations applicable to the Work. If the CMAR observes that the Specifications or Drawings are at variance therewith, the CMAR shall give the OCCC Project Administrator prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate Change Order. If the CMAR performs any Work knowing it to be contrary to such laws, ordinances, rules, and regulations and without such notice to the OCCC Project Administrator, the CMAR shall bear all costs arising therefrom; however, it shall not be its primary responsibility to make certain that the Drawings and Specifications are in accordance with such laws, ordinances, rules, and regulations.

- C. **Conflicts of Interest.** The CMAR hereby certifies that no undisclosed conflict of interest exists with respect to the present CONTRACT, including any conflicts that may be due to representation of other clients, other contractual relationships of the CMAR, or any interest in property which the CMAR may have. The CMAR further certifies that any apparent conflict of interest that arises during the term of this CONTRACT will be immediately disclosed in writing to the COUNTY. Violation of this provision will be considered as justification for immediate termination of this CONTRACT under the Termination provisions of this CONTRACT.
- D. **Civil Rights.** The CMAR shall not discriminate on the grounds of race, religion, sex, sexual orientation and gender expression/identity, color, age, disability or national origin in the performance of work under this CONTRACT.
- E. **Personal Transport Devices.**
1. Personal transport equipment such as rollerblades, razor scooters, skates, hover-boards, and skateboards are not permitted on OCCC premises. However, electric wheelchairs and electric motor vehicles (e.g. Segways®) are permitted to operate on OCCC premises.
 2. The CONSTRUCTION MANAGER shall obtain prior approval from the OCCC Project Administrator for operation of electric motor vehicles (e.g. Segways®) on the show floor. Safe operating practices shall be used at all times. Segways® and electric scooter-style wheelchairs are currently the only personal transport equipment with rubber wheels allowed in OCCC concourses, lobbies, and registration areas. Non-gasoline powered motorized vehicles, such as electric carts and bicycles, may be operated in OCCC's exhibit halls during move-in and move-out days only. Bicycles shall be walked, not ridden, across any OCCC concourse, lobby or registration area. All vehicles, transport devices, and equipment shall be operated in a safe manner.
 3. Motorized vehicles, such as personnel carts, forklifts, pallet jacks, and other related motorized vehicles with steel and/or hard metallic wheels are not permitted on the OCCC's concourses, lobbies, and registration areas. Lifts or other wheeled vehicles approved for use in carpeted areas shall have non-marking tires, or tires that are covered with carpet tape or heavy-duty polyethylene sheeting.

Section 30: Assignability – Employment of Specialists.

- A. The CMAR shall maintain an adequate and competent professional staff and may associate with such staff, professional specialists for the purpose of ensuring and enlarging its services hereunder, without additional cost to the COUNTY. Should the CMAR desire to utilize such specialists, the CMAR is fully responsible for satisfactory completion of all work within the scope of this CONTRACT.
- B. The CMAR shall be responsible for the integration of all specialists or outside

professional work into the documents and for all payments to such specialists or Subcontractors from the fee heretofore stated. Services rendered by the CMAR in connection with coordination of the services of the aforementioned personnel shall be considered within the scope of the base CONTRACT and no additional fee shall be due the CMAR for such Work.

- C. All final plans and documents prepared by the CMAR shall bear the endorsement of a person in the full employ of the CMAR and be duly registered as a Professional Engineer/Architect in the State of Florida.
- D. The CMAR shall not assign any interest in this CONTRACT, and shall not transfer any interest in the same without prior written approval of the COUNTY, provided that Claims for the money due or to become due the CMAR from the COUNTY under this CONTRACT may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the COUNTY.

Section 31: Security and Identification.

- A. **Access to the Site.** Access to the Site shall be controlled by the CMAR. The CMAR shall provide a method of securing access to the Site that:
 - 1. Ensures that only authorized individuals with appropriate badges are permitted to enter and exit the Site; and
 - 2. Tracks the entrances and exits of such authorized individuals from the Site.
- B. **OCCC Photo Identification Badge.** The CMAR'S management staff who shall be accessing the Site or any non-public area of the OCCC shall adhere to the following security badging requirements:
 - 1. A Level 1 (5 years) FDLE Background check for the CMAR'S management staff shall be approved by OCCC Security team prior to working in any COUNTY facility. The CMAR shall obtain the necessary forms for background checks for Work at the OCCC.
 - 2. All background checks shall be sent to OCCC Project Administrator for approval. The CMAR'S staff and its Subcontractors shall not be allowed in Orange County facilities without a completed and approved background investigation. The OCCC Project Administrator will inform the CMAR of their Background Check results.
 - 3. The CMAR shall be responsible for all costs for background investigations.
 - 4. The COUNTY shall have the right to request any additional investigative background information including, but limited to, the employment record, Right-To-Know records, E-Verify system records (if the CMAR uses this service as a means to determine employment eligibility, available through

www.uscis.gov), training records, payroll records, position for which hired including site location of any personnel assigned to perform the services.

5. The CMAR shall furnish, in writing, such information to the extent allowed by law, prior to commencement of services. The COUNTY reserves the right to conduct its own investigation of any employee of the CMAR.
6. **For security purposes and to maintain privacy when submitting FDLE Background Checks via e-mail the subject line of the email must contain the following **EXEMPT**** Upon Background Check approval, the CMAR'S staff shall arrange an appointment with the Convention Center staff to obtain an Orange County photo ID badge. An affidavit of Identity form (issued by the CMAR) and a State of Florida ID or Driver's License shall be required from the staff. Cost associated with lost or stolen badges is \$25.00.
7. The CMAR shall arrange an appointment with the OCCC Project Administrator to receive, when applicable, keys to the project areas the CMAR requires access. The CMAR shall return all the keys to the OCCC Project Administrator during the PROJECT close-out phase. If any of the keys are lost, the CMAR shall reimburse OCCC for replacement of the cores associated with the keys that were lost. The cost for each core is \$50.00.
8. The CMAR shall also request OCCC parking hang tags for the CMAR'S staff to park on OCCC designated parking lots during construction Work hours. The CMAR shall submit the required forms given by the OCCC Project Administrator for the issuance of hang tags. Cost associated with lost or stolen parking hang tags is \$25.00.
9. All OCCC Photo Identification Badges shall be returned to the OCCC Project Administrator. There is a fee assessed for badges that are not returned.

C. **CMAR Photo Identification Badge.** The CMAR shall establish a Photo Identification Badging System that is acceptable to the COUNTY. The CMAR, Subcontractors and Suppliers staff shall adhere to the following security badging requirements:

1. The CMAR shall obtain a satisfactory Level 1 (5 years) FDLE Background check for the CMAR'S staff and its Subcontractors and Suppliers prior to working in any COUNTY facility. The CMAR shall obtain the necessary forms for background checks for Work at the OCCC. The CMAR'S staff, Subcontractors and Suppliers shall not be allowed in any COUNTY facilities without a completed and approved background investigation. The CMAR shall provide copies of all Background Check results to the OCCC Project Administrator.
2. The CMAR shall be responsible for all background investigation costs. The COUNTY shall have the right to request any additional investigative background information including, but limited to, the employment records, Right-To-Know records, E-Verify system records (if the CMAR uses this service as a means to determine employment eligibility, available through

www.uscis.gov), training records, payroll records, position for which hired including site location of any personnel assigned to perform the services.

3. The CMAR shall furnish, in writing, such information to the extent allowed by law, prior to commencement of services. The COUNTY reserves the right to conduct its own investigation of any employee of the CMAR.
4. Upon approval of Background Check the CMAR shall issue a Photo Identification Badge for access to the Construction Site.

D. **Subcontractors and Suppliers.** The CMAR shall ensure that its Subcontractors and Suppliers:

1. Are not permitted to work on the PROJECT or enter the Site without background investigation approval from the OCCC Program Administrator; and
2. Wear the appropriate identification badges while on the Site.

Section 32: Maintenance, Examination, and Release of Public Records.

- A. The CMAR shall keep adequate records and supporting documents applicable to this CONTRACT. Said records and documentation shall be retained by the CMAR for a minimum of five (5) years from the date of final payment on this CONTRACT. If any litigation, Claim or audit is commenced prior to the expiration of the five (5) year period, the records shall be maintained until all litigation, Claims or audit findings involving the records have been resolved.
- B. If applicable, time records, and cost data shall be maintained in accordance with industry standard accounting practices.
- C. This includes full disclosure of all transactions associated with the CONTRACT. Also, if applicable, all financial information and data necessary to determine overhead rates in accordance with Federal and State regulatory agencies and the CONTRACT shall be maintained.
- D. The CMAR'S "records and supporting documents" as referred to in this CONTRACT shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, invoices, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in the COUNTY'S judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document.
- E. Such records and documents shall include (hard copy, as well as computer readable data, written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating worksheets; correspondence; change order files (including pricing data used to price change proposals and documentation covering

negotiated settlements); back-charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other CMAR records which may have a bearing on matters of interest to the COUNTY in connection with the CMAR'S dealings with the COUNTY (all foregoing hereinafter referred to as "records and supporting documents") to the extent necessary to adequately permit evaluation and verification of:

1. CMAR compliance with CONTRACT requirements;
 2. Compliance with provisions for pricing Change Orders;
 3. Compliance with provisions for pricing invoices;
 4. Compliance with provisions regarding pricing of Claims submitted by the CMAR or its payees;
 5. Compliance with the COUNTY'S business ethics; or
 6. Compliance with applicable state statutes and County Ordinances and Regulations.
- F. Records and documents subject to audit shall also include those records and documents necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this CONTRACT. In those situations where CMAR'S records have been generated from computerized data, the CMAR shall provide the COUNTY'S Representatives with extracts of data files in computer readable format on data disks or suitable alternative computer exchange formats.
- G. The COUNTY and its authorized agents shall have the right to audit, inspect and copy records and documentation as often as the COUNTY deems necessary throughout the term of this contract and for a period of five (5) years after final payment. Such activity shall be conducted during normal business working hours. The COUNTY, or any of its duly authorized representatives, shall have access within forty-eight (48) hours to such books, records, documents, and other evidence for inspection, audit and copying.
- H. The COUNTY, during the period of time defined by the preceding paragraph, shall have the right to obtain a copy of and otherwise inspect any audit made at the direction of the CMAR as concerns the aforesaid records and documentation.
- I. Records and documentation shall be made accessible at the CMAR'S local place of business. If the records are unavailable locally, the CMAR shall ensure that all required records are provided at the CMAR'S expense including payment of travel and maintenance costs incurred by the COUNTY'S authorized representatives or designees in accessing records maintained out of the COUNTY. The direct costs of copying records, excluding any overhead cost, shall be at the COUNTY'S expense.
- J. The CMAR shall require all payees (examples of payees include Subcontractors, insurance agents, material Suppliers, etc.) to comply with the provisions of this article

by including the requirements hereof in a written CONTRACT agreement between CMAR and payee. Such requirements include a flow-down right of audit provisions in contracts with payees, which shall also apply to Subcontractors and Sub-Subcontractors, material Suppliers, etc. the CMAR shall cooperate fully and shall cause all aforementioned parties and all of the CMAR'S Subcontractors (including those entering into lump sum subcontracts and lump sum major material purchase orders) to cooperate fully in furnishing or in making available to the COUNTY from time to time whenever requested in an expeditious manner any and all such records, documents, information, materials, and data.

- K. The COUNTY'S authorized representatives or designees shall have reasonable access to the CMAR'S facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this CONTRACT and shall have adequate and appropriate work space, in order to conduct audits in compliance with this article.
- L. Even after a Change Order has been approved, the CMAR agrees that if the COUNTY later determines the cost and pricing data submitted was inaccurate, incomplete, not current or not in compliance with the terms of the CONTRACT regarding pricing of Change Orders, then an appropriate Contract Amount reduction shall be made. Such post-approval Contract Amount adjustment shall apply to all levels of CMAR'S and/or Subcontractors and to all types of Change Orders specifically including Change Orders – Lump Sum, Change Orders – Unit Price, and Change Orders – Cost Plus.
- M. If an audit inspection or examination by the COUNTY, or its designee, in accordance with this article discloses overpricing or overcharges (of any nature) by the CMAR to the COUNTY in excess of one-half of one percent (.5%) of the total CONTRACT billings, the reasonable actual cost of the COUNTY'S audit shall be reimbursed to the COUNTY by the CMAR. Any adjustments or payments that must be made as a result of any such audit or inspection of the CMAR'S invoices or records and supporting documents shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the COUNTY'S findings to the CMAR.
- N. **Public Records.**
 - 1. The COUNTY is a public agency subject to Chapter 119, Florida Statutes. The CMAR shall comply with Florida's Public Records Law. Specifically, the CMAR shall:
 - a. Keep and maintain public records required by the COUNTY to perform the Work;
 - b. Upon request from the COUNTY, provide the COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this Chapter 119, Florida Statutes, or as otherwise provided by law;

- c. Ensure that public records that are exempt or confidential and exempt from the public records disclosure requirements are not disclosed except as authorized by law for the duration of the CONTRACT term and following completion of this CONTRACT if the CMAR does not transfer the records to the COUNTY; and
- d. Transfer at no cost to the COUNTY all public records in possession of the CMAR or keep and maintain public records required by the COUNTY to perform the Work upon completion of the CONTRACT.
 - (1) If the CMAR transfers all public records to Orange County upon completion of the contract, the CMAR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
 - (2) If the CMAR keeps and maintains public records upon completion of the contract, the CMAR shall meet all applicable requirements for retaining public records.
- 1. All records stored electronically must be provided to the COUNTY upon its request in a format that is compatible with the COUNTY'S information technology systems.
- 2. If the CMAR fails to provide the public records to the COUNTY within a reasonable time, the CMAR may be subject to penalties under section 119.10, Florida Statutes.

IF THE CMAR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CMAR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**400 E. South Street, 2nd Floor
Orlando, FL 32801
407-836-5897**

ProcurementRecords@ocfl.net

Section 33. Equal Opportunity and Nondiscrimination Policy.

- A. Pursuant to Section 17-288, Orange County Code, the COUNTY will not extend public funds or resources in a manner that would encourage, perpetuate or foster discrimination. As such, any and all person(s) doing business with the COUNTY shall recognize and comply with the COUNTY'S "Equal Opportunity and Nondiscrimination Policy," which is intended to assure equal opportunities to every person in securing or holding employment in a field of work or labor for which that person is qualified, regardless of race, religion, sex, color, age, disability or national origin. This policy is enforced by Section 17-314, Orange County Code, and the COUNTY'S relevant

Administrative Regulations. Section 17-290, Orange County Code, memorializes the COUNTY'S commitment to its Equal Opportunity and Nondiscrimination Policy by requiring the following provisions in all COUNTY contracts:

1. The CMAR represents that the CMAR has adopted and shall maintain a policy of nondiscrimination as defined by applicable County ordinance through the term of this CONTRACT.
2. The CMAR agrees that, on written request, the CMAR shall permit reasonable access to all business records or employment, employment advertisement, application forms, and other pertinent data and records, by the county, for the purpose of investigating to ascertain compliance with the nondiscrimination provisions of this CONTRACT; provided, that the CMAR shall not be required to produce for inspection records covering periods of time more than one year prior to the date of this CONTRACT.
3. The CMAR agrees that, if any of the obligations of this CONTRACT are to be performed by Subcontractor(s), the provisions of subsections 1. and 2. of this section shall be incorporated into and become a part of the subcontract.

Section 34. Tobacco Free Campus.

All Orange County operations under the Board of County Commissioners shall be tobacco free. This policy shall apply to parking lots, parks, break areas and worksites. It is also applicable to CMAR and their personnel during contract performance on county-owned property. Tobacco is defined as tobacco products including, but not limited to, cigars, cigarettes, e-cigarettes, pipes, chewing tobacco and snuff. Failure to abide by this policy may result in civil penalties levied under Chapter 386, Florida Statutes, for the violating individual, contract enforcement remedies against the CMAR, or both.

Section 35. Verification of Employment Status.

- A. Prior to the employment of any person performing services under this contract, the CMAR shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of: (a) all employees within the State of Florida that are hired by the CMAR after the execution of the contract who are providing labor under the contract during the contract term; and, (b) all employees within the State of Florida of any of the CMAR'S Subcontractors that are hired by those Subcontractors after the execution of the contract who are providing labor under the contract during the contract term. Please refer to USCIS.gov for more information on this process.
- B. **Only those employees determined eligible to work within the United States shall be employed under the contract.**
- C. Therefore, by submission of a proposal in response to this solicitation, the CMAR confirms that all employees in the above categories will undergo e-verification before performing labor under this contract. The CMAR further confirms its commitment to comply with the requirement by completing the E-Verification certification, contained in this solicitation.

Section 36. Scrutinized Companies.

- A. By executing this CONTRACT, the CMAR certifies that it is eligible to bid on, submit a proposal for, or enter into or renew a contract with the COUNTY for goods or services pursuant to Section 287.135, Florida Statutes.
- B. Specifically, by executing this CONTRACT, the CMAR certifies that:
 - 1. The CMAR is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, and that it is not engaged in a boycott of Israel; and
 - 2. The CMAR is not:
 - a. On the “Scrutinized Companies with Activities in Sudan List” or the “Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List,” created pursuant to Section 215.473, Florida Statutes; or
 - b. Engaged in business operations in Cuba or Syria.
- C. The COUNTY reserves the right to terminate this CONTRACT immediately should the CMAR be found to:
 - 1. Have falsified its certification of eligibility to bid on, submit a proposal for, or enter into or renew a contract with the COUNTY for goods or services pursuant to Section 287.135, Florida Statutes; or
 - 2. Have become ineligible to bid on, submit a proposal for, or enter into or renew a contract with the COUNTY for goods or services pursuant to Section 287.135, Florida Statute subsequent to entering into this CONTRACT with the COUNTY.
- D. If this CONTRACT is terminated by the COUNTY as provided in subparagraph C1. above, the COUNTY reserves the right to pursue any and all available legal remedies against the CMAR, including but not limited to the remedies as described in Section 287.135, Florida Statutes.
- E. If this CONTRACT is terminated by the COUNTY as provided in subparagraph C2. above, the CMAR shall be paid only for the funding-applicable work completed as of the date of the COUNTY’S termination.
- F. No damages, fees, or costs may be assessed against the COUNTY for its termination of the CONTRACT pursuant to this “Scrutinized Companies” provision.

Section 37. Florida Convicted/Suspended/Discriminatory Complaints.

By executing this CONTRACT, the CMAR hereby certifies that it is not on the “Convicted Vendor List” maintained by the Department of Management Services pursuant to Section

287.133(3)(d), Florida Statutes. The CMAR understands that should this certification be falsified, that the COUNTY reserves the right to: (1) Terminate this CONTRACT; and (2) Pursue any of the COUNTY'S available legal rights and remedies.

Section 38. Notices.

Any notice, payment, demand, or communication required or permitted to be delivered or given by the provisions of this CONTRACT shall be deemed to have been effectively delivered or given and received on the date personally delivered to the respective party to whom it is directed, or when deposited by registered or certified mail, with return receipt requested, postage and charges prepaid, and addressed to the parties at the respective addresses set forth below or to such other addresses as the parties may designate to each other in writing from time to time.

To the COUNTY:

Orange County Administration Building
Attention: County Administrator
201 S. Rosalind Avenue, 5th Floor
Orlando, Florida 32801

AND

Orange County Convention Center
North-South Building Improvements
Attention: OCCC Project Administrator
Capital Planning Division
9860 Universal Blvd
Orlando, FL 32819

AND

Orange County Procurement Division
Attention: Carrie Mathes
400 E. South Street, 2nd Floor
Orlando, Florida 32801

To the CMAR:

Attention: _____

Section 39. Regulatory Authority.

In the event that the COUNTY exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws, and ordinances shall be deemed to have occurred pursuant to the COUNTY'S authority as a governmental body and shall not be attributable in any manner to the COUNTY as a party to this CONTRACT.

Section 40. General Terms.

- A. **Headings.** The headings or captions of articles, sections, or subsections used in this CONTRACT are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this CONTRACT.
- B. **Sovereign Immunity.** Nothing contained in this CONTRACT or any Contract Document shall constitute, or be in any way construed to be, a waiver of the COUNTY'S sovereign immunity or the protections and provisions of Section 768.28, Florida Statutes.
- C. **Authority of Signatory.** Each signatory below represents and warrants that they are duly authorized by their respective party to bind that party to the terms and obligations of this CONTRACT.
- D. **Attorneys' Fees and Costs.** With the exception of the indemnification terms of this CONTRACT, the parties shall each bear their own costs, expert fees, attorneys' fees, and other fees incurred in connection with this CONTRACT or the PROJECT, as well as for any or any legal proceeding(s) that may arise either directly, or indirectly, from this CONTRACT.
- E. **Governing Law.** This CONTRACT and the PROJECT, and any and all actions directly or indirectly associated with this CONTRACT or the PROJECT, shall be governed by and construed in accordance with the internal laws of the State of Florida, without reference to any conflicts of law provisions.
- F. **Venue.** Each party hereby submits to the exclusive jurisdiction of, and waives any venue or other objection against, the Ninth Circuit Court in and for Orange County, Florida, for any legal proceeding(s) that may arise either directly, or indirectly, from this CONTRACT or the PROJECT. Should any federal claims arise for which the courts of the State of Florida lack jurisdiction, the parties hereby agree that venue for those actions shall be in the Orlando Division of the U.S. Middle District of Florida.
- G. **Jury Waiver.** Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any right that party does or might have to a trial by jury in any legal proceeding(s) that may arise either directly, or indirectly, from this CONTRACT or the PROJECT.
- H. **Representations and Construction.** Each party represents that they have had the opportunity to consult with an attorney, and have carefully read and understand the scope and effect of the provisions of this CONTRACT. Neither party has relied upon any representations or statements made by the other party hereto which are not specifically set forth in this CONTRACT or the Contract Documents, and that this CONTRACT is not to be construed against any party as it were the drafter of this CONTRACT.
- I. **Remedies.** No remedy conferred upon any party in this CONTRACT is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy: (1) provided for in this CONTRACT; and (2) now or later existing at law or at equity. No single or partial exercise by any party of

any right, power, or remedy provided to that party by this CONTRACT shall preclude any other or further exercise of any such rights, powers, or remedies. The rights and remedies of the parties provided for under this CONTRACT are in addition to any other rights and remedies provided by law.

- J. **Successors and Assigns.** The COUNTY and the CMAR each binds itself and its partners, successors, executors, administrators and assigns to the other party of this CONTRACT and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this CONTRACT. Additionally, the parties deem the services to be rendered pursuant to this CONTRACT to be personal in nature. As such, neither party shall assign, sublet, convey, or transfer its interest in this CONTRACT without the written consent of the other, which consent shall be in the sole determination of the party with the right to consent.
- K. **Survivorship.** Those provisions which by their nature are intended to survive the expiration, cancellation, or termination of this CONTRACT, including, by way of example only, the indemnification and public records provisions, shall survive the expiration, cancellation, or termination of this CONTRACT.
- L. **Severability.** The provisions of this CONTRACT are declared by the parties to be severable. However, the material provisions of this CONTRACT are dependent upon one another, and such interdependencies a material inducement for the parties to enter into this CONTRACT. Therefore, should any material term, provision, covenant, or condition of this CONTRACT be held invalid or unenforceable by a court of competent jurisdiction, the party protected or benefited by such term, provision, covenant, or condition may demand that the parties negotiate such reasonable alternate contract language or provisions as may be necessary either to restore the protected or benefited party to its previous position or otherwise mitigate the loss of protection or benefit resulting from holding.
- M. **Third Party Beneficiaries.** Nothing in this CONTRACT, express or implied, is intended to, or shall confer, upon any person, other than the parties and their respective successors and permitted assigns, any legal or equitable right, benefit or remedy of any nature under or by reason of this CONTRACT.
- N. **Waiver.** Neither the COUNTY'S review, approval, or acceptance of – nor payment for – the Work required under this CONTRACT shall be construed to operate as a waiver of any rights under this CONTRACT or of any cause of action arising out of the performance of this CONTRACT. No delay or failure on the part of any party to this CONTRACT to exercise any right or remedy accruing to such party upon the occurrence of an event of violation shall affect any such right or remedy, be held to be an abandonment of any such right or remedy, or preclude such party from the exercise of any such right or remedy at any time during the continuance of any event of violation. No waiver of a single event of violation shall be deemed to be a waiver of any subsequent event of violation.
- O. **Price Adjustments.** No price adjustments shall be made on this CONTRACT to the proposal price of any products or materials including but not limited to gasoline, diesel or other fuels, and bituminous materials, asphalt, steel, concrete and any other

materials due to fluctuations in market prices, changes in Suppliers or any other reason.

P. Patents and Royalties.

1. Unless otherwise provided, the Proposer shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of the CONTRACT.
2. The CMAR, without exception, shall indemnify and hold harmless the COUNTY and its employees from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured or supplied by the CMAR.
3. In the event of any Claim against the COUNTY of copyright or patent infringement, the COUNTY shall promptly provide written notification to the CMAR. If such a Claim is made, the CMAR shall use its best efforts to promptly purchase for the COUNTY any infringing products or services or procure a license, at no cost to the COUNTY, which shall allow continued use of the service or product. If none of the alternatives are reasonably available, the COUNTY agrees to return the article on request to the CMAR and receive reimbursement, if any, as may be determined by a court of competent jurisdiction.

Q. Ethics.

1. The CMAR warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CMAR, to solicit or secure this CONTRACT and that they have not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the CMAR any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of this CONTRACT.
2. For the breach or violation of this provision, the COUNTY shall have the right to terminate this CONTRACT at its sole discretion, without liability, and to deduct from the Contract Price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

IN WITNESS HEREOF, the parties have executed this CONTRACT on the dates set forth below.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

Carrie Mathes, MPA, CFCM, CPPO, C.P.M.

Date

[CMAR]

By: _____

(Signature)

(Printed)

(Official Title)

Date

RFP Y19-815-JS

ADDENDUM NO. 11

ATTACHMENT 5: CONTRACT EXHIBITS

EXHIBIT A

CONSTRUCTION MANAGER AT RISK SERVICES FOR THE ORANGE COUNTY CONVENTION CENTER PHASE V MULTI-PURPOSE VENUE AND GRAND CONCOURSE IMPROVEMENTS

SCOPE OF SERVICES

The Construction Manager at Risk (CMAR) shall provide Construction Management Services for the Orange County Convention Center (OCCC) Phase V Multi-purpose Venue and Grand Concourse Improvements.

BACKGROUND AND PROJECT OVERVIEW

For additional information about the existing facilities of OCCC, demographics, and any other major related facts, proposers should go to the OCCC website at: www.occc.net.

The Orange County Board of County Commissioners is a public authority of Orange County, Florida. The County owns and operates the Orange County Convention Center. Orange County is currently undertaking the development of approximately 850,000 square feet of buildout improvements to Phase V of the Orange County Convention Center, also known as the North/South Building.

The preliminary program for the potential improvements shall be distributed between the east and west sides of the North/South building. The eastern side of the facility shall consist of a 200,000 square foot column-free Multi-purpose Venue with associated supporting lobby, concourses, docks, restrooms, and service corridors. The western side of the building shall consist of a grand concourse improvement to include 60,000 square feet of meeting room program, a flexible 80,000 square foot ballroom, restrooms and service corridors. Each area is designed with appropriate amount of circulation, services, back of house, and utility spaces. The project also includes public improvements in and around the project site, including an enhanced streetscape, utilities relocation, and a walkway connecting North and South Buildings. **All work shall be coordinated with convention activity and shall not impact these activities.**

The Orange County Convention Center conducted a Campus Master Plan (2 Volumes) that resulted in numerous recommended improvement projects, which were categorized as Campus, West Building and North-South Building enhancements. The Multi-purpose Venue and the Grand Concourse are two of these recommended projects collectively known as North-South Building Improvements. These projects within this solicitation are based upon concepts drawings, basic site and floor plan layouts, conceptual renderings,

and documents within the Campus Master Plan, which can be made available through public records request.

The Capital Planning section of the Orange County Convention Center is the User Group requesting this work and, therefore is named as the Owner going forward in this Scope of Services document. The Owner Project Team consists of the Capital Planning Division, Risk Management Division and the AECOM Program Manager Representative Team.

THE FOLLOWING SERVICES SHALL BE PROVIDED BY THE CMAR:

The CMAR shall provide Construction Services for the above referenced project. Depending on the scope, composition and complexity of the project, these construction services, may include, but not necessarily limited to, Architectural, Mechanical, Electrical, Plumbing, Fire Protection, Civil, Survey, Low Voltage, Cost Estimator, and Structural as required in the execution of the Construction Documents by the CMAR. These services are described herein, as required per project needs.

The negotiated Guaranteed Maximum Price (GMP) fees and task-hour requirements shall be presented utilizing forms provided by the County. The tasks included in this Scope of Services can be generally grouped into the following primary categories:

- General Responsibilities
- Design Assist
- Pre-Construction
- Construction
- Post Construction

This Scope of Services addresses each task within these elements and serves to further define specific project requirements. The CMAR shall provide construction services in a timely manner in order to allow sufficient time to complete construction by August 2023. The construction contract shall be delivered as a “Construction Manager at Risk with a GMP”. The Contractor shall be available to provide cost estimates for comparison and value engineering concepts for review. Construction is projected to start in July 2020; however, work can only progress in the facility when specifically authorized in writing by the Owner.

The OCCC currently has and/or will have contractual commitments to conventions, shows and exhibits, therefore the CMAR in conjunction with the A/E Design Team shall manage and execute the design of the project to account for schedule and sequence of the work such that minimal to no impact shall result to ongoing business functions of the facility or scheduled shows and exhibits.

The Scope of Services to be provided under this contract will include complete pre-construction, construction and post construction services for all phases of the project, subject to the direction of the Owner. Further details of the categories to be provided are as follows:

1. GENERAL RESPONSIBILITIES

1.1 The CMAR shall be responsible for the bid, award and day-to-day management of all Trade/Construction contracts for its contracted project. The CMAR shall provide problem solving, quality assurance, scheduling, general and specific coordination of activities and trades, contract administration, scope and budget management, and management of construction at the contract level. The CMAR shall obtain all permits required for construction with the assistance of the A/E Design Team. The County will pay for all permit application fees and review fees required to process construction documents and obtain approval from the Agency Having Jurisdiction (AHJ) over the project. The CMAR shall maintain on-site a well-qualified Senior Project Manager and Project Manager.

- The CMAR shall perform design assist, cost estimating, project scheduling, value engineering, and constructability reviews. During the Enabling Work and Construction Phase, the CMAR's scope shall include management of all aspects of construction, coordination of all agencies having jurisdiction over the contracted project, including but not limited to governing municipalities' Building Departments, systems commissioning, claims avoidance, safety monitoring and project closeout and post construction warranty services, all within a GMP.

1.2 **Communication and General Oversight.** The CMAR shall communicate with all project participants during all phases of enabling project(s), design, bidding, permitting, pre-construction, construction, and other project activities to include the following:

- Communicate daily or periodically with the County Project Manager, Capital Planning Manager, and the Owner Project Team as needed. The CMAR shall submit a report daily, weekly, and

monthly on concerns related to design and construction efforts, activities, costs, scope and schedule.

- Utilize the County's adopted e-Builder™ program for all communications between the A/E Design Team, and other members of Owner Project Team.
- Assist in facilitating workshops and key stakeholder meetings with the Owner. These meetings will be held to determine requirements for the Project as required.

- 1.3. **Owner Direct Purchase Program.** The Owner may utilize the Owner Direct Purchase program (ODP) to the extent reasonable and practical for this Project including ODP of GMP subcontractor bid packages if in the best interest of the Owner. Particular emphasis will be placed on the selection, purchase, and delivery of specific equipment and material purchases to facilitate the construction schedule. The CMAR, as a condition of this scope of services, shall review the necessary technical documentation to support the Owner Project Team as required to facilitate the purchase of equipment and material.

Owner Furnished Material. The Owner may furnish material directly to the CMAR for delivery, storage and installation. The CMAR shall be responsible for coordinating the delivery, storage and installation with all subcontractors and other vendors, ensuring that all infrastructure needed by the Owner furnished material is in place in a timely manner. The CMAR, as a condition of this scope of services, shall review the necessary technical documentation to support the Owner Project Team as required to facilitate the purchase of equipment and material. The CMAR shall warranty installation for a period consistent with contractual requirements and specifications. This material will be noted on the drawings and specifications.

- 1.4. **Project Status Meetings.** The CMAR shall ensure the appropriate members of the CMAR attend weekly meetings with the Owner Project Team and staff to discuss project progress, schedule and status, technical issues, cost concerns, potential changes and conflicts, and upcoming events and activities. The purpose of these meetings is to maintain clear communication with the County and the Owner Project Team.

- 1.5. **Construction Project Schedule.** The CMAR shall prepare and submit a detailed construction schedule prior to the Notice to Proceed meeting for completion of the project identifying major tasks, their duration and task relationships. All significant events shall be identified as milestones on the schedule. This schedule shall utilize the Orange County Standard Project

Schedule format on Primavera P6. The Project Schedule is the schedule of activities, in a Work Breakdown Structure format (WBS), by which all activity progress in each project are measured. The schedule shall identify a reasonable critical path. Unless otherwise agreed, all schedules shall be constructed using Primavera P6.

- 1.6. **Utility Coordination.** The CMAR shall coordinate with all utility providers within the project limits. The CMAR shall participate in on-going utility coordination efforts to ensure field activity goes according to plan. The resolution to existing utility conflicts and limitations shall be presented in an “Enabling Design and Construction package”. These plans are designated the Enabling Projects. The A/E Design Team will determine any capacity limitations for development, including electric, gas, potable water, reclaimed water, and chilled water. Resolution of any utility capacity limitations and/or conflicts will be designed in the Enabling Project Package for execution before construction begins on the actual Phase V Improvements. The CMAR shall bid, negotiate and execute these enabling plans to facilitate building construction and expedite the schedule.
- 1.7. **Quality Assurance/Quality Control (QA/QC).** The CMAR shall submit a quality assurance/quality control program for review and approval as the QA/QC Plan deliverable. The CMAR shall designate appropriate staff to conduct QA/QC reviews of all work products. These reviews shall be performed for all work products submitted to the County for review or use. Each submittal shall include a Project QA/QC Form provided by the Owner (CP Form 301F) or suitable alternative. The CMAR shall be directly responsible for the quality of its work and/or work product. Quality evaluations/determinations by others will in no way invalidate the contractor’s responsibility to produce the specified quality.
- 1.8. **Safety and Site Security Plan.** The CMAR shall develop and submit a site Safety Plan that will include maintaining safety of workers, visitors, subcontractors, and the public from any dangers associated with the construction site. Further, the CMAR shall submit a Site Security Plan designed to maintain control over the site during construction to insure against any loss or damage. These plans shall constitute the Site Safety and Security Plan deliverable. The Owner Project Team will review and approve these plans prior to the start of construction.
- 1.9. **Asbestos Free Material.** The CMAR shall prepare the certified written and notarized statement that warrants the project was constructed with asbestos free materials. Such statement shall be submitted with the final payment request.

- 1.10. **Project Management and Supervision.** The CMAR shall provide full time, on-site representatives during design assist, pre-construction, bidding, permitting, and construction phases that shall coordinate and aid in the design, construction, start-up and service contracts entered into by Orange County. The Senior Project Manager and Project Manager shall maintain an on-site presence for the duration of the project.
- 1.11. **Building Information Modelling (BIM).** BIM shall be a required element from the CMAR and the CMAR's subcontractors. The three dimensional model shall be used to coordinate building elements to minimize conflicts in the field and to provide a common platform to optimize installation. Should the CMAR identify any conflicts, these conflict shall be immediately brought to the attention of the Owner Project Team at the same time they become known to CMAR. The A/E Design Team will participate in these coordination meetings with the CMAR and subcontractors to identify and resolve installation conflicts during the design and construction phases. The CMAR shall develop and maintain this model. As part of the close out package, the CMAR shall submit the complete final model in as-built condition. The A/E Design Team will certify that the final model is free of conflicts prior to construction.
- 1.12. **Deliverables.** Work to be completed under this section by the CMAR shall require the following items to be delivered and accepted by the Owner (as outlined in the 1.6 Construction Project Schedule):
- BIM Model
 - QA/QC Plan
 - Building, Water Management and all other Permits
 - Safety and Site Security Plan
 - Primavera Project Schedule
 - Asbestos Free Certification
 - Review of Owner Direct Purchase Program technical documents
- 1.14 **Pay Task.** Work to be completed under this section by the CMAR will be paid for under the following Pay Tasks as listed on the Activity and Fee Summary:
- BIM Model
 - QA/QC Plan
 - Building, Water Management and all other Permits
 - Safety and Site Security Plan
 - Primavera Project Schedule

- Asbestos Free Certification
- Review of Owner Direct Purchase Program technical documents

2. DESIGN ASSIST

The CMAR shall provide Design Assist services for this project. These services shall provide insight into the current costs, the constructability, and relative benefits of design elements. These services shall be provided at meetings with the A/E Design and Owner Project Team, in reports generated by the CMAR and reviews of documents and specifications. Each submittal shall be accompanied by documentation indicating that proper QA/QC procedures have been applied.

- 2.1 **Cost Estimating.** The Owner is utilizing a Design to Budget approach for The Phase V Improvements. As such, at the completion of each phase under the CMAR's contracts to include Schematic Design (SD), Design Development (DD) phases, and 90% Design Drawings, the CMAR shall submit a project cost estimate and reconcile it with the Owner's Project Team Estimate. Cost estimates will be reviewed and validated by the Owner Project Team and the A/E Design Team during the plans review phase. The CMAR shall submit detailed cost estimates for each phase of the 30%, 60% and 90% design drawings. These itemized estimates shall follow the required estimate format as detailed by Construction Specifications Institute (CSI) index.

Note: If no estimate is within +/- 10 % of the construction estimate, the CMAR shall prepare a revised estimate, re-evaluate the construction plans, evaluate the bids and submit a report that summarizes this information. This report shall include recommendations for revisions to the construction documents, if needed. This report shall be prepared at no cost to the County.

- 2.2 **Value Engineering.** Value Engineering (VE) is to establish the best-cost balance in relation to the targeted/intended overall performance of the finalized project. VE exercises shall be conducted at the end of each design phase to incorporate ideas to improve the construction and/or performance of the building. The VE Reviews shall be conducted through a standardized approach endorsed by the Society of American Value Engineers (SAVE). The CMAR shall participate in each scheduled VE session. Following each VE session the CMAR shall submit a report which itemizes the VE session results of all evaluations into a prioritized listing of alternatives for discussion.

VE sessions shall be as scheduled below. Actual dates shall be established by agreement between the A/E Design Team and County. The approximate schedule for these exercises is noted below:

- Late Schematic Design Phase (Approximate 30% Level)
 - Evaluation of Alternatives
 - Decisions

- Middle to late Design Development Phase (Approximate 60% Level)
 - Design Review
 - Alternative Technical Solutions
 - Cost Evaluations
 - Priorities and Trade-offs (if necessary)

Modifications or changes resulting from value engineering and design review sessions must be incorporated into design documents before approval is given to proceed to design development phase and cost evaluations.

- 2.3 **Constructability Reviews.** Throughout the design development process, constructability reviews shall be conducted by the CMAR to confirm that the design addresses key construction phase issues, including technical feasibility, claims avoidance and quality. The constructability comments shall be provided to the Owner Project Team, who is responsible for confirming that they are addressed and/or resolved by the A/E Design Team. The CMAR shall make recommendations and submit a report upon the general constructability of the design; construction documents that appear to be ambiguous, incomplete, excessively restrictive, defective or incorrect; designs and specifications not in compliance with codes and standards; the use of alternative materials and/or means or methods of construction; and other economies in design or construction.
- 2.4 **LEED Design.** The CMAR shall assist the Owner Project Team and A/E Design Team with the design of the project for LEED Gold certification. The CMAR shall attend coordination meetings and participate in applying “Green Design Principles” to the overall project design. The CMAR shall manage all aspects of the requirements to achieve LEED Gold in accordance with construction documents and specifications.
- 2.5 **Phasing and Logistics Plan.** The CMAR shall prepare and submit a phasing plan for the construction of the proposed improvements. This plan shall include limits of construction, fencing, screening, schedule, staging,

logistics and proposed trailer locations. This plan will be reviewed and approved by the Owner Project Team in conjunction with the A/E Design Team.

2.6 **Deliverables.** Work to be completed under this section by the CMAR shall require the following items to be delivered and accepted by the Owner (as outlined in the 1.6 Construction Project Schedule):

- Updated Project Schedule
- Constructability Review Report
- 30%, 60% and 90% Construction Cost Estimate
- 30%, 60% Value Engineering Report
- Phasing and Logistics Plan

2.7 **Pay Tasks.** Work to be completed under this section by the CMAR shall be paid for under the following Pay Tasks as listed on the Activity and Fee Summary:

- Updated Project Schedule
- Constructability Review Report
- 30%, 60% and 90% Construction Cost Estimate
- 30%, 60% Value Engineering Report
- Phasing and Logistics Plan

3. PRECONSTRUCTION

3.1 **Project Scheduling.** The CMAR shall submit an updated project schedule with each updated design submittal. The Project Schedule is the schedule of activities, in a Work Breakdown Structure format (WBS), by which all activity progress in the project is measured. The schedule shall identify a reasonable critical path. This schedule shall incorporate all significant milestones from the A/E Design Team schedule in the overall Master Project. All significant events shall be identified as milestones on the schedule. This schedule shall utilize the Orange County Standard Project Schedule format on Primavera P6.

3.2 **Pre-Construction Meeting.** The CMAR shall hold Pre-Construction meetings for subcontractors and provide answers regarding questions from the Subcontractors. The Owner Project Team and the A/E Team will be invited to each of these meetings. The number and size of these meetings shall be determined by the CMAR in conjunction with the A/E Team and the Owner Project Team. The CMAR shall submit meeting minutes within 48 hours of each meeting detailing the discussion and agreements.

- 3.3 **Construction Plans.** The CMAR shall assist the Owner Project Team during all phases of design development for the project, including monitoring compliance with design guidelines and criteria by reviewing all design submittals for constructability, operations and maintainability, analyzing life-cycle costs and performing value engineering on all stages of design development. The CMAR shall submit a report documenting the review and concurrence with civil, architectural, mechanical, electrical, plumbing and structural system design. The CMAR's recommendations shall include information, data, cost estimates, and documentation, as necessary, which the CMAR shall develop, and OCCC may use as a basis for evaluating the acceptability of each recommendation. Changes recommended by the CMAR will not be deemed final and part of the contract until the A/E Firm of Record and the Owner Project Team accept these recommendations.
- 3.4 **Agency Coordination.** The CMAR shall notify the Owner's Program Management Team of all meetings with regulatory agencies to coordinate attendance by County staff.
- 3.5 **Agency Field Review.** The CMAR, shall conduct and coordinate field investigations as necessary with County staff and with the appropriate regulatory agencies.
- 3.6 **Deferred Permit Preparation.** The CMAR shall prepare and submit permit applications, construction drawings, specifications, and related support documentation for all **deferred** permits and approval requirements for the project. Deferred permits shall include fire suppression and alarm systems, health department and any other permits that cannot be obtained prior to complete design. Copies of all permit application shall be provided to the Owner for review and signature prior to submittal.
- 3.7 **Site Preparation.** The CMAR shall establish their physical presence on site, including trailers, facilities, utilities, waste removal and parking as deemed necessary during negotiations. A suitable location shall be identified on site for these facilities. A location for subcontractors' trailers, laydown and staging facilities will be identified during the design process by the Owner Project Team.
- 3.8 **Guaranteed Maximum Price** Once the construction documents have been certified as 90% complete, the CMAR shall establish a **Guaranteed Maximum Price** (GMP) for which the project can be constructed. This GMP shall be all inclusive of general conditions, fees,

profit, labor, materials, logistics, taxes, storage, transportation, insurance, site maintenance and any other cost needed to build the project. The CMAR shall account for all current conditions, escalation costs and any other factors that may impact the price. The CMAR shall submit a warranty letter at this time stating that the CMAR has completed the constructability check and warrants the constructability and bid-ability of the Construction Documents. At this time, the CMAR assumes responsibility for the completeness of the construction documents. The Owner anticipates that the Contractor Contingency will not exceed 10% of the GMP.

A separate Allowance Fund shall be established for any undefined scope of work. These allowances shall be for scopes that will be installed as part of the project, but will not be specifically described by the 100% Design drawings. These allowances shall be inclusive of all labor, material, fees, taxes, freight and any other costs associated with the scope. Any unused Allowance funds shall be returned to the Owner.

A Contractor Contingency amount shall be set aside for the contractor's use. The Contractor Contingency shall be used for unpredictable changes in the scope of the work and only at the discretion of the Owner. Any funds remaining in the Contractor Contingency upon Final Completion of the Project will be divided twenty percent to the Contractor and eighty percent to the Owner based upon the Contractor achieving all performance goals. Upon the earlier termination of the Contract, all Contractor Contingency remaining shall be returned to the Owner.

Any incentive plan involving the sharing of the residual Contractor Contingency shall be based on the Contractor completing the project on time and within the budget, achieving or exceeding the M/WBE participation goal and maintaining throughout its performance of the Contract a satisfactory safety performance for this type of construction.

The amount of any funds remaining in the Contractor Contingency shall be confirmed by the written certification of the Owner at the time of the Owner's final payment under this Contract. Eighty (80%) percent of any funds remaining in the Contractor Contingency after this written certification shall be distributed to the Owner.

Of the funds remaining after the eighty (80%) percent distribution to the Owner:

Thirty (30%) percent shall be distributed to the Contractor if the Business Development Division certifies in writing that the Contractor has achieved

the participation goal for Minority/Women Business Enterprise set forth in the Proposal. If this condition has not been met at the time of the written certification of the Owner referred to above, this thirty percent of such remaining funds shall be released to the Owner. If the Contractor exceeds the participation goal for Minority/Women Business Enterprise set forth in the proposal, the distribution shall increase to fifty (50%) percent of the remaining funds. In this case, additional cost sharing shall be divided equally among the remaining goals.

Thirty-five (35%) percent shall be distributed to the Contractor if the Contractor's safety record for the performance of all Work under this Contract meets standards proposed by the Contractor and accepted by the Owner as part of the Change Order fixing the Guaranteed Maximum Price. If this condition has not been met at the time of the written certification of the Owner referred to above, this thirty-five percent of such remaining funds shall be released to the Owner.

Thirty-five (35%) percent shall be distributed to the Contractor if all of the following conditions are met:

1. The Contractor has achieved substantial completion of the Project by or before the date required, achieved Final Completion of the Project by or before the date required and achieved Final Completion of the overall Project by or before the Contract Completion Date.
2. The Contractor uses no more than fifty (50%) percent of the amount identified as the Contractor Contingency in the Change Order fixing the Guaranteed Maximum Price.
3. The Project, as completed by the Contractor, achieves a LEED GOLD or better LEED rating.

If any of the preceding conditions have not been met at the time of the written certification of the Owner referred to above, this thirty-five (35%) percent of such remaining funds shall be released to the Owner.

There shall be no fee associated with any funds spent on the Contractor Contingency. Fee will be allowed on changes associated with Owner Contingency.

An Owner Contingency shall be established for Owner directed changes and other conditions at the discretion of the Owner. This contingency can only be used with the explicit approval of the Owner Project Team. The Owner Project Team may direct the CMAR to use this contingency for specific additional improvements as required by the Project.

3.9 **Deliverables.** Work to be completed under this section by the CMAR shall require the following items to be delivered and accepted by the Owner(as outlined in the 1.6 Construction Project Schedule):

- Guaranteed Maximum Price with a warranty letter
- Deferred Permits
- Pre-Construction Meeting Minutes
- Construction Plan Report
- Updated Project Schedule

3.10 **Pay Tasks.** Work to be completed under this section by the CMAR shall be paid for under the following Pay Tasks as listed on the Activity and Fee Summary:

- Guaranteed Maximum Price with a warranty letter
- Deferred Permits
- Pre-Construction Meeting Minutes
- Construction Plan Report
- Updated Project Schedule

4. CONSTRUCTION

4.1 **CMAR Responsibilities.** The CMAR's responsibility during construction is all-inclusive. The CMAR shall administer, coordinate, schedule, obtain, contract, inspect, control, arrange, supervise, manage and/or otherwise provide and perform all work in a manner that is in full accordance with the requirements of the Contract Documents. The CMAR shall be accountable for the quality control of all the work provided and/or performed by his personnel or by trade contractors, subcontractors or others.

4.2 **Coordination.** The CMAR shall be responsible for full coordination between portions of the work provided and/or performed by trade contractors, subcontractors and others. The CMAR shall promptly address and resolve any conflicts, gaps or uncertainties that exist in the Contract Documents or which occur during the work, as well as for confirming that the work of all the trade contractors, subcontractors or others is clearly understood, fully coordinated and results in the work complying with the requirements of the Contract Documents in all respects and to the fullest extent as governed by the agreement between the CMAR and Orange County.

4.3 **Best Practices.** The CMAR shall establish, implement and maintain, throughout the entire term of the Contract, practices that demonstrate the status of the planned and actual work is progressing in a proper, orderly, harmonious, well documented, well-coordinated manner, without conflict, interruption, disruption or delay in the scheduled prosecution, execution and completion of the required work.

4.4 **Enabling Projects.** Based upon the results of the design analysis, one or more enabling projects may be required prior to proceeding to full scale design development. These enabling projects may include selective demolition, modification of traffic and pedestrian routes, temporary facilities for truck and bus loading zones and/or relocation of kitchen facilities and utilities that are in conflict with proposed improvements. **All work shall be coordinated with convention activity and shall not impact these on-going activities.** This would include development of standalone construction documents not limited to drawings and specifications that can be permitted and released for construction. The CMAR shall participate in these design discussions providing insight into construction means and methods and advising the Owner Project Team of alternatives regarding the Enabling Project. The CMAR shall submit a report detailing its findings and recommendations for the Enabling Project.

Once the documents for the Enabling Projects have been completed, the CMAR shall submit them to the Building Department for review and approval.

The 100% Enabling Projects Construction Documents will be negotiated with the CMAR and issued as a separate purchase order, in accordance with Orange County Procurement Policies. Once permits have been issued for construction, a Notice to Proceed will be issued and construction may commence.

4.5 **Bid Process.** The CMAR shall arrange, coordinate and administer the bidding process of the project as requested by the County. The CMAR shall contract with the subcontractors for specific scopes of work who shall construct the project. It is anticipated that the entire project shall be bid as one package but modifications can be made to accommodate the needs of the CMAR.

4.5.1 **Pre-Bid Meeting.** The CMAR shall establish pre-bid meetings after requesting bids from subcontractors. These pre-bid meetings shall be held at the Orange County Convention Center at a prescribed

location and scheduled with the Owner Project Team and County's Procurement Division.

4.5.2 **Addenda.** The CMAR shall coordinate with the A/E Design Team to develop responses to questions from the prospective subcontractors that may include addenda as required to interpret, clarify or expand the construction documents. The CMAR Team will prepare addenda in a manner that allows timely reception of addenda by all IFB interested parties.

4.5.3 **Bid Review.** The Owner Project Team will review the bids received by the CMAR and make any recommendation for additives or alternates, as applicable. The CMAR shall submit a final bid tabulation of all bids received for all trades upon completion of each bidding sequence.

4.5.4 **Progress Meetings.** The CMAR shall hold weekly construction progress meetings with, or in the absence of, the Owner Project Team to discuss project progress and status, technical issues, and upcoming events and activities. The purpose of these meetings is to identify construction progress, discuss issues that arise in the field, quality of the work, potential and actual claims and disputes, expedite critical RFIs and submittals, and insure that construction is being performed safely. The CMAR shall submit Two Week Look Ahead Schedule updates at each meeting.

4.6 **Daily and Monthly Construction Reports.** The CMAR shall submit and record in e-Builder Daily Construction Reports within 48 hours. These reports shall contain information on construction activities, manpower, equipment, materials, deliveries, safety, and other pertinent information. Each construction daily report shall include:

- The date, time on and off site, weather conditions and temperature
- General discussion of the daily work and progress, including a description of the activities completed and started and an assessment of the work accomplished by location
- Project accidents, deficiencies, changes or corrective action to maintain schedule
- Damage to existing facilities
- Project delays, reason for delay and corrective action to maintain schedule
- Record when Contractor is on site, number of workers by craft and list of equipment items by type
- Construction testing activities, results, and observations

- Where possible and appropriate, the quantities of work put into place
- Visitor names and purpose of site visit
- Description of potential disputes between the Contractor and County and/or A/E Design Team
- Description of any direction or corrective action given to the Contractor
- Description of non-conforming work
- Detailed record of materials, equipment and number of works by craft used in connection with extra work, or in situations where there is reason to suspect a request for change order or claim maybe submitted by the Contractor.
- Photographic documentation and associated log with description. These photographs should be capturing daily project progress, overall site conditions, job accidents, deficiencies noted, deviations or changes from drawings or technical specifications, items that could cause delays (i.e. weather conditions, unforeseen conditions) and staged materials/equipment.
- Incident Reports (if applicable)

Monthly reports shall be submitted to the Owner Project Team by the 1st of every month, detailing construction progress during the month, costs, safety remarks, schedule milestones, manpower and upcoming events. Each monthly report shall be recorded in e-Builder.

4.7 Contractors' Submittals. The A/E Design Team in conjunction with the Owner Project Team, will establish procedures for review of shop drawings, mockups, samples and other submittals, and assist in expediting approval process. The A/E Design Team will review all submittals on e-Builder concerning product data, shop drawings and other submissions, as required for general conformance with design concept of this Project and the Contract Documents in consultation with the Owner. All submittals will be returned to the CMAR and all responses shall also be recorded on e-Builder. All approved submittals shall bear the A/E Design Team's stamp and be delivered to the Owner Project Team at Substantial Completion. The Owner Project Team will manage and monitor at all times the Submittal log in conjunction with the A/E Design Team. Status of the log will be reviewed by the Owner Project Team as a part of each Construction Progress Meeting. The goal for the return of submittals shall be within fourteen (14) calendar days. Larger, more complicated submittals will require more time accordingly.

- 4.8 **Design Clarification Responses:** The CMAR shall submit all Requests for Information (RFI) on e-Builder to request technical interpretation of the plans/drawings and specifications. The A/E Team will evaluate requested deviation from the approved design or specification; will review and respond to RFIs. Any supplementary sketches will be provided for clarification of construction plans and assist in resolving actual field conditions encountered via e-Builder. The Owner Project Team will monitor and manage at all times a RFI log of all RFI's submitted by the Contractor in conjunction with the A/E Design Team. Status of RFI log will be reviewed as part of each Project Progress Meeting. The goal for the return of RFI's will be seven (7) calendar days.
- 4.9 **Field Orders, Change Order Requests and Claims.** The A/E Design Team will review the technical interpretations of the Contract Documents, evaluate requested deviations from the approved design drawings or specifications. The Owner Project Team will issue Field Orders as necessary. The A/E Design Team will review all Contractor's Change Order Requests and Claims, and recommend an appropriate cost and course of action within ten (10) calendar days. The Owner Project Team will maintain a log of all Change Order Requests and Claims. Status of the log will be reviewed as part of each Construction Progress Meeting.
- 4.10 **LEED Reports.** The CMAR shall submit any interim reports to the LEED Coordinator to fulfill requirements for LEED Gold Certification. These reports shall be detailed in coordination efforts with the A/E Design Team, and the Owner Project Team during the design phase of the project.
- 4.11 **Final Construction Plans.** The A/E Design Team will provide signed and sealed copies of the updated final construction plans. The number of signed and sealed copies will be determined by the needs of the permitting agency as well as the needs of the Owner Project Team.
- 4.12 **Application for Payment.** The Owner Project Team will establish a procedure for processing of the progress payment applications; the CMAR shall prepare a pencil requisition (draft application for payment) and shall review it with the A/E Design Team and the Owner Project Team. The A/E Design Team will make recommendations to the Owner for payment. Based on the project progress site visit observations, and on the evaluation of the invoice requests, the Owner Project Team will evaluate the appropriate amount to be paid to the Contractor(s) for the current stage of project as reviewed by the A/E Design Team. The CMAR shall submit the notarized invoice to the Owner Project Team for payment within five (5) business days of receipt in accordance with FS 218.735,

Local Government Prompt Payment Act. Such certificate for payment will constitute a representation to the Owner that the quantity of the work has been performed in accordance with the Contract Documents. During Project Close-out, the Owner Project Team will assist in negotiating the final payment for the project with justification upon which final settlement and termination of Contract can be based upon.

4.13 Deliverables. Work to be completed under this section by the CMAR shall require the following items to be delivered and accepted by the Owner (as outlined in the 1.6 Construction Project Schedule):

- Daily Reports
- Monthly Reports
- Submittals
- RFIs
- Enabling Project Report
- Enabling Project Permit
- Progress Meeting 2-week Look Ahead Schedule
- Progress Meeting Minutes
- LEED Reports
- Bid Tabulation

4.14 Pay Tasks. Work to be completed under this section by the CMAR shall be paid for under the following Pay Tasks as listed on the Activity and Fee Summary:

- Daily Reports
- Monthly Reports
- Submittals
- RFIs
- Enabling Project Report
- Enabling Project Permit
- Progress Meeting 2-week Look Ahead Schedule
- Progress Meeting Minutes
- LEED Reports
- Bid Tabulation

5 POST CONSTRUCTION

5.1 **Final Close-out.** The CMAR shall submit project close-out documents for acceptance by the County. In coordination with the A/E Design Team, the

Owner Project Team will develop and implement procedures for orderly completion of punch-list items (rolling punch list), checkout of utilities, operational systems and equipment, and initial startup and testing. The CMAR shall submit the punchlist in accordance with these procedures.

- 5.2 **Substantial Completion and Final Completion.** Substantial Completion is when a designated portion of the project is sufficiently complete, in accordance with the construction contract documents, so that the Owner may use or occupy the building project or designated portion thereof for the intended purpose. The A/E Design Team will issue certification of Substantial and Final Completion. The Owner Project Team will ensure the necessary signed and sealed documents needed for partial clearances and certifications of completion are provided to the appropriate regulatory agency.
- 5.3 **Operation and Maintenance (O&M) Manual.** The CMAR shall submit to the Owner Project Team documents for the operation and maintenance of the completed facility. The CMAR shall submit all O & M Manuals in conformance with project specifications and contract language.
- 5.4 **Testing and Start-up.** The Owner Project Team and A/E Design Team will coordinate with the CMAR to conduct a facility operations and performance meeting to test the equipment in accordance with Technical Specifications and manufacturer parameters. Prior to the commencement of the full commissioning process, the CMAR shall submit to the Owner documentation proving successful pretesting. The CMAR shall conduct the testing and start-up regimen to be witnessed by the Owner Project Team and the A/E Design Team.
- 5.5 **Commissioning.** Commissioning is the process of verifying and documenting that a project and all of its systems and assemblies are planned, designed, installed, tested, operated, and maintained to meet the project requirements. The Owner Project Team will designate the Commissioning Team, who will be responsible for the development of the project Master Test Plan. This Team will direct the A/E Design Team and the CMAR to coordinate and perform a complete commissioning regimen to ensure the building is ready for turnover. The CMAR shall attend commissioning meetings, review and comment on the Master Test Plan, execute the Master Test Plan and review and take corrective action to rectify issues that are identified by the Commissioning Team. The CMAR shall submit all commissioning reports to the Owner Project Team.

- 5.6 **Training.** The CMAR shall conduct the proper training of County staff in the use of the equipment and proper care of all installations. The specific type and quantity of training that shall be identified in the Construction documents and contract and will be managed by the Owner Project Team.
- 5.7 **As-Built and Record Drawings.** The Owner Project Team will verify that the CMAR is preparing, updating, and maintaining as-built drawing documentation. The Owner Project Team will ensure regular maintenance of field As-built drawings by the Contractor of record. The CMAR shall submit all as-built drawings to the Owner Project Team. The Owner Project Team will review and verify final as-built drawings. The A/E Design Team will revise original design drawings of the project using contractor supplied as-builts and submit to the Owner within thirty (30) working days of the final completion date, a CD with the drawings in AutoCAD and PDF, certification as to the accuracy of the record drawings and specifications in MS-Word and PDF (latest editions). Current as-built documents from the CMAR shall be a requirement for pay application approval.
- 5.8 **Warranty.** The CMAR shall submit to the County the guaranties, warranties, certifications, releases, affidavits, bonds, manuals, insurance certificates and other items required by the contract documents. The A/E Design Team will assist the County in documentation and resolution of warranty issues within the first year of the warranty period.
- 5.9 **Post Construction Warranty Inspection.** The CMAR, along with its Sub-contractors, within ten (10) months after issuance of a Certificate of Substantial Completion and before expiration of the contractual one year warranty and/or guarantee period, in the company of the A/E Design Team Representative and the representative of the Owner Project Team, shall conduct an on-site inspection of the Project to determine the condition of all items of equipment, materials or building systems which are under warranty or guarantee coverage pursuant to the requirements of the Construction Agreement. The A/E Design Team, along with its Sub-contractors, will provide the Owner with a written report listing all items covered by warranty or guarantee coverage that are observed or otherwise found to be defective, inoperable, or not performing their intended function in a satisfactory manner. The report shall include recommendations for resolving all the items so noted in the warranty inspection report. All corrections shall be made under the project's one year warranty.

5.10 **Deliverables.** Work to be completed under this section by the CMAR shall require the following items to be delivered and accepted by the Owner Project Team (as outlined in the 1.6 Construction Project Schedule):

- Substantial Completion Letter
- Punch List
- Final Completion Letter
- Startup and Testing Reports
- LEED Summary Reports
- Operation and Maintenance (O & M) Manual
- O and M Training
- Commissioning Reports
- Warranties
- Lien Waivers
- Warranty Inspection Report
- Project QA/QC Form
- As-Built Drawings

5.11 **Pay Tasks:** Pay Tasks. Work to be completed under this section by the CMAR shall be paid for under the following Pay Tasks as listed on the Activity and Fee Summary

- Substantial Completion Letter
- Punch List
- Final Completion Letter
- Startup and Testing Reports
- LEED Summary Reports
- Operation and Maintenance (O & M) Manual
- O and M Training
- Commissioning Reports
- Warranties
- Lien Waivers
- Warranty Inspection Report
- Project QA/QC Form
- As-Built Drawings

6 SUSTAINABILITY

As part of the County's commitment to sustainability and high performing buildings, the CMAR shall:

- 6.1 Coordinate with the OCCC Facilities Operations to identify opportunities for integrated design and construction with respect to best energy and environmental practices within the project scope of work by the A/E Design Team. The CMAR shall recognize that the OCCC campus holds a variety of branding certifications which may be impacted by the project. These include LEED Gold 2018 O+M, ISO 14001, and APEX/ASTM Certifications. The CMAR shall strive to maintain these certifications and achieve Gold Certification on the expansion.
- 6.2 The CMAR shall use the Owner's Project Requirements (OPR) analysis to guide the LEED design and construction. This report shall include objectives for the project, budget considerations, space / use requirements, commissioning requirements and expected utility performance outcomes for the building spaces in the Design Criteria Package. The CMAR shall coordinate with the Owner Project Team and the A/E Design Team regarding the OPR and identify any opportunities to improve the LEED design and construction efforts. The CMAR shall submit a report detailing performance relative to the OPR goals, a final LEED Performance Report and an overall Utility Performance Report.
- 6.3 The Project, within the scope of work, shall use LEED BD+C and O+M to identify specific opportunities to achieve the following: (1) materials and resources, (2) indoor air quality, (3) energy and atmosphere, (4) water efficiency, (5) sustainable sites, and (6) location and transportation performance credits which are economically feasible regarding project costs and long term operating expenses. Certification of the project at a minimum shall be LEED Gold version 4.1 or the most current version.
- 6.4 **Deliverables.** Work to be completed under this section by the CMAR shall require the following items to be delivered and accepted by the Owner (as outlined in the 1.6 Construction Project Schedule):
- Final LEED Performance Report
 - Owner's Project Requirements Report
 - Utility Performance Report
- 6.5 **Pay Tasks:** Work to be completed under this section by the CMAR shall be paid for under the following Pay Tasks as listed on the Activity and Fee Summary:
- Final LEED Performance Report
 - Owner's Project Requirements Report
 - Utility Performance Report

7.0 OTHER CONDITIONS

The Owner has the right to verify, and the CMAR hereby represents, promises and warrants to Owner, (i) that CMAR is financially solvent and possesses sufficient experience, licenses, authority, personnel and working capital to complete the services required hereunder, and (ii) that CMAR has visited the site for the Project and generally familiarized itself with the local conditions under which the services required hereunder are to be performed, and the CMAR will correlate its observations of same with all of the requirements of this Agreement.

- 7.1 Upon Owner's reasonable request at any time during the design or construction Phases of this Agreement, and as often as reasonably requested, the CMAR shall promptly provide Owner with an Estimated Cost at Completion. The Owner shall at all times have reasonable access to the files and Principals and the Project Manager of CMAR relating to the Project in order to answer any reasonable questions the Owner may have relating to the CMAR's performance.
- 7.2 The CMAR shall respond to design documents for limited alternative materials and systems for comparative pricing for the purpose of determining which such materials and systems should be ultimately included in the Construction Documents. The documents for limited separate or sequential bids will be made available by the A/E Design Team. The CMAR shall provide services in connection with limited bidding, negotiations, or construction prior to the completion of the Construction Documents Phase. The drawing packages for the CMAR's use in separate or sequential bids shall be listed in the Design Documents.
- 7.3 The CMAR shall provide interior design and other similar services required for and in connection with the selection, procurement and installation of furniture, furnishings and related equipment for the Project.
- 7.4 As requested by the Owner and as Additional Services, the CMAR shall make investigations and/or inventories of materials and equipment, general valuations and/or detailed appraisals of existing facilities.
- 7.5 The CMAR shall provide assistance to the Owner in the utilization of equipment or Systems of the Project, such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

- 7.6 Notwithstanding any other provisions of this Agreement, the CMAR understands that the Owner has made commitments that require the Project to be completed and operational by August 2023. As part of its Basic Services, the CMAR shall perform its obligations under this Agreement with diligence and sufficient manpower to maintain the progress of the work at a pace necessary to meet this deadline. As needed to meet this completion deadline, the CMAR may be required to accelerate its services by performing certain parts of the services before other parts, adding extra manpower, or ordering overtime labor, all as part of its Basic Services. Further, the CMAR shall perform its Basic Services, if asked, in such manner as shall allow the bidding and negotiation for the numerous trade contracts to be let in phases, instead of all at once.
- 7.7 The CMAR acknowledges and understands the rights and duties of the Owner under that certain "Contract for Sale and Purchase for Orange County Convention Center Expansion" between the Owner and Universal City Property Management Company III, a Delaware Corporation ("UCPMC"), dated October 21, 1998 (the "Site Contract"). The CMAR shall perform its Basic Services and Additional Services (if any) in such a way as to ensure that the Project is designed and constructed in a manner consistent with, and not in breach of, any and all obligations of the Owner under that Contract. However, the CMAR may rely on the Owner's legal interpretation of the language therein.
- 7.8 The CMAR represents to and covenants with the Owner that neither it nor any of its Sub-contractors shall engage in any actions which could constitute a conflict of interest with respect to the services required under this Agreement. Therefore, throughout the term of this Agreement, the CMAR shall ensure that neither it nor any of its Sub-contractors or employees enter into any contract or other arrangement under which they render any services or advice, whether directly or indirectly, to UCPMC or any of its parent, subsidiary, sister, or affiliate corporations or partnerships, to any agents or employees or contractors of UCPMC, or to any successors to UCPMC to any portion of the parent tract of land from which the Owner purchased the site for the Project pursuant to the Site Contract, unless the Owner's Authorized Representative first approves such contract or other arrangement (which approval may be granted or withheld at the Owners sole discretion).
- 7.9 The CMAR acknowledges that the Owner will retain or has retained a consulting firm to provide project management services and advice. The contractor will not be the Owner's Authorized Representative and, unless

declared in writing otherwise by the Owner, will not have the authority to render decisions on behalf of the Owner. However, as part of its Basic Services, the CMAR shall cooperate fully at all times with the contractor and shall respond promptly to all the contractor's inquiries and requests for documents and information.

7.10 **Deliverables.** Work to be completed under this section by the CMAR shall require the following items to be delivered and accepted by the Owner (as outlined in the 1.6 Construction Project Schedule):

- Letter Response

7.11 **Pay Tasks:** Work to be completed under this section by the CMAR shall be paid for under the following Pay Tasks as listed on the Activity and Fee Summary:

- Letter Response

TABLE OF DELIVERABLES

The CMAR shall produce and deliver to the Owner the deliverables outlined as follows:

CATEGORIES	Hard Copies	Paper Copy Size	Digital File	File Type(s)
<u>1.0 GENERAL RESPONSIBILITIES</u>				
BIM Model	-	-	1	BIM Model Format
Permits	3	Full	1	MS Word & PDF
QA/QC Plan	3	Full	1	MS Word & PDF
Safety and Site Security Plan	3	Full	1	MS Word & PDF
Primavera Project Schedule	3	Full	1	Primavera File Format & PDF
Asbestos Free Certification	3	Full	1	MS Word & PDF
<u>2.0 DESIGN ASSIST</u>				
Updated Project Schedule	3	Full	1	Primavera File Format & PDF
Constructability Review Report	3	Full	1	MS Word & PDF
30%, 60%, 90% Construction Cost Estimate	3	Full	1	MS Word & PDF
Phasing and Logistics Plan	3	Full	1	DWG & PDF
30%, 60% Value Engineering Report	3	Full	1	MS Word & PDF
<u>3.0 PRECONSTRUCTION</u>				
Deferred Permits	3 1	Full Half	1	MS Word, DWG and PDF
Updated Project Schedule	3	Full	1	Primavera File Format & PDF
Pre-Construction Meeting Minutes	1	Full	1	MS Word & PDF
Guaranteed Maximum Price with a warranty letter	3	Full	1	MS Word & PDF
Construction Plan Report	3	Full	1	MS Word & PDF
<u>4.0 CONSTRUCTION</u>				
Daily Reports	1	Full	1	MS Word & PDF
Enabling Projects Report	3	Full	1	MS Word & PDF
Enabling Projects Permit	1	Full	1	MS Word & PDF
Look Ahead Schedule	1	Full	1	MS Word & PDF
Submittals	3	Full	1	MS Word & PDF

Monthly Reports	1	Full	1	MS Word & PDF
RFIs	1	Full	1	MS Word & PDF
Progress Meeting Minutes	1	Full	1	MS Word & PDF
LEED Results and Reports	1	Full	1	MS Word & PDF
Final Bid Tabulation	1	Full	1	MS Word & PDF
<u>5.0 POST CONSTRUCTION</u>				
Substantial Completion Letter	3	Full	1	MS Word & PDF
Punch list Completion	1	Full	1	MS Word & PDF
Final Completion Letter	1	Full	1	MS Word & PDF
Startup and Testing Reports	1	Full	1	MS Word & PDF
LEED Summary Reports	3	Full	1	MS Word & PDF
Operation and Maintenance (O & M) Manual	5	Full	1	DWG & PDF
Training	3	Full	1	MS Word & PDF
Commissioning Reports	3	Full	1	MS Word & PDF
Warranties	1	Full	1	MS Word & PDF
Lien Waivers	3	Full	1	MS Word & PDF
Warranty Inspection Report	3	Full	1	MS Word & PDF
Project QA/QC Form	3	Full	1	MS Word & PDF
As-Built Drawings	3	Full	1	DWG & PDF
<u>6.0 SUSTAINABILITY REVIEW AND MANAGEMENT</u>				MS Word & PDF
Owner's Project Requirements Report	1	Full	1	MS Word & PDF
Utility Performance Report	1	Full	1	MS Word & PDF
LEED Performance Report	1	Full	1	MS Word & PDF
<u>7.0 OTHER CONDITIONS</u>				
Letter Response	1	Full	1	MS Word & PDF

End of Exhibit A

PERFORMANCE BOND

BOND NUMBER _____

KNOW ALL MEN BY THESE PRESENTS that

Name of Contractor _____

Address _____

Phone Number _____

Corporation, Partnership or Individual _____

hereinafter referred to as the CMAR, as Principal, and

Name of Surety _____

Address _____

Phone Number _____

hereinafter called SURETY, as SURETY, are held and firmly bound unto Orange County, 400 East South Street, Orlando, FL 32801, (407) 836-5635 a Political Subdivision of the State of Florida as Obligee, hereinafter referred to as COUNTY, in the full and just sum of \$ _____, lawful money of the United States of America, to the payment of which sum, well and truly to be made, the CMAR and the SURETY bind themselves, their representatives, and each of their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the CMAR has entered into **Contract No. Y19-815** with the COUNTY for the PROJECT entitled: **CONSTRUCTION MANAGER AT RISK SERVICES FOR THE ORANGE COUNTY CONVENTION CENTER PHASE V MULTI-PURPOSE VENUE AND GRAND CONCOURSE IMPROVEMENTS, 9899 International Dr. Orlando, FL 32819** with conditions and provisions as are further described in the aforementioned CONTRACT, which the CONTRACT is by reference made a part hereof for the purpose of explaining this Bond.

General description of the Work: The development of approximately 850,000 square feet of buildout improvements to Phase V of the Orange County Convention Center, also known as the North/South Building. A 200,000 square foot column-free Multi-purpose Venue with associated supporting lobby, concourses, docks, restrooms, and service corridors. A grand concourse improvement to include 60,000 square feet of meeting room program, a flexible 80,000 square foot ballroom, restrooms and service corridors. Public improvements in and around the project site, including an enhanced streetscape, utilities relocation, and a walkway connecting North and South Buildings.

NOW, THEREFORE, the condition of this obligation is such that if the CMAR shall fully, promptly and faithfully perform said CONTRACT and all obligations thereunder, including all obligations imposed by the Contract Documents (which includes the Request for Proposal, General and Supplemental Conditions, Form(s) of Contract Bond(s), Plans and Specifications and such Amendments thereof as may be made as provided for therein), then this obligation shall be void; otherwise it shall remain in full force and effect.

1. The undersigned shall indemnify and save harmless said COUNTY against and from all costs, expenses and damages, including litigation costs and attorney's fees arising out of, or in connection with the neglect, default or want of care or skill, including patent infringement on the part of said CMAR, his agents, servants or employees in the execution or performance of said CONTRACT.

The applicable provisions of Section 255.05 and 713.01 Florida Statutes apply to this bond.

2. Whenever the CMAR shall be, and declared by the COUNTY to be in default under the CONTRACT, the COUNTY having performed COUNTY's obligations thereunder, the SURETY may promptly remedy the default or shall promptly:
 - A. Complete the CONTRACT in accordance with its terms and conditions; or

B. Obtain a proposal or proposals for completing the CONTRACT in accordance with its Terms and Conditions, and upon determination by SURETY of the selected CMAR, or, if the COUNTY elects, upon determination by the COUNTY and the SURETY jointly of the selected CMAR, arrange for a CONTRACT between such CMAR and the COUNTY. The SURETY shall make available as the Work progresses (even though there should be a default or a succession of defaults under the CONTRACT or CONTRACTs of completion arranged under this Paragraph) sufficient funds to pay the costs of completion, including other costs and damages for which the SURETY may be liable hereunder, the amount set forth in the first paragraph hereof.

3. Any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the CONTRACT or the changes shall not affect SURETY'S obligation under this Bond. Any increase in the total Contract Amount as authorized by the COUNTY shall accordingly increase the SURETY'S obligation by the same dollar amount of said increase. The Principal shall be responsible for notification to SURETY of all such changes.

4. The undersigned expressly acknowledges its obligations and liabilities for liquidated damages suffered by the COUNTY under the provisions of the Contract Documents.

5. The undersigned, covenant and agree that no change, extension of time, exercise of options for Contract renewals, changes to Contract Amounts, alterations or additions to the terms of the CONTRACT or the Work to be performed thereunder, or the specifications accompanying the same shall in any way affect their obligation on this bond, and the SURETY does hereby expressly waive notice of any such change, extension of time, change to Contract Amount, alteration, or addition. Moreover, no alterations or additions to this bond form shall be binding unless specifically agreed to in writing by the parties.

6. The CMAR shall save the COUNTY harmless from any and all damages, expenses and costs which may arise by virtue of any defects in said Work or materials within a period of one (1) year from the date of Final Completion of the PROJECT.

Signed and sealed this the _____ day of _____, 20_____.

CMAR, AS PRINCIPAL

WITNESS:

_____ Firm Name

BY: _____ Signature

_____ Type Name and Title

SURETY _____ AGENT FOR SURETY

NAIC Number: _____ Signature

BY: _____ AGENCY ADDRESS: _____

SURETY ADDRESS: _____

_____ PHONE _____

Licensed Florida Insurance Agent? Yes _____ No _____

License Number: _____

STATE OF _____)

COUNTY OF _____) SS

CITY OF _____)

Before me, a Notary Public duly commissioned, qualified and acting personally, appeared:

to me well known, who being by me first duly sworn upon oath says that he is Attorney-in-Fact for

_____ as Surety, and that he has been authorized by said Surety to execute the foregoing Performance Bond on behalf of the Principal (CMAR) named therein in favor of the COUNTY.

Subscribed and sworn to before me this the _____ day of _____, 20__.

Notary Public

(Print, Type or Stamp Commissioned Name of Notary Public)

Personally Known _____ or Produced Identification _____

Type of Identification: _____

If applicable, list the Lead Surety.

LEAD SURETY

AGENT FOR SURETY

Signature

BY: _____ AGENCY ADDRESS: _____

SURETY ADDRESS: _____

_____ PHONE _____

PAYMENT BOND

BOND NUMBER _____

KNOW ALL MEN BY THESE PRESENTS that

Name of Contractor _____

Address _____

Phone Number _____

Corporation, Partnership or Individual _____

Thereinafter called CMAR, as Principal, and

Name and Address of Surety _____

hereinafter called SURETY, as SURETY, are held and firmly bound unto Orange County, 400 East South Street, Orlando, FL 32801, (407) 836-5635 a Political Subdivision of the State of Florida as Obligee, in the full and just sum of \$_____, lawful money of the United States of America, to the payment of which sum, well and truly to be made, the CMAR and SURETY bind themselves, their representatives, and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the CMAR has entered into **Contract No. Y19-815** with the COUNTY, also referred to herein as the COUNTY, for the project entitled: **CONSTRUCTION MANAGER AT RISK SERVICES FOR THE ORANGE COUNTY CONVENTION CENTER PHASE V MULTI-PURPOSE VENUE AND GRAND CONCOURSE IMPROVEMENTS, 9899 International Dr. Orlando, FL 32819** with conditions and provisions as are further described in the aforementioned CONTRACT, which CONTRACT is by reference made a part hereof for the purpose of explaining this bond.

General description of the Work: The development of approximately 850,000 square feet of buildout improvements to Phase V of the Orange County Convention Center, also known as the North/South Building. A 200,000 square foot column-free Multi-purpose Venue with associated supporting lobby, concourses, docks, restrooms, and service corridors. A grand concourse improvement to include 60,000 square feet of meeting room program, a flexible 80,000 square foot ballroom, restrooms and service corridors. Public improvements in and around the project site, including an enhanced streetscape, utilities relocation, and a walkway connecting North and South Buildings.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS such that if CMAR shall promptly make payments to all Claimants for any and all labor and material used or reasonably required for use or furnished in connection with the performance of said CONTRACT, and shall perform all other covenants and obligations of this bond, then this obligation shall be void; otherwise it shall remain in full force and effect.

1. The undersigned shall promptly make payment to all persons supplying services, labor, material or supplies used directly or indirectly by said CMAR, or any Subcontractor(s) or sub-Subcontractor(s), in the prosecution of the Work provided for in said CONTRACT.
2. Subject to the COUNTY's priority, Claimants covered by Section 713.01 of the Florida Statutes shall have a direct right of action against the Principal and SURETY under this obligation, after written notice of the performance of labor or delivery of materials or supplies, and non-payment therefore. Any Claimant who seeks to recover against the Principal or SURETY under this obligation must also satisfy the notice requirement and time limitations of Section 255.05 of the Florida Statutes, as amended.
3. The undersigned, covenant and agree that no change, extension of time, exercise of options for Contract renewals, change to Contract Amounts, alterations or additions to Terms of the Contract or the Work to be performed thereunder, or the specifications accompanying the same shall in any way affect their obligation on this bond and the SURETY does hereby expressly waive notice of any such change, extension of time, exercise of options for CONTRACT renewal, changes to Contract Amount, alternations or additions. Moreover, no alterations or additions to this bond form shall be binding unless specifically agreed to in writing by the parties.

The applicable provisions of Sections 255.05 and Florida Statutes apply to this bond.

4. Any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the CONTRACT or the changes shall not affect SURETY'S obligation under this bond. Any increase in the total Contract amount as authorized by the COUNTY shall accordingly increase the SURETY'S obligation by the same dollar amount of said increase. The Principal shall be responsible for notification to SURETY of all such changes.

Signed and sealed this the _____ day of _____, 20_____

CMAR, AS PRINCIPAL:

WITNESS:

Firm Name

Signature

BY:

Signature

Type Name and Title

SURETY:

AGENT FOR SURETY:

NAIC Number: _____

BY:

Signature

BY: _____ AGENCY ADDRESS: _____

SURETY ADDRESS _____

PHONE NO. _____

Licensed Florida Insurance Agent? Yes _____ No _____

License Number: _____

STATE OF _____)

COUNTY OF _____) SS

CITY OF _____)

Before me, a Notary Public duly commissioned, qualified and acting personally, appeared:

_____ to me well known, who being by me first duly sworn upon oath says that he is Attorney-in-Fact for

_____ as Surety, and that he has been authorized by said Surety to execute the foregoing Payment Bond on behalf of the CMAR named therein favor of the COUNTY.

Subscribed and sworn to before me this the _____ day of _____, 20_____.

Notary Public

(Print, Type or Stamp Commissioned Name of Notary Public)

Personally Known _____ or Produced Identification (Type) _____

If applicable, list the Lead Surety.

LEAD SURETY

AGENT FOR SURETY

Signature

BY: _____ AGENCY ADDRESS: _____

SURETY ADDRESS: _____

_____ PHONE _____

SAMPLE DO NOT USE

LEASED EMPLOYEE AFFIDAVIT CONTRACT #Y _____

I affirm that an employee leasing company provides my workers' compensation coverage. I further understand that my contract with the employee leasing company limits my workers' compensation coverage to enrolled worksite employees only. My leasing arrangement does not cover un-enrolled worksite employees, independent contractors/consultants, uninsured sub-contractors/consultants or casual labor exposure.

I hereby certify that 100% of my workers are covered as worksite employees with the employee leasing company. I certify that I do not hire any casual or uninsured labor outside the employee leasing arrangement. I agree to notify the County in the event that I have any workers not covered by the employee leasing workers' compensation policy. In the event that I have any workers not subject to the employee leasing arrangement, I agree to obtain a separate workers' compensation policy to cover these workers. I further agree to provide the County with a certificate of insurance providing proof of workers' compensation coverage prior to these workers entering any County jobsite.

I further agree to notify the County if my employee leasing arrangement terminates with the employee leasing company and I understand that I am required to furnish proof of replacement workers' compensation coverage prior to the termination of the employee leasing arrangement.

I certify that I have workers' compensation coverage for all of my workers through the employee leasing arrangement specified below:

Name of Employee Leasing Company: _____

Workers' Compensation Carrier: _____

A.M. Best Rating of Carrier: _____

Inception Date of Leasing Arrangement: _____

I further agree to notify the County in the event that I switch employee-leasing companies. I recognize that I have an obligation to supply an updated workers' compensation certificate to the County that documents the change of carrier.

Name of Contractor/Consultant: _____

Signature of Owner/Officer: _____

Title: _____ Date: _____

SAMPLE DO NOT USE

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 10 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):
Orange County, Florida Procurement Division 400 E. South Street Orlando, FL 32801
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

<p>A. Section II – Who is An Insured is amended to include as an additional insured the person(s) or organizations(s) shown in the Schedule, but only with respect to liability for “bodily injury”, “property damage” or “personal and advertising injury” caused, in whole or in part, by:</p> <ol style="list-style-type: none"> 1. In performance of your ongoing operations; or 2. In connection with your premises owned by or rented to you. <p>However:</p> <ol style="list-style-type: none"> 1. The insurance afforded to such additional insured only applies to the extent permitted by law; and 2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured. 	<p>B. With respect to the insurance afforded to these additional insureds, the following is added to Section III-Limits of Insurance:</p> <p>If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:</p> <ol style="list-style-type: none"> 1. Required by the contract or agreement; or 2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less. <p>This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.</p>
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SAMPLE DO NOT USE

POLICY NUMBER: _____

COMMERCIAL GENERAL LIABILITY
CG 24 04 0509

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies Insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:
ORANGE COUNTY, FLORIDA PROCUREMENT DIVISION 400 E. SOUTH STREET ORLANDO, FL 32801
(Information required to complete this Schedule, if not shown above, will be shown in the Declarations.)

The following is added to Paragraph 8, Transfer of rights of Recovery Against Others To Us of Section IV – Conditions:

We waive any right to recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or “your work” done under a contract with that person or organization and included in the “Products-completed operations hazard”. This waiver applies only to the person or organization shown in the Schedule above.

SAMPLE DO NOT USE

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY
WC 00 03 13

(Ed. 4-84)

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

Name of Person or Organization:

ORANGE COUNTY, FLORIDA
PROCUREMENT DIVISION
400 E. SOUTH STREET
ORLANDO, FL 32801

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement
Endorsement No.

Effective Policy No.

Insured

Insurance Company
by _____

Countersigned

WC 00 03 13

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OCCC NORTH-SOUTH BUILDING EXPANSION

DRAFT- NOTE: Schedule is Subject to Change

ID	Task Name	Start	Finish	Duration	% Complete	2017		2018		2019		2020		2021		2022		2023		2024
						H1	H2	H1	H2	H1	H2	H1	H2	H1	H2	H1	H2	H1	H2	H1
1	OCCC NORTH/SOUTH BUILDING EXPANSION	Fri 6/1/18	Thu 1/11/24	2051 days	30%															
2	PROGRAM PHASE	Wed 12/19/18	Fri 2/1/19	45 days	100%															
3	Scope & Budget Development	Wed 12/19/18	Fri 2/1/19	45 days	100%															
4	PROCUREMENT PHASE	Fri 6/1/18	Mon 2/15/21	991 days	72%															
5	OWNER'S REPRESENTATIVE / PROGRAM MANAGER	Fri 6/1/18	Tue 12/18/18	201 days	100%															
6	A/E DESIGN TEAM	Mon 1/14/19	Wed 12/4/19	325 days	90%															
7	Prepare RFP	Mon 1/14/19	Mon 1/28/19	15 days	100%															
8	RFP Procurement Review	Mon 2/4/19	Mon 2/18/19	15 days	100%															
9	Solicit Proposals	Fri 3/1/19	Mon 4/15/19	46 days	100%															
10	Pre-Proposal Conference	Fri 3/15/19	Fri 3/15/19	1 day	100%															
11	RFI Deadline	Fri 3/1/19	Tue 3/26/19	26 days	100%															
12	Public Opening of Proposals	Tue 4/16/19	Tue 4/16/19	1 day	100%															
13	Procurement Committee	Wed 5/8/19	Wed 5/15/19	8 days	100%															
14	Protest Hearing	Tue 6/11/19	Tue 6/11/19	1 day	100%															
15	Appeal Period	Tue 6/18/19	Tue 6/18/19	1 day	100%															
16	BCC Meeting Preparation	Wed 6/19/19	Thu 7/11/19	23 days	100%															
17	BCC Meeting Submission	Tue 7/16/19	Tue 7/16/19	0 days	100%															
18	BCC Meeting Presentation	Tue 8/6/19	Tue 8/6/19	0 days	100%															
19	Negotiation & Award	Tue 8/6/19	Tue 10/22/19	77.94 days	76%															
20	Negotiation and Award	Tue 8/6/19	Tue 8/27/19	22 days	100%															
21	Negotiation & Award - ON HOLD 8/27/19	Tue 8/27/19	Mon 9/30/19	34.94 days	100%															
22	Negotiation & Award - Re-Start	Mon 9/30/19	Tue 10/22/19	22 days	14%															
23	BCC Meeting Submission	Wed 11/13/19	Wed 11/13/19	1 day	0%															
24	BCC Meeting	Tue 12/3/19	Tue 12/3/19	1 day	0%															
25	A/E Design Team NTP Issued	Wed 12/4/19	Wed 12/4/19	1 day	0%															
26	CONSTRUCTION MANAGER AT RISK (CMAR)	Mon 1/28/19	Tue 11/24/20	667 days	79%															
27	CMAR SELECTION PHASE	Mon 1/28/19	Tue 12/17/19	323 days	94%															
28	Prepare RFP	Mon 1/28/19	Tue 3/12/19	43 days	100%															
29	Pre-Solicitation Informational Session 1	Thu 3/14/19	Thu 3/14/19	1 day	100%															
30	Pre-Solicitation Informational Session 2	Mon 4/15/19	Mon 4/15/19	1 day	100%															
31	RFP Procurement Review	Tue 3/12/19	Fri 4/19/19	38 days	100%															
32	Solicit Proposals	Fri 4/19/19	Mon 8/5/19	108 days	100%															
33	Pre-Proposal Conference	Wed 5/1/19	Wed 5/1/19	1 day	100%															
34	RFI Responses	Fri 4/19/19	Wed 7/31/19	104 days	100%															
35	Addenda Issued	Fri 4/19/19	Thu 10/17/19	182 days	92%															
36	Addenda #8 RFP Supplement RFI Deadline	Tue 8/6/19	Fri 8/16/19	11 days	100%															
37	Addenda #8 RFP Supplement RFI Responses	Mon 8/19/19	Wed 8/28/19	10 days	100%															
38	Addenda #11 Re-Stated RFP RFI Deadline	Thu 10/24/19	Thu 10/24/19	0 days	0%															
39	Addenda #11 Re-Stated RFP RFI Responses	Fri 11/1/19	Fri 11/1/19	0 days	0%															
40	Public Opening of Proposals	Fri 11/8/19	Fri 11/8/19	0 days	0%															
41	Procurement Committee	Fri 11/8/19	Fri 11/22/19	15 days	0%															
42	BCC Meeting Submission	Tue 11/26/19	Tue 11/26/19	0 days	0%															
43	BCC Meeting Presentation	Tue 12/17/19	Tue 12/17/19	0 days	0%															
44	DESIGN ASSIST PROPOSAL	Tue 12/17/19	Wed 2/19/20	65 days	0%															
45	Design Assist Proposal Submission from CMAR	Tue 12/17/19	Tue 12/31/19	15 days	0%															
46	Design Assist Negotiation & Award	Wed 1/1/20	Tue 1/28/20	28 days	0%															
47	Design Assist BCC Meeting Submission	Wed 1/29/20	Wed 1/29/20	1 day	0%															
48	Design Assist BCC Meeting	Tue 2/18/20	Tue 2/18/20	1 day	0%															
49	Design Assist NTP Issued	Wed 2/19/20	Wed 2/19/20	1 day	0%															
50	ENABLING CONSTRUCTION PROPOSAL	Wed 7/15/20	Tue 8/25/20	42 days	0%															

OCCC NORTH-SOUTH BUILDING EXPANSION

DRAFT- NOTE: Schedule is Subject to Change

ID	Task Name	Start	Finish	Duration	% Complete	2017		2018		2019		2020		2021		2022		2023		2024
						H1	H2	H1	H2	H1	H2	H1	H2	H1	H2	H1	H2	H1	H2	H1
51	Enabling Construction Proposal Submission from CMAR	Fri 7/31/20	Fri 7/31/20	1 day	0%															
52	Enabling Construction Negotiation	Mon 8/3/20	Tue 8/25/20	23 days	0%															
53	Enabling Construction BCC Submission	Wed 7/15/20	Wed 7/15/20	1 day	0%															
54	Enabling Construction BCC Meeting	Tue 8/4/20	Tue 8/4/20	1 day	0%															
55	Enabling Construction NTP	Wed 8/5/20	Wed 8/5/20	1 day	0%															
56	GMP PROPOSAL	Tue 11/3/20	Tue 11/24/20	22 days	0%															
57	GMP Proposal Submission from CMAR	Tue 11/3/20	Tue 11/3/20	1 day	0%															
58	GMP Negotiation	Wed 11/4/20	Tue 11/24/20	21 days	0%															
59	GMP BCC Submission	Wed 11/4/20	Wed 11/4/20	1 day	0%															
60	GMP BCC Meeting	Tue 11/10/20	Tue 11/10/20	1 day	0%															
61	GMP NTP	Wed 11/11/20	Wed 11/11/20	1 day	0%															
62	GEOTECHNICAL ENGINEERING, TESTING & INSPECTION SERVICES	Mon 4/8/19	Wed 1/22/20	290 days	76%															
63	Prepare RFP	Mon 4/8/19	Wed 8/28/19	142.94 days	100%															
64	RFP Procurement Review	Thu 8/29/19	Wed 9/25/19	28 days	100%															
65	Solicit Proposals	Thu 9/26/19	Fri 10/25/19	30 days	26%															
66	Pre-Bid Meeting	Fri 10/4/19	Fri 10/4/19	1 day	0%															
67	RFI Deadline	Thu 10/17/19	Thu 10/17/19	1 day	0%															
68	Public Opening of Proposals	Tue 10/29/19	Tue 10/29/19	0 days	0%															
69	Procurement Committee	Wed 11/20/19	Wed 12/4/19	15 days	0%															
70	Negotiations	Thu 12/5/19	Thu 12/19/19	15 days	0%															
71	BCC Meeting Submission	Tue 12/31/19	Tue 12/31/19	1 day	0%															
72	BCC Meeting	Tue 1/21/20	Tue 1/21/20	1 day	0%															
73	GTIS Inspection NTP	Wed 1/22/20	Wed 1/22/20	1 day	0%															
74	COMMISSIONING (Cx)	Mon 9/9/19	Thu 12/17/20	466 days	17%															
75	Prepare RFP	Mon 9/9/19	Fri 9/20/19	12 days	100%															
76	RFP Procurement Review	Mon 9/23/19	Mon 10/7/19	15 days	73%															
77	Solicit Proposals	Tue 10/8/19	Wed 11/6/19	30 days	0%															
78	Public Opening of Proposals	Thu 11/7/19	Thu 11/7/19	0 days	0%															
79	Procurement Committee	Thu 11/7/19	Thu 11/21/19	15 days	0%															
80	TASK 1: DESIGN PHASE PROPOSAL	Fri 11/22/19	Thu 12/17/20	392 days	0%															
81	Negotiation	Fri 11/22/19	Fri 12/6/19	15 days	0%															
82	BCC Meeting Submission	Thu 12/17/20	Thu 12/17/20	1 day	0%															
83	BCC Meeting	Tue 1/7/20	Tue 1/7/20	1 day	0%															
84	Cx Design Phase NTP	Wed 1/8/20	Wed 1/8/20	1 day	0%															
85	TASK 2: CONSTRUCTION PHASE PROPOSAL	Tue 11/3/20	Wed 12/16/20	44 days	0%															
86	Cx Construction Phase Proposal Due	Tue 11/3/20	Tue 11/17/20	15 days	0%															
87	Negotiation	Wed 11/18/20	Wed 12/16/20	29 days	0%															
88	BCC Meeting Submission	Wed 11/18/20	Wed 11/18/20	1 day	0%															
89	BCC Meeting	Tue 12/8/20	Tue 12/8/20	1 day	0%															
90	Cx Construction Phase NTP	Wed 12/9/20	Wed 12/9/20	1 day	0%															
91	OWNER PROVIDED EQUIPMENT	Tue 11/3/20	Mon 2/15/21	105 days	0%															
92	Owner Provided Equipment Specifications (A/E)	Tue 11/3/20	Mon 11/16/20	14 days	0%															
93	Owner Provided Equipment Procurement	Tue 11/17/20	Mon 2/15/21	91 days	0%															
94	Client Advisory Board Mtg - CANCELED	Wed 9/4/19	Fri 9/6/19	3 days	100%															
95	DESIGN PHASE	Thu 12/5/19	Thu 12/17/20	379 days	0%															
96	VALIDATION / CONCEPTUAL	Thu 12/5/19	Tue 1/28/20	55 days	0%															
97	Design Kickoff Meeting	Thu 12/5/19	Thu 12/5/19	1 day	0%															
98	Meet with End Users	Fri 12/6/19	Wed 12/18/19	13 days	0%															
99	Meet with Clients	Fri 12/6/19	Wed 12/18/19	13 days	0%															
100	Deliverable: Design Analysis Report	Thu 12/19/19	Mon 1/13/20	26 days	0%															

OCCC NORTH-SOUTH BUILDING EXPANSION

DRAFT- NOTE: Schedule is Subject to Change

ID	Task Name	Start	Finish	Duration	% Complete	2017		2018		2019		2020		2021		2022		2023		2024
						H1	H2	H1	H2	H1	H2	H1	H2	H1	H2	H1	H2	H1	H2	H1
101	Design Analysis Report Validation	Tue 1/14/20	Mon 1/27/20	14 days	0%															
102	Design Analysis Report Validation Meeting	Tue 1/28/20	Tue 1/28/20	1 day	0%															
103	SCHEMATIC DESIGN (SD) - 30% DESIGN	Wed 1/29/20	Wed 4/15/20	78 days	0%															
104	30% Design	Wed 1/29/20	Wed 3/18/20	50 days	0%															
105	30% Design Deliverable	Wed 3/18/20	Wed 3/18/20	0 days	0%															
106	30% Cost Estimate (A/E & CM)	Thu 3/19/20	Tue 3/31/20	13 days	0%															
107	30% Design Review	Thu 3/19/20	Tue 3/31/20	13 days	0%															
108	Value Engineering	Wed 4/1/20	Tue 4/7/20	7 days	0%															
109	Value Engineering Report and Estimate (CM)	Wed 4/8/20	Tue 4/14/20	7 days	0%															
110	E-Team Approval of Scheme	Wed 4/15/20	Wed 4/15/20	1 day	0%															
111	30% Design Review Meeting	Wed 4/15/20	Wed 4/15/20	0 days	0%															
112	DESIGN DEVELOPMENT (DD) - 60% DESIGN	Thu 4/16/20	Mon 8/24/20	131 days	0%															
113	60% Design	Thu 4/16/20	Tue 7/14/20	90 days	0%															
114	60% Design Deliverable	Tue 7/14/20	Tue 7/14/20	0 days	0%															
115	60% Cost Estimate (A/E & CM)	Wed 7/15/20	Tue 7/28/20	14 days	0%															
116	60% Design Review	Wed 7/29/20	Tue 8/11/20	14 days	0%															
117	Value Engineering (if necessary)	Wed 8/12/20	Tue 8/18/20	7 days	0%															
118	Value Engineering Report and Estimate (CM)	Wed 8/19/20	Sun 8/23/20	5 days	0%															
119	60% Review Meeting	Mon 8/24/20	Mon 8/24/20	1 day	0%															
120	ENABLING DESIGN	Wed 1/29/20	Thu 7/30/20	184 days	0%															
121	Enabling Construction Design - 100%	Wed 1/29/20	Thu 7/30/20	184 days	0%															
122	Enabling Construction Design Deliverable	Thu 7/30/20	Thu 7/30/20	0 days	0%															
123	CONSTRUCTION DOCUMENTS (CD) - 90% DESIGN	Tue 8/25/20	Tue 11/17/20	85 days	0%															
124	90% Design	Tue 8/25/20	Mon 11/2/20	70 days	0%															
125	90% Design Deliverable	Mon 11/2/20	Mon 11/2/20	0 days	0%															
126	90% Cost Estimate (A/E)	Tue 11/3/20	Mon 11/16/20	14 days	0%															
127	Constructability Review	Tue 11/3/20	Mon 11/16/20	14 days	0%															
128	90% Design Review Meeting	Tue 11/17/20	Tue 11/17/20	1 day	0%															
129	CONSTRUCTION DOCUMENTS (IFC) - 100% DESIGN	Wed 11/18/20	Thu 12/17/20	30 days	0%															
130	100% Const Documents	Wed 11/18/20	Thu 12/17/20	30 days	0%															
131	100% Const Docs Deliverable	Thu 12/17/20	Thu 12/17/20	0 days	0%															
132	CMAR DESIGN ASSIST	Thu 2/20/20	Tue 10/27/20	251 days	0%															
133	Design Assist	Thu 2/20/20	Tue 10/27/20	251 days	0%															
134	CONSTRUCTION PHASE	Thu 4/16/20	Thu 1/11/24	1366 days	0%															
135	PERMITTING	Thu 4/16/20	Thu 1/28/21	288 days	0%															
136	DD Permit Review	Thu 4/16/20	Thu 4/16/20	1 day	0%															
137	Enabling Permit	Fri 7/31/20	Wed 9/16/20	48 days	0%															
138	CD 60% Permit Review	Tue 8/25/20	Tue 8/25/20	1 day	0%															
139	Construction Permits	Fri 12/18/20	Thu 1/28/21	42 days	0%															
140	ENABLING CONSTRUCTION	Thu 9/17/20	Mon 1/25/21	131 days	0%															
141	Enabling Work Construction	Thu 9/17/20	Mon 1/25/21	131 days	0%															
142	CONSTRUCTION	Thu 11/12/20	Thu 1/11/24	1156 days	0%															
143	Preconstruction	Thu 11/12/20	Fri 12/25/20	44 days	0%															
144	CPM Schedule	Thu 11/12/20	Fri 12/11/20	30 days	0%															
145	Construction	Fri 1/29/21	Fri 11/10/23	1016 days	0%															
146	Substantial Completion	Mon 11/13/23	Tue 12/12/23	30 days	0%															
147	Punch List	Mon 11/13/23	Tue 12/12/23	30 days	0%															
148	Final Completion	Wed 12/13/23	Thu 1/11/24	30 days	0%															

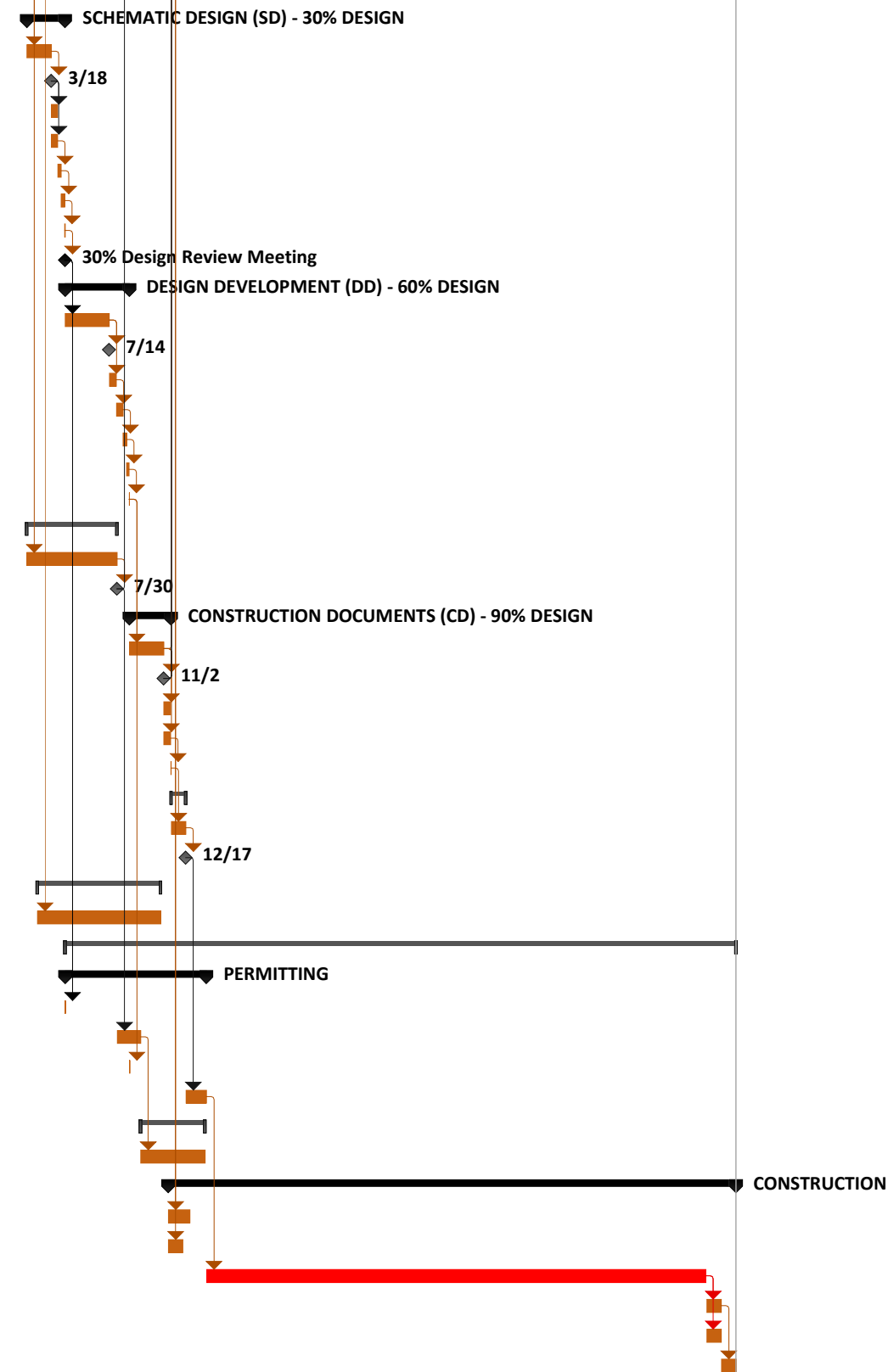


EXHIBIT E**DRAFT GUARANTEED MAXIMUM PRICE (“GMP”) PROPOSAL FORM**

**CONSTRUCTION MANAGER AT RISK (“CMAR”) SERVICES
FOR THE ORANGE COUNTY CONVENTION CENTER PHASE V MULTI-PURPOSE
VENUE AND GRAND CONCOURSE
RFP #Y19-815-JS**

The undersigned CMAR hereby offers, in the amounts stated below, to furnish all services for the Design Assist Phase, Enabling Construction Phase and the Construction Phase and to furnish all labor, materials, tools, equipment, apparatus, facilities, transportation, and permits for the construction of the Phase V Multi-Purpose Venue and Grand Concourse, RFP #Y19-815-JS, at Orange County Convention Center (“OCCC”), in accordance with all the requirements of the Request for Proposals and to the satisfaction of the COUNTY.

The CMAR also hereby agrees to amend its CONTRACT with the COUNTY for the PROJECT related to RFP #Y19-815-JS if the COUNTY accept this GMP Proposal for the purposes of incorporating this GMP Proposal, or the negotiated version of this GMP Proposal.

The proposal is subject to the provisions contained in the CONTRACT, and the CMAR agrees that failure to comply with the conditions thereof shall be basis for rejection of this GMP Proposal.

The CMAR shall complete the information in the space provided below for the Total Fee Percentage and Total Fee in Dollars.

TOTAL FEE PERCENTAGE: _____ %
 TOTAL FEE IN DOLLARS: \$ _____ (Lump Sum)
 (Fee Percentage multiplied by Direct Cost) *(Use figures only)*

The CMARs shall also complete the information in the following table.

GMP	Fee Percentage (Fee as % of Direct Cost Budget)	Fee in Dollars (Fee % multiplied by Direct Cost Budget)
Design Assist (<i>This will be the amount of the Design Assist Amendment</i>)	%	\$
Enabling Construction Phase (<i>This will be the amount of the Enabling Construction Amendment</i>)	%	\$
Construction Phase (<i>Detailed GMP Breakdown sheet attached broken down by trade</i>)	%	\$
General Conditions	%	\$
CM's Contingency for Construction Phase	10%	\$
Fee (<i>CM's Overhead & Profit</i>)	%	\$
Total GMP	%	\$

The above amounts are to be stated in figures only and are the total amounts proposed for the entire Contract Work. Any alteration, erasure, or change must be clearly indicated and initialed by the CMAR. In the event of any error in the GMP Proposal, the individual fee percentages will prevail, and the math for the fee in dollars

**Fee Proposal Form for Construction Manager Services at Risk with Guaranteed Maximum Price
Phase V Multi-Purpose Venue and Grand Concourse Improvements, Y19-815-JS - Exhibit E
Orange County Convention Center**

recalculated. The CMAR agrees that the above fees will be held until award of the construction phase in accordance with the proposed calendar contained in the Request for Proposals.

The total GMP Not-to-Exceed Contract Amount shall be the sum of the total Direct Cost plus the above percentage fees multiplied by the total Direct Construction Cost Budget. The COUNTY will require 100% Performance and Payment bonds to be written in this amount.

The COUNTY reserves the right to reject any and all proposals and to waive any irregularities.

The GMP proposal must be submitted on this GMP Proposal Form, which the COUNTY reserves the right to update as it deems necessary.

By signing below, the CMAR represents that they have read and understood the CONTRACT, including but not limited to its OCIP obligations: The CMAR and all subcontractors shall include in their Proposals and Change Orders all costs for the CMAR's insurance coverage described in the CONTRACT'S Insurance provisions.

The CMAR shall include all CMAR's General Liability, Business Automobile Liability, Workers Compensation, and Errors & Omissions insurance costs. The OCIP Administrator shall determine the actual cost of this insurance, made redundant due to enrollment in the OCIP program.

By signing the space below, the CMAR acknowledges this notification of its CONTRACT and OCIP obligations:

Print Name

Signature

Title

Date

-End of GMP Proposal Form for Construction Manager Services at Risk with Guaranteed Maximum Price-

1. OBJECTIVE:

To provide guidelines for Owner Direct Purchases (ODP) in order to realize the benefits of owner tax exempt status for the procurement of materials for incorporation into a public works project.

2. AUTHORITY:

Pursuant to *Florida Statutes*, Section 212.08(6), and *Florida Administrative Code*, Number 12A-1.094, Orange County Florida is exempt from Florida Sales Tax for the purchase of construction materials, supplies and/or equipment incorporated into a construction project. Under this program, the Florida Sales Tax rate of 6% shall apply to purchases of \$5000.01 and above. For purchases of \$5000 or less 6.5% shall apply. For example on a \$100,000 purchase 6% sales tax would apply to the total purchase and the .5% would apply to the first \$5000 only. Total sales tax saved on a \$100,000 purchase would be \$6025.

3. DIRECTION:

The County has elected to exercise this right to direct purchase selected materials on all construction projects and such direct purchase shall be without any additional cost to the County. **All bids are to be submitted with all applicable taxes included.**

The CMAR shall be fully responsible for all matters relating to the receipt of materials, equipment, supplies and furnishings, including but not limited to providing and obtaining all warranties and guarantees in favor of and for the benefit of the County for all materials, equipment, supplies and furnishings as required by the Contract. At the time of and subsequent to the delivery of such materials, equipment, supplies and furnishings, the CMAR shall be responsible for ensuring the security and safe keeping against all loss or damage to materials, equipment, supplies and furnishings purchased pursuant to the owner direct purchase provisions. Notwithstanding the foregoing, the County shall be responsible for payment of the invoices issued by the supplier, vendor or subcontractor. The County shall retain the risk of loss of and damage to OPE for the purpose of receiving a tax exemption under Section 212.08(6), Fla. Stat, which meets the criteria in Rule 12A 1.094(4)(b)(1-4), Fla. Admin. Code, to determine if the County is the purchaser for the purposes of the tax exemption under Section 212.08(6), Fla. Stat.

The procedures outlined here may change at any time without prior notice to CMAR.

4. TERMS - For the purpose of this document, the following terms are defined as:

- a. **Change Order (CO):** A written order authorizing a change in the scope of work, contract amount or contract time. (Attachment F)
- b. **CMAR:** same definition as contract.
- c. **Orange County Board of County Commissioners, Orange County, Florida:** OC or Owner.

- d. **Owner Direct Purchase Order (ODP):** A purchase order issued by the Owner directly to the CMAR's vendor for the purchase of materials exempt from sales tax.
- e. **Owner Direct Purchase Procedures:** Guidelines outlined in this document.
- f. **Material:** Any material, supplies, or equipment incorporated into an OC construction project.
- g. **Letter of Indemnification:** Agreement between CMAR and Owner that will undertake to indemnify CMAR from any and all liability for unpaid sales tax due to DPO. (Attachment E)
- h. **Letter of Understanding:** Agreement between CMAR and Owner that CMAR contractual duties remain the same insofar as the inspection, handling, storage, protection and installation of the direct purchase item into the work. (Attachment D)
- i. **Purchase Requisition (PR):** A request to purchase stated material or services for a quoted price. (Attachment A)
- j. **Purchase Order (PO):** A written authorization issued by the Owner for a vendor to delivery material or services at a specified price, which becomes a legally binding contract upon acceptance by the vendor.
- k. **Vendor:** A company supplying material to the Project, whether such provision includes installation or not.
- l. **Vendor List:** A list provided by the CMAR of the vendors the Owner will direct purchase material from.

5. FUNCTIONS:

The County reserves the right to require the CMAR to assign some or all of its subcontracts or other agreements with material suppliers directly to the County. This process will be referred to as ODP and is a method that may be utilized to create savings for the County.

A. Initial Requirements.

A purchase order may be awarded for supplies or materials without competition where such supplies or materials are being procured by the County as an ODP for incorporation into a public works project (as defined in Section 12A-1.094, 4c. of the Florida Department of Revenue, Florida Administrative Code), the contract for which was previously awarded by the County and which prior award included the cost of such supplies or materials. In such event, the County may procure the supplies or materials in compliance with the requirements of the Florida Department of Revenue, Florida Administrative Code Section 12A-1.094, as amended; for the direct purchase of materials and/or other tangible personal property that is incorporated into or becomes a part of a public facility pursuant to a public works contract, and that will not be used to furnish or equip the project in accordance with Section 12A-1.038(4) of the Florida Administrative Code, as amended. *Under no circumstances shall any materials which will not be incorporated into the public works project be purchased by the County as ODP materials, including but not limited to, any consumables such as fuel or any equipment related to the public works project which will not be affixed or otherwise incorporated into the public works project such as reusable construction equipment.*

B. Procedural Requirements.

The following steps are to be followed unless modified by the Manager of the Procurement Division, or designee, and may be enhanced based on individual project circumstances or at the discretion of the Manager of the Procurement Division:

- i. The price for all construction materials will be provided in the CMAR's bid. The CMAR's bid shall also include all Florida State Sales and other taxes normally applicable to such material. The County may consider purchasing any approved materials.
- ii. At any time upon the request of the County, the CMAR shall provide County with a list of all intended suppliers for such materials as specified by County for consideration for procurement by the County as ODP materials. The list shall include price quotes from the suppliers, as well as a description of the materials to be supplied, estimated quantities and prices. The Owner will purchase the material from Vendors selected by the CMAR for the price originally negotiated by the CMAR.
- iii. The CMAR shall be responsible for maintaining the project schedule and the execution of the terms and conditions of the ODP purchase order, including expediting the suppliers' delivery schedules. The CMAR shall assume all risk and remain fully responsible for all material incorporated into any project, directly purchased by the Owner or not. This will include, but not be limited to, theft, storage, damage during installation, coordination, quantities ordered, submittals, protection, scheduling, shipping, security, expediting, receiving, installation, cleaning and all applicable warranties, etc.
- iv. After receipt of the Purchase Requisition Form and all required documents, the County will prepare a purchase order for all items of material which County chooses to purchase directly. The purchase order will include the County's Consumer's Certificate of Exemption number and a copy of the Consumer's Certificate of Exemption, and a Certificate of Entitlement (See Attachment "B"). The County's purchase order will be sent directly to the supplier by the County with a copy sent to the CMAR, including a copy of the Certificate of Entitlement. Pursuant to the purchase order, the supplier will provide the required quantities of material at the price established in the supplier's quote to the CMAR or subcontractor.
- v. In conjunction with the PR the CMAR shall submit the Letter of Understanding and a Letter of Indemnification.

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- vi. In conjunction with the issuance by the County of Purchase Orders for ODP materials to suppliers, the Owner will submit a deductive change order to CMAR who shall execute and deliver to County deductive change orders, with a complete description referencing the full value of all ODP materials to be provided by each supplier from whom the County elected to purchase materials directly, plus all sales taxes associated with such materials in CMAR's bid to the County.
- vii. The CMAR shall obtain consent from their Surety acknowledging that Surety's obligation under our Payment and Performance. Bond remains unmodified and in full force and effect, notwithstanding that Orange County has entered into a separate Purchase Order with (Supplier) for the direct purchase of the Materials that will be deducted and deleted from the Contract by the Deductive Change Order. This shall accompany the deductive change order.
- viii. Notwithstanding the transfer of ODP materials by the County to the CMAR's possession, the County shall retain legal and equitable title to any and all ODP materials. The transfer of possession of ODP materials from the County to the CMAR shall constitute a bailment for the mutual benefit of the County and the CMAR. The County shall be considered the bailor and the CMAR the bailee of the ODP materials. Transfer of possession shall be deemed to occur immediately and automatically upon delivery of ODP materials to the County without notice from County to CMAR. ODP materials shall be considered returned to the County for purposes of their bailment at such time as they are incorporated into the project. While in CMAR's possession, the CMAR shall handle and store all ODP materials in a manner consistent with the supplier's or manufacturer's instructions regarding handling and storage to ensure later installation of ODP materials in a sound and undamaged condition.
- ix. The County will make payment directly to the suppliers of the ODP materials.
- x. The CMAR shall review all invoices submitted to the County by suppliers of ODP materials and either concur or object to the County's issuance of payment to the suppliers, based upon CMAR's records of materials and any defects detected in such materials.

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The County will directly pay all suppliers with respect to ODP materials purchased by the County.

- xi. The CMAR shall ensure that ODP materials conform to all specifications contained in the contract documents.

The CMAR shall determine prior to incorporation into the work if such materials are patently defective, and whether such materials are identical to the materials ordered and match the description on the bill of lading.

If the CMAR discovers defective or non-conformities in ODP materials upon such visual inspection, the CMAR shall not utilize such nonconforming or defective materials in the work and instead shall promptly notify the County of the defective or nonconforming condition so that repair or replacement of those materials can occur without any undue delay or interruption to the work.

If the CMAR fails to perform such inspection and otherwise incorporates into the work such defective or nonconforming ODP materials, the condition of which it either knew or should have known by performance of an inspection, the CMAR shall be responsible for all damages to County resulting from CMAR's incorporation of such materials into the work, including liquidated or delay damages.

- xii. In order to arrange for timely payment to the suppliers of ODP materials, the CMAR shall promptly submit to County within five (5) days of County's receipt of an invoice from a supplier (i) a copy of the applicable purchase order as receiving report, (ii) copies of the delivery tickets, (iii) written acceptance of the delivered items by the CMAR, and (iv) such other documentation as may be reasonably required by the COUNTY. Upon receipt of the appropriate documentation, the County will prepare a check drawn to the supplier based upon the data provided by the CMAR. This check will be made payable and remitted directly to the supplier. The CMAR shall assist the County to immediately obtain partial or final release of waivers as appropriate.
- xiii. The CMAR shall maintain records of all ODP materials it incorporates into the work. The CMAR shall account monthly to the County for any ODP materials delivered into the CMAR's possession, indicating portions of all such materials which have been incorporated into the work
- xiv. The CMAR shall obtain and manage all warranties and guarantees for all ODP materials in the same manner and on the same terms as materials obtained by the CMAR as required by the contract documents.

**ORANGE COUNTY
OWNER DIRECT PURCHASE PROVISION**

All repair, maintenance or damage-repair calls shall be forwarded to the CMAR for resolution with the appropriate supplier or subcontractor.

The CMAR agrees and understands that it shall undertake all warranty enforcement and other related duties of the County for all ODP materials. Additionally, all ODP materials shall be warranted and guaranteed by the CMAR as part of the CMAR's warranty and guarantee of the work to the same extent and degree as other materials procured and provided to the work by CMAR. The CMAR's warranty and guarantee duties shall be governed by and carried out pursuant to the terms of the contract documents. To that end, the CMAR expressly agrees it shall make no distinction in discharging such warranty and guarantee duties and obligations between ODP materials and equipment and materials otherwise supplied by the CMAR.

- xv. The County shall in no way be liable for any interruption or delay in the public works project, for any defects or other problems with the public works project, or for any extra costs resulting from any delay in the delivery of, or defects in ODP materials. The CMAR's sole or exclusive remedy shall be an extension of the time of completion of the public works project for such reasonable time as determined by County.

6. REQUIREMENTS FOR PURCHASE ORDER ISSUANCE:

The Procurement Division will issue a Purchase Order to the intended supplier and a deductive change order will be prepared by the County's Project Manager to reduce the amount of the contract with the CMAR by the cost of materials purchased through ODP (including tax savings).

Upon request from the County and in a timely manner, the CMAR shall prepare a Purchasing Requisition Request Form which shall, in form and detail acceptable to County, specifically identify the materials which County, in its discretion, has identified and elected to purchase directly as ODP materials. The Purchasing Requisition Request Form shall include:

- a. the name, address, telephone number and a contact person for the material supplier;
- b. the manufacturer or brand, model or specification number of the item;
- c. quantity needed as estimated by CMAR;
- d. the price quoted by the supplier for the materials identified;
- e. any sales tax associated with such quote;
- f. delivery dates as established by CMAR;
- g. the PR and the quote must indicate FOB Destination or Job Site.
The Owner will not pay shipping and handling charges.

**ORANGE COUNTY
OWNER DIRECT PURCHASE PROVISION**

Upon receipt of a Purchase Order Request Form, the PM will initiate a requisition specifying price, quantity, delivery, material/equipment description, etc. and provide a copy of the Purchase Order Request form and all backup to the Procurement Division. Upon receipt of the electronic requisition, the Procurement Division will review all submittals and issue the purchase order.

The original ODP purchase order, along with a copy of the County's Tax Exemption Certificate and the signed Certificate of Entitlement, will be either e-mailed or faxed and mailed to the material supplier; and a copy will be sent to the CMAR including a copy of the Certificate of Entitlement.

7. REQUIREMENTS FOR PURCHASE ORDER

PAYMENT:

- a. Upon delivery of ODP materials to such locations as the County may designate, the CMAR shall visually inspect all shipments from suppliers, and sign off on all receiving reports for ODP material delivered or received. The CMAR shall assure that each delivery of ODP materials is accompanied by delivery tickets or such other documentation as is adequate to identify the purchase order against which the purchase is made. This documentation may consist of a delivery ticket and a copy of the invoice from the supplier conforming to the purchase order together with such additional information as the County may require. The CMAR shall then forward the delivery tickets to the County to match up with the invoice for payment. The County shall be directly invoiced by the suppliers for all ODP materials. In the event that CMAR receives any invoices (other than copies of invoices the originals of which have been sent directly by the supplier to the County), the CMAR shall not pay such invoice and shall immediately notify the supplier that the County must be directly invoiced on all ODP materials.
- b. Invoices for payment will be submitted by the materials supplier to the County. The purchase order number shall be noted on all invoices.
- c. Except as expressly stated herein, the CMAR shall be fully responsible for all matters relating to the procurement of ODP materials furnished by and incorporated into the public works project including, but not limited to, assuring the correct quantities, verifying documents and the placement of all orders in a timely manner, assuring coordination of purchases, providing and obtaining all warranties and guarantees required by the contract documents, and inspection and acceptance of the materials at the time of delivery. The CMAR shall coordinate delivery locations and schedules, sequence of delivery, loading orientation, and other arrangements normally required by the CMAR for the particular materials furnished. The CMAR shall

**ORANGE COUNTY
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provide all services required for the unloading, handling and storage of materials through installation. **The County assumes the risk of loss of ODP materials from the time title to such material passes from the supplier at purchase, or upon delivery if allowed by Laws and Regulations.**

8. REFERENCES:

Owner Direct Purchase Requisition Form
Certificate of Entitlement
Consumers Certificate of Exemption
Letter of Understanding
Letter of Indemnification
Change Order Form
Example Consent of Surety

EXHIBIT G

(THIS FORM MUST BE UTILIZED IN ALL FINAL PAY APPLICATIONS)

FINAL RELEASE OF LIEN

KNOW ALL MEN BY THESE PRESENTS, that for and in consideration of the sum of monies, set out in the accompanying Estimate Statement No. _____, final, which quantity, the receipt of which is hereby acknowledged, is accepted as full and complete compensation for all Work done, materials furnished and damages or Claims arising under Orange County Contract No. Y19-815, entitled:

CONSTRUCTION MANAGER AT RISK SERVICES FOR THE ORANGE COUNTY CONVENTION CENTER PHASE V MULTI-PURPOSE VENUE AND GRAND CONCOURSE IMPROVEMENTS

By:

Contractor

(SEAL)

STATE OF _____


COUNTY OF _____

The foregoing instrument was acknowledged before this _____ day of

_____ 20_____, by _____.

Personally Known _____ OR Produced Identification _____

Type of identification Produced _____

	Stored Materials Form		CP 504C Form
	OCCC Capital Planning	PROCESS & PROCEDURES MANUAL	

**RESPONSIBILITY AND LIABILITY
FOR MATERIALS AND
EQUIPMENT NOT INCLUDED
IN THE WORK**

Re: Contract # _____

For _____

The undersigned CMAR, pursuant to Contract Section 11 entitled "Payment." by written application dated _____, has requested payment covering work completed through _____, and for material and equipment which has been delivered to and suitably stored at the project site or at a County-approved offsite location but not incorporated in the work as of _____.

The material and equipment delivered and stored is listed in the attached to the undersigned's above referenced Application for Payment. The undersigned hereby certifies that the material and equipment listed thereon has been verified by the undersigned to have been delivered to and is securely stored at the project site or County-approved offsite location.

In consideration of receiving payment for the material and equipment certified to have been delivered to and stored at the project site or County-approved offsite location, which is still under the custody and control of the undersigned, the undersigned Contractor, hereby agrees to assume and accept full and complete responsibility and liability for the storage, custody, security, care and safe-keeping of all said material and equipment in the event of theft, pilferage, fire or any other damage or loss until such time as said material and equipment is incorporated in the work, and the work is completed and accepted by the County.

CMAR: _____

BY: _____

TITLE: _____

DATE: _____

STORED MATERIALS INVENTORY LIST												
CMAR:				Pay Estimate Number:				Contract Number:				
Project Name:				FROM: 00/00/0000								
Project Limits:				TO: 00/00/0000				Page Number:				
Offsite Location Address:												
Onsite Location Address:												
	Value stored last period			Value installed this period			Value delivered this period			Value stored this period		
Item Description	quantity	unit price	amount	quantity	unit price	amount	quantity	unit price	amount	quantity	unit price	amount
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Totals			0.00			0.00			0.00			0.00

NOTE: Copies of suppliers invoices are required to substantiate cost/value of items on list.

CERTIFICATE OF TITLE TO STORED MATERIALS

WHEREAS, _____, hereafter referred to as the "CMAR", is engaged in the performance of construction contract Y19-815, hereafter referred to the "contract", with Orange County, hereafter referred to as the "County", and

WHEREAS, the CMAR has purchased certain materials for incorporation into the contract work in accordance with the contract documents from _____, hereafter referred to as the "Vendor", and

WHEREAS, these materials referred to are as follows:

DESCRIPTION of Materials and Quantities:

and,

WHEREAS, to comply with the provisions of the Contract Section 11 entitled "Payment.", requiring certification of the CMAR's legal title to the materials described above and warrant of title to the same materials to the County, the CMAR and the Vendor have entered into the following agreement.

NOW, THEREFORE, and in consideration of the forgoing premises, the CMAR and the Vendor agrees, with the intention of being bound hereby, as follows:

1. The Vendor has executed this document for the purpose of acknowledging that: the Vendor has made an outright sale and transfer of title for the above materials to the CMAR free of all restrictions, filings, or liens; the Vendor is the lawful owner of the above materials and has the right make such transfer of title; and the Vendor will not in the future make any claims whatsoever to such title.
2. The CMAR certifies and represents that he is the lawful holder of the legal title to the above materials, and has full legal right, power and authority to sell and transfer such title without restrictions, filings or liens of any kind on the part of the Vendor and/or any Subcontractor.
3. The CMAR, Vendor and/or any Subcontractor, their successors and assigns, will and do by these presents warrant title to the above described materials to the County.
4. In the event that the Vendor has sold the above described materials to a Subcontractor of the CMAR, this Certificate of Title is hereby amended at all applicable points to reflect this fact. By the execution of this certificate, any such Subcontractor is acknowledging that: such Subcontractor has made an outright sale and transfer of title for the above materials to the CMAR free of all restrictions, filings or liens; such Subcontractor is the lawful owner of the above materials and has the right to make such transfer of title; and such Subcontractor will not in the future make any claims whatsoever to such title.

CERTIFICATE OF TITLE TO STORED MATERIALS

IN WITNESS WHEREOF, the parties hereto have caused this Certificate of Title to be executed this ____ day of ____, 20__.

CMAR: [Firm's name]

BY: _____
(Signature)

ATTEST:

BY: _____
Corporate Officer & Title

Date: _____

Date: _____

SUBCONTRACTOR: [Firm's name]

BY: _____
(Signature)

ATTEST:

BY: _____
Corporate Officer & Title

Date: _____

Date: _____

VENDOR: [Firm's name]

BY: _____
(Signature)

ATTEST:

BY: _____
Corporate Officer & Title

Date: _____

Date: _____

CONSENT OF SURETY TO PAYMENT FOR MATERIALS STORED OFF SITE

Bond No.:

PROJECT:
(Name & Address)

TO: (Owner)

CMAR: (Name &
Address)

In accordance with the provisions of the Contract between the Owner and the CMAR as indicated above, the

(here insert name and address of Surety as it appears in the bond).

SURETY, on bond of _____
(here insert name and address of CMAR as it appears in the bond)

_____, CMAR,
hereby approves of the payment to the CMAR for materials stored off site as follows:

The Surety agrees that such payment to the CMAR for materials stored off site shall not relieve the Surety of any of its obligations to _____
(here insert name and address of Owner)

_____, OWNERS,
as set forth in the said Surety's bond.

Dated this ____ day of _____

Surety Company

By:

Attorney-in-Fact

Surety Phone No. _____