

August 5, 2019
RFP Y19-815-JS
Addendum #8
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 has been changed from ~~July 30, 2019~~ to **September 5, 2019.**
- B. Technical concerns/questions shall be submitted in writing, no later than 3:00pm on **August 16, 2019** to Jacqueta.Scott@ocfl.net.
- C. **Removals/Replacements:**

The following are clarifications:

- 1. The draft contract has been completely removed and replaced in its entirety with the draft contract attached to this Addendum #8 which is entitled "CONTRACT No: Y19-815 ORANGE COUNTY, FLORIDA CONSTRUCTION MANAGER AT RISK ("**CMAR**") CONTRACT" and dated as version 8/5/19.
- 2. Part D – *Supplemental Conditions/Special Provisions* have been removed with any applicable provisions revised and incorporated into the draft contract attached to this Addendum #8.
- 3. The *Segment Completion Schedule* has been removed and replaced. The revision is hereby attached to this Addendum #8 and incorporated as **Exhibit "D"** to the draft contract attached to this Addendum #8.
- 4. Part F - *General Conditions* have been removed with any applicable provisions revised and incorporated into the draft contract attached to this Addendum #8.
- 5. Form A - *Proposer Information* has been removed and replaced with **Revised Form "A"** as attached to this Addendum #8.
- 6. Form J - *Employment Data – Minority/Women Workforce Employment Goal* has been removed and replaced with Revised **Form "J"** as attached to this Addendum #8.
- 7. Form K - *Joint Venture, Partnership, or Teaming Information* has been removed in its entirety. **Form K shall not be used as part of this RFP.**

8. Forms M-1 and M-2 – *Letters of Intent* have been removed in their entirety. **Neither Form M shall be used as part of this RFP.**

D. Redlines/Revisions:

The following redlines shall be incorporated into the RFP:

TERMS AND CONDITIONS:

9. **MINORITY/WOMEN OWNED BUSINESS ENTERPRISE:**

The entirety of the Minority/Women Owned Business Enterprise provision shall be considered struck through, removed, and hereby replaced in its entirety as found in the Minority/Women Owned Business Enterprise Supplement attached to this Addendum #8 and dated 8/5/19.

Any previously issued addenda provisions regarding Minority/Women Owned Business Enterprise requirements or goals are hereby revoked and replaced with the contents of the Minority/Women Owned Business Enterprise Supplement attached to this Addendum #8 and dated 8/5/19.

21. **BONUS POINTS FOR HIRING REGISTERED SERVICE-DISABLED VETERANS**

The entirety of the Bonus Points for Hiring Registered Service-Disabled Veterans provision shall be considered struck through, removed, and hereby replaced in its entirety as found in the Bonus Points for Hiring Registered Service-Disabled Veterans Supplement attached to this Addendum #8 and dated 8/5/19.

Any previously issued addenda provisions regarding the Bonus Points for Hiring Registered Service-Disabled Veterans are hereby revoked and replaced with the contents of the Bonus Points for Hiring Registered Service-Disabled Veterans Supplement attached to this Addendum #8 and dated 8/5/19.

E. Questions/Responses. The following are questions/responses:

Question 1: 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.

Response 1: Addendum 3 Response 9 notes the following:

A Contractor or subcontractor may not be on multiple contracts for this specific PROJECT. See updated Award Restrictions section:

8. AWARD RESTRICTION.

The Contractor(s) and subcontractor(s) currently under contract for this specific PROJECT and awarded the Construction Manager at Risk Services for the Orange County Convention Center Phase V Multi-Purpose Venue and Grand Concourse Improvements (RFP #Y19-815-JS) and Design Services for the Orange County Convention Center Phase V Multi-Purpose Venue and Grand Concourse Improvements (RFP #Y19-810-JS) contract shall be ineligible to participate on any future contracts to be solicited for this same specific PROJECT. A Contractor or subcontractor may not be on multiple contracts for this specific PROJECT.

It is the proposer's responsibility to ensure that there is no conflict of interest that would violate the AWARD RESTRICTION provision.

F. ATTACHMENTS TO THIS ADDENDUM #8:

The following attachments to this Addendum shall, when applicable: (1) replace the previous attachments to the RFP or previous addendums thereto where the information found within such attachments conflicts; or be added as material parts of the RFP pursuant to this Addendum #8.

1. Draft Contract dated 8/5/19 **[New]**
2. Minority/Women Owned Business Enterprise Supplement dated 8/5/19 **[Supplement – New]**
3. Service-Disabled Veterans Enterprises Supplements dated 8/5/19 **[Supplement – New]**
4. **Exhibit “B”:** Bond Forms
 - a. Performance Bond Form
 - b. Payment Bond Form
5. **Exhibit “D” [Revised]:** Segment Completion Schedule
6. **Exhibit “E” [New]:** Draft GMP Proposal
7. **Exhibit “F” [New]:** Orange County Owner Direct Purchase Provision
8. **Exhibit “G” [New]:** Final Release of Lien Form
9. **Exhibit H [New]:** Stored Materials Forms
 - a. Stored Materials Form CP-504C
 - b. Stored Materials Inventory List Form CP-504D

- c. Certificate of Title to Stored Materials Form CP-504E
- d. Consent of Surety to Payment for Stored Materials Offsite Form CP-504F
- 10. **Form "A" [Revised]:** Proposer Information
- 11. **Form "J" [Revised]:** Employment Data – Minority/Women Workforce Employment Goal

All other terms and conditions of the RFP remain the same.

- G. 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

**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 [REDACTED] as its Senior Project Manager and [REDACTED] 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 Addendum #8 of 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 Addendum #8 of 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 Addendum #8 of 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 Addendum #8 to 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 Addendum #8 of 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 pay or 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 <i>(Insert Number 1 – 5 Below)</i>

(Number) Dislocated Workers

- 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 – If the construction method is Construction Management at Risk 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 \$_____. 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 \$_____ 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 Addendum #8 of 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 record 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, 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.

[SIGNATURES ON THE FOLLOWING PAGE]

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.
CPPB, APP, Manager, Procurement Division

Date

[CMAR]

By: _____

(Signature)

(Printed)

(Official Title)

Date

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

Minority/Women Owned Business Enterprises Supplement

The entirety of the Minority/Women Owned Business Enterprise provisions in RFP #Y19-815-JS shall be considered struck through, removed, and hereby replaced in their entirety as found in this supplement. Additionally, any previously issued addenda provisions to RFP #Y19-815-JS regarding Minority/Women Owned Business Enterprise requirements or goals are hereby revoked and replaced with the contents of this supplement.

Strike through provision 9 on pages 4-9 of RFP #Y19-815-JS and replace with:

TERMS AND CONDITIONS:

...

9. Minority/Women Owned Business Enterprise:

A. M/WBE Management Level Requirement.

1. 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.**
2. M/WBE inclusion at the management level can be accomplished by the Proposer:
 - a. 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**
 - b. Through a fully-executed Joint Venture (JV), Partnership, or Teaming 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.]

(1) **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:**

- (a) 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
- (b) The name of the Joint Venture registered with the Florida Department of Corporations must reflect the same name used in the proposal.

[Note: Registration of the Joint Venture with the State is not required at the time of proposal; however, submittal of a binding agreement meeting the requirements outlined herein is required at the time of proposal.]

(2) **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.

(3) **Teaming agreement:** A written and executed agreement between two or more businesses to act together solely for the purposes of pursuing a proposal and performing the Work and services required under an Orange County contract. One of the businesses must be an Orange County certified minority/ woman owned business enterprise. The teaming agreement outlines the proposal responsibilities and obligations.

c. **Joint Venture, Partnership, and Teaming Agreement Requirements.**

(1) **All Agreements:** At a minimum, the following items must be included in the selected Joint Venture, Partnership, and Teaming Agreements:

- (a) The name and type (ie: Joint Venture, Partnership, or Teaming) of agreement;
- (b) The parties in the agreement;
- (c) Place(s) of business of each party;
- (d) The term (which cannot terminate prior to PROJECT completion);
- (e) Capital account information;
- (f) Accounting book information;
- (g) Work responsibilities for each party;
- (h) Dispute resolution language;
- (i) Insurance/Fidelity bond/Surety information;
- (j) Event of a loss; and
- (k) **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.]

- (2) **Partnership & Teaming Agreements:** If proposing as a partnership or team, the Partnership or Teaming Agreement must additionally identify:
 - (a) Which firm shall serve as the fiscal agent to which the COUNTY shall make payment; and
 - (b) Which firm shall be the contracting entity with which any PROJECT-related contracts shall be executed.
- (3) **Teaming Agreements:** If proposing as a team, the Teaming Agreement must additionally contain a clause stating that all team members represented within the team have granted authority to the specifically identified Contracting Entity to, for PROJECT-related work:

- (a) Enter into contracts with the COUNTY and Subcontractors on the team's behalf; and
 - (b) Legally bind each individual entity throughout the duration of this PROJECT.
- d. 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.

- 1. 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.
- 2. **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.**
3. **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.
4. **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.
5. 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. Such subcontracts shall include the following terms:
 - (1) "Payment shall be made to the Subcontractor/Suppliers within 72 hours of 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."
- c. The awarded Proposer shall also be expected to:
 - (1) 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.
 - (2) 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.

- (3) Submit an updated monthly certified MWBE utilization report, Equal Opportunity Workforce Schedule, Joint Venture, Partnership or Team 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.
- (4) 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.
- (5) 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.

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

Bonus Points for Hiring Registered Service-Disabled Veterans Supplement

The entirety of the Bonus Points for Hiring Registered Service-Disabled Veterans provisions in RFP #Y19-815-JS shall be considered struck through, removed, and hereby replaced in their entirety as found in this supplement. Additionally, any previously issued addenda provisions to RFP #Y19-815-JS regarding Bonus Points for Hiring Registered Service-Disabled Veterans are hereby revoked and replaced with the contents of this supplement.

Strike through provision 21 on pages 12-14 of RFP #Y19-815-JS and replace with:

TERMS AND CONDITIONS:

...

21. BONUS POINTS FOR HIRING REGISTERED 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. Expeditiously 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.

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:

BY: _____

SURETY

Type Name and Title

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 _____

EXHIBIT D - SEGMENT COMPLETION SCHEDULE

OCCC CMP North-South Building Improvements Multipurpose Venue and Convention Way Grand Concourse (CM at RISK method)

DRAFT- NOTE: Schedule is Subject to Change

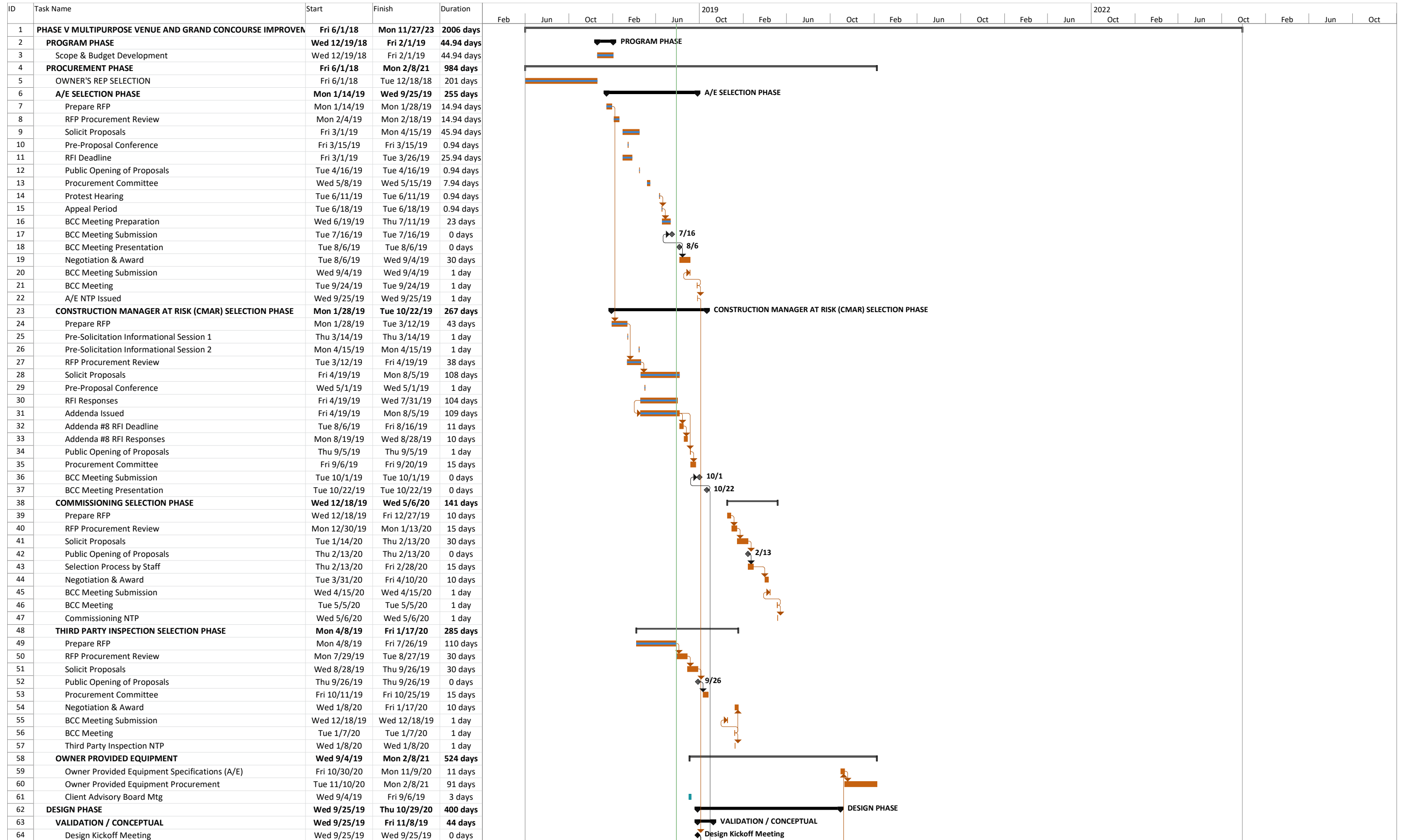


EXHIBIT E

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 (“**OC**CC”), 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
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-

GUARANTEED MAXIMUM PRICE (GMP) BREAKDOWN

Item No.	Bid Pkg No.	CSI Code	Description	Total
DESIGN ASSIST PHASE				\$
ENABLING CONSTRUCTION PHASE				\$
CONSTRUCTION PHASE				\$
<i>Trade Contractor Packages</i>				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
<i>Allowances</i>				\$
				\$
				\$
				\$
				\$
				\$
				\$
<i>Construction Contingency</i>				\$
	\$			\$
	\$			\$
	\$			\$
<i>General Conditions</i>				\$
	\$			\$
	\$			\$
	\$			\$
	\$			\$
				\$
TOTAL ALL PHASES				\$
FEE (_____%)				\$
GUARANTEED MAXIMUM PRICE (GMP)				\$

**ORANGE COUNTY
OWNER DIRECT PURCHASE PROVISION**

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.

**ORANGE COUNTY
OWNER DIRECT PURCHASE PROVISION**

- 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.*

**ORANGE COUNTY
OWNER DIRECT PURCHASE PROVISION**

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.

**ORANGE COUNTY
OWNER DIRECT PURCHASE PROVISION**

- 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.

**ORANGE COUNTY
OWNER DIRECT PURCHASE PROVISION**

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
OWNER DIRECT PURCHASE PROVISION**

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)

BY: _____
Corporate Officer & Title

Date: _____

ATTEST:

Date: _____

SUBCONTRACTOR: [Firm's name]

BY: _____
(Signature)

BY: _____
Corporate Officer & Title

Date: _____

ATTEST:

Date: _____

VENDOR: [Firm's name]

BY: _____
(Signature)

BY: _____
Corporate Officer & Title

Date: _____

ATTEST:

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. _____

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. – ~~June 6, 2019~~ September 5, 2019

PROPOSER INFORMATION:

NAME OF FIRM: _____

ADDRESS: _____ (Street Address)

_____ (PO Box)

_____ (City, County, State, Zip)

PHONE: _____

FAX: _____

AUTHORIZED SIGNATORY: _____ (Print Name) TITLE: _____

SIGNATURE: _____

CONTACT'S E-MAIL ADDRESS: _____

TIN# _____

NOTE: COMPANY NAME MUST MATCH LEGAL NAME ASSIGNED TO TIN NUMBER. CURRENT W9 MUST BE SUBMITTED WITH PROPOSAL.

IDENTIFICATION OF BUSINESS ORGANIZATION:

Check the appropriate box that describes the organization of the firm proposing:

PLEASE NOTE: Proposers must include a minimum 24% M/WBE inclusion at the management level. This can be achieved by the proposer having 24% M/WBE Joint Venture, Partnership or Teaming. The proposer must submit ~~Form K~~ along with an executed Joint Venture, Partnership or Teaming agreement with their proposal. The Joint Venture must be properly registered with the Florida Division of Corporations before the contract award and the name of the joint Venture must the same name used in the proposal

Sole Proprietorship Partnership Joint Venture Corporation Teaming

State of Incorporation: _____

Principal Place of Business (Florida Statute Chapter 607): _____

Check all that apply:

Mergers Parent Company Subsidiary

If a merger, a parent company or subsidiary relationship applies, list **all** entities in the relationships:

The bidder or proposer represents that the following principals are authorized to sign and/or negotiate Contracts and related documents to which the bidder or proposer will be duly bound. Principal is defined as an employee, officer or other technical or professional in a position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

Name	Title	Phone Number

ADDENDUM ACKNOWLEDGEMENT:

The Proposer shall acknowledge receipt of any addenda issued to the solicitation by completing the blocks below or by completion of the applicable information on the addendum and returning it not later than the date and time for receipt of the Proposal. Failure to acknowledge an addendum that has a material impact on the solicitation may negatively impact the responsiveness of your 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.

Addendum No. _____	Date	Addendum No. _____	Date:
Addendum No. _____	Date:	Addendum No. _____	Date:
Addendum No. _____	Date	Addendum No. _____	Date:
Addendum No. _____	Date:	Addendum No. _____	Date:

Minority/Women Workforce Employment Goal

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/bidder 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 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;

Minority/Women Workforce Employment Goal

- (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;
- (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;

Minority/Women Workforce Employment Goal

- (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.
- (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.

Minority/Women Workforce Employment Goal

- (5) If proposing or bidding as a Joint Venture, Partnership, or Team:
- 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, Partnership, or Team'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/Bidder 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/bidder's evidence of good faith effort (employment) for each workforce employment level not met.