



AGENDA STAFF REPORT

Agenda Item

6

ASR Control 20-000367

MEETING DATE: 05/19/20
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): 2
SUBMITTING AGENCY/DEPARTMENT: John Wayne Airport (Approved)
DEPARTMENT CONTACT PERSON(S): Barry A. Rondinella (949) 252-5183
 Lawrence G. Serafini (949) 252-5270

SUBJECT: Approve Contract for Terminal Building Curtain Wall Modifications Project

CEO CONCUR Pending Review	COUNTY COUNSEL REVIEW Approved Agreement to Form	CLERK OF THE BOARD Consent Calendar 3 Votes Board Majority
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Budgeted: Yes **Current Year Cost:** \$94,356 **Annual Cost:**
 FY 2020-21 \$6,400,000

Staffing Impact: No **# of Positions:** **Sole Source:** N/A
Current Fiscal Year Revenue: N/A
Funding Source: N/A **County Audit in last 3 years:** No

Prior Board Action: 08/27/2019 #20, 03/26/2019 #29

RECOMMENDED ACTION(S):

1. Award Construction Manager At-Risk Contract to Webcor Builders, Inc. for the Terminal Building Curtain Wall Modifications Project in the amount of \$94,356 for the Design Phase Services portion of the Contract, for a term of up to 120 days, effective upon Board of Supervisors approval.
2. Authorize the expenditure of funds in an amount not to exceed \$6.4 million in Guaranteed Maximum Price Amendments to the Contract with Webcor Builders, Inc. for Construction Phase Services for the Terminal Building Curtain Wall Modifications Project, commencing on the date of execution of Contract Amendments.
3. Authorize the Airport Director, or designee, to execute Guaranteed Maximum Price Amendments for Construction Phase Services when the requisite Certificates of Insurance and bonds have been submitted and approved by the County Executive Office/Office of Risk Management and County Counsel.

SUMMARY:

Approval of a Construction Manager At-Risk Contract with Webcor Builders, Inc. for the Terminal Building Curtain Wall Modifications Project will enable the construction of two new curtain wall bays to house future casual bar and dining concession amenities.

BACKGROUND INFORMATION:

John Wayne Airport (JWA) strives to continuously improve its guest experience by providing guests with the means to have a pleasant terminal experience prior to boarding their flights. To achieve this goal, JWA is planning the addition of a variety of food and beverage concession spaces along the departure concourse.

On March 26, 2019, the Board of Supervisors (Board) authorized the Airport Director or designee to issue a Request for Qualifications (RFQ), and subsequently to issue a Request for Proposals (RFP) to the RFQ’s qualified respondents, for the Airport Concession Development Program. On August 27, 2019, the Board awarded and executed concession leases with various food and beverage concessions for the Phase I Concession Development Program. Two of these leases were for casual dining and bar services. One lease is with Mission Yogurt Inc. dba Taps Fish House, and the other lease is with Greenleaf Gourmet Chop Shop Inc.

The objective of the Terminal Building Curtain Wall Modifications Project (Project) is to develop usable floor space through the addition of two curtain wall bays along the west-facing curtain wall, to enable the two above-noted casual dining and bar concessions to house their amenities, thereby allowing the concessions to retain their square footage allotments while maintaining existing hold room seating.

JWA may return to the Board to request additional authorization for expenditure of future funds to construct up to three additional curtain wall bays as increases in passenger counts and demand for concession services warrant.

The Project is currently being designed by JWA’s on-call Architect-Engineer firm, IDS Group.

Construction Manager at Risk (CMAR) Services

On January 2, 2020, JWA issued an RFP for CMAR services for the Project. Three proposals were received and evaluated based upon predetermined criteria. The evaluation committee consisted of staff from JWA’s Facilities division. All firms were deemed to have met minimum requirements, with the evaluation committee scoring the three firms on their written proposal. The three CMAR firms that submitted proposals and their ranking are as follows:

<u>CMAR Contractor</u>	<u>Rank</u>
Webcor Builders, Inc. (Webcor)	1
Swinerton Builders	2
2H Construction, Inc.	3

Webcor received the highest ranking. Webcor’s state contractor’s license was verified as current and active through the Contractors State License Board.

JWA staff have conducted due diligence on Webcor. Reference checks were completed with San Francisco International Airport on the Harvey Milk Terminal 1, International Terminal Customer Hospitality Boarding Areas A and G and Consolidated Administration Campus projects and were found to be satisfactory.

JWA negotiated a design phase services fee with Webcor to provide pre-construction services including design reviews, constructability reviews, value engineering recommendations, scheduling, permitting support and preparation of pre-construction submittals. The final negotiated fee amount of Webcor’s

design phase services was established and gauged for reasonableness based on JWA staff's analysis of Webcor's proposed fee structure and taking into consideration JWA's independent fee estimate of the services required.

JWA seeks the Board's authorization for the Airport Director or designee to execute future negotiated Guaranteed Maximum Price (GMP) amendments for construction phase services between the County and Webcor. If authorized, the Airport Director or designee will approve future GMP amendment package(s), allowing for the timely procurement of materials and construction of the Project.

The CMAR project delivery method chosen for the Project is in compliance with the County of Orange Design and Construction Procurement Policy Manual, Section 5 – Alternate Project Delivery methods. JWA and Webcor will collaborate on the Project design and its objectives, with the aim to achieve the most realistic and accurate construction cost.

The CMAR Contract does not currently include subcontractors or pass through to other providers. See Attachment C for the Contract Summary Form.

Compliance with CEQA: The proposed project was previously determined to be Categorically Exempt from CEQA pursuant to Section 15301 (Class 1) of the CEQA Guidelines, on August 27, 2019 when it was originally approved. CEQA Guidelines Section 15301 provides for the exemption of repairs, upgrades and minor alteration of existing public facilities involving negligible or no expansion of use beyond existing.

FINANCIAL IMPACT:

Appropriations for this Project are included in the FY 2019-20 and FY 2020-21 Budget for Airport Construction Fund 281. The total cost of the construction phase services is estimated to not exceed \$6.4 million at this time, and will be included in next fiscal year's budget. JWA may return to the Board to request additional authorization for expenditure of future funds to construct up to three additional curtain wall bays as increases in passenger counts and demand for concession services warrant.

The CMAR Contract contains language allowing JWA to terminate the Contract, reduce the levels of services and/or renegotiate the levels of services to be provided.

STAFFING IMPACT:

N/A

ATTACHMENT(S):

- Attachment A – CMAR Contract with Webcor Builders, Inc.
- Attachment B – CMAR Evaluation Summary and Individual Scoring Sheets
- Attachment C – Contract Summary Form

**COUNTY OF ORANGE
JOHN WAYNE AIRPORT
CONSTRUCTION MANAGER AT RISK CONTRACT
TERMINAL BUILDING CURTAIN WALL MODIFICATIONS
PROJECT NO. P447**

This Contract is made and entered into the ____ day of _____, 20____, by and between the County of Orange, a political subdivision of the State of California (“COUNTY” or “OWNER”), acting through its department John Wayne Airport (“JWA”), and Webcor Builders (“Construction Manager at Risk” or “CMAR” or “Contractor”), with OWNER and CMAR sometimes referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

- A. OWNER intends to construct the Terminal Building Curtain Wall Modifications, as described in the section titled Project Description, hereinafter referred to as “Project.”
- B. To undertake the design of the Project, the OWNER has entered into a Contract with Webcor Builders, Inc. hereinafter referred to as the “Design Professional” or “A-E.” At OWNER’s sole discretion, OWNER may elect to use its own staff to accomplish certain aspects of the design.
- C. The CMAR has represented to the OWNER CMAR’s ability to provide Design Phase Services, Construction Phase Services, and to construct the Project.
- D. Based on this representation, the OWNER enters into this Contract with the CMAR for the services identified in these Contract Documents. The time of performance of this Contract shall commence upon the date of award as evidenced by the County of Orange Board of Supervisors Minute Order awarding this Agreement (“Contract Award Date”). At the end of the design phase, at the OWNER’s discretion, the OWNER may direct the CMAR to proceed with the Construction Phase Services for the Project.

CONTRACT

NOW THEREFORE, in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the OWNER and the CMAR as follows:

1. DEFINITIONS

Term	Definition
Abbreviations	The language of specifications and other Contract Documents is of the abbreviated type in certain instances, and implies words and meanings appropriately interpreted. Singular words will be interpreted as plural and plural words will be interpreted as singular where applicable and where full context of the Contract so indicates.
Addendum and Addenda	1) Written or graphic instruments issued prior to the submittal of the GMP Proposal(s), which clarify, correct or change the GMP Proposal(s) requirements. 2) Written or graphic instrument issued prior to the opening of Bids which corrects or changes the Contract Documents.

Term	Definition
Allowance	An estimated dollar amount determined jointly by the Owner and the CMAR that is included in the Contract for the purpose of encumbering funds to cover the cost of items which have not been specified explicitly in the Contract. Allowance items may not be completely defined when the Contract is executed, but may be necessary to complete the project. Allowances may be used for changes in scope. Contract allowances are controlled by the Owner.
Alternate Systems Evaluations	Assessments of substitutes for design, means and methods or other scope considerations. Alternative Systems Evaluations may use value engineering principles and have the potential to reduce construction costs while still delivering a quality and functional Project that meets Owner requirements
Amendment or Change Order	A written instrument issued after execution of the Contract Documents which identifies changes to the Contract including: the addition, deletion or revision in the scope of services or Deliverables; the amount of the adjustment to the Contract Amount; the extent of the adjustment to the Contract Time; or modifications of other Contract terms.
Application for Payment	See "Payment Request".
Approved, Accepted, or No Exceptions Taken	Where used in conjunction with the Architect or Engineer's response to submittals, requests, applications, inquiries, reports and claims by the CMAR, the meaning of the terms "Approved, Accepted, or No Exceptions Taken" will be held to limitations of the Architect or Engineer's responsibilities and duties as specified in General Conditions. In no case will "approved" by the Architect or Engineer be interpreted as a release of the CMAR from responsibilities to fulfill requirements of the Contract, nor as any modification to those requirements.
Architect-Engineer or A-E	The qualified, licensed person, firm, corporation or in-house force who furnishes design, construction support, and/or construction administration services required for the Project.
Beneficial Occupancy or Beneficial Use	The stage of construction before Final Acceptance at which the Owner may occupy the building, structure or facility, or a portion thereof, for its intended purpose.
Board of Supervisors	Owner's governing body.
Bulletin	Written or graphic instrument issued after contract execution which revises the Contract Documents.
CCR	California Code of Regulations.
Change Order	A modification of the Contract as provided by the "Changes" Section of the General Conditions.
Change Order Request	Owner's request for CMAR to provide a proposal and price/time quote for Owner's desired Change Order, or Owner's description of work to be performed pursuant to CMAR's Request for Change.
Changed Conditions	Site conditions or materials of an unexpected nature or differing from those represented in the Contract Documents as provided by the "Changes" Section of the General Conditions.

Term	Definition
CMAR or Contractor or CONTRACTOR	The Party awarded the Contract by Owner.
CMAR Contingency	A fund to cover cost growth during the Project used by the CMAR, usually for costs that result from Project circumstances. The amount of the CMAR Contingency will be negotiated as a separate line item in each GMP package. Use and management of the CMAR Contingency during the construction phase is described in the Contract Section titled GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS.
Code Sections	Except where otherwise specified, all statutory references (e.g. "Labor Code" or "Public Contract Code") shall mean those laws enacted by the State of California, or other authority, as they may be amended.
Construction Documents	Plans, specifications and estimates prepared by the Design Professional after correcting for permit review requirements.
Construction Fee	The CMAR's administrative costs, home office overhead, and profit, whether at the CMAR's principal or branch offices.
Construction Manager at Risk or CMAR	The firm, corporation, or other approved legal entity with whom the Owner has entered into this Contract to provide services as detailed in this Contract.
Construction Phase Services	The erection, construction, alterations, improvements, and other works provided by the CMAR in performing the services contained in the construction phase(s) of the Project, as attached hereto, and as described in this Contract, including Early Work Amendments, GMP Amendments, and Change Orders.
Construction Schedule(s)	CMAR's initial construction schedule after it has been accepted by Owner and designated as the Project Construction Schedule, and updated by each monthly schedule update. Refer to Construction Schedule sections.
Contract or Agreement	A legally binding written document signed by the Owner and CMAR, including but not limited to this Contract, and any and all attachments, exhibits, or any other documents as incorporated or referenced herein. The Contract is the complete agreement between Owner and CMAR covering the Project, as represented by the Contract Documents.
Contract Amount	The combined sum of costs for Design Phase Services and Construction Phase Services for this Contract, and all Early Work Amendments, Change Orders, and GMP Amendments issued under this Contract as identified in the "CONTRACT AMOUNT" and "PAYMENTS" sections.
Contract Documents	Documents comprising the complete agreement between Owner and CMAR as enumerated in the "Contract Documents" Section of the Agreement.
Contract Time or Time of Completion	The number of calendar days specified in the "CONTRACT TIME" section of the Agreement within which the CMAR must complete the Work. Contract Time or Time of Completion may be adjusted in accordance with the "Changes" section of the General Conditions.

Term	Definition
Cost of the Work	Direct construction phase costs necessarily incurred by the CMAR in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, building permit fees (if not paid for by Owner), materials testing, and related items. The Cost of the Work shall not include the CMAR's Construction Fee, General Conditions Cost, or taxes.
Critical Path Schedule	The sequence of activities from the start of the Work to the Completion of the Project. Any delay in the completion of critical path activities will extend the Time of Completion.
Day(s)	Day or number of days shall mean consecutive calendar days including all holidays and weekends unless otherwise specified within the Contract Documents.
Defective Work	CMAR's performance that does not conform to the requirements of the Contract Documents, industry standards, manufacturers' recommendations, or requirements of the <i>Quality Of Materials And Workmanship</i> section of the General Conditions.
Design Phase Services	The work products prepared by the CMAR in performing the services contained in the design phase(s) of the Project, as attached hereto, and as described in this Contract.
Design Professional	See Architect-Engineer or A-E.
Directed, Requested, etc.	Where not otherwise explained, terms such as "directed," "requested," "authorized," "selected," "approved," "required," "accepted," and "permitted" mean "directed by A-E," "requested by A-E," "requested by A-E," and similar phrases. However, no such implied meaning will be interpreted to extend A-E's responsibility into the CMAR's area of construction responsibility.
Director	Except where otherwise provided, references to "Director" shall mean the Director of John Wayne Airport or his or her designee.
Division 01 to 46 Specifications	Construction Specification Institute's (CSI) format of specifications organization. CSI maintains the standardization of construction language as it pertains to building specifications.
Dust Control Plan or Fugitive Dust Emission Control Plan	CMAR's plan for compliance with Owner's Fugitive Dust Emission Control Plan in conformance with the SCAQMD Rule 403 (See the "Performance" Section of the General Conditions).
Emergency/Contingency Plan	CMAR's provisions for handling spills of hazardous, liquid, or nuisance materials prepared in accordance with the "Hazardous Or Contaminated Materials" subsection of the "Performance" Section of the General Conditions.
Engineer or Architect of Record	The California-registered architect or engineer in responsible charge for the design of the Project and whose seal appears on the Plans and/or Technical Specifications.
Final Payment	The last and complete payment by Owner to CMAR under the Contract as provided by the "PAYMENTS" section.

Term	Definition
Float	The number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.
General Conditions	The portion of the Contract Documents setting forth various conditions and requirements of the Contract.
General Requirements	The provisions of Division 01 (1) CSI sections that shall apply to the entire work.
GMP	Guaranteed Maximum Price
GMP Item	An item of work or task listed in the GMP schedule including the description and price in lump sum or unit price, where applicable.
GMP Item, Deletable	A GMP item that is considered part of the GMP but which may or may not be deleted from the Contract Price at any time prior to completion of the Work.
GMP Item, Specialty	A GMP item that is considered part of the GMP but not considered part of the CMAR's obligation to perform at least a specified percentage of the Work, where and when applicable.
GMP Schedule	The detailed list of items of work with associated quantities, prices, and type of cost, submitted with each GMP.
Guaranteed Maximum Price (GMP)	The sum of the maximum Cost of the Work and, including but not limited to, the CMAR's Construction Fee, General Conditions Costs, sales tax, and CMAR Contingency, as defined in a GMP Proposal.
Guaranteed Maximum Price (GMP) Proposal	The offer or proposal of the CMAR submitted on the prescribed form setting forth the GMP prices for the entire Work or portions of the Work to be performed during the construction phase. The GMP Proposal(s) is to be developed pursuant to the "DESIGN PHASE SERVICES" section, under the "GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS" subsection.
Laws and Regulations; Laws or Regulations	Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.
Manifests	Required transport documents that serve as tally-sheets and identify the generator, transporter, disposal facility and type of hazardous material(s), if any. Manifests include, but are not limited to: documents titled Uniform Hazardous Waste Manifest(s), Bills of lading, or similar documentation concerning the handling, transportation, and disposal of materials (See the "Hazardous Or Contaminated Materials" subsection of the "Performance" Section of the General Conditions).
Notice of Completion	The document recorded by Owner in accordance with Civil Code Section 8182 after completion of the Work.
Notice of Termination	Owner's notice to CMAR specifying the effective date of a termination of the Contract (in whole or in part), as provided by the "Termination" Section of the General Conditions.

Term	Definition
OWNER	The County of Orange, a political subdivision of the State of California, and its representative, agencies/departments. Alternate designations: COUNTY.
Owner Contingency	A fund to cover cost growth during the Project used at the discretion of the Owner, usually for costs that result from Owner directed changes or unforeseen site conditions. The amount of the Owner Contingency will be set by the Owner and will be in addition to the project costs included in the CMAR's GMP packages. Use and management of the Owner Contingency during the construction phase is described in the Contract section titled <i>Guaranteed Maximum Price (GMP) Proposals</i> .
OCPW	Orange County Public Works, A County of Orange Agency/Department
Party / Parties	The Owner and/or CMAR.
Payment Request	CMAR's request for progress payment or Final Payment using the Owner-provided form and supporting documents as required by the Contract submitted in a manner acceptable to the Owner.
Plans	Documents which visually represent the scope, extent and character of the Work to be furnished and performed by the CMAR during the construction phase and which have been prepared or approved by the Design Professional and the Owner. Includes drawings that have reached a sufficient stage of completion and released by the Design Professional solely for the purposes of review and/or use in performing constructability or bidability reviews and in preparing cost estimates (e.g. conceptual design Drawings, preliminary design Drawings, detailed design Drawings at 30%, 60%, 90% or 100% or schematic, design development, Construction Documents). Shop Drawings are not Drawings as so defined. The drawings, profiles, cross sections, standard plans, working drawings, or reproductions thereof, approved by Owner, which show the location, character, dimensions, or details of the Project.
Project	All work performed by CMAR as required by, and in strict accordance with, the Contract Documents.
Project Engineer	Design engineer, designer, civil engineering assistant, civil engineer, or senior civil engineer who has responsible charge of preparing the engineering plans, estimates, and specifications.
Project Manager (PM)	The individual appointed by the Owner to act as liaison between the Owner and the CMAR, and to carry out the administration of the Contract.
Project Team	Team consisting of the Design Professional, CMAR, Project Manager or other Owner representative, and other stakeholders who are responsible for making decisions regarding the Project.
Request for Change	CMAR's request that Owner issue a Change Order as specified in the "Change Order" section of the General Conditions.

Term	Definition
Retention	The amount of progress payments withheld by Owner as security for CMAR's complete and proper performance of the Contract as provided by the "Payments" Section of the General Conditions.
Retention Payment	Payment of the Retention in accordance with Public Contract Code 7107 and the "Retention Payment" Section of the General Conditions.
Schedule of Values (SOV)	Detailed breakdown by discipline or unit prices and costs of Project elements to be performed and/or delivered by CMAR as defined in the Contract Documents.
Schedule Update(s)	CMAR's monthly update of work progress.
Shop Drawings	All drawings, diagrams, schedules and other data specifically prepared for the Work by the CMAR, Subcontractor of any tier, manufacturer, supplier, or distributor to illustrate some portion of the Work.
Site	The land or premises on which the Project is located.
Specifications	Includes, but is not limited to, the part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
Sub-consultant	A person, firm or corporation having a Contract with the CMAR to furnish services required as its independent professional associate or consultant with respect to the Project.
Subcontractor(s)	An individual or firm having a direct Contract with the CMAR or any other individual or firm having a Contract with the aforesaid Contractors at any tier, who undertakes to perform a part of the Design Phase Services or construction phase Work at the site for which the CMAR is responsible.
Submittals	Items that the Contract Documents require CMAR to submit to Owner after award of the Contract and issuance of the Notice to Proceed, as provided by the "Submittals" Section of the General Conditions.
Substantial Completion	The point in time when major components of the Work are complete and the project is functional for its intended use. This may include, but is not limited to: (i) All fire and life safety provisions related to the Work have been completed and approved, and approvals have been granted by the Fire Authority-Having-Jurisdiction/Fire Marshall and local authorities to issue a Temporary Certificate of Occupancy; (ii) elevator permits, if any, have been secured; (iii) all systems for allowing the safe and functional occupancy of the Project for its intended use are in place, functional, and displayed to the Owner; (iv) draft O&M manuals and record documents reviewed and accepted by the Owner; (v) Owner operation and maintenance training complete or in-progress; (vi) commissioning has progressed sufficiently to allow safe and functional occupancy of the Project for its intended use.

Term	Definition
Supplementary General Conditions	The portion of the Contract Documents describing additions and revisions to the General Conditions setting forth conditions and requirements particular to the Project.
Supplier	A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct Contract with CMAR or with any Sub-Contractor to furnish materials or equipment to be incorporated in the construction phase Work by CMAR or any Sub-Contractor.
Traffic Control Plan (TCP)	CMAR's provisions for coordination of traffic at the Project site. (See the "Performance" section of the General Conditions.)
Unilateral Change Order	A Change Order issued by the Owner where Owner and CMAR cannot reach an agreement on a proposed modification to the Contract.
Updated schedule	A current schedule developed from the baseline or subsequent schedule through regular monthly review to incorporate as-built progress and any planned changes.
Value Engineering	Alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while still delivering a quality and functional Project that meet OWNER requirements.
Work	The entire and complete construction of the Project or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.
Working day	Any day within the period between the date of Contract award and Owner's acceptance of the Work, except Saturday, Sunday, or any day designated as a holiday by Owner. Notwithstanding the foregoing, any day will be treated as a working day if the Contract Documents require that it be so treated, or CMAR with Owner's approval elects to work on such day.

2. CONTRACT DOCUMENTS

Contract Documents, which together represent the complete agreement between OWNER and CMAR, consist of the following: this Contract; OWNER-approved Guaranteed Maximum Price (GMP) package(s), as approved by the Director of John Wayne Airport; the General Conditions; Supplementary General Conditions; Addenda and Bulletins; Attachments; Appendices; Plans; and Specifications mentioned in any Contract Documents; and all modifications and amendments to the foregoing issued after the date of execution of the Agreement, including Amendments and Change Orders. The Contract Documents also include a Faithful Performance Bond and a Labor and Material Payment Bond corresponding with each GMP package. The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all.

3. PRECEDENCE OF CONTRACT DOCUMENTS

If there is a conflict among Contract Documents, the document highest in precedence shall control.

The precedence shall be:

1. Permits and applicable regulations as may be provided by law or that govern the site;
2. Amendments and Change Orders;
3. Addenda and Bulletins;
4. Supplementary General Conditions;
5. Contract;
6. General Conditions;
7. Plans;
8. Specifications; and
9. Attachments and Appendices.

4. PROJECT DESCRIPTION

The Terminal Building Curtain Wall Modifications Project includes construction of multiple bays (nodes) that protrude from the Terminal's airfield-facing (or west-facing) curtain wall, each measuring approximately 30 feet in width by 15 feet in depth, to allow future restaurant concessions food preparation areas to be situated within them while retaining some existing gate hold room seating.

All work shall be per applicable codes as required by the Authorities Having Jurisdiction (AHJ). The Work shall conform to the Construction Documents, codes, regulations, laws, and all other governing rules, regulations, and standards referenced in the Contract Documents or by industry standard.

5. CONTRACT AMOUNT

5.1. CMAR DESIGN PHASE SERVICES

OWNER shall pay to CMAR for Design Phase Services the lump sum amount of **NINETY-FOUR THOUSAND THREE HUNDRED FIFTY-SIX** dollars (\$94,356) for CMAR's approved services as well as those additional amounts for OWNER-approved additional Design Phase Services ordered and described in OWNER-approved change orders, in accordance with the Scope of Services and terms and conditions of the Contract documents. Services begin upon the Contract Award Date.

5.2. CMAR CONSTRUCTION PHASE SERVICES

OWNER shall pay to CMAR for Construction Phase Services for all work required by the Contract Documents and for performance of this Agreement up to and not exceeding the amounts authorized and amended by change orders to the Contract documents for Early Work Amendments, if any, for GMP Amendments, as they may be adjusted, and for other change order work, pursuant to the "Changes" section of the General Conditions, and will be paid for in accordance with the Payments section of this agreement.

5.3. REIMBURSABLE EXPENSES

Reimbursable expenses are included in the amounts to be paid to CMAR for performance of each task. CMAR shall not be entitled to additional reimbursable compensation unless change order(s) or amendment(s) specifically adding reimbursable compensation to this agreement have been approved in writing by OWNER.

6. CONTRACT TIME

- 6.1.1. Within 10 calendar days of the OWNER's execution of the Contract, Change Orders for Early Work Amendment(s) or applicable GMP Amendment(s), CMAR shall submit to OWNER for OWNER'S review: (1) proof of insurance; (2) bonds (as required and detailed below); (3) safety plan; (4) overall Project Schedule; and (5) initial Construction Schedule for Early Work Amendments and/or GMP Amendments, as applicable for each amendment. If OWNER rejects the submitted documents due to CMAR's failure to comply with requirements of the Contract Documents, CMAR shall have 5 additional calendar days to resubmit. If CMAR fails to submit documents within the required time(s), the Contract Time (as defined below) may be reduced by the number of days which exceed the time for submittal. If CMAR fails to submit acceptable documents by the second submission, OWNER may, at its sole discretion, reduce the Contract Time by the number of days between OWNER's rejection of the second submission and OWNER's approval of the documents.
- 6.1.2. Notice to Proceed with Design Phase Services: Upon OWNER's approval of the CMAR's insurance, safety plan, and overall Project Schedule, OWNER will furnish to CMAR a Notice to Proceed with the Design Phase Services. CMAR shall complete all Design Phase Services within 120 calendar days of the date indicated by the Notice to Proceed.
- 6.1.3. Notice to Proceed with Construction Phase Services: Upon issuance of any required permit(s) necessary to commence work, and OWNER's approval of the CMAR's insurance or additional insurance, bonds required by Construction Phase Services Early Work or GMP Amendment(s), project site-specific safety plan, Storm Water Pollution Prevention Plan (SWPPP) (if required), and initial Construction Schedule, OWNER will furnish to CMAR a Notice to Proceed with the work. CMAR shall not commence construction until the date indicated by the Notice to Proceed. CMAR shall complete all construction and commissioning work required by the Contract Documents within the number of calendar days of the date indicated by the Notice to Proceed ("Contract Time" or "Time of Completion") that is specified in and for each Change Order for Early Work Amendment, GMP Amendment, or other change orders for other scopes of work. Except as otherwise specified in the Contract Documents, the time of completion for the Work required by any approved Change Order for Early Work Amendment, GMP Amendment, or other change orders for other scopes of work shall not affect or be affected by the time of completion applicable to work required by any other change order or amendment except as specified therein, and Liquidated Damages shall independently accrue for failure to timely complete the Work required by each GMP Amendment.
- 6.1.4. The OWNER and A-E will not be responsible for the failure of the CMAR to plan, schedule, and execute the Work in accordance with the approved schedule or the failure of the CMAR to meet the Contract completion dates or the failure of the CMAR to schedule and coordinate the Work of his own trades and subcontractors or to coordinate with other contractors.

7. LIQUIDATED DAMAGES

In accordance with Government Code Section 53069.85, CMAR agrees to forfeit and pay to OWNER the sum of two thousand dollars (\$2,000) per day (“Liquidated Damages”) for each calendar day that completion of all construction and commissioning work required by the Contract Documents is delayed beyond the Contract Time, or specified portion of work if designated in a Change Order for GMP Amendment, and as may be adjusted by subsequent Change Orders. OWNER may deduct such sum from any payments due to or to become due to CMAR.

If the Liquidated Damages exceed the unpaid balance of the Contract Price otherwise owed to CMAR, then CMAR shall immediately pay OWNER the difference.

8. A-E STATUS

Unless otherwise expressly stated in the agreement between CMAR and the OWNER, the A-E is responsible to the OWNER for the preparation of adequate drawings, specifications, and reports within the scope of the A-E’s contract. A-E services normally include checking of shop drawings, equipment submittals and material lists; recommendations to the OWNER regarding proposed substitutions; furnishing consultation and advice to the OWNER to clarify the intent of the drawings and specifications and on questions that may arise during construction. A-E shall have access to observe work at all times wherever it is in preparation or progress. A-E does not have the authority to act for the OWNER or to stop work. Should the A-E observe work which in A-E’s judgement should be stopped to prevent damage, injury, loss, or error, A-E should notify the CMAR and the OWNER’s representative without delay.

9. DESIGN PHASE SERVICES

9.1. GENERAL

9.1.1. CMAR agrees to provide all of the Design Phase Services described below on an ongoing basis in support of, and in conformance with, the time frames described in the Contract, including all OWNER-approved change orders for Early Work Amendments and GMP Amendments. Commencement of the Construction Phase shall not excuse the CMAR from completion of the Design Phase Services, if such services have not been fully performed at commencement of the Construction Phase.

9.1.2. To further the interests of the OWNER, CMAR shall perform the services required by, and in accordance with this Contract, to the satisfaction of the OWNER, exercising the degree of care, skill and judgment a professional construction manager performing similar services in Orange County, California would exercise at such time, under similar conditions. CMAR shall, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practice. The services provided in this Contract’s Design Phase Services are not intended to alter any real property owned by the OWNER. CMAR shall provide these services as applicable from the Design Phase through the end of the project design and GMP Proposal process.

9.1.3. CMAR shall consult with, advise, assist, and provide recommendations to the OWNER and the design team on all aspects of the planning and design of the Work.

9.1.4. Program Evaluation: If requested, as a participating member of the Project Team, CMAR shall provide to the OWNER and Design Professional a written evaluation of the OWNER’s Project

and Project Budget, each in terms of the other, with recommendations as to the appropriateness of each.

- 9.1.5. Project Meetings: CMAR shall jointly schedule and attend Project Team meetings which may include, but are not limited to, regular Project management meetings, Project workshops, special Project meetings, construction document rolling reviews and partnering sessions.
- 9.1.6. Project Schedule: CMAR shall prepare and update, on a weekly basis, a preliminary Project Schedule for the A-E and OWNER's review and approval. CMAR shall coordinate and integrate the preliminary Project Schedule with the services and activities of the OWNER, A-E, and CMAR. As design proceeds, CMAR shall update the preliminary Project Schedule to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a GMP proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, and OWNER's occupancy requirements showing portions of the Project having occupancy priority, provided that the date(s) of Substantial Completion shall not be modified without OWNER's prior written approval. If preliminary Project Schedule updates indicate that previously approved Schedules may not be met, CMAR shall make appropriate recommendations to the OWNER and A-E.
- 9.1.7. CMAR shall make recommendations to A-E and OWNER regarding the phased issuance of Plans and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project.
- 9.1.8. CMAR shall provide design phase services, described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. CMAR shall promptly notify the OWNER in writing whenever the CMAR determines that any Drawings or Specifications should be revised for the Project and/or cause changes in the scope of Work requiring an adjustment in the cost estimate, Project Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.
- 9.1.9. CMAR shall review in-progress design documents, including the documents generally described in the industry as Schematic Design, Design Development, Construction Documents and provide input and advice to eliminate areas of conflict, overlapping trade jurisdictions, and overlaps in the Work to be performed by the various subcontractors, and to endeavor to confirm that all Work has been included in the Documents.
- 9.1.10. CMAR shall consult with the OWNER and A-E and User Representative regarding site use and improvements, and the selection of materials, building systems and equipment.
- 9.1.11. CMAR shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.
- 9.1.12. CMAR shall review completed Schematic Design, Design Development, Construction Documents and suggest modifications whenever design details affect construction feasibility, schedules or cost in an effort to maintain and to improve completeness and clarity.
- 9.1.13. CMAR shall provide construction cost estimating services that reflect best industry estimating practices. Project construction cost estimates shall be developed/updated and submitted as a part of the following submissions:

- a) At the award of the Contract, CMAR shall provide an estimate of total construction cost of the project, based on the written scope of work. The estimate shall utilize area, volume, or similar estimating techniques for review by OWNER and A-E.
 - b) 100% Schematic Design: CMAR shall provide an updated statement of probable construction cost for the project. The estimate shall be arranged in uniform format. The cost shall also be summarized to show all issues discussed and how costs have been incorporated.
 - c) 75 to 100% Design Development: CMAR shall provide an updated estimate of probable cost for the project. Estimates for building projects shall be arranged in an agreed upon uniform format. This cost shall be summarized to ensure all refinement and changes have been addressed in the estimate.
 - d) 50 to 95% Construction Documents: CMAR shall provide an updated statement of probable construction costs for the project at 50% and 95% or other designated percentage of the development of the Construction Documents. Estimates for projects shall be arranged in an agreed upon uniform format. The costs shall also be summarized for OWNER and A-E review.
- 9.1.14. CMAR shall provide consultation throughout the Design Phase including, but not limited to the furnishing of all necessary Value Engineering (“VE”) services. The object of the Value Engineering is to achieve optimum value for each construction dollar spent and keep the Time of Completion and Cost of the Work within the time and fiscal constraints set forth in the Contract Documents. In cooperation with the OWNER and the A-E, CMAR shall:
- a) Formulate and evaluate alternative design, schedules, systems, and materials;
 - b) Provide cost estimates of the alternatives to be evaluated. Cost estimates shall include industry standard operating and maintenance costs when appropriate to evaluate life-cycle costs of the alternatives;
 - c) Evaluate the alternatives on the basis of costs, time schedules, availability of labor and materials and construction feasibility;
 - d) Prepare written reports at the end of the Schematic Design Phase and the Design Development Phase summarizing the Value Engineering activities. The reports shall indicate each Value Engineering alternative considered, the cost estimate for the alternative, the cost to incorporate the alternative and whether or not the OWNER and the A-E agreed to accept the alternative;
 - e) In addition to the reports discussed in subparagraph (d) above, CMAR shall maintain a running log of all Value Engineering alternatives considered throughout the entire design period. The log shall include the cost estimate for the alternative, the cost to incorporate the alternative and indicate whether or not the OWNER and the A-E have agreed to incorporate the alternative;
 - f) Constructability Review. CMAR shall check the documents for completeness and coordination and make recommendations to A-E and OWNER;
- 9.1.15. CMAR shall work with A-E and OWNER to review systems and equipment using AutoCAD format and utilizing 2-D or 3-D modeling (e.g. Building Information Modeling), if necessary.

9.1.16. CMAR shall perform the following tasks related to subcontracting:

- a) CMAR shall seek to develop subcontractor and supplier interest in the Project, and shall furnish to the OWNER and A-E for their information a list of possible subcontractors and suppliers, including suppliers who may furnish materials or equipment fabricated to a special design, from whom competitive bids, quotes, or proposals (collectively "Offers") will be requested for each principal portion of the Work. Submission of such list is for information and discussion purposes only and not for prequalification.
- b) CMAR shall provide input to the OWNER and the A-E regarding current construction market bidding climate, status of key subcontract markets, and other local economic conditions. CMAR shall determine the division of work to facilitate bidding and award of trade contracts, considering such factors as bidding climate, and improving or accelerating construction completion.
- c) Prior to commencement of any Construction, either for Early Work or GMP Amendment Work, CMAR shall provide to OWNER the Combined List of Subcontractors. The Facilities Representative and OWNER Representative shall review the list and approve or give any objections to the CMAR.

9.1.17. CMAR shall recommend to the OWNER and A-E a schedule for procurement of long-lead time items, which will constitute part of the Work as required to meet the Project Schedule, which shall be procured by the CMAR upon execution of either a GMP Amendment or Early Work Amendment covering such procurement, and approval of such schedule by the OWNER. CMAR shall expedite the delivery of long-lead time items.

9.1.18. CMAR shall work with the OWNER in identifying critical elements of the Work that may require special procurement processes, such as prequalification of Subcontractors or Material Suppliers or alternative contracting methods.

9.1.19. When requested by the OWNER, CMAR shall attend, make presentations and participate as may be appropriate in public agency and or community meetings, germane to the Project. CMAR shall provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or apropos in any such public agency meetings.

9.2. CONSTRUCTION MANAGEMENT PLAN

9.2.1. CMAR shall prepare and/or maintain a Construction Management Plan (CMP), which may include the CMAR's professional opinions concerning: (a) Project milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project, (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (c) alternate strategies for fast-tracking and/or phasing the construction, (d) the number of separate subcontracts to be awarded to Subcontractors and Suppliers for the Project construction, (e) permitting strategy, (f) safety and training programs, (g) construction quality control, (h) a commissioning program, (i) the cost estimate and basis of the project, and (j) a matrix summarizing each Project Team member's responsibilities and roles.

9.2.2. CMAR shall add detail to its previous version of the CMP as new information becomes available to keep it current throughout the design phase, so that the CMP is ready for implementation at the start of the construction phase. The update/revisions shall take into account (a) revisions in Drawings and Specifications; (b) the results of any additional investigatory reports of subsurface

conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the OWNER, Design Professional or the CMAR, (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way, (d) the fast-tracking if any of the construction, or other chosen construction delivery methods, (e) the requisite number of separate bidding documents to be advertised for solicitation of subcontractors and materials suppliers, (f) the status of the procurement of long-lead time equipment (if any) and/or materials, and (g) funding issues identified by the OWNER.

9.3. CONSTRUCTION SCHEDULE

9.3.1. The fundamental purpose of the “Construction Schedule” is to identify, coordinate and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team to utilize that Deliverable as a basis for managing and monitoring all members’ compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Construction Schedule requirements. CMAR shall, however, develop and maintain the “Construction Schedule” on behalf of and to be used by the Project Team based on input from the other Project Team members. The Construction Schedule will be consistent with the most recent revised/updated CMP. The Project Schedule will use the Critical Path Method (CPM) technique, unless required otherwise in writing by the OWNER. CMAR shall use Primavera 6 scheduling software to develop the Construction Schedule or other schedule software that is acceptable to the OWNER. The Construction Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Construction phasing as described below is required, the Construction Schedule will indicate milestone dates for the phases once determined.

9.3.2. The Construction Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.

- a) The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CMP diagram shall be presented in a time scaled graphical format for the Project as a whole.
- b) The CPM diagram schedule shall indicate all relationships between activities.
- c) The activities making up the schedule shall be sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.
- d) The CPM diagram schedule shall be based upon activities, which would coincide with the schedule of values.
- e) The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.

9.3.3. The schedule shall show milestones, including milestones for OWNER-furnished information, and shall include activities for OWNER-furnished equipment and furniture when those activities are interrelated with the CMAR activities.

- 9.3.4. The Construction Schedule shall consider the OWNER's and the tenants' occupancy requirements showing portions of the Project having occupancy priority, and Contract Time, if applicable.
- 9.3.5. Float time shall be as prescribed below:
- a) The total Float within the overall schedule, is for the exclusive use of the OWNER, and is a resource available to the OWNER as needed to meet Contract milestones and the Project completion date.
 - b) Because Float time within the schedule is solely OWNER owned, it is acknowledged that OWNER-caused delays on the Project may be offset by OWNER-caused time savings (i.e., critical path submittals returned in less time than allowed by the Contract, approval of substitution requests and credit changes which result in savings of time to the CMAR, etc.). In such an event, CMAR shall not be entitled to receive a time extension or delay damages until all OWNER-caused time savings are exceeded, and the Substantial Completion date is also exceeded.
- 9.3.6. The Construction Schedule will be updated and maintained by the CMAR throughout the design phase such that it will not require major changes at the start of the construction phase to incorporate the CMAR's plan for the performance of the construction phase Work. CMAR shall provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but no less often than at the monthly Project Team meetings. CMAR shall include with such submittals a narrative describing its analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.
- 9.3.7. Construction Phasing: If phased construction is deemed appropriate and the OWNER and Design Professional approve, CMAR shall review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. CMAR shall take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.

9.4. DESIGN DOCUMENT REVIEWS

- 9.4.1. CMAR shall evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact the cost estimate, GMP Proposals and/or the Construction Schedule.
- 9.4.2. CMAR shall recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for the CMAR to construct the Project. Before initiating construction operations, CMAR may request additional investigations in their GMP Proposal to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents.
- 9.4.3. CMAR shall meet with the Project Team as required to review designs during their development. CMAR shall familiarize itself with the evolving documents through the various design phases. CMAR shall proactively advise the Project Team and make recommendations on factors related

- to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and, labor and material availability. CMAR shall furthermore advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as, concerns that exist with respect to coordination of the Drawings and Specifications. CMAR shall recommend cost effective alternatives.
- 9.4.4. CMAR shall routinely conduct constructability and bidability reviews of the Construction Documents as necessary to satisfy the needs of the Project Team. The reviews will attempt to identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, and coordination of Work for Subcontractors and Suppliers.
- 9.4.5. Constructability Reviews: CMAR shall evaluate whether (a) the Drawings and Specifications are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the Drawings and Specifications, (d) module/preassembly design are prepared to facilitate fabrication, transport and installation, (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions, (f) sequences of Work required by or inferable from the Drawings and Specifications are practicable, and (g) the design has taken into consideration, efficiency issues concerning access and entrance to the site, laydown and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues.
- 9.4.6. Bidability Reviews: CMAR shall check cross-references and complementary Drawings and sections within the Specifications, and in general evaluate whether (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations, (c) Specifications include alternatives in the event a requirement cannot be met in the field, and (d) in its professional opinion, the Project is likely to be subject to differing site conditions.
- 9.4.7. The CMAR shall provide the results of the reviews to the OWNER in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications and other documents. If requested by the OWNER, CMAR shall meet with the OWNER and Design Professional to discuss any findings and review reports.
- 9.4.8. CMAR's reviews will be from a Contractor's perspective, and though it will serve to reduce the number of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications will remain with the Design Professional and not the CMAR.
- 9.4.9. Notification of Variance or Deficiency: It is the CMAR's responsibility to assist the Design Professional in ascertaining that, in the CMAR's professional opinion, the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the CMAR recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it will promptly notify the Design Professional and OWNER in writing, describing the apparent variance or deficiency. However, the Design Professional is ultimately responsible for the compliance with those laws, statutes, ordinances, building codes, rules and regulations.
- 9.4.10. Alternate Systems Evaluations: The Project Team will routinely identify and evaluate using value engineering principles any alternate systems, approaches, design changes that have the potential

to reduce Project costs while still delivering a quality and functional product. If the Project Team agrees, the CMAR in cooperation with the Design Professional will perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. The Project Team will decide which alternatives will be incorporated into the Project. The Design Professional will have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. CMAR shall include the cost of the alternatives into the cost estimate and any GMP Proposals.

9.5. COST ESTIMATES

- 9.5.1. Unless otherwise agreed by both parties, within 14 days after receipt of the documents for the various phases of design, CMAR shall provide a detailed cost estimate and a written review of the documents. The Design Professional and CMAR shall reconcile any conflicts on the estimate to arrive at a GMP. If no consensus is reached, the OWNER will make the final determination.
- 9.5.2. If any estimate submitted to the OWNER exceeds previously accepted estimates or the OWNER's Project budget, CMAR shall make appropriate recommendations on methods and materials to the OWNER and Design Professional that he believes will bring the project back into the Project budget.
- 9.5.3. In between these milestone estimates, CMAR shall periodically provide a tracking report which identifies the upward or downward movements of costs due to value engineering or scope changes. It shall be the responsibility of the CMAR to keep the OWNER and Design Professional informed as to the major trend changes in costs relative to the OWNER's budget.
- 9.5.4. If requested by the OWNER, CMAR shall prepare a preliminary "cash flow" projection based upon historical records of similar type projects to assist the OWNER in the financing process.

9.6. LABOR STANDARDS

If this Contract is funded in whole or in part by the Federal Government, CMAR agrees to comply with the Federal labor standards provisions set forth in the Special Provisions. If the Federal prevailing wage determinations differ from the State's, CMAR shall not pay less than the higher of the two rates.

9.7. GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS

- 9.7.1. The proposed GMP for the entire Work (or portions thereof) will be presented in a format acceptable to the OWNER. Due to the potential for the OWNER to update procedures without notice, CMAR must verify with the OWNER the current submittal requirements and procedures when entering into these services.

The OWNER may request a GMP Proposal for all or any portion of the Project and at any time during the design phase. Any GMP Proposals submitted by CMAR shall be based on and consistent with the current update/revised cost estimate at the time of the request, the associated estimates for construction costs and include any clarifications or assumptions upon which the GMP Proposal(s) are based.

- 9.7.2. Guaranteed Maximum Price is comprised of the following amounts defined below.
 - a) The Cost of the Work as set forth in Early Work Amendments, GMP Amendments, and Change Orders, as applicable.

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- b) The General Conditions Costs are a firm fixed lump sum amount which will include bonds and insurance premiums based on the full Contract price for construction.
 - c) The Construction Fee is a firm fixed lump sum amount.
 - d) CMAR Contingency, which is an amount or fund to cover cost growth during the project, usually for costs that result from Project circumstances. The amount of the CMAR Contingency is a separate line item in a given GMP package. The CMAR may use the CMAR Contingency under the following conditions:
 - (1) With OWNER'S consent, for increases in the Cost of the Work that are not the OWNER's responsibility.
 - (2) CMAR Contingency is assumed to be a direct project cost, so it will receive all markups at the time of GMP submission.
 - (3) Any CMAR Contingency not utilized shall be split 50/50 between CMAR and the OWNER after project completion.
- 9.7.3. Taxes are deemed to include all sales, use, consumer and other taxes which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and are a not-to-exceed reimbursable amount.
- 9.7.4. OWNER Contingency, if stipulated in the Contract Documents, are funds to be used at the discretion of the OWNER to cover any increases in Project costs that result from OWNER-directed changes. OWNER Contingency will be added to the GMP amount provided by the CMAR, the sum of which will be the full Contract price for construction. Markups for Construction Fee and taxes will be applied by the CMAR at the time that OWNER's Contingency is used. Any OWNER Contingency not utilized shall revert to the OWNER after Project completion.
- 9.7.5. GMPs are cumulative except for CMAR Contingency. The amount of CMAR Contingency for each GMP amendment will be negotiated separately and shall reflect the CMAR's risk from that point in the project forward.
- 9.7.6. The CMAR, in preparing any GMP Proposal will prepare its GMP in accordance with the OWNER's request and will obtain from the Design Professional, three sets Construction Documents (including all addenda). CMAR shall mark the face of each document of each set upon which its proposed GMP is based. CMAR shall send one set of those documents to the OWNER's Project Administrator, keep one set and return the third set to the Design Professional.
- 9.7.7. An updated/revised Construction Schedule will be included with any GMP Proposal(s) that reflects the Construction Documents. Any such Project Schedule updates/revisions will continue to comply with the requirements of the "**Construction Schedule**" section.
- 9.7.8. GMP savings resulting from a lower actual project cost than anticipated by the CMAR remaining at the end of the project will revert to OWNER.
- 9.8. GMP PROPOSAL(S) REVIEW AND APPROVAL**
- 9.8.1. The CMAR will meet with the OWNER and Design Professional to review the GMP Proposal(s) and the written statement of its basis. In the event the OWNER or Design Professional discovers

inconsistencies or inaccuracies in the information presented, CMAR shall make adjustments as necessary to the GMP Proposal, its basis or both.

9.8.2. The OWNER, upon receipt of any GMP proposal from the CMAR, may submit the GMP Plans and Specifications to an independent third party or to the Design Professional for review and verification. The third party or Design Professional will develop an independent estimate of the Cost of the Work and review the Construction Schedule for the associated scope of the GMP Proposals.

9.8.3. If the GMP Proposal is greater than the independent third party or Design Professional's estimate, the OWNER may require the CMAR to reconfirm its GMP Proposal. CMAR shall accept the independent third party's or Design Professional's estimate for the Cost of Work as part of his GMP or present a report within seven days of a written request to the OWNER identifying, explaining and substantiating the differences. CMAR may be requested to, or at its own discretion, submit a revised GMP Proposal for consideration by the OWNER. At that time the OWNER may do one of the following:

- a) Accept the CMAR original or revised GMP Proposal, if within the OWNER's budget, without comment.
- b) Accept the CMAR original or revised GMP Proposal that exceeds the OWNER's budget, and indicate in writing to the CMAR that the Project Budget has been increased to fund the differences.
- c) Reject the CMAR's original or revised GMP Proposal because it exceeds the OWNER's budget, the independent third parties or Design Professional's estimate, in which event, the OWNER may terminate this Contract and/or elect not to enter into an Amendment or separate agreement with the CMAR for the construction phase associated with the scope of Work reflected in the GMP Proposal.
- d) With the CMAR's Contract, wait to accept the GMP Proposal if the OWNER believes adequate funding will be available in the future.

9.8.4. If during the review and negotiation of GMP Proposals design changes are required, the OWNER will authorize and cause the Design Professional to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents will be furnished to the CMAR. CMAR shall promptly notify the Design Professional and OWNER in writing if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.

9.9. MAJOR SUBCONTRACTOR AND MAJOR SUPPLIER SELECTION

9.9.1. The selection of major Subcontractors and major Suppliers may occur prior to submission of a GMP Proposal. Major Subcontractors may be selected based on qualifications or a combination of qualifications and price. Subcontractors shall not be selected based on price alone. Except as noted below, the selection of major Subcontractors/Suppliers is the responsibility of the CMAR. In any case, the CMAR is solely responsible for the performance of the selected Subcontractors/Suppliers.

9.9.2. CMAR shall prepare a Subcontractor/Supplier selection plan and submit the plan to the OWNER for approval. This subcontractor selection plan shall identify those subcontractor trades anticipated to be selected by qualifications only and those subcontractor trades anticipated to be

- selected by qualifications and competitive bid, as described in this section. This plan will also identify those subcontractor trades that will not be selected through a formalized qualifications-based selection process. The subcontractor selection plan must be consistent with the selection requirements included in this Contract.
- 9.9.3. Selection by qualifications only - The OWNER may approve the selection of a Subcontractor(s) or Suppliers(s) based only on their qualifications when the CMAR can demonstrate it is in the OWNER's best interest.
- 9.9.4. Qualification based selection of a Subcontractor(s)/Supplier(s) should only occur during the design phase to achieve maximum benefit of the subcontractors' involvement prior to the submittal of the GMP Proposal.
- 9.9.5. CMAR shall apply the approved subcontractor selection plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the OWNER with its review and recommendation.
- 9.9.6. CMAR must receive OWNER approval of the selected Subcontractor(s)/Supplier(s).
- 9.9.7. CMAR shall negotiate costs for services/supplies from each Subcontractor/Supplier selected under this method.
- 9.9.8. Selection by qualifications and competitive bid: CMAR shall apply the subcontractor selection plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the OWNER with its process to prequalify prospective subcontractors and suppliers. All Work for major subcontractors and major suppliers shall then be competitively bid to the prequalified subcontractors unless a Subcontractor or Supplier was selected pursuant to paragraph 2.8.2 above. Competitive bids may occur prior to or after the GMP Proposal(s).
- 9.9.9. CMAR shall develop Subcontractor and Supplier interest, submit the names of a minimum of three qualified Subcontractors or Suppliers for each trade in the Project for approval by the OWNER and solicit bids for the various Work categories. CMAR shall identify the Small Business Enterprise Subcontractors and Suppliers and during the bidding process keep the OWNER informed on the progress of meeting the desired SBE goal. If there are not three qualified Subcontractors/Suppliers available for a specific trade or there are extenuating circumstances warranting such, the CMAR may request approval by the OWNER to submit less than three names. No change in the recommended Subcontractors/Suppliers will be allowed without prior written notice to the OWNER.
- 9.9.10. If the OWNER objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, CMAR shall nominate a substitute Subcontractor/Supplier that is acceptable to the OWNER.
- 9.9.11. CMAR shall distribute Drawings and Specifications, and when appropriate, conduct a prebid conference with prospective Subcontractors and Suppliers with OWNER's Project Administrator or their designee present.
- 9.9.12. If the CMAR desires to self-perform certain portions of the Work, it will request to be one of the approved Subcontractor bidders for those specific bid packages. The CMAR's bid will be evaluated in accordance with the process identified below. If events warrant and the OWNER concurs that in order to insure compliance with the Project Schedule and/or cost, the CMAR may self-perform Work without bidding or re-bidding the Work.

- 9.9.13. CMAR shall request the pre-qualified Subcontractors to provide a detailed bid for the services requested. The Subcontractor bid, provided on the Subcontractors' letterhead, shall contain sufficient information (i.e. unit costs/amounts) to allow an evaluation of the reasonableness of bid costs. CMAR shall receive, open, record and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the CMAR, in addition to bid price, may consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be performed, and performance schedule to complete the Work. The final evaluation of Subcontractor/Supplier bids will be done with the OWNER Project Administrator in attendance to observe and witness the process. CMAR shall resolve any Subcontractor/Supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.
- 9.9.14. CMAR shall be required to prepare two different reports on the subcontracting process:
- a) Within fifteen Days after each major subcontractor/Supplier bid opening process, CMAR shall prepare a report for OWNER's review and approval identifying the recommended Subcontractors/Supplier for each category of Work. The report will provide (1) the name of the recommended Subcontractor/Supplier and the amount of the Subcontractor/Supplier bid for each subcontract, (2) the sum of all recommended Subcontractor/Supplier bids received, (3) a copy of the bids received from each subcontractor, and (4) trade work and its cost that the CMAR intends to self-perform, if any.
 - b) Upon completion of the Subcontractor/Supplier bidding process, CMAR shall submit a summary report to the OWNER of the entire Subcontractor/Supplier selection process. The report will indicate, by bid process, all Subcontractors/Suppliers contacted to determine interest, the Subcontractors/Suppliers solicited, the bids received and costs negotiated, and the recommended Subcontractors/Suppliers for each category of Work.
- 9.9.15. The approved Subcontractors/Suppliers will provide a Schedule of Values that reflects their final accepted bid proposal, which will be used to create the overall Project Schedule of Values.
- 9.9.16. If after receipt of sub-bids or nominations made by CMAR for award of sub-bids, the OWNER objects to any sub-bid or any nominated Subcontractor/Supplier, or to any self-performed Work for good reason, CMAR shall nominate a substitute Subcontractor or Supplier, preferably if such option is still available, from those who submitted Subcontractor bids for the Work affected. Once such substitute Subcontractors and Suppliers are consented to by the OWNER, the CMAR's proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.
- 9.9.17. Promptly after issuing the Notices of Intent to Award sub-bids, CMAR shall arrange and conduct a pre-award conference with the OWNER and other Project Team members. At the pre-award conference, CMAR shall (a) review the nominated slate of Subcontractors and Suppliers and discuss any concerns with or objections that the OWNER has to any nominated Subcontractor or Supplier; (b) discuss OWNER concerns relating to any proposed self-performed Work; (c) review the CMAR's proposed Contract Price for the Work during the construction phase; (d) discuss the conditions, if any, under which the OWNER will agree to leave any portion of the remaining CMAR Contingency within the Contract Price for the construction phase Work; (e) resolve possible time frames for the Date of Commencement of the Contract time for the construction phase Work; (f) schedule the pre-construction conference; and (g) discuss other matters of importance.

10. CONSTRUCTION PHASE SERVICES

- 10.1.1. Upon execution of an Early Work Amendment or GMP Amendment, CMAR shall provide Construction Phase Services as provided in the Contract Documents as amended, including without limitation providing and paying for all materials, tools, equipment, labor and professional and non-professional services, and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work, as required by the Contract Documents.
- 10.1.2. The parties may execute one or more Early Work Amendments identifying specific Construction Phase Services that must be performed in advance of the GMP Amendment. CMAR shall be obligated to perform the Early Work only to the extent that the Cost of Work therefore, together with the CMAR Fee, does not exceed the Early Work Price; however, if CMAR performs Early Work with a cost in excess of the Early Work Price, CMAR shall pay such excess cost without reimbursement. If one or more Early Work Amendments are executed, CMAR shall diligently continue to work toward development of a GMP Amendment acceptable to OWNER, which shall incorporate the Early Work Amendments.
- 10.1.3. Prior to commencement of any Construction, and in any event not later than mutual execution of the GMP Amendment, CMAR shall provide to OWNER a performance bond and a payment security bond as required by the General Conditions in amounts equal to the value of the Amendment(s). If an Early Work Amendment is executed, CMAR shall provide such bond in the amount of the Early Work Price under the Early Work Amendment. CMAR shall provide to OWNER additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or GMP Amendment, in each case prior to execution of the Amendment and the supplying of any labor or materials for the prosecution of the Work covered by the Amendment, and in each case in a sufficient amount so that the total bonded sums equals or exceeds the total Early Work Price or the GMP, as the case may be. In the event of a Scope Change that increases the GMP, CMAR shall provide to OWNER an additional or supplemental bond in the amount of such increase prior to performance of the additional Work.

11. CONSTRUCTION MANAGEMENT SERVICES

Throughout the Design Phase and Construction Phase of the Project, CMAR shall provide Construction Management (“CM”) Services, generally consisting of coordinating and managing the building process as an independent contractor, in cooperation with the OWNER, Client Representative, A-E and other designated Project consultants (the “Stakeholders”). CM Services shall include, but are not limited to:

- a) Providing all Design Support Services described above;
- b) Developing and delivering schedules, preparing construction estimates, performing constructability review, analyzing alternative designs, studying labor conditions, coordinating and communicating these activities to the stakeholders during the Construction Phase.
- c) Continuously monitoring the Project Schedule and recommending adjustments to ensure completion of the Project in the most expeditious manner possible;
- d) Working with the OWNER, the OWNER Representative, and the A-E to analyze the design, participate in decisions regarding construction materials, methods, systems,

phasing, and costs, and suggest modifications to achieve the goals of providing the OWNER with the highest quality Project within the budget, GMP and schedule;

- e) Providing Value Engineering (“VE”) services ongoing throughout the Project. CMAR shall develop cost proposals, in the form of additions or deductions from the GMP, including detailed documentation to support such adjustments and shall submit such proposals to OWNER for its approval. CMAR acknowledges that VE services are intended to improve the value received by OWNER with respect to cost reduction or life cycle of the Project;
- f) Holding and conducting predetermined scheduled meetings with the OWNER, Client Representative and the A-E to coordinate, update and ensure progress of the Work;
- g) Submitting weekly/monthly written report(s) to the OWNER. Each report shall include, but shall not be limited to, Project updates including; actual costs and progress for the reporting period as compared to the estimate of costs, explanations of significant variations, work completed, work in progress, changes in the Work and other information as determined to be appropriate by the OWNER. Written updates shall be provided to the OWNER as deemed appropriate by the CMAR or as requested by the OWNER.
- h) Preparing Daily Reports in the format of the report as outlined in General Conditions.
- i) Developing and implementing a system of cost control for the Work acceptable to OWNER, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. CMAR shall identify variances between actual and estimated costs and report the variances to the OWNER and A-E at regular intervals.
- j) Cooperation with any and all consultants hired by OWNER.
- k) Cooperating and performing warranty and inspection Work for the Project through the expiration date of the applicable warranty period.
- l) Assist the OWNER with start-up of the Project. Such start-up may occur in phases due to phased occupancy.
- m) Incorporating OWNER HVAC and automated control system scheduled activities and inspections into the Project Schedule and coordinating Subcontractors required to participate in the schedule.
- n) Performing all other obligations and providing all other services set forth in the Contract Documents and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work as required by the Contract.
- o) Assisting the A-E in evaluating Life Cycle Cost and Value Engineering. Options including but not limited to the following: building envelope, HVAC, lighting, and sustainability 2016 CALIFORNIA GREEN (CAL Green) BUILDING STANDARDS CODE (EFFECTIVE JANUARY 1, 2017). Cooperating to ensure building meets or exceed CAL Green with the OWNER and the A-E throughout the project.

12. PAYMENTS

12.1. PAYMENTS FOR DESIGN PHASE SERVICES

- 12.1.1. Requests for payments by the CMAR for Design Phase Services shall be submitted on the OWNER's "Payment Request" form and shall be accompanied by a progress report, detailed invoices, and receipts, as applicable. Any requests for payment will include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any deliverables submitted, and copies of any Sub-consultants' and Subcontractors' requests for payment, based on their respective payment schedules in Appendix 1 – "Design Phase Services Cost and Compensation", and other payment schedules that will be made part of Design Phase Services change orders, plus similar narrative and listings of deliverables associated with their Work. Payment for services negotiated as lump sums shall be made in accordance with the percentage of work completed during the preceding month. Services negotiated as not-to-exceed amounts will be paid in accordance with the Work effort and/or actual costs expended on those services and works during the preceding month.
- 12.1.2. The fees for the CMAR and any Subconsultants will be based upon the fee schedule included in Appendix 1.
- 12.1.3. CMAR shall pay all sums due Subconsultants for services and reimbursable expenses within 14 calendar days after the CMAR has received payment for those services from the OWNER. In no event will the OWNER pay more than 95 percent of the Contract Amount until final acceptance of all Design Phase Services, and award of the final approved GMP for the entire Project by OWNER, or OWNER's election not to use CMAR for construction of the Project.
- 12.1.4. CMAR agrees that no charges or claims for costs or damages of any type will be made by it for any delays or hindrances beyond the reasonable control of the OWNER during the progress of any portion of the services or construction works specified in this Contract. Such delays or hindrances, if any, will be solely compensated for by an extension of time for such reasonable period as may be mutually agreed-upon between the Parties. It is understood and agreed, however, that permitting the CMAR to complete any services or construction work, in whole or in part, after the date to which the Time of Completion may have been extended, will in no way act as a waiver on the part of the OWNER of any of its legal rights whether or not provided for herein.

12.2. PAYMENTS FOR CONSTRUCTION PHASE SERVICES

- 12.2.1. CMAR must submit request for payment on a form approved by OWNER. Each Request for Payment must include:
- a) An accepted Schedule of Values and monthly Schedule Update with a narrative report (if requested), all approved in writing by OWNER and all developed in accordance with the "Schedules, Submittals, Substitutions, and Inspections" Section of the General Conditions. CMAR's submission of an Accepted Construction Schedule, monthly Schedule Updates, and Schedule of Values are conditions precedent to OWNER's processing of requests for payment;
 - b) If requested by OWNER, photographic documentation of completed work;
 - c) If requested by OWNER, three copies of certified payrolls from CMAR and all Subcontractors for the period covered by the request for payment, with one copy having

all pertinent information visible and two copies having the workers' names, addresses, and social security numbers blacked out;

- d) Evidence satisfactory to OWNER that CMAR is fulfilling its obligations under the Contract Documents with respect to preparing daily reports and maintaining up-to-date As-Built Plans.
- e) Conditional waivers and releases on progress payments or Final Payment (as applicable) from CMAR, those Subcontractors of any tier, and those suppliers claiming funds covered by the request for payment, and unconditional waivers and releases on progress payments or Final Payment from CMAR, those Subcontractors of any tier, and those suppliers who received funds through the preceding request for payment, all in the form prescribed by Civil Code Sections 8120 through 8138; and
- f) Any other administrative documentation as agreed upon by the Parties.

12.2.2. The Request for Payment shall show the total value of work completed or partially completed as of the date of submission of the request for payment. At OWNER's sole discretion, the value of the Work completed may include up to 50% of the value, as determined by OWNER, of: (i) material delivered to the Project site and not yet incorporated into the construction; and/or (ii) materials delivered to CMAR and stored at locations other than the Project site, provided that CMAR furnishes OWNER satisfactory evidence that CMAR has acquired title to the materials, the materials will be used on the Project, the materials are properly stored at a secure off-site location acceptable to OWNER, and the materials at each storage location are segregated from any other materials there that are not intended for use on the Project. OWNER will not pay CMAR for any materials at the Project site that are furnished but are not to be incorporated into the Work.

OWNER reserves the right to adjust a request for payment if a prior request for payment is determined to have been overstated or understated.

12.2.3. Lump Sum Work and Unit Prices: OWNER shall pay for work shown on the Schedule of Values as "Lump Sum", "L.S.", or "Job" at the lump sum price shown. Any work for which a unit price has been agreed upon will be paid for at the actual quantities constructed in accordance with the Contract Documents. Upon completion of the Work, if the actual quantities show either an increase or decrease from the quantities stated in the agreement, the unit price stated will apply unless a change to the unit price is warranted pursuant to the "Changes" Section of the General Conditions.

12.2.4. Allowances: Payment for any Allowance identified in the Schedule of Values shall be for direct cost reimbursement only, unless the Schedule of Values identifies it as a "Time and Materials" or "T&M" item. Reimbursable direct costs shall be verified by invoices and shall include any amounts paid to third parties, and do not include markups, including but not limited to supervision, labor, overhead, or profit related to the item. Payment for Allowances based on T&M pricing shall be proposed by CMAR subject to OWNER's acceptance using the same criteria and proposal breakdown as that specified in the "Time-and-Materials Change Orders" subsection of the "Changes" Section of the General Conditions. Any work to be performed in connection with any Allowance identified in the Schedule of Values must first be approved in writing by OWNER. Any costs that exceed the maximum amount of any Allowance line item shall be addressed as a change to the Contract consistent with "Changes" Section of the General Conditions, but in such event there shall be no markup for overhead and profit on the additional actual costs. Upon completion of the Project, each Allowance will be corrected for unused

balances and a credit to the Contract Price will be issued by Change Order to reflect the actual sums authorized for work as Allowance items.

- 12.2.5. Time for Submitting and Reviewing Requests for Payment: CMAR shall submit each request for payment to OWNER for its review on the first business day of the month following the month for which it is seeking payment. OWNER will review the request for payment as soon as practicable and, no later than 7 days after receiving it or as provided by Public Contract Code Section 20104.50, will return to CMAR any request for payment that OWNER determines is not a proper request for payment suitable for payment along with a written explanation of the reasons why the request for payment is not proper. The grounds on which the OWNER may conclude the request for payment is not proper and not suitable for payment include, but are not limited, to: (i) the request for payment is missing documents required under this section; (ii) the request for payment does not accurately reflect the progress of the Work; (iii) the quality of the Work is not in conformance with the requirements of the Contract Documents; (iv) CMAR has failed to remedy Defective Work; (v) there are third party claims filed against OWNER arising out of CMAR's work; (vi) CMAR has failed to make payments properly to subcontractors and suppliers; (vii) CMAR has damaged OWNER's property or the Work by or property of OWNER's separate contractors; (viii) CMAR has repeatedly failed to carry out the Work in accordance with the Contract Documents; or (ix) there is reasonable evidence that CMAR shall not complete the Work within the Contract Time and that the unpaid balance of the Contract Price would not be adequate to cover the Liquidated Damages for the anticipated delay.
- 12.2.6. Progress Payments: Within 30 days of receiving an undisputed, properly completed request for payment, or as provided by Public Contract Code Section 20104.50, and pursuant to Public Contract Code Section 9203, OWNER shall pay to CMAR a sum equal to 95% of the value of the Work completed since the commencement of the Work, less all previous payments, plus a like percentage of the value of material delivered on the ground or stored subject to, or under the control of, the local agency, and unused. OWNER shall hold 5% of the value of the Work completed as Retention until the Retention Payment is made pursuant to Public Contract Code Section 7107. CMAR may be entitled to interest pursuant to Public Contract Code Section 20104.50 if OWNER fails to timely make any progress payment. No progress payment by OWNER shall be considered to be OWNER's acceptance of any part of the Work.
- 12.2.7. Retention Payment: Payment of the Retention amount will be made in accordance with Public Contract Code Section 7107. If the Retention Payment is made before CMAR has complied with all of its obligations under the Contract, then payment of Retention shall not be interpreted as Final Payment, and shall not relieve CMAR of its obligations under the Final Payment provisions.
- 12.2.8. Final Payment: The Final Payment, if unencumbered, or any part thereof unencumbered, shall be made no later than 60 days after CMAR completes the Work and submits a request for Final Payment in proper form and suitable for payment. CMAR's work will not be complete until CMAR has delivered: (i) As-Built Plans suitable for use in preparing a reproducible set of record drawings for the Project; (ii) all operations and maintenance manuals; (iii) manufacturers', suppliers', and installers' warranties, guarantees, instruction sheets, and parts lists; and (iv) any other documents or information required by the Contract Documents as a condition to completion of the Work.

CMAR's request for Final Payment shall include:

- a) CMAR's affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Project have been paid or otherwise satisfied by CMAR; and

- b) Conditional waivers and releases on Final Payment in the form prescribed by Civil Code Section 8136 from CMAR, its Subcontractors of any tier, and its suppliers who will receive funds from the Final Payment, listing with specificity any and all claims under or arising out of the Contract or the Project that remain unsettled.

12.3. AVAILABILITY OF FUNDS

The obligation of OWNER is subject to the availability of funds appropriated for this purpose, and nothing herein shall be construed as obligating the OWNER to expend or as involving the OWNER in any Contract or other obligation for future payment of money in excess of appropriations authorized by law.

12.4. CONTINGENCY OF FUNDING

CMAR acknowledges that funding or portions of funding for this Contract may also be contingent upon receipt of funds from multiple funding sources to OWNER. If such funding and/or appropriations are not forthcoming, or otherwise limited, OWNER may immediately terminate or modify this Contract without penalty.

13. OWNER'S RESPONSIBILITIES

13.1.1. OWNER, at no cost to CMAR, will furnish the following information:

- a) One copy of data the OWNER determines pertinent to the Work. However, CMAR shall be responsible for searching the records and requesting information it deems reasonably required for the Project.
- b) All available data and information and requirements pertaining to relevant policies, standards, criteria, studies, etc.
- c) The name of the OWNER employee or OWNER's representative who will serve as the Project Administrator during the term of this Contract. The Project Administrator has the authority to administer this Contract and will monitor the CMAR's compliance with all terms and conditions stated herein. All requests for information from or decisions by the OWNER on any aspect of the Work or deliverables will be directed to the Project Administrator. OWNER shall give CMAR written notification if the person designated as the Project Administrator changes.
- d) OWNER's Project Manager shall coordinate the activities of the OWNER's staff assigned to work with the CMAR. The Project Manager shall have the right to require the removal and replacement of the CMAR project manager and key personnel. The Project Manager shall notify the CMAR in writing of such action. CMAR shall accomplish the removal within 14 days after written notice by the Project Manager. The Project Manager shall review and approve the appointment of any replacement of the CMAR's project manager and/or key personnel. Said approval shall not be unreasonably withheld. The Project Manager shall have the authority to administer the rights and responsibilities of OWNER so long as the Project Manager's actions do not affect the legal rights and obligations of OWNER.

13.1.2. OWNER additionally will:

- a) Contract separately with one or more design professionals to provide architectural and/or engineering design services for the Project if it does not use its in-house forces. The scope of services for the Design Professional will be provided to the CMAR for its information. CMAR shall have no right, to limit or restrict any changes of such services that are otherwise mutually acceptable to the OWNER and Design Professional.
 - b) Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by the CMAR except for those copies whose cost has been reimbursed by the OWNER.
 - c) Give prompt written notice to the CMAR when the OWNER becomes aware of any default or defect in the Project or non-conformance with the Plans, Specifications and Estimates, or any of the services required hereunder. Upon notice of failure to perform, the OWNER may provide written notice to CMAR that it intends to terminate the Contract unless the problem cited is cured, or reasonable steps have begun to cure the problem, within three days of CMAR's receipt of such notice.
 - d) Notify the CMAR of changes affecting the budget allocations or schedule.
- 13.1.3. OWNER's Project Administrator will have authority to approve the Project Budget and Project Schedule and render decisions and furnish information the Project Administrator deems appropriate to the CMAR. This authority is only for the purpose of facilitating the design phase. This approval authority is not binding or a commitment upon the OWNER for the purposes of Project construction.

14. PROJECT DOCUMENTS AND COPYRIGHTS

- 14.1.1. COUNTY ownership of Project Documents: All work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original Mylar drawings, Computer Aided Drafting and Design (CADD) file, and other related documents which are prepared specifically in the performance of this Contract (collectively referred to as Project Documents) are to be and remain the property of the OWNER and are to be delivered to the Project Manager before the Final Payment is made to the CMAR. Nonetheless, in the event these Projects Documents are altered, modified or adapted without the written consent of the CMAR, which consent CMAR shall not unreasonably withhold, the OWNER agrees to hold the CMAR harmless to the extent permitted by law, from the legal liability arising out of and or resulting from the OWNER's alteration, modification or adaptation of the Project Documents.
- 14.1.2. License to OWNER for Reasonable Use: The CMAR hereby grants, and will require its Subconsultants to allow the OWNER, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Project Documents, works or Deliverables developed or created for the Project and this Contract. This license will also include the making of derivative works. In the event that the derivative works require the OWNER to alter or modify the Project Documents, then the previous paragraph applies to such works.
- 14.1.3. Documents to Bear Seal: When applicable and required by state law, the CMAR and its Subconsultants will sign and stamp by an applicable California professional all plans, works, and deliverables prepared by them for this Contract.

15. AMENDMENTS TO DESIGN WORK

- 15.1.1. CMAR shall make no changes in the Work or perform any additional work without the OWNER's specific written approval. If such changes cause an increase in the cost of doing work or in the time required and are issued as a result of some action or inaction on the part of OWNER, compensation shall be based on negotiated fees and costs. Changes in Services, scope of work, or reimbursable expenses must be authorized in writing by OWNER before work begins. All changes in scope of work that amend this Contract may be subject to approval by the Board of Supervisors.
- 15.1.2. OWNER-Initiated Changes: OWNER may, at any time, upon written notice, direct any changes in the Work within the general scope of the Contract. If OWNER shall determine that a change in the scope of services of the CMAR is desirable, a written order called an "Amendment" shall be issued by OWNER which shall set forth the nature of the change. When an Amendment has been issued, CMAR shall expeditiously proceed to implement the change set forth therein.
- 15.1.3. If CMAR believes that a change in the scope of services is necessary and desirable to further the interests of the Project under this Contract, CMAR shall make a request, in writing, to OWNER to issue an Amendment. Such requests for a Contract change shall include the proposed change in scope of work, as well as any proposed change in compensation, schedule, construction cost and time, associated with granting such an Amendment. Upon receipt of such request for a Contract scope change, OWNER may reject the request; approve the request; negotiate with CMAR regarding the change in the scope of services, cost and/or change in schedule. A written Amendment will be processed by OWNER and CMAR shall expeditiously proceed to implement such change.

16. ALTERATIONS IN CHARACTER OF WORK

- 16.1.1. Notwithstanding the provisions of the "AMENDMENTS TO DESIGN WORK" section of this Contract, OWNER may approve increases in CMAR's Contract amount resulting from a substantial change in this Contract for services within the existing scope of work.
- 16.1.2. Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to the CMAR may accordingly be adjusted by mutual Contract of the Contracting parties.
- 16.1.3. No claim for extra work done or materials furnished by the CMAR during this design phase will be allowed by the OWNER except as provided herein, nor will the CMAR do any work or furnish any material(s) not covered by this Contract, unless such work or material is first authorized in writing. Work or material(s) furnished by the CMAR without such prior written authorization will be the CMAR's sole jeopardy, cost, and expense, and the CMAR hereby agrees that without prior written authorization no claim for compensation for such work or materials furnished will be made.

17. PROJECT STAFF

- 17.1.1. Prior to the start of any Work or Deliverable under this Contract, CMAR shall submit to the OWNER an organization chart for the CMAR staff, Subconsultants and subcontractors, and detailed resumes with pictures of key personnel listed in its response to the OWNER's Request for Qualifications or subsequent fee proposals (or revisions thereto), that will be involved in performing the services prescribed in the Contract. Unless otherwise informed, the OWNER hereby acknowledges its acceptance of such personnel to perform such services under this

Contract. In the event the CMAR desires to change such key personnel from performing such services under this Contract, CMAR shall submit the qualifications of the proposed substituted personnel to the OWNER for prior approval. Key personnel will include, but are not limited to, principal-in-charge, project manager, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.

- 17.1.2. CMAR shall maintain an adequate number of competent and qualified persons, as determined by the OWNER, to ensure acceptable and timely completion of the scope of services described in this Contract throughout the period of those services. If the OWNER objects, with reasonable cause, to any of the CMAR's staff, CMAR shall take prompt corrective action acceptable to the OWNER and, if required, remove such personnel from the Project and replace with new personnel acceptable to the OWNER. If CMAR breaches this section, it will be considered an event of default under this Contract.

18. LAWS TO BE OBSERVED

- 18.1.1. CMAR represents and agrees that services to be provided under this Contract shall fully comply, at CMAR's expense, with all applicable laws and regulations, including, but not limited to those issued by OWNER in its governmental capacity and all other laws applicable to this Contract at the time services under this Contract are provided to and accepted by OWNER.
- 18.1.2. CMAR acknowledges that OWNER is relying on CMAR for such compliance, and pursuant to the requirements of the indemnification paragraph above, CMAR agrees that it shall defend, indemnify and hold OWNER and OWNER Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- 18.1.3. CMAR shall strictly adhere to and obey all applicable laws, statutes, codes, ordinances, rules, regulations, tariffs, and orders of any local, State, or federal governmental or regulatory OWNER having jurisdiction over the Project.

19. ERRORS AND OMISSIONS

- 19.1.1. All Projects/Services submitted by CMAR shall be complete and shall be carefully checked prior to submission. CMAR understands that OWNER's checking is discretionary, and CMAR shall not assume that OWNER will discover errors and/or omissions. If OWNER discovers any errors or omissions prior to approving CMAR's Projects/Services, the Projects/Services will be returned to CMAR for correction. Should OWNER or others discover errors or omissions in the Work submitted by CMAR after OWNER's approval thereof, OWNER's approval of CMAR's Projects/Services shall not be used as a defense by CMAR.
- 19.1.2. If CMAR subcontracts portions of the architectural or engineering design Projects or Services to be performed under the terms of this Contract, CMAR shall obtain evidence that such subcontractors have purchased Professional Liability Insurance to the same limits as described in Paragraph 6.15.4 and containing the same clauses as the insurance required of CMAR under the terms of this Contract. Evidence of subcontractor's insurance shall be submitted to OWNER upon request.

20. INSURANCE

- 20.1.1. Prior to the provision of services under this contract, the CMAR agrees to purchase all required insurance at CMAR's expense, including all endorsements required herein, necessary to satisfy

the OWNER that the insurance provisions of this contract have been complied with. CMAR agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the OWNER during the entire term of this Contract. In addition, all subcontractors performing work on behalf of CMAR pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for CMAR. The OWNER reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. In addition, all subcontractors performing work on behalf of CMAR pursuant to this contract shall obtain insurance subject to the same terms and conditions as set forth herein for CMAR.

- 20.1.2. CMAR shall ensure that all subcontractors performing work on behalf of CMAR pursuant to this Contract shall be covered under CMAR's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for CMAR. CMAR shall not allow subcontractors to work if subcontractors have less than the level of coverage required by OWNER from CMAR under this Contract. It is the obligation of CMAR to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by CMAR through the entirety of this agreement for inspection by OWNER representative(s) at any reasonable time.
- 20.1.3. All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of CMAR's current audited financial report. If CMAR's SIR is approved, CMAR, in addition to, and without limitation of, any other indemnity provision(s) in this Agreement/Contract, agrees to all of the following:
- a) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from CMAR's, its agents, employee's or subcontractor's performance of this Agreement, CMAR shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
 - b) CMAR's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
 - c) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the CMAR's SIR provision shall be interpreted as though the CMAR was an insurer and the County was the insured.
- 20.1.4. If the CMAR fails to maintain insurance acceptable to the OWNER for the full term of this contract, the OWNER may terminate this Contract.

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by CMAR shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$5,000,000 per occurrence/ \$5,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence \$10,000,000 per occurrence if Commercial Ramp is accessed
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$1,000,000 per claims made/ \$2,000,000 aggregate

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) A Primary Non-Contributory endorsement evidencing that the CMAR's insurance is primary and any insurance maintained by the County of Orange shall be excess and non-contributing.
- 3) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO form CG2010 (ed. 11/85).

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees and agents.

All insurance policies required by this contract shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

CMAR shall notify COUNTY in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation may constitute a material breach of the contract, upon which the COUNTY may suspend or terminate this Contract.

If CMAR's Professional Liability policy is a "claims made" policy, CMAR shall agree to maintain Professional Liability coverage for Two (2) years following completion of contract.

The Commercial General Liability policy shall contain a severability of interest clause (standard in the ISO CG 001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation. If the CMAR fails to provide the insurance certificates and endorsements within seven (7) days of notification by Project Manager or the agency/department Facilities Division, award may be made to the next qualified vendor.

COUNTY expressly retains the right to require CMAR to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect COUNTY.

COUNTY shall notify CMAR in writing of changes in the insurance requirements. If CMAR does not deposit copies of acceptable certificates of insurance and endorsements with COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to CMAR, and COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit CMAR's liability hereunder or to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

21. BONDS

Within 10 calendar days after award of each Change Order for Early Work Amendment and/or GMP Amendment, CMAR shall furnish a Faithful Performance Bond and a Labor and Material Payment Bond, each in an amount equal to 100% of the GMP Contract Price, issued by a surety in accordance with this Contract. The bonds shall be in the form of the models provided by the OWNER, and must be approved by OWNER's Risk Manager and County Counsel. CMAR shall submit the bonds in duplicate, all of which shall bear original signatures. The signature of the surety representative must be notarized. CMAR shall take steps to assure that the penal sum of the bonds shall be increased by the amount of any additive adjustments to the Contract Price as a result of Change Orders and Amendments.

The payment and performance bonds must each be issued by a surety that: (i) is authorized by the California Insurance Commissioner to transact surety insurance in the State of California; (ii) has assets exceeding its liabilities in an amount equal to or in excess of the amount of the bonds; and (iii) acts in compliance with Insurance Code Section 12090.

22. SECURING WORKERS' COMPENSATION INSURANCE CERTIFICATION

CMAR, by executing this Agreement, hereby certifies:

“I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this contract.”

23. PARTIES’ REPRESENTATIVES

OWNER has the final decision in all matters affecting the Work. OWNER has the authority to enforce CMAR’s compliance with the Contract Documents. OWNER’s decision is final and binding on all questions relating to: quantities; acceptability of material, equipment, or work; execution, progress, or sequence of work; and interpretation of the Contract Documents. All labor, materials, tools, equipment furnished by CMAR and all work performed by CMAR shall be subject to the approval of OWNER.

23.1. OWNER’S REPRESENTATIVES

23.1.1. John Wayne Airport: The Project is under the general direction of OWNER’s Board of Supervisors. The Board of Supervisors authorizes John Wayne Airport (through its Airport Director or his designee, hereinafter “Director”) to be OWNER’s representative in connection with the Project.

23.1.2. Project Manager: Director will designate the person who will act ex-officio as OWNER’s representative during construction of the Project. Unless otherwise expressly stated in the Contract Documents, OWNER’s designated representative will issue and receive all written communications on behalf of OWNER for the Project. The designated representative shall also coordinate any communications to or from OWNER’s Design Professional (“Architect-Engineer” or “A-E”) in connection with the Project. The Project Manager shall manage the routine responsibilities of OWNER, but is not authorized to make decisions for OWNER that materially affect this Contract or create additional legal liabilities for OWNER.

23.1.3. The OWNER and A-E shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the CMAR’s failure to carry out the Work in accordance with the Contract Documents.

23.1.4. The OWNER will not be responsible for the acts or omissions of the CMAR, or any subconsultant or subcontractor, or any CMAR’s or subcontractor’s agents or employees, or any other persons performing any of the Work.

23.2. CMAR’S REPRESENTATIVES

23.2.1. Representative and Alternate: Before starting work, CMAR shall designate in writing a representative who shall have complete authority to act for it. The representative shall be the same as proposed during original Request for Proposal selection process. CMAR may also designate an alternate representative (also as identified during original Request for Proposal selection process) with complete authority to act for it. OWNER may rely on such representative or alternate as having the authority to execute Change Orders in any amount unless CMAR identifies to OWNER in writing the officer(s) or employee(s) with such authority. Any order or communication given to this representative shall be deemed delivered to CMAR. In the absence of CMAR’s representative, instructions or directions may be given by OWNER to the project manager or superintendent. Such order shall be complied with promptly and referred to CMAR

or its representative. CMAR's representative and alternate must be able to read, write, and speak English fluently.

- 23.2.2. CMAR's Project Manager: CMAR shall provide the services of the project manager, as proposed during original Request for Proposal selection process. CMAR's project manager, if different than designated representative, shall represent CMAR in the absence of CMAR's designated representative or alternate, and all directions given to the project manager shall be binding as if given to CMAR. OWNER may require CMAR to replace the project manager whose conduct or performance is unsatisfactory. CMAR shall not change its project manager without OWNER's consent unless the project manager is unsatisfactory to CMAR or ceases to be in CMAR's employ. If CMAR's project manager leaves the Project, CMAR shall replace him or her within 24 hours (unless additional time is agreed upon by OWNER) with a new, well-qualified project manager acceptable to OWNER.
- 23.2.3. Superintendent(s): CMAR shall provide the services of the superintendent(s) as proposed during original Request for Proposal selection process. A superintendent shall be present at the work site whenever work is in progress including whenever weather conditions necessitate its presence to take measures necessary to protect the Work, persons, or property. CMAR's superintendent shall represent CMAR in the absence of CMAR's designated representative, alternate or project manager, and all directions given to the superintendent(s) shall be binding as if given to CMAR. The superintendent must read, write, and speak English fluently. OWNER may require CMAR to replace a superintendent whose conduct or performance is unsatisfactory. CMAR shall not change its superintendent without OWNER's consent unless the superintendent is unsatisfactory to CMAR or ceases to be in CMAR's employ. If CMAR's superintendent leaves the Project, CMAR shall replace him or her within 24 hours (unless additional time is agreed upon by OWNER) with a new, well-qualified superintendent acceptable to OWNER.
- 23.2.4. Emergency Contacts: CMAR shall provide OWNER with a list of names and telephone numbers at which CMAR's representative, alternate, superintendent, and other key personnel can be reached during non-working hours in the case of an emergency.

24. CONFLICT OF INTEREST

- 24.1.1. CMAR shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the OWNER. This obligation shall apply to the CMAR, the CMAR's employees, agents, and relatives; sub-tier Contractors; and third parties associated with accomplishing work and Projects/Services hereunder.
- 24.1.2. CMAR's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from: making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the OWNER.

25. NOTICES

- 25.1.1. Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' project managers' routine exchange of information and cooperation during the Projects/Services.
- 25.1.2. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt, or no greater

than four (4) calendar days after being mailed by U. S. certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day.

- 25.1.3. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

CMAR: Webcor Builders
Attn: Mitch Thomson
550 S. Hope Street, Suite 2100
Los Angeles, CA 90071

OWNER: John Wayne Airport
Attn: Leo Tang Project Manager
3160 Airway Avenue
Costa Mesa, CA 92626

26. SIGNATURE REQUIREMENTS

The Agreement must be signed by officer(s) authorized to bind CMAR. If documentation demonstrating express OWNER is not provided, then the Agreement must be signed by those officers with apparent OWNER to bind CMAR. If CMAR is a corporation, such signatures must comply with Corporations Code Section 313, as follows:

- a) One signature by the chairman of the board, the president, or any vice president; and
- b) One signature by the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer.

APPENDICES:

Appendix 1 – Design Phase Services Cost and Compensation
Appendix 2 – Information Technology Network Usage Policy

[Signature Page Follows.]

John Wayne Airport
Construction Manager at Risk (CMAR) Contract

Terminal Building Curtain Wall Modifications
Project Number P447

IN WITNESS WHEREOF, the PARTIES hereto have executed this CONTRACT on the dates
opposite their respective signatures:

Date: 4/28/2020

CMAR:

Webcor Builders, Inc.

By: [Signature]
Signature

KESTENSON PRESIDENT/CEO
Print Name & Title

Date: 4/28/2020

By: [Signature]
Signature

Matthew Reece EVP + CFO
Print Name & Title

COUNTY OF ORANGE,
a political subdivision of the State of California

Date: _____

By: _____

Chairwoman of the Board of Supervisors
County of Orange, California

SIGNED AND CERTIFIED THAT A COPY OF THIS AGREEMENT HAS BEEN
DELIVERED TO THE CHAIR OF THE BOARD PER G.C. Sec 25103, Reso 79-1535

Robin Stieler
Clerk of the Board of Supervisors
County of Orange, California

APPROVED AS TO FORM
COUNTY COUNSEL

By: [Signature]
Deputy

Date: 4-28-2020

**If CMAR is a corporation, signatures of two specific corporate officers are required as further set forth:*

- *The first signature must be one of the following: a) the Chairman of the Board; b) President; or c) any Vice President.*
- *The second signature must be one of the following: a) Secretary; b) the Chief Financial Officer; c) any Assistant Secretary; or d) any Assistant Treasurer.*
- *In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.*

GENERAL CONDITIONS

1. CONTRACTOR'S LICENSE

The contractor's license classification for this Contract is a Class B license issued by the State of California, Contractor's State License Board. At all times during the term of this Contract, CMAR shall: (a) maintain in good standing all licenses required by the State of California or any other governmental entity for it to perform the Work required under the Contract; and (b) comply in all respects with the California Contractors' State License Law, Business & Professions Code Section 7000, et seq.

2. LICENSED SUBCONTRACTOR

Each Subcontractor selected for the Work shall be licensed in the State of California in the Subcontractor's particular field.

2.1. COMMUNICATIONS

Communications with Subcontractors shall be made through CMAR except when in emergency situations CMAR is not readily available, in which case detailed instructions shall be transmitted to Subcontractors directly.

2.2. RESPONSIBILITY

CMAR shall give personal attention to the fulfillment of the Work and shall keep the Work under its control. CMAR shall be equally responsible for all work required by the Contract Documents and the acts and omissions of Subcontractors and all persons directly or indirectly employed by them as CMAR is for CMAR's acts and omissions and of persons directly or indirectly employed by CMAR. CMAR shall indemnify and hold OWNER harmless with respect to the activities of each and every Subcontractor in the same manner and to the same degree as if such Subcontractor were the CMAR's employee. CMAR shall pay each Subcontractor promptly the amount allowed CMAR on account of such Subcontractor's work to the extent of such Subcontractor's interest therein.

2.3. CONTRACTUAL RELATIONS

Nothing contained in this Contract shall create any contractual relations between OWNER and any Subcontractor.

2.4. LISTING AND SUBSTITUTION OF SUBCONTRACTORS

CMAR shall comply with the Subletting and Subcontracting Fair Practices Act, California Public Contract Code Sections 4100 et seq. CMAR may not substitute a person or entity in place of any subcontractor listed in the GMP except with OWNER's written approval in compliance with the provisions of Public Contract Code Sections 4107 et seq.

3. PLANS AND SPECIFICATIONS

- 3.1.1. Checking: CMAR shall review all Contract Documents immediately upon receiving them and shall promptly notify OWNER of any discrepancies. CMAR shall notify OWNER about the absence of a specification or detail, and such absence shall not excuse CMAR from following standard practices in the industry. Dimensions marked on drawings shall in general be followed

in preference to scale measurements. Larger-scale, more detailed drawings shall in general govern over smaller-scale, less detailed drawings. Architectural and engineering schedules shall take precedence over other portions of the Plans. CMAR shall compare all Plans and verify the dimensions before laying out the Work and will be responsible for any errors that might have been avoided by doing so. If measurements are affected by site conditions, CMAR shall take new measurements for which CMAR bears full responsibility, and which shall be treated as if represented in the Plans and Special Provisions.

- 3.1.2. Omissions and Mistakes: CMAR shall call to OWNER's attention as soon as identified any omissions in the Contract Documents or mistakes in details of work that are necessary to carry out the intent of the Contract Documents or that are customarily performed. OWNER shall promptly notify CMAR in writing of the correction. If warranted, OWNER shall issue a Change Order in accordance with the "Changes" Section of these General Conditions. If CMAR makes any adjustment to the Work without first receiving the OWNER's written correction, such adjustment shall be at CMAR's own risk and expense.
- 3.1.3. Conflicting Information: In case of conflicting information in the Contract Documents, CMAR shall bid the most expensive alternative.
- 3.1.4. Documents at the Site: CMAR shall keep available at the site for ready reference a complete set of the Contract Documents. CMAR also shall maintain a complete set of approved shop drawings, manufacturers' recommendations and instructions, and copies of all Project correspondence at the site. CMAR shall provide OWNER with a set of manufacturers' recommendations and instructions.
- 3.1.5. "As-Built" Plans at the Site: CMAR shall maintain at the site a complete "As-Built" set of Plans for the Project. CMAR shall update the As-Built Plans each day. CMAR shall make As-Built Plans available to OWNER immediately upon request. Any delay by CMAR in providing OWNER with access to properly updated As-Built Plans may result in a commensurate delay in OWNER's processing of progress payment applications. Prior to Final Payment, CMAR shall deliver a complete set of the As-Built Plans to OWNER in a format acceptable to OWNER and suitable for use in preparing a reproducible set of record drawings for the Project.
- 3.1.6. Deviations: CMAR shall not deviate from the Plans and the dimensions shown therein, whether or not CMAR believes an error exists, without first obtaining OWNER's written permission for the deviation.

4. CMAR'S PRE-CONSTRUCTION OBLIGATIONS

Prior to beginning construction and again before starting a section of work, CMAR and each subcontractor shall carefully examine all preparatory work that has been executed to receive the Work. CMAR shall check carefully, by whatever means are required, to ensure that the Work and adjacent, related work, will finish to proper contours, planes, and levels. CMAR shall promptly notify the OWNER of any defects or imperfections in preparatory work which will in any way, affect satisfactory completion of his work. Absence of such notification will be construed as an acceptance of preparatory work, and later claims of defects or delays therein will not be recognized. Under no condition shall a section of work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials rests solely with the CMAR, who shall maintain coordination control at all times. CMAR's or each Subcontractor's commencement of the Work of its trade will be interpreted as CMAR's acceptance of existing conditions over which the new work must be placed, installed, or otherwise performed.

5. INDEMNIFICATION

To the maximum extent allowable by law, CMAR agrees to indemnify, defend with counsel approved in writing by OWNER, and hold OWNER, its elected and appointed officials, officers, employees, agents and those special districts and agencies for which OWNER's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any loss, injury, liability claims, demands, costs and expenses whether incurred by or made against OWNER or County Indemnitees of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by CMAR pursuant to this Contract. This indemnity applies even in the event of County Indemnitees' concurrent fault, except that nothing in this indemnification provision shall be construed to require CMAR to indemnify County Indemnitees for losses caused by County Indemnitees' active negligence, sole negligence, willful misconduct, or defects in design furnished by them.

CMAR's indemnity obligation set forth above shall include but not be limited to all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (1) failure of CMAR to comply with its obligations under the Contract Documents, (2) injury or death of any person or damage to property resulting from the construction of the Work or by or in consequence of any negligence in protecting the Work; (3) use of materials or other things used or employed in the construction that are not in conformance with the Contract Documents; and (4) any negligent or intentional act or omission by CMAR and any of its respective officers, employees, agents, subcontractors, suppliers, and representatives during the progress of the Work or at any time before its completion and final acceptance.

If judgment is entered against CMAR and OWNER by a court of competent jurisdiction because of the concurrent active negligence of OWNER or County Indemnitees, CMAR and OWNER agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

6. RESPONSIBILITY FOR DAMAGES OR INJURY

OWNER and its officers and employees shall not be liable in any manner for any loss or damage to any portion of the Work, any loss or damage to any of the materials or equipment used in the Work, or any injury to any person or property by any cause that might reasonably have been prevented by CMAR, its employees, or its Subcontractors. CMAR shall indemnify and defend OWNER against any claims or liability under this section pursuant to the "Indemnification Provisions" Section of these General Conditions.

CMAR shall remove and dispose of any waste materials, including soils or other materials that become contaminated directly or indirectly as a result of CMAR's performance under this Contract, according to the "Hazardous or Contaminated Materials" Section of the General Conditions.

Payment of any penalties, fines, or other liability assessed to OWNER by regulatory agencies due to CMAR's or any Subcontractor's action or inaction in performing the Work shall be CMAR's sole responsibility.

CMAR shall pay any assessments or damages covered by this Section directly, or, at OWNER's discretion, OWNER may pay or retain the amount of such assessments or damages and deduct its costs from payments owed or as they become due to CMAR.

7. SCHEDULES, SUBMITTALS, SUBSTITUTIONS, AND INSPECTIONS

7.1. CONSTRUCTION SCHEDULES

- 7.1.1. Construction Schedules: As part of GMP, CMAR shall submit to OWNER for OWNER's review an initial job progress schedule.
- 7.1.2. Once the Notice to Proceed is issued, the Construction Schedule shall be updated to reflect the Contract Time as defined in the Agreement. Unless a specific software application is called for elsewhere in the Contract Documents, CMAR shall use Oracle Primavera P6, or other scheduling software acceptable to OWNER to configure all versions of its job progress schedule. CMAR shall prepare the Construction Schedule using the critical path format. Schedule activities shall be of sufficient detail to assure that adequate planning has been done for proper execution of all of CMAR's work. The job progress schedule shall show the sequence, duration, and interdependence of activities required for the complete performance of all of CMAR's work.
- 7.1.3. CMAR shall include on the Construction Schedule the schedule for submittals, shop drawings, procurement, fabrication, and delivery for major materials and equipment required for the Project, and shall allow no less than 21 days for OWNER's review of each such submittal. After CMAR's initial Construction Schedule is accepted by OWNER, it will be designated as the "Accepted Construction Schedule". An Accepted Construction Schedule is a condition precedent to OWNER's obligation to make the initial progress payment to CMAR.
- 7.1.4. Weekly Meetings and Look-Ahead Charts: CMAR shall participate in weekly meetings with OWNER during which the parties shall exchange information regarding the actual progress of construction. OWNER and CMAR shall attempt to agree upon quantities and percentages of completion that reflect the actual progress of construction. At each meeting CMAR shall submit 4 copies of a 2-week look-ahead chart. The 2-week look-ahead chart shall include only those activities that will be started, in progress, or completed during the next 2-week period. The format of the look-ahead chart shall be subject to OWNER's approval.
- 7.1.5. Monthly Schedule Updates: Each month, CMAR shall submit to OWNER for its review an update of the Accepted Construction Schedule. The monthly Schedule Update shall reflect agreed assessments of actual completion reached during weekly meetings. If OWNER and CMAR cannot agree, then CMAR shall use OWNER's assessment of actual progress to prepare the Schedule Update. CMAR's monthly Schedule Update shall include: (a) a diagram showing the target versus actual dates for each activity; (b) an updated critical path method report; and (c) a narrative report that includes, but is not limited to, a description of problems, current and anticipated delays and their causes, impacts of delays, and corrective actions that CMAR has taken or proposes to take to overcome problems and recover from delays. CMAR shall identify any events that will delay the completion of an interim milestone or the completion of the overall Project in the monthly Schedule Update. On OWNER's acceptance of the monthly Schedule Update, it shall become the current Accepted Construction Schedule. Any request for an extension of the Contract Time must be based on the Accepted Construction Schedule. The submission of an acceptable monthly Schedule Update will be part of the basis of the progress payment and shall be a condition precedent to OWNER's obligation to make such progress payment to CMAR.
- 7.1.6. Recovery Schedule: If any activity on the critical path is more than 7 days behind the Accepted Construction Schedule and it appears that CMAR may not complete all work within the Contract Time, then OWNER may require CMAR to submit a recovery schedule demonstrating its proposed plan to make up all lost time and complete the Project within the Contract Time. CMAR

shall submit its recovery schedule within 7 calendar days of OWNER's request. If OWNER finds the proposed recovery schedule unacceptable, it may require CMAR to submit a revised plan or to take actions that are, in OWNER's judgment, necessary to recapture lost time, including but not limited to increasing: (a) manpower; (b) the number of working hours per day; (c) the shifts per working day; (d) the number of working days per week; (e) the amount of equipment; or (f) any combination of the foregoing. CMAR's entitlement to additional compensation, if any, will be determined in accordance with the provisions of the "Changes" Section of the General Conditions.

7.2. SCHEDULE OF VALUES

- 7.2.1. Within 14 calendar days of the issuance of the Notice to Proceed, CMAR shall submit a proposed Schedule of Values for OWNER's review and approval. The Schedule of Values shall include sufficient detail and be supported by sufficient data as OWNER, in its sole discretion, may deem necessary to substantiate its accuracy and to evaluate progress at any point in the Project. The Schedule of Values shall include the general categories noted in the GMP, subdivided into their various components for the costs of trade subcontractors' services, labor, and material based when possible upon actual subcontract, purchase order, or vendor prices. Subdivisions of work should be described by easily identifiable and measurable units.
- 7.2.2. The data from the Schedule of Values shall be transferred and correspond directly to the appropriate construction activities on Construction Schedule. OWNER will accept the Schedule of Values with review of the Construction Schedule. The Schedule of Values along with the Construction Schedule will be the basis for CMAR's Progress Payment Request and therefore, must be reviewed by OWNER before the first Progress Payment Request is submitted to OWNER.
- 7.2.3. To substantiate the accuracy of the Schedule of Values, OWNER and CMAR may review such supporting data as OWNER may require which includes, but is not limited to, subcontractor contracts, material contracts, supply and services contracts, etc.

7.3. CMAR'S SUBMITTALS

- 7.3.1. CMAR shall include within the Construction Schedule a schedule for submittals ("submittal schedule") in accordance with Contract Time and Contract Document requirements.

CMAR shall prepare and submit a progress schedule for itself, and each sub-contractor and supplier, showing anticipated dates for submittals of construction data. Schedule shall allow for lead time required for subcontractors, material and equipment manufacturers, fabricators and suppliers, delivery of materials and equipment, in sufficient time for installation without delaying any portion of the Work.

- 7.3.2. Time for submittals: Each submittal must be received by the A-E in time to permit 21 calendar days for their review. If a submittal is not received in time to allow sufficient time, (calendar days) for the A-E's review without delaying construction, CMAR shall reimburse OWNER for the A-E's costs incurred by checking on an accelerated basis.
- 7.3.3. A-E or OWNER Responsibility: (1) The A-E's or OWNER's responsibility for time consumed in review of construction data and any claim made by the CMAR (including Subcontractors and suppliers) that such time is excessive and has caused or will cause delay in completion of the Work, will only be considered as starting from the time drawings, samples and other construction data are complete and correct in all respects and so submitted and signed as approved by CMAR.

- (2) Preliminary and incomplete or incorrect submittals of said drawings and samples shall not be considered as the beginning of the official approved time.
- 7.3.4. “Sufficient time” as used herein shall mean a maximum of 21 calendar days unless approved otherwise by OWNER.
- 7.3.5. Construction Data: Obtain and review all construction data and such other data as required for the coordination of the Work of the CMAR and each of his subcontractors, whether such submittals are requested.
- 7.3.6. Submittal Requirements: CMAR shall submit to OWNER electronic copies of all initial submittals required by the Contract Documents, including but not limited to: shop drawings, working drawings, descriptions of materials and equipment to be supplied, samples, supporting information, and other submittals (collectively “Submittals”) and 2 hard copies of each approved submittal. All submittals shall be provided at CMAR’s expense. CMAR shall carefully review each Submittal before delivering it to OWNER. CMAR shall provide a signed, dated transmittal letter with each Submittal certifying that the Submittal is correct and in strict conformance with the Contract Documents. CMAR shall allow no less than 21 days for OWNER to review each Submittal. CMAR is expected to make a complete and acceptable Submittal by the second submission as to any item, and OWNER reserves the right to withhold moneys otherwise due CMAR to cover additional costs of OWNER’s reviews beyond the second Submittal.
- 7.3.7. OWNER’s Review: When the Contract Documents require a Submittal, CMAR shall not furnish or fabricate any materials or equipment and shall not perform any work covered by the Submittal until OWNER has reviewed and notified CMAR that OWNER takes no exceptions to the Submittal. Any fabrication or other work performed in advance of receiving OWNER’s notice of no exceptions shall be entirely at CMAR’s risk and expense. CMAR is responsible for the correctness of each Submittal. OWNER’s review of a Submittal shall not relieve CMAR from responsibility for any errors or omissions in the Submittal or from any performance requirements of the Contract Documents. In the transmittal letter that accompanies the Submittal, CMAR shall call to OWNER’s attention any deviations from the Contract Documents. CMAR shall furnish all materials and perform all work for which Submittals are required in accordance with the Submittals that OWNER has reviewed and has taken no exception.
- 7.3.8. A-E’s Review: Review of submittals is only to check for general conformance with the project design concept and general compliance with the Contract Documents. Responsibility will not be assumed by OWNER or the A-E for any of the following:
- a) Correctness of dimensions, details, quantities, or procedures indicated on the submittals.
 - b) Any violation indicated on shop drawings, or other construction data, of local, county, state or federal laws, rules, ordinances, or rules and regulations of commissions, boards or other authorities or public utilities having jurisdiction.
 - c) Any deviation made from Contract Documents requirements, even with approval from the A-E and OWNER, will not relieve the CMAR from any responsibility for errors or omissions in the construction data.
- 7.3.9. Review of construction data submittals will only be performed as specifically required in the various Specification Sections.
- 7.3.10. Review of a separate item shall not indicate approval of an assembly in which the item functions.

- 7.3.11. Review of shop drawings will be general, for design, arrangement and appearance only, and shall not relieve CMAR of responsibility for accuracy of such shop drawings, dimensions, proper fitting, construction of work, providing materials required by the Contract Documents, even though such materials and their installation are not indicated on shop drawings. Review of shop drawings shall not be construed as approving departure from Contract requirements or as acceptance of any responsibility by OWNER or the A-E for any errors, omissions, or discrepancies shown thereon.
- 7.3.12. No portion of the Work requiring a submission shall be commenced until the submission has been reviewed and returned to the CMAR with the A-E's stamp of approval. All such portions of the Work shall be in accordance with approved construction data.
- 7.3.13. Working Drawings: Working drawings are drawings showing details not shown on the Plans, which details CMAR must design. CMAR must prepare working drawings of a sufficient size and scale to show clearly all necessary details. CMAR shall ensure that when required by California law or the Contract Documents, working drawings are prepared by engineers holding valid professional licenses in the applicable engineering discipline.
- 7.3.14. Shop Drawings: Shop drawings are drawings showing details of manufactured or assembled products that CMAR proposes to incorporate into the Work. CMAR shall submit the shop drawings required by the Contract Documents.
- 7.3.15. Shop Drawing Variations:
- a) If shop drawings show variations from Contract Documents because of standard shop practice, questions, or any other reason, make specific mention of variations in transmittal letter to the A-E as well as encircle variations or questions on shop drawings to identify and call them to the A-E's attention.
 - b) If the CMAR has not notified the A-E in writing of variations, deviations or omissions, CMAR shall be required, at its sole expense, to repair, replace, furnish whatever materials are required, perform the Work, including adjacent work of other trades affected thereby, necessary to rectify such deviations and variations, all as directed by OWNER. Replacement and repair shall be mandatory in such instances, even though this occurs after shop drawings have been stamped "Review Completed" and the Work in question has been completed. All work pertaining to this condition or situation shall be performed at no additional cost to the OWNER.
- 7.3.16. Samples:
- a) Samples shall be the precise item proposed to be furnished.
 - b) Submit one sample to be retained by the A-E, one to be retained by OWNER, plus the number required by the CMAR for his and his subcontractor's use.
 - c) Identify each sample with the manufacturer's name, model number or type, and its intended location in the Work.
 - d) Samples of value will be returned to the CMAR for use in the Work after review by the A-E and OWNER.

- e) Failure of samples to conform to specific requirements may, at OWNER option, constitute a bar against submission of other samples by the same manufacturer, vendor or supplier.
- f) Acceptance of samples will not preclude rejection, prior to final acceptance of completed work, of any material upon discovery of defects in material which said sample failed to represent, even though such material or equipment has been installed or erected in place.
- g) After samples have been reviewed, no change in brand or make will be permitted unless satisfactory written evidence is presented, to the A-E and OWNER, that the manufacturer cannot make scheduled delivery of approved material, or that material delivered has been rejected and substitution of an alternate material is an urgent necessity, or that other conditions are apparent which indicate acceptance of such substitute materials to be in the best interest of the OWNER.
- h) All samples of materials requiring laboratory tests shall be tested sufficiently in advance of the time they are required to be delivered to the Project Site for: (1) A-E's review of test results, (2) re-testing and re-submittal as necessary to obtain A-E's acceptance, (3) manufacture or fabrication, and (4) delivery to Project Site without delaying the scheduled progress of the Work.
- i) Each sample shall have physically attached to it, in a manner not easy removable, a label bearing the following information:
 - (1) Project identification.
 - (2) CMAR's and subcontractor's identification.
 - (3) Sample identification including full information as to manufacturer, model, catalog number, finish number, and other required information.
 - (4) Space for A-E's review stamp.
- j) When samples are rejected by the A-E, submit new samples immediately after notification of rejection, and mark them "Resubmitted Samples," in addition to other information required on label.
- k) The right to require additional submission of samples of any materials or material lists is reserved, whether or not specifically mentioned in Specifications.
- l) Field Samples (as applicable):
 - (1) Field samples (mock-ups), when required, shall be prepared at the site, at location designated by OWNER's Project Manager.
 - (2) Approved mock-ups will be used as the standard for all other similar work on the Project. Protect such approved mock-up sample areas at all times, until directed by OWNER to remove.

7.3.17. Supporting Information: Supporting information is information required by the Contract Documents or requested by OWNER when reviewing a submittal that OWNER determines is necessary to analyze and verify that the submittal conforms to the Contract Documents or will be needed by OWNER to operate and maintain a manufactured product or system to be constructed

as part of the Work. CMAR shall submit supporting information for a system bound together and include information about all manufactured items for the system. Unless otherwise specified in the Contract Documents, supporting information shall comply with applicable requirements of the Specifications and shall include but not be limited to the following:

- a) List of Subcontractors;
- b) List of Materials;
- c) Manufacturer's certifications that materials to be supplied meet the requirements of the Contract Documents, where the Contract Documents allow such certifications or OWNER waives materials testing requirements. OWNER may require materials test data as part of the certification;
- d) Data including but not limited to catalog sheets, manufacturer's brochures, technical bulletins, specifications, diagrams, product samples, and other information necessary to describe a system, product or item. This information may be required for irrigation systems, street lighting systems, and traffic signals, and may also be required for any product, manufactured item, or system.

7.4. SUBSTITUTIONS – BRAND OR TRADE NAMES

- 7.4.1. Unless OWNER has made a finding under Public Contract Code Section 3400(c), whenever the Contract Documents specify any materials, products, things, or services by brand, trade, or proprietary name, by patent, or by manufacturer, such specifications shall be deemed to be a measure of quality and utility or a standard and shall be deemed to be followed by the words "or equal".
- 7.4.2. If CMAR desires to use any other brand or manufacturer of equal quality, performance, and utility to that specified, it shall apply to OWNER in writing within 35 days after the award of the Contract. CMAR shall submit to OWNER 6 copies of each application for an "or equal" determination. CMAR's application shall include all information required for OWNER to evaluate the substitute items, including but not limited to shop drawings, product data, and certified test results.
- 7.4.3. CMAR shall have the item tested as required by OWNER to determine that the quality, strength, performance, physical, chemical, or other characteristics including but not limited to durability, finish, efficiency, dimensions, service, suitability, and compatibility with OWNER's operations are such that the item will be equal in quality and utility to the item specified. CMAR'S written application constitutes its representation that:
 - a) CMAR has investigated the proposed item and determined that it meets or exceeds in all respects the quality, performance, and utility of the specified item.
 - b) CMAR shall provide the same warranty as for the specified item.
 - c) CMAR shall coordinate installation and make such modifications, which may be required for the Work to be complete in all respects, with no addition to the Contract Time or the Contract Price.

- d) CMAR waives all claims for reimbursement for additional costs which may subsequently become apparent by reason of the acceptance and use of such “or equal” materials, equipment, products, processes, or articles.
- 7.4.4. OWNER will then determine, in its sole discretion, whether or not the proposed materials, products, things, or services are equal in quality, performance, and utility to those specified, and its decision shall be final and binding. CMAR shall not use or install any materials, products, things, or services proposed as “or equal” without OWNER’s prior approval. CMAR shall remain solely responsible for the suitability of such proposed material, products, things, or services notwithstanding any determination by OWNER. CMAR shall bear all expenses associated with its application for determination of “or equal” status.
- 7.4.5. Any request by CMAR to change materials, products, things, or services required by the Contract Documents that does not fall within the above provisions relating to Public Contract Code Section 3400 shall be considered pursuant to the “Changes” Section of these General Conditions. OWNER will determine, in its sole discretion, whether or not to accept the requested change.

8. SUBSTITUTED SECURITY

In accordance with Public Contract Code Section 22300 and at the request and expense of CMAR, OWNER will accept securities equivalent to any amount withheld by OWNER to ensure complete and proper performance under the Contract Documents, including the amount withheld as Retention under the “Payments” Section of the General Conditions. Substituted securities must meet the requirements of Public Contract Code Section 22300 and shall be deposited with OWNER or with a California or federally chartered bank in California as escrow agent. The securities shall be held by the escrow agent subject to a written escrow agreement between OWNER, CMAR, and escrow agent, which agreement shall be in a form substantially similar to that contained in Public Contract Code Section 22300.

9. WAIVER OF CLAIMS

Unless a shorter time is specified elsewhere in the Contract, on or before making its application for Final Payment, CMAR shall submit to OWNER in writing all claims for compensation under or arising out of this Contract. CMAR’s acceptance of OWNER’s payment in response to CMAR’s application for Final Payment shall constitute a waiver of all claims against OWNER under or arising out of this Contract except those previously made in writing and identified by CMAR as unsettled at the time of CMAR’s application for Final Payment.

10. LABOR CODE REQUIREMENTS

CMAR and all Subcontractors shall comply with all applicable requirements of the Labor Code throughout the performance of the Contract, including but not limited to the following:

10.1. WAGE RATES

CMAR and any Subcontractor(s) shall comply with the provisions of California Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. CMAR shall post all job site notices as required by Labor Code Section 1771.4(a), including a copy of these wage rates for each craft, classification, or type of worker needed in the performance of this Contract. Copies of these rates are on file at the principal office of OWNER’s representative, or may be obtained from the State Office, Department of Industrial

Relations (“DIR”) or from the DIR’s website at www.dir.ca.gov. If the Contract is federally funded, CMAR and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.

10.2. WAGE RATE PENALTY

CMAR and any Subcontractor(s) shall comply with the provisions of Labor Code Section 1775. CMAR and any Subcontractor(s) shall be subject to a penalty in an amount up to \$200, or a higher amount as provided by Section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates for any work done by the CMAR or Subcontractor(s) under the Contract.

10.3. WORK HOUR PENALTY

As provided by Labor Code Section 1810, 8 hours of labor shall constitute a legal day’s work, and 40 hours shall constitute a legal week’s work. The time of service of any worker employed under the Contract shall be restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week, except as provided herein. CMAR shall forfeit to OWNER \$25, or a higher amount as provided by Labor Code Section 1813, for each worker employed in the performance of this Contract by CMAR or by any Subcontractor(s) for each calendar day during which such worker is required or permitted to work more than the legal day’s or week’s work, except as provided by Labor Code Section 1815.

10.4. REGISTRATION OF CONTRACTORS

CMAR and all Subcontractors must comply with the requirements of Labor Code Section 1771.1(a), pertaining to registration of contractors pursuant to Section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract.

10.5. PAYROLL RECORDS

CMAR and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide in part:

- 10.5.1. CMAR and any Subcontractor(s) performing any portion of the Work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by CMAR or any Subcontractor(s) in connection with the Work.
- 10.5.2. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - a) The information contained in the payroll record is true and correct.
 - b) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.

- 10.5.3. The payroll records shall be certified and shall be available for inspection at the principal office of CMAR on the basis set forth in Labor Code Section 1776.
- 10.5.4. CMAR shall inform OWNER of the location of the payroll records, including the street address, city and county, and shall, within five working days, provide a notice of any change of location and address of the records.
- 10.5.5. Pursuant to Labor Code Section 1776, CMAR and any Subcontractor(s) shall have 10 days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that CMAR or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to OWNER, forfeit \$100, or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. CMAR acknowledges that, without limitation as to other remedies of enforcement available to OWNER, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due CMAR. CMAR is not subject to a penalty assessment pursuant to this Section due to the failure of a Subcontractor to comply with this Section.

10.6. APPRENTICES

- 10.6.1. Unless the Contract involves a dollar amount less than that specified in Labor Code Section 1777.5, this Contract is governed by the provisions of Section 1777.5. CMAR shall comply with Labor Code Section 1777.5 for all apprenticeable occupations.
- 10.6.2. CMAR and all Subcontractor(s) shall comply with Labor Code Section 1777.6, which forbids discriminatory practices in the employment of apprentices on any basis listed in Government Code Section 12940 (described in the "Nondiscrimination" Section of the General Conditions), except as provided in Labor Code Section 3077.

11. NONDISCRIMINATION

In the performance of the Contract, CMAR agrees that it will comply with the requirements of the California Labor Code and the California Government Code pertaining to nondiscrimination provisions. CMAR shall neither engage in nor permit its Subcontractors to engage in discrimination against any employee or applicant for employment on any basis listed in California Government Code Section 12940, including but not limited to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, as those bases are currently defined in Government Code Sections 12926 and 12926.1, or as they may be modified. This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including apprenticeship; and any other action or inaction pertaining to employment matters. CMAR acknowledges that a violation of these provision shall subject CMAR to all the penalties imposed by law for a violation of the above-noted California Codes.

12. WARRANTY / GUARANTEES

12.1. WARRANTY

CMAR warrants that materials and equipment furnished under the Contract Documents will be new, of good quality, and carrying all available manufacturers' and installers' warranties; that construction will be of good and workmanlike quality; and that all of the Work shall be performed in strict conformance with the requirements of the Contract Documents, industry standards, and manufacturers' recommendations. Work not conforming to these requirements shall be considered defective ("Defective Work"). Defective Work does not include damage caused by modifications not executed by CMAR, improper operation or maintenance, or normal wear and tear.

12.2. ONE-YEAR CORRECTION PERIOD

For a period of not less than one year from the date OWNER accepts CMAR's work, as evidenced by a Notice of Completion issued by OWNER, CMAR shall take immediate action to correct any Defective Work reported by OWNER orally or in writing. CMAR shall initiate corrective action on Defective Work affecting use of a facility, safety, or preservation of property within twenty-four (24) hours after notification. CMAR shall initiate corrective action on other Defective Work within ten (10) calendar days after notification. If CMAR fails to initiate corrective action within the specified times or fails to complete the corrective work within a reasonable time, OWNER may take whatever corrective action it deems necessary. All costs incurred by OWNER because of CMAR's failure to correct Defective Work during the one-year correction period shall be due and payable immediately by CMAR. The one-year correction period relates only to the specific obligation of CMAR to return to the Project site and correct Defective Work. The one-year correction period does not establish a period of limitations with respect to any of CMAR's other obligations under the Contract Documents, including but not limited to CMAR's warranty, and it has no relationship to the time within which OWNER may seek to enforce the CMAR's obligation to comply with the Contract Documents or to the time within which proceedings may be commenced to establish the CMAR's liability with respect to any of the CMAR's obligations.

12.3. MANUFACTURERS' AND INSTALLERS' WARRANTIES

All manufacturers' and installers' warranties received by CMAR shall be assignable to OWNER, and upon abandonment, termination, or completion of the Agreement shall be deemed, and hereby are, assigned to OWNER. CMAR shall take all actions necessary to preserve the full scope of all manufacturers' and installers' warranties for the benefit of OWNER and shall take no action that would impair OWNER's rights under any such warranties. Before OWNER's acceptance of the Work, CMAR shall deliver to OWNER manufacturers' and installers' warranties, guarantees, instruction sheets, and parts lists, which are furnished with certain articles of materials incorporated in the Work.

12.4. SURVIVAL

All of CMAR's warranty obligations shall survive abandonment, termination, and completion of the Contract. Neither Final Payment nor any other provision in the Contract Documents shall constitute OWNER's acceptance of work not performed in accordance with the Contract Documents nor relieve CMAR of liability with respect to its warranty obligations or for Defective Work.

13. PERFORMANCE

13.1. OBLIGATION TO REVIEW DOCUMENTS

13.1.1. CMAR shall carefully study and compare all Contract Documents and shall at once report to OWNER any error, inconsistency, or omission that CMAR may discover.

13.1.2. CMAR shall be responsible for the coordination of all trades so that all components are properly integrated into the construction. All significant conflicts in location shall be brought promptly to the attention of OWNER. In the event of conflicts that cannot be anticipated and resolved by examination of the Contract Documents, the cost of changes ordered by OWNER shall be compensated by Change Order.

13.2. OTHER CONTRACTS

OWNER may undertake or award other contracts for simultaneous, collateral, or additional work adjacent to or within the work site. CMAR shall fully cooperate with such other contractors and OWNER, and carefully fit CMAR's own work to such other work as may be directed by OWNER. CMAR shall be responsible for ascertaining the nature and extent of any simultaneous, collateral, or additional work by others. CMAR shall not commit or permit any act that will interfere with the performance of work by OWNER or any other contractor, and shall cooperate in the coordination of its separate activities in a manner that shall not interfere with OWNER's current facility operations and the activities of other contractors working in the area.

13.3. PROTECTION

13.3.1. CMAR shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. CMAR shall comply with the provisions of the Construction Safety Orders issued by the State Division of Occupational Safety and Health. CMAR shall also be responsible for all materials delivered and work performed until completion and acceptance of the Project, except for any completed unit of construction that OWNER may have previously accepted.

13.3.2. CMAR shall maintain continuously adequate protection of all work from damage and shall protect OWNER's personnel, invitees, and property from damage, injury, or loss arising in connection with this Contract. CMAR shall make good any such damage, injury, or loss. CMAR shall adequately protect adjacent property and shall maintain reasonable security of the site at all times. CMAR shall limit visitors to the site to those necessary for construction and inspection. Visitors for other purposes shall be referred to OWNER. CMAR's and Subcontractors' employees shall possess means of identification at all times as required by OWNER while on the job site.

13.3.3. Security of the CMAR's material, equipment, work product and work site is the CMAR's responsibility.

13.3.4. Employment of a security guard for any time period (working hours or other than working hours), shall be left to the discretion of the CMAR. CMAR shall be fully responsible for any theft or damage to any material, equipment or to any portion of the building, work, or site.

13.3.5. OWNER may notify CMAR of any noncompliance with the foregoing provisions and the action to be taken. CMAR shall, after receipt of such notice, immediately correct such conditions. Such notices shall be deemed sufficient for said purpose when delivered to CMAR or CMAR's

representative at the work site. Failure of receipt of such notice from OWNER shall not relieve CMAR of responsibility for safety.

13.3.6. If CMAR fails or refuses to comply promptly, OWNER may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. No part of the time lost due to any such stop work order shall be made the subject of claim for extension of time or additional compensation to CMAR. CMAR shall be responsible for ensuring that CMAR's Subcontractors and suppliers comply with the provisions of this Section.

13.3.7. In an emergency affecting the safety of persons, the Work, or of adjoining property, CMAR without special instruction or authorization from OWNER, is hereby permitted to act at CMAR's discretion to prevent such threatened loss or injury. CMAR shall so act if directed by OWNER. Any claim for additional compensation by CMAR on account of emergency work shall be determined as set forth in the "Changes" Section of these General Conditions.

13.4. FENCES AND BARRICADES

13.4.1. CMAR shall furnish, erect and maintain all fences and barricades required by local ordinances, or public safety and necessity until completion of the project.

13.4.2. Barricades to protect pedestrians from building construction shall be constructed of one-half-inch (1/2") painted (two coats) plywood and shall be free from projecting nails, boards or other hazards. CMAR shall maintain barricades free from graffiti.

13.4.3. No signs, other than those specified, shall be erected without the written approval of the OWNER.

13.4.4. Remove construction fences, barricades, and other related temporary construction upon completion of work, or sooner if authorized or required to maintain Project progress.

13.4.5. Alternate means of fencing and barricades to protect pedestrians maybe proposed by CMAR for approval by OWNER.

13.5. PROJECT SIGN & NOTICE

13.5.1. No signs or advertisements will be permitted on the Project site, except with the express permission of OWNER's Project Manager.

13.5.2. At every door and barricade separating the project work and staging areas from areas not included in the project work area, CMAR shall provide, install and continuously maintain a construction warning sign. The 11 inch by 17 inch construction warning sign shall be approved by OWNER's Project Manager and shall be plastic laminated on heavy cardstock and shall be securely affixed at eye level to the door or barricade.

13.5.3. CMAR (if required) shall furnish and install one 4 foot by 8 foot Project sign to be located at the Project site and shall contain the following information:

13.5.4. County Logo (in color, graphics to be provided)

13.5.5. Board Of Supervisors (list of 5 supervisors and district)

13.5.6. Facility & Project Name:

a) County Of Orange

- b) Architect-Engineer:.
- c) CMAR - CMAR shall submit sign layout and proposal exact location for review and approval by the OWNER's Project Manager.
- d) Mounting: Mount on 2 each 4 inch by 4 inch posts. Posts shall extend a minimum of 36 inches below grade and extend a minimum of 8 feet-0 inches above finish grade. The sign shall be mounted by concealed fasteners with the base of the sign 1 foot-4 inches above finish grade. The posts shall be pressure treated wood, primed and partial whitened.

13.6. QUALITY OF MATERIALS AND WORKMANSHIP

13.6.1. CMAR shall perform all work required by the Contract Documents in a skillful, good, and workmanlike manner and in strict conformance with the Contract Documents. All materials and equipment furnished by CMAR shall be new and of good quality, unless otherwise required by the Contract Documents.

13.6.2. CMAR shall supervise and direct the Work using its best skill and attention. All labor shall be performed by individuals specially skilled in the kind of work required. CMAR shall at all times enforce strict discipline and good order among its employees and those of its Subcontractors of any tier. CMAR shall not employ for the Project any unfit person or anyone not skilled in the assigned task or otherwise unfit. CMAR shall immediately remove from the Project any person that OWNER determines, in its sole discretion, is unfit or behaving in an unsatisfactory or unacceptable manner. Persons so removed shall not thereafter be reassigned to any portion of the Project without OWNER's written approval, which may be granted or withheld in OWNER's sole discretion.

13.6.3. CMAR shall, without charge, replace any material or correct any work found by OWNER not to conform to the requirements of the Contract Documents, unless OWNER consents to accept such material or work along with a commensurate reduction in the Contract Price. CMAR shall promptly segregate and remove rejected material from the work site.

13.6.4. If CMAR does not promptly replace rejected material or correct rejected work, or immediately remove persons who are unfit or behaving unacceptably, OWNER may: (1) by contract or otherwise replace such material or correct such work and charge the cost thereof to CMAR, including but not limited to by deducting the cost from amounts due or to become due to CMAR; or (2) terminate CMAR's right to proceed in accordance with the "Termination For Cause" Section.

13.7. SURVEYING

13.7.1. CMAR has full responsibility for layout and establishment of lines and grades for execution of the Work. All temporary monuments shall be substantially established and shall be protected and maintained in place by the CMAR for the duration of the Work.

13.7.2. If any discrepancy exists between the lines and grades actually at the site and the existing lines and grades depicted on the drawings, CMAR shall notify the County Project Manager at once, and before commencing work.

13.7.3. The engineering survey work need not be performed by a State licenses surveyor or civil engineer, however it shall be performed in a professional manner in accordance with the requirements, standards, and practices exercised by licenses individuals.

13.7.4. The surveyor shall check line, level, and plumb of every major element of the construction, and shall keep a log book recording all relevant data. The log book shall be available for review by County Representatives of the A-E at any time during construction, and it shall be submitted to the OWNER along with the “as-Built” drawings, upon completion of the Project. All deviations from line/grade requirements of the Contract Documents which are accepted (not corrected) by CMAR shall be recorded in the log book and also shall be noted on the “as-Built” drawings.

13.8. UTILITIES

13.8.1. Location: OWNER will provide CMAR with copies of documents which describe the location of known utility substructures, or will indicate in the Plans or Special Provisions those substructures (except for service connections) that may affect the Work. The removal, relocation, abandonment, or installation of utilities shall be in accordance with the applicable provisions of the Contract Documents. Where underground main distribution conduits such as water, gas, sewer, electric power, telephone, or cable television are shown on the Plans, CMAR shall assume that every property parcel or facility adjoining the Project will have a service connection for each type of utility. CMAR shall determine the location and depth of all utilities, including service connections, which have been marked by the respective owners and which may affect or be affected by its operations. Unless otherwise specified in the Contract Documents, costs associated with complying with the requirements of this Section shall not entitle CMAR to additional compensation under the “Changes” Section of the General Conditions. Pursuant to Government Code Sections 4216 et seq., CMAR shall contact the appropriate regional notification center(s) and shall obtain an inquiry identification number at least 2 working days, but not more than 14 calendar days, prior to commencing any excavation.

13.8.2. Protection: CMAR shall not interrupt the service function or disturb the support of any utility without permission from the utility owner or direction from OWNER. Valves, switches, vaults, and meters shall be maintained readily accessible for emergency shutoff. Where protection is required to ensure support of utilities located as shown on the Plans or in the Special Provisions, CMAR shall furnish and place the necessary protection at its expense unless otherwise provided in the Contract Documents. Permanent improvements installed in proximity to any utilities shall be constructed in a manner that will not impair the physical integrity, use, or ongoing maintenance of those utilities. Upon learning of the existence and location of any utility omitted from or represented incorrectly in the Plans or Special Provisions, CMAR shall immediately notify OWNER in writing. Support or protection of the omitted or incorrectly identified utility authorized by OWNER will be paid for as provided in the “Changes” Section of these General Conditions. CMAR shall immediately notify OWNER and the utility owner if any utility is disturbed or damaged. CMAR shall bear the costs of repair or replacement of any utility damaged if located in accordance with the “Location” Section, above.

13.8.3. Removal: Unless otherwise specified in the Contract Documents, CMAR shall remove all interfering portions of utilities represented in the Plans or Special Provisions as “abandoned” or “to be abandoned in place.” Before starting removal operations, CMAR shall ascertain from OWNER whether the abandonment is complete, and the costs involved in the removal and disposal shall be included in the Bid for the items of work necessitating such removals.

13.8.4. Relocation: When feasible, the owners responsible for utilities within the area affected by the Work will complete their necessary installations, relocations, repairs, or replacements before commencement of the Work by CMAR. When the Plans or Special Provisions indicate that a utility installation is to be relocated, altered, or constructed by others, OWNER will conduct all negotiations with the utility owners and utility work will be done at no cost to CMAR, except as otherwise specified in the Contract Documents. Utilities that are relocated in order to avoid

interference shall be protected in their position and the cost of such protection shall be included in the Bid for the items of work necessitating such relocation. After award of the Contract, portions of utilities not accurately described in the Plans and Special Provisions that are found to interfere with the Work will be relocated, altered, or reconstructed by the utility owners. Alternatively, OWNER may order changes in the Work to avoid interference as provided by the "Changes" Section of these General Conditions. When the Contract Documents provide for CMAR to alter, relocate, or reconstruct a utility, all costs for such work shall be included in the Bid for the items of work necessitating such alteration, relocation, or reconstruction. Temporary or permanent relocation or alteration of utilities requested by CMAR for its convenience shall be its responsibility and CMAR shall make all arrangements and bear all costs.

- 13.8.5. Relocation of Service Connections: The utility owner will relocate service connections as necessary within the limits of the Work or within temporary construction or slope easements. When directed by OWNER, CMAR shall arrange for the relocation of service connections as necessary between the meter and property line, or between a meter and the limits of temporary construction or slope easements. Unless, otherwise specified in the Contract Documents, payment for the relocation of such service connections shall be in accordance with the "Changes" Section of these General Conditions, and will include the restoration of all existing improvements which may be affected thereby. CMAR may agree with the owner of any utility to disconnect and reconnect interfering service connections, and OWNER will not be involved in any such agreement.
- 13.8.6. Notice: CMAR shall notify OWNER of its schedule insofar as it affects the protection, removal, or relocation of utilities.
- 13.8.7. Cooperation: When necessary, CMAR shall so conduct its operations as to permit access to the work site and provide time for utility work to be accomplished during the progress of the Work.
- 13.8.8. Utility Facilities on Project Site: If CMAR discovers unidentified utilities, CMAR shall immediately notify OWNER and the utility owner in writing. Pursuant to Government Code Section 4215, CMAR shall be compensated for the costs of locating and repairing damage not due to failure of CMAR to exercise reasonable care, and of removing or relocating main or trunk line utilities located on the site and not identified in the Contract Documents with reasonable accuracy. Such compensation shall also cover the cost of CMAR's equipment necessarily idled during such work. CMAR shall not be assessed Liquidated Damages for delay in completion of the Work if such delay was caused by the failure of OWNER or utility owner to provide for removal or relocation of such utilities. This provision shall not be deemed to require compensation or excuse of Liquidated Damages when the presence of existing service laterals or appurtenances can be inferred from the presence of visible facilities such as buildings, meters, and junction boxes on or adjacent to the construction site.
- 13.8.9. Increase of Contract Time: CMAR shall not be entitled to additional time or compensation for delays attributable to utility relocations or alterations if such utility relocations or alterations are correctly located, noted, and completed. CMAR may be entitled to an extension of the Contract Time for unforeseen delays attributable to unreasonably protracted interference by utilities in performing work correctly represented in the Plans or Special Provisions. OWNER will assume responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities within the area affected by the Work if such utilities are not identified in the Contract Documents. CMAR shall not be assessed Liquidated Damages for any delay caused by failure of OWNER to provide for the timely removal, relocation, or protection of such existing facilities.

13.9. SPACE AT SITE

CMAR shall be allowed reasonable space at the work site and shall confine CMAR's operations to the assigned space. The Work shall be done without interference with the ordinary use of streets, berthing places, fairways, and passages. CMAR shall cooperate with other contractors of the OWNER and shall not commit or permit any act which will interfere with the performance of work by any other Contractor or employees of the OWNER whether at the site or not.

13.10. OPERATING HOURS AND SITE ACCESS

Unless otherwise specified in the Contract Documents, normal operating hours are from 6:00 A.M. to 4:00 P.M. Work performed outside normal operating hours will require OWNER's written approval.

13.11. TRAFFIC CONTROL

13.11.1. CMAR shall coordinate its traffic at the site with OWNER. When a Traffic Control Plan (TCP) is required by the Contract Documents, CMAR shall submit an acceptable plan to OWNER within 10 days after the Notice to Proceed is issued (or as agreed upon in the Accepted Construction Schedule).

13.11.2. The TCP shall display and address, at a minimum:

- a) Protection of existing improvements;
- b) Maintaining access by OWNER operations;
- c) Methods to eliminate interference with existing facility operations and traffic in and out of the facility and operations area;
- d) Proposed haul routes for delivery of materials;
- e) Maximum speeds for each class of vehicle on each type of terrain, but in no event to exceed 15 mph on shared access roads and any crossing areas;
- f) Access to work areas; and
- g) CMAR's and Subcontractors' staging and material storage areas, including fuel storage procedures.
- h) All motor-driven equipment using fuel shall have spark arresters.

13.11.3. Reckless driving shall not be tolerated, and all vehicles shall be operated at a safe speed at all times. If OWNER determines that CMAR has violated the Traffic Control Plan or otherwise operated in an unsafe manner, OWNER may suspend or prohibit the equipment operator(s) from any further work at the site. Repeated or severe incidents demonstrating the failure of CMAR to operate its vehicles safely shall constitute a material breach of this Contract and OWNER may terminate CMAR's right to proceed with the Work pursuant to the "Termination for Cause" Section of the General Conditions.

13.12. TEMPORARY OFFICE BUILDING AND TELEPHONE

CMAR shall provide a temporary office building and telephone, if required for the Project. CMAR may provide a temporary office for his own convenience at his sole expense. The temporary office, if desired by CMAR, shall be subject to approval of the OWNER. Any temporary building shall be Class B and be provided by the CMAR per OWNER requirements. The trailer shall be located as shown in the Plans and/or as directed by OWNER or CMAR shall submit, a location plan showing the arrangement of field offices, storage sheds, equipment storage, and staging areas for OWNER and A-E review/approval.

13.13. PERMANENT SYSTEMS USED AS TEMPORARY FACILITIES

When any portion of the permanent systems are in operating condition, that part of the system may be used as a temporary facility, provided that the CMAR:

- a) Obtains OWNER's approval in writing.
- b) Assumes full responsibility for the system used.
- c) Pays all costs for operation, maintenance, cleaning and restoration of the system.
- d) Operates the system with the consent and supervision of the subcontractor responsible for the system's installation and ultimate performance.

13.14. TEMPORARY UTILITIES

CMAR shall provide the necessary temporary utilities for construction use and bear the responsibility for their proper operation. If any utilities are in place and in use by the OWNER at the Project site, such utilities -- excluding telephone -- may be utilized by the CMAR at no cost, to the extent the utilities are available without impact to the OWNER's operations. If OWNER supplied utilities are utilized by the CMAR, CMAR shall exercise conservation of energy and utility resources to the satisfaction of the OWNER, or such provision of utilities by the OWNER will be terminated at OWNER's discretion.

13.15. SANITARY UNIT

CMAR shall provide temporary toilets for CMAR's use. CMAR shall maintain and service them in a sanitary condition through the construction of the Project. Toilet facilities in existing County buildings shall not be used by the CMAR, sub-contractors, suppliers, workers, and/or inspectors.

13.16. WATER

CMAR shall furnish all water needed for the Project, including but not limited to potable (drinking) and construction/dust suppression water, unless otherwise specified in these Contract Documents.

13.17. FIRE PROTECTION

CMAR shall take all necessary measures to protect the building and all areas of the project site against fire. CMAR shall provide fire extinguishers suitable for the Project and consistent with the factors enumerated in Title 19 of the California Code of Regulations, Section 565. These extinguishers shall be placed at strategic locations around the working area and kept accessible

for use in case of fire. CMAR shall keep fire extinguishers in working order and shall remove them from the site at the end of construction.

CMAR shall observe all requirements specified in the various other Sections of the Specifications related to fire safety.

13.18. STORAGE AND WORKING SPACE

CMAR may use the working area designated by OWNER for material storage and working space. Any additional space shall be obtained by CMAR at CMAR's own expense. Locations for CMAR to store CMAR's equipment will be agreed upon during the pre-construction meeting.

13.19. TRANSPORTATION AND HANDLING OF PRODUCTS

CMAR shall:

- 13.19.1. Transport and handle products in accordance with manufacturer's instructions and applicable regulations;
- 13.19.2. Promptly inspect shipments to assure that products comply with requirements, quantities are correct, and products are undamaged; and
- 13.19.3. Provide equipment and personnel to handle products by methods to prevent damage.

13.20. STORAGE AND PROTECTION OF PRODUCTS

CMAR shall:

- 13.20.1. Store and protect products in accordance with manufacturer's instructions and applicable regulations, with seals and labels intact and legible;
- 13.20.2. Store sensitive products in weather-tight, climate-controlled enclosures;
- 13.20.3. Store hazardous materials in accordance with applicable regulations, including but not limited to those related to containment and protection of the materials and surrounding environment;
- 13.20.4. Store fabricated products on sloped supports above ground if such products are stored outdoors;
- 13.20.5. Cover products subject to deterioration with impervious sheet covering with ventilation to avoid condensation;
- 13.20.6. Provide equipment and personnel to store products by methods to prevent damage;
- 13.20.7. Arrange storage of products to permit access for inspections; and
- 13.20.8. Periodically inspect to ensure products are undamaged and are maintained under specified conditions.

13.21. REMOVAL OF TEMPORARY FACILITIES

CMAR shall remove temporary toilets, storage sheds, and other facilities of a temporary nature from the Project site as soon as OWNER determines progress of the Work permits. CMAR shall

recondition and restore portions of the site occupied by temporary facilities to a condition acceptable to OWNER.

13.22. REGULATORY COMPLIANCE REQUIREMENTS

13.22.1. Permits:

- a) Project plans are approved for permit from the Orange County Planning & Development Services Agency as well as (list other approvals including but not limited to South Coast Air Quality Management District, and SWPPP). CMAR shall identify any additional and obtain all permits necessary for the Project, including: permits, licenses, and certifications, including but not limited to all trade-related permits; permits required for environmental protection; construction permits; encroachment permits; permits required for the operation and storage of any equipment or regulated hazardous materials brought onsite; and permits required for dispensing and storing petroleum-related products. If necessary for the Project, CMAR shall obtain and submit to OWNER a California Occupational Safety Health Agency (Cal-OSHA) Excavation Permit. If required for project. CMAR shall be responsible for ensuring that all permits necessary to complete the Project are in place consistent with Federal, State, and local laws and regulations. Costs and fees associated with said permits, regardless of whether obtained by OWNER, CMAR, or any other entity, shall be borne solely by the CMAR, except as identified elsewhere in Agreement.
- b) CMAR shall comply with the regulations or requirements of all permits, licenses, certifications, and regulations governing the Project. Any act or omission by CMAR that causes either Party to be in violation of any permit, licenses, certification, or regulation shall be deemed a material breach of this Contract by CMAR. OWNER reserves the right to perform itself or through other contractors any work necessary to correct any violation or to bring the Project into compliance with any permit, license, certification, or regulation, and shall deduct the cost of such work from any funds due or to become due to CMAR
- c) CMAR shall maintain, at its job site office, copies of all permits, licenses, and certifications required for or governing the Project, including permits and approvals issued to OWNER by the State Water Resources Control Board; the South Coast Air Quality Management District (“SCAQMD”) for dust control; and the SCAQMD and Local Enforcement Agency for refuse excavation.

13.22.2. Contractor Compliance with Applicable Law and Regulations: CMAR shall comply with all Federal, State, County, and local codes, ordinances, regulations, and standards applicable to the Project. CMAR shall comply with all current regulatory criteria and standards. CMAR shall not be entitled to any additional compensation for work necessary to comply with legal or regulatory requirements effective at the time of bid opening.

13.23. ARCHAEOLOGICAL/PALEONTOLOGICAL RESOURCES

13.23.1. OWNER may engage the services of an Archaeologist/Paleontologist (“A/P”) to monitor all or portions of the Work.

13.23.2. The Contract Documents may require CMAR to retain an A/P. In such event, the following conditions apply:

- a) A/P shall be acceptable to OWNER. A/P can be selected from OWNER's list available at www.ocplanning.net/building/plan/forms under the "Archaeologist and Paleontologist" section. Regardless of whether A/P is selected from OWNER's list, A/P shall meet all minimum qualifications listed in the "Qualifications for Certification of Archaeological and Paleontological Professionals" document provided at that website.
 - b) CMAR shall submit the qualifications and references of A/P to OWNER for verification at least 10 working days prior to any excavation or grading work. A/P shall be approved in writing by OWNER at least 5 working days prior to the start of any excavation or grading work.
 - c) Unless otherwise agreed to in writing by OWNER, A/P shall not be an employee of CMAR, any subcontractor currently under contract by CMAR (for any job), or any supplier to any project awarded or contracted to CMAR.
 - d) CMAR shall be compensated for all A/P expenses including all labor, materials, tools, equipment, and incidentals necessary for accomplishing the Work in accordance with the Item(s) identified for A/P services in the Bid Schedule or, if not listed there, in accordance with the "Changes" Section of the General Conditions.
 - e) A/P shall report exclusively to OWNER. OWNER may terminate the services of A/P at any time and at OWNER's sole discretion, with no justification necessary to CMAR, and CMAR shall replace A/P with another individual or firm meeting the requirements of this Section. Under no circumstances will A/P's termination entitle CMAR to any additional time or payment under the "Changes" Section of these General Conditions.
 - f) All other provisions of this Section apply whether A/P is retained by OWNER or by CMAR, and CMAR shall ensure that A/P complies with the provisions of these Contract Documents pertaining to A/P services.
- 13.23.3. CMAR shall cooperate with all A/P personnel. If A/P directs CMAR to suspend or stop work in a particular area, CMAR shall abide by such request immediately and not resume work until directed by OWNER.
- 13.23.4. The A/P shall:
- a) Conduct a literature and records search for recorded sites and previous surveys;
 - b) Conduct a field survey unless the entire work site has been previously surveyed and the survey documentation is acceptable to OWNER;
 - c) Attend the pre-construction meeting to conduct or schedule separate pre-construction cultural and paleontological resources sensitivity training, and attend additional meetings or provide training as determined necessary by OWNER. In the event of the discovery of specimens or artifacts, attend construction meetings until otherwise directed by OWNER;
 - d) Conduct pre-construction cultural and paleontological resources sensitivity training for all staff involved in moving soil or working near soil disturbance. Training shall review the types of archaeological and paleontological resources that might be found, along with laws for the protection of the resources;

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- e) If determined necessary by the A/P and approved by OWNER, the A/P shall prepare a report on a subsurface test level investigation of archaeological resources collection or pre-grade paleontological salvage operation. The report shall evaluate the site including the significance of any finds (location, depth, nature, condition, and extent of the artifacts or specimens), recommended methodology of salvage or mitigation and related cost estimates, and an analysis and catalogue of artifacts or specimens;
 - f) Establish procedures for A/P sampling and resource surveillance and monitoring;
 - g) In cooperation with OWNER, establish procedures for suspension or redirection of work to permit sampling, identification, and evaluation of possible resources.
- 13.23.5. During grading, excavation, or other ground-disturbing activities, if any evidence of paleontological, pre-historic, or historic cultural resources is uncovered, the following measures, unless otherwise specified in regulatory permit language, shall be taken:
- a) All below grade work shall stop within a 100-foot radius of the discovery. Work shall not continue until the discovery has been evaluated by the A/P.
 - b) The A/P shall assess the find(s) and determine if they are of value. If the find(s) are of value then:
 - i. The A/P shall draft a monitoring program and monitor all ground-disturbing activities related to the Project.
 - ii. A/P shall prepare all potential finds in excavated material to the point of identification.
 - iii. Significant finds shall be preserved as determined necessary by the A/P.
 - iv. Excavated finds shall be offered to OWNER or its designee for curation on a first-refusal basis, then offered to a local museum or repository willing to accept the resource.
 - v. Within 30 working days of completion of the end of earth moving activities, the A/P shall draft a report summarizing the finds, and shall include the inspection period, an analysis of any resources found, and the present repository of the items.
 - vi. All resulting reports shall be delivered to OWNER and filed with the South Central Coastal Information Center at the California State University, Fullerton, or another institution if directed by OWNER.
 - c) If CMAR uncovers any burial grounds or remains, ceremonial objects, petroglyphs, or archaeological, paleontological, or other artifacts or specimens of like nature within the construction area, CMAR shall immediately notify the OWNER's onsite representative of CMAR's finds and shall modify the construction operations so as not to disturb the finds pending further instructions from OWNER.
 - d) Discovery of human remains:
 - i. In accordance with Section 7050.5 of the California Health and Safety Code, if human remains are found, no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains shall occur until the County of Orange Sheriff-Coroner and/or other applicable coroner and

law enforcement agency (“Coroner’s Office”) has determined the appropriate treatment and disposition of the human remains. The Coroner’s Office shall be notified within 24 hours of the discovery.

- ii. If the Coroner’s Office determines that the remains are or are believed to be of Native American origin, the Coroner’s Office will notify the California Native American Heritage Commission (NAHC).
 - iii. In accordance with Section 5097.98 of the California Public Resources Code, the NAHC must notify those persons it believes to be the most likely descended from the deceased Native American. The descendants shall be granted access to the site to complete their inspection as quickly as possible. The designated Native American representative would then determine, in consultation with OWNER, the treatment and disposition of the human remains.
- 13.23.6. Should the finds, or notification of finds, result in delays or extra work, payment will be allowed in accordance with the “Changed Conditions” subsection of the “Conditions Affecting The Work” Section of these General Conditions. However, CMAR shall not be entitled to damages, additional payments, or extensions of time where the CMAR could have avoided delays by any reasonable means.
- 13.23.7. Unless otherwise required by law, any and all finds shall remain the property of OWNER and not become the property of any other person or entity.

13.24. SURFACE WATER PROTECTION

- 13.24.1. Work is subject to the requirements of the National Pollutant Discharge Elimination System (“NPDES”) storm water regulations. NPDES regulations require the implementation of a Stormwater Pollution Prevention Plan (“SWPPP”). The nature and location of the Work require compliance with the SWPPP, OWNER has prepared a SWPPP for this project. CMAR is responsible for obtaining copies of the site-specific SWPPP from OWNER. Copies of the SWPPP and related documents may be found at: http://www.waterboards.ca.gov/water_issues/programs/stormwater/industrial.shtml.
- 13.24.2. Additionally, in a letter dated August 31, 2011, the Santa Ana Regional Water Quality Control Board issued a Water Quality Standards Certification pursuant to the federal Clean Water Act (“CWA”) (also known as the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.), Section 401. The Certification requires that discharge from the Project will comply with CWA Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards). The discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ, “General Waste Discharge Requirements for Dredge and Fill Discharges that Have Received Water Quality Certification.”
- 13.24.3. SWPPP Implementation & Compliance:
- a) CMAR is responsible for implementing and complying with the SWPPP, as applicable to the nature and location of the Work. CMAR’s implementation and compliance activities shall include but not be limited to: installation and maintenance of BMPs (interim and final); preparation and implementation of Rain Event Action Plans (REAPS); rainfall and storm water turbidity and pH monitoring, sampling and analysis as required by the SWPPP. CMAR shall designate an independent Qualified SWPPP

Practitioner (QSP), who will be responsible for monitoring CMAR's compliance with SWPPP requirements on the Project at all times.

- b) CMAR shall be responsible for providing all reports required by the SWPPP (monitoring, inspection, REAP, annual reports, etc.) to the OWNER for review. CMAR shall submit all reports digitally with at least three hard copies to the OWNER.
- c) CMAR's designated QSP shall review and make recommendations to the OWNER to amend the appropriate SWPPP as needed during the course of work to reflect actual construction progress and construction practices.
- d) CMAR shall comply with all the requirements identified in the SWPPP.

13.25. HAZARDOUS OR CONTAMINATED MATERIALS

- 13.25.1. At the start of project work OWNER will provide CMAR with all known documentation of hazardous materials including but not limited to Hazardous Materials Assessments and State Mandated reports on asbestos containing building materials. The project requires CMAR to be responsible for work related to hazardous materials;
- 13.25.2. CMAR is responsible for proper handling, storage, transportation, and disposal (per all federal, State and local regulations) of any hazardous wastes, liquid wastes, or nuisance wastes (for example, finely divided, powdery, or dusty materials, strong odors, etc.) that it generates while working on OWNER's behalf.
- 13.25.3. As provided by the "Contract Time" Section of the Agreement, CMAR must submit for OWNER's review an Emergency/Contingency Plan for handling spills of hazardous, liquid, or nuisance materials while working on OWNER's behalf. The Plan shall include proper handling, removal, and disposal of these materials per all applicable federal and State requirements. The Emergency/Contingency Plan shall also include emergency notification to OWNER and any other notifications as required by law. CMAR shall not commence work at the site until OWNER has approved CMAR's Emergency/Contingency Plan.
- 13.25.4. CMAR must restore any spill-damaged areas to their original condition in a correct and timely manner and to the satisfaction of OWNER.
- 13.25.5. CMAR shall remove and dispose of any materials that become contaminated directly or indirectly as a result of the CMAR's operations, whether or not such contamination involves hazardous materials. The removal and disposal of any contaminated materials associated with this Contract shall be completed by the CMAR to the satisfaction of OWNER at no additional cost to the OWNER. CMAR shall execute all necessary manifests, bills of lading, or similar documents ("Manifests") concerning such contaminated materials which shall identify CMAR as the generator of the materials.
- 13.25.6. Prior to shipment, CMAR shall provide copies of all Manifests to the OWNER to verify that CMAR has arranged for the proper disposal of hazardous materials to a licensed, permitted facility. CMAR shall provide to OWNER proof of proper disposal of such materials. If Manifests and proof of proper disposal are not submitted, OWNER may withhold or deduct directly the estimated cost of removal and disposal from amounts otherwise due CMAR, plus a 5% administration fee, until CMAR submits Manifests and proof of disposal.
- 13.25.7. OWNER has the OWNER to perform inspections of the CMAR's work area at any time to ensure CMAR is compliant with all applicable regulations.

- 13.25.8. Upon written notice from OWNER, if CMAR does not remove contaminated materials immediately, OWNER may remove, process, transport, and certify the material as stated above and all costs incurred by OWNER for removal and disposal, plus a 5% administrative fee, will be deducted directly from amounts otherwise due CMAR. If OWNER performs such decontamination, CMAR shall sign any Manifests for that material as the generator.
- 13.25.9. CMAR shall train its employees, as required by OSHA and California Code of Regulations Title 8, in the proper handling, storage, transportation and disposal of hazardous materials. CMAR shall train its employees to follow the Emergency/Contingency Plan and know immediate response procedures should a release occur.
- 13.25.10. CMAR shall keep appropriate emergency response equipment and materials available in the working area at all times.
- 13.25.11. Maintenance Facilities and Work Area: CMAR shall maintain its equipment in an area designated by OWNER for such purposes. Certain maintenance areas have been designated at the OWNER facility for the purpose of maintaining OWNER equipment. CMAR may utilize an OWNER maintenance area only with the express permission of the OWNER. OWNER may designate a different maintenance area for CMAR's use at any time, and CMAR shall not be entitled to a Change Order as the result of such relocation.
- 13.25.12. CMAR's maintenance activities shall conform to the provisions of the "Regulatory Compliance Requirements" Section of the General Conditions. CMAR shall keep the facility clean, maintain clean equipment, and dispose of any contaminated materials in accordance with the "Hazardous Or Contaminated Materials" Section, above. CMAR shall store all maintenance materials in accordance with the "CMAR'S Storage and Protection of Products" Section.
- 13.25.13. CMAR shall be responsible for any damage it causes to the designated area and for restoring the area to its original condition when CMAR ceases using the area. CMAR shall repair any damage and perform such restoration. If CMAR fails to perform such repair or restoration in a timely manner, OWNER may perform that work and CMAR shall reimburse OWNER for repair or restoration costs plus a 5% administrative fee.

13.26. FUGITIVE DUST EMISSION CONTROL

CMAR shall comply with SCAQMD Rule 403 including, if applicable, to prepare and submit to OWNER and for acceptance by SCAQMD a Fugitive Dust Emission Control Plan, as required for Project work. CMAR shall also notify OWNER of any condition that could lead to noncompliance with the Rule 403 requirements. If a Fugitive Dust Emissions Control Plan is required pursuant to Rule 403, CMAR may not conduct any activities governed by SCAQMD Rule 403 until OWNER has accepted CMAR's Plan and the Plan is accepted by SCAQMD. If CMAR fails or refuses to immediately correct any noncompliance with the provisions of this Section, OWNER may terminate CMAR's right to proceed with the Work and OWNER may exercise its rights under the "TERMINATION FOR CAUSE" Section of the Contract.

Whether or not CMAR's right to proceed with the Work is terminated, CMAR and the CMAR's sureties shall be liable for any damage to the OWNER resulting from CMAR's refusal or failure to complete the Work within the specified time.

CMAR shall not be entitled to any time extensions or compensation for any cost due to any such action as a result of CMAR's failure to comply with the provisions of the accepted Fugitive Dust Emission Control Plan. CMAR shall be responsible for ensuring that all Subcontractor(s) comply

with the provisions of this Section. CMAR shall be liable for any action or fine imposed by the SCAQMD on those incidents of noncompliance that are within the CMAR's area of responsibility.

13.27. BIOLOGICAL AND HABITAT PROTECTION

OWNER will inform CMAR of any biological resources that would or could be impacted by the Project, and specify any required mitigation measures or procedures to protect those resources during construction. CMAR shall be responsible for complying with these protection measures, and for ensuring that all Subcontractors also comply. OWNER has the authority to perform inspections of CMAR's work area at any time to ensure that these measures or procedures are being followed.

13.28. RED IMPORTED FIRE ANT INTERIOR QUARANTINE OF ORANGE COUNTY

CMAR shall be responsible for strict compliance with the quarantine of the County of Orange for the red imported fire ant ("RIFA") as defined in California Code of Regulations, Title 3, Section 3432 and incorporated herein by reference. CMAR shall arrange for any California Department of Food and Agriculture inspections, certifications, or approvals necessary to perform any portion of the Project. A copy of the form used to request such inspections is available from OC Planning. CMAR shall bear the full financial responsibility of any assessed fine or penalty resulting from CMAR's violation of any law, regulation, or permit related to RIFA control. CMAR shall submit to OWNER for OWNER's approval an acceptable detailed incident report within 5 working days of the date of any violation or not later than 5 working days from the date of the notification of the violation, whichever is later.

13.29. COMPLIANCE WITH "PERFORMANCE" SECTION

CMAR shall not be entitled to any time extensions or compensation for any cost due to any action required as a result of the CMAR's failure to comply with the requirements of this "Performance" Section. CMAR shall be responsible for ensuring that the CMAR's Subcontractor(s) comply with the provisions of this Section. CMAR shall be liable for any fine or penalty imposed by any regulatory agency or for any other cost incurred by OWNER as a result of regulatory noncompliance arising from any action or inaction of CMAR or its Subcontractor(s).

14. CHANGE ORDERS

14.1. CHANGE ORDERS

14.1.1. OWNER may, at any time, by written order, and without notice to the sureties, make changes to the Contract Documents if within the general scope of the Project. Changes made pursuant to this section are only to be utilized if the applicable contingency fund has been exhausted. If such changes cause an increase or decrease in the CMAR's cost, or the time required for performance of the Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly by OWNER and CMAR.

14.1.2. OWNER's Change Order Requests: OWNER shall issue a written request ("Change Order Request") which shall set forth in reasonable detail the nature of the change and the type of quote requested (lump sum or time-and-materials with a not-to-exceed amount) and whether such change involves additions, deletions, or other revisions to the Contract Documents. Within 7 days of receiving OWNER's Change Order Request, CMAR shall present to OWNER a detailed proposal for change in Contract Price and/or a change in the Contract Time from that set forth in

the Agreement. If such change causes an increase or decrease in CMAR's cost or the time required for performance of the Work, an equitable adjustment shall be made and the Contract Price and/or Contract Time modified in writing accordingly by a Change Order.

- 14.1.3. CMAR's Request for Change: If CMAR believes that a change in the Contract Documents, including any change in Contract Price or Contract Time, is appropriate, it shall submit, within 7 days of the event giving rise to the proposed change, a written request ("Request for Change") to OWNER to issue a Change Order. Timely notice to OWNER is essential to OWNER's identification, prioritization, and response to claimed changes, including any claimed delays, and CMAR's failure to give OWNER timely notice of such claims shall be presumed to be prejudicial to OWNER. CMAR's failure to submit a notice to OWNER within 7 days after the date CMAR first recognized, or should have recognized in the exercise of ordinary care, any event giving rise to any proposed change shall constitute a waiver by CMAR of any request for or entitlement to an increase in the Contract Price or Contract Time.

CMAR's Request for Change shall include a description of the proposed change in the Contract Documents, the event or circumstance giving rise to the need for the change, and any proposed change in the Contract Price and/or Contract Time associated with the Request for Change. If the Request for Change includes a proposal to increase the Contract Time, CMAR shall include a description of: (1) the cause(s) for the proposed extension of time, including but not limited to causal events and responsible persons and organizations; (2) the dates (or anticipated dates) of performance of the changed work; (3) activities on the Accepted Construction Schedule affected by the change, any new activities created by the change, and their relationship with existing activities; (4) the anticipated extent of any claimed increase to the Contract Time; and (5) recommended action to avoid or minimize the increase. If OWNER agrees that a change in the Contract Documents is appropriate, OWNER may use the same options described in the "Lump Sum Change Orders" and "Time-and-Materials Change Orders" Sections below in response to CMAR's Request for Change. CMAR waives all claims as to which it has not provided OWNER with notice through a Request for Change in accordance with this Section. In the event of a claim or litigation arising from any disagreement involving CMAR's Request for Change, CMAR's compensation (if any) shall be limited to an amount calculated in accordance with the "Time-and-Materials Change Orders" Section below.

- 14.1.4. Lump Sum Change Orders: For a lump sum change, CMAR's quote shall be itemized and supported with sufficient substantiating data (including but not limited to detailed subcontractor estimates, supplier quote sheets, prices, invoices, and rate sheets) to permit evaluation with respect to the following costs:
- a) Labor (show hourly rate multiplied by estimated hours);
 - b) Payroll taxes on labor;
 - c) Materials, supplies, and equipment (include unit costs and estimated quantities);
 - d) Machinery and equipment rental (include rental rates and estimated durations);
 - e) Sales, use, or similar taxes related to the Work;
 - f) Other Items: OWNER may authorize other items that may be required for the changed work. Such items include labor, services, material, and equipment that are different in their nature from those required for the Work and that are of a type not ordinarily available from CMAR or any of its subcontractors;

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- g) Reasonable overhead and profit associated with the change, not to exceed 15% on above items if CMAR uses its own forces to perform changed work. If CMAR's subcontractor's forces perform changed work, then the subcontractor shall be entitled to a maximum of 15% on above items and CMAR shall be entitled to a maximum of 6% on above items for its overhead and profit on the changed work. OWNER will pay only one overhead and profit markup of 6% for CMAR and one markup of 15% for the subcontractor in connection with changed work, regardless of the actual number of intervening subcontractors involved in the changed work; and
 - h) Premiums for all bonds and insurance (the maximum amount for this shall not exceed 2% of above items and CMAR shall provide documentation demonstrating it will actually incur an increase in insurance costs directly attributable to the change, if demonstrated, we can pay more).
- 14.1.5. OWNER may reject CMAR's lump sum proposal, may negotiate with CMAR a revision of the requested change and associated lump sum proposal, or may approve the CMAR's lump sum proposal and incorporate it into a Change Order.
- 14.1.6. Time-and-Materials Change Orders: For a time-and-materials change, OWNER shall determine the adjustment to the Contract Price on the basis of actual costs as follows:
- a) Cost of materials and supplies (show actual unit cost multiplied by actual quantity). The cost of materials shall be at invoice price or the lowest current price at which such materials are locally available and delivered to the job site in the quantities involved, plus freight and delivery. OWNER reserves the right to approve materials and sources of supply or to supply materials to CMAR if necessary for the progress of the Work. No markup for overhead and profit shall be applied to any material provided by OWNER.
 - b) Tool and equipment rental. OWNER will not pay for the use of tools that individually have a replacement value of \$200 or less. Regardless of ownership, the equipment rental rates shall be based upon the edition of equipment rental rates published by the Caltrans Division of Construction, or locally available rate or other reference acceptable to OWNER current as of the date the changed work is performed. The rental rates paid shall include the cost of fuel, oil lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidents. Necessary loading and transportation costs for equipment used on the changed work shall be included. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to OWNER than holding it at the work site, it shall be returned, unless CMAR elects to keep it at the work site at no expense to OWNER. All equipment shall be acceptable to OWNER, in good working condition, and suitable for the purpose for which it is to be used. Manufacturers' ratings and approved modifications shall be used to classify equipment and it shall be powered by a unit of at least the minimum rating recommended by the manufacturer. The reported rental time for equipment already at the work site shall be the duration of its use on the changed work, commencing at the time it is first put into actual operation on the changed work, plus the time required to move it from its previous site and back or to a closer site. CMAR shall submit invoices for tool and equipment rental costs. If CMAR does not submit invoices, OWNER may establish the rental costs at the lowest price which was current at the time the changed work was performed.
 - c) Cost of labor (show actual total hourly rate multiplied by actual hours spent on changed work). The costs of labor shall not exceed the wages prevailing for each craft or type of

workers performing the changed work at the time the changed work is done. The costs of labor shall include the actual basic hourly rate, plus employer's actual regular payments for health and welfare, pension, vacation or holiday, training, and other direct costs resulting from federal, State or local laws, as well as assessments or benefits required by lawful collective bargaining agreements and shall be supported by payroll records. The costs of labor shall not include any amount for bonuses or extraordinary vacation or holidays. The use of a labor classification that would increase the changed work cost will not be permitted unless CMAR establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental. The labor cost for foremen shall be proportional to all of their assigned work and only that applicable to changed work shall be paid. Non-direct labor costs including superintendence shall be considered part of the markup for overhead and profit below.

- d) Sales taxes on materials (percentage of item a), above).
- e) Payroll tax on labor (percentage of item c), above).
- f) Insurance (workers' compensation and liability insurance).
- g) Other Items. OWNER may authorize other items that may be required for the changed work. Such items include labor, services, material, and equipment that are different in their nature from those required for the Work and that are of a type not ordinarily available from CMAR or any of its subcontractors. CMAR shall submit invoices covering all such items in detail.
- h) Overhead and profit. CMAR shall receive a maximum 15% for overhead and profit on above items if CMAR uses its own forces to perform changed work. If CMAR's subcontractor's forces perform changed work, then the subcontractor shall be entitled to a maximum of 15% on above items for its overhead and profit and CMAR shall be entitled to a maximum of 6% on above items for its overhead and profit on the changed work. OWNER will pay only one overhead and profit markup of 6% for CMAR and one markup of 15% for the subcontractor in connection with changed work, regardless of the actual number of intervening subcontractors involved in the changed work. OWNER will not pay any overhead or profit for omitted work.
- i) Bond and insurance (not to exceed 2% of above items , if demonstrated, County can pay more). CMAR shall keep and present, in such form as OWNER may prescribe, an itemized accounting of the costs or savings attributable to the changed work, together with appropriate supporting data. The accounting shall include a daily job record in quadruplicate containing a detailed description of: the labor (workers, classifications, and hours worked); quantities of materials used; equipment used (identifying the equipment and the hours of use); and any other services and expenditures in such detail as OWNER may require. Upon being signed and agreed to by OWNER and CMAR at the end of each day's performance, the daily job record will become the basis for payment for the changed work. But such agreement shall not preclude the OWNER from thereafter conducting an audit and adjusting the basis for payment. Failure by CMAR to submit the daily report by the close of the next working day may constitute a waiver of any rights for that day. Upon request by OWNER, CMAR shall permit OWNER to inspect CMAR's original estimate for the Project, subcontract agreements, or purchase orders relating to the change. Upon completion of the changed work ordered to be performed on a time and materials basis,

OWNER will then issue a unilateral Change Order adjusting the Contract Price according to the actual costs incurred and, if appropriate, adjusting the Contract Time.

- 14.1.7. Unilateral Change Orders: If OWNER and CMAR cannot reach an agreement on a proposed change, OWNER may issue a Unilateral Change Order directing work on a time-and-materials basis as set forth above.
- 14.1.8. No Extension of Contract Time without Critical Path Delay: CMAR shall not be entitled to an extension of the Contract Time unless CMAR demonstrates a delay to the critical path shown on the most recent Accepted Construction Schedule.
- 14.1.9. No Additional Compensation for Early Completion: Nothing contained in the Contract Documents creates any contractual right, express or implied, on the part of CMAR to early completion of the Project. Under no circumstances shall OWNER owe additional compensation to CMAR for CMAR's inability to achieve completion of the Project before the expiration of the Contract Time, whether or not such inability is caused by the acts or omissions of OWNER or any other party for which OWNER is responsible, regardless of any approval by OWNER of the Accepted Construction Schedule.
- 14.1.10. Credits: Regardless of whether the equitable adjustment associated with changed work is recorded through a lump sum or time-and-materials Change Order: (1) if the net value of a change to the Work results in a credit from CMAR, then the credit given shall include costs as well as overhead and profit; or (2) if the net value of a change to the Work results in additional costs, then overhead and profit will only be applied to the amount by which the added costs of the change exceed the credited amount. When a change proposed by OWNER results in the deletion of work and the OWNER and CMAR are unable to agree upon the cost, overhead, and profit thereof, the OWNER's estimate of the cost, overhead, and profit shall be deducted from the Contract Price by a Change Order unless within 15 days of receiving the OWNER's estimate CMAR presents proof that the OWNER's estimate is in error.
- 14.1.11. Overhead and Profit: CMAR shall receive a maximum 15% for overhead and profit on above items if CMAR uses its own forces to perform changed work. If CMAR's subcontractor's forces perform changed work, then the subcontractor shall be entitled to a maximum of 15% on above items for its overhead and profit and CMAR shall be entitled to a maximum of 6% on above items for its overhead and profit on the changed work. OWNER will pay only one overhead and profit markup of 6% for CMAR and one markup of 15% for the subcontractor in connection with changed work, regardless of the actual number of intervening subcontractors involved in the changed work. OWNER will not pay any overhead or profit for omitted work.

Regardless of whether the equitable adjustment associated with changed work is recorded through a lump sum or time-and-materials Change Order, the amount OWNER pays for overhead and profit shall be CMAR's only compensation for: all costs of supervision, superintendence, and scheduling; wages of timekeepers, watchmen, and clerks; tools individually valued at \$200 or less; incidentals; any and all field and home office expenses; costs of estimating and preparing change orders; all impact costs including but not limited to lost productivity associated with "learning curves," "productivity factors," and "ripple effects"; and all other expenses not included in itemized costs.

- 14.1.12. Compensation for Delay: CMAR shall be compensated for its substantiated actual, direct expenses, together with the markup for overhead and profit described in "Overhead and Profit" above, resulting from delay for which OWNER is responsible. Under no circumstances shall OWNER compensate CMAR for extended home office overhead or profit based on an "*Eichleay*

formula” or any other proportionate allocation of CMAR’s overhead expenses or profit, all of which shall be deemed to have already been included in the above-described markup.

14.1.13. Unit Price Changes: If a change is ordered in an item of work covered by a Contract Unit Price, and such change does not involve substantial change in character of the Work from that shown on the Plans or Special Provisions, then an adjustment in payment will be made. This adjustment will be based upon the increase or decrease in quantity and the Contract Unit Price. If the actual quantity of an item of work covered by a Contract Unit Price and constructed in conformance with the Plans and Special Provisions varies from the Bid quantity by 25% or less, payment will be made at the Contract Unit Price. If the actual quantity of the item of work varies from the Bid quantity by more than 25%, then payment will be made as described in Subsection (a) “Increases of More than 25%,” or Subsection (b) “Decreases of More than 25%,” below, as appropriate. If a change is ordered in an item of work covered by a Contract Unit Price, and such change involves a substantial change in the character of the Work from that shown on the Plans or Special Provisions, an adjustment in payment will be made as described in Subsection (c) “Substantial Change in Character of the Work,” below.

- a) **Increases of More than 25%:** Should the actual quantity of an item of work covered by a Contract Unit Price and constructed in conformance with the Plans and Special Provisions exceed the Bid quantity by more than 25%, then payment for the quantity in excess of 125% of the Bid quantity will be made on the basis of an adjustment in the Contract Unit Price mutually agreed to by the CMAR and OWNER or, at the option of OWNER, on the basis of Time and Materials Change Orders, described above. However, in no event will payment be more than would be paid for the actual quantity at the Contract Unit Price.
- b) **Decreases of More than 25%:** Should the actual quantity of an item of work covered by a Contract Unit Price, and constructed in conformance with the Plans and Special Provisions, be less than 75% of the Bid quantity, then an adjustment in payment will not be made unless CMAR requests an adjustment in writing and adequately demonstrates that the reduction in quantity has increased CMAR’s per-unit cost of performing the Work item. If CMAR so requests, payment will be made on the basis of an adjustment in the Contract Unit Price mutually agreed to by CMAR and OWNER, or at the option of OWNER, on the basis of Time and Materials Change Orders, described above. However, in no case will payment be less than would be made for the actual quantity at the Contract Unit Price nor more than would be paid for 75% of the Bid quantity at the Contract Unit Price.
- c) **Substantial Change in Character of Work:** If a change in an item of work covered by a Contract Unit Price involves a substantial change in the character of work from that shown on the Plans or Special Provisions, then an adjustment to the payment for the Work may be made by mutual agreement of CMAR and OWNER as an adjustment to the Contract Unit Price, as a Lump Sum Change Order, or at OWNER’s option as a Time and Materials Change Order, as described above.

14.2. DELAYS DUE TO WEATHER AND FORCE MAJEURE

14.2.1. Subject to the other provisions of these Contract Documents, CMAR may be entitled to an extension of the Contract Time, but no damages or increase in the Contract Price, for delays arising from the following causes when they occur beyond CMAR’s or its Subcontractors’ control, fault, or negligence:

- a) Acts of God (tornadoes, fires, hurricanes, blizzards, earthquakes, typhoons, or floods), war, civil unrest, trade embargoes, labor disputes, or strikes necessitating stoppage of work; or
 - b) Weather days necessitating stoppage of work in excess of the number of anticipated weather days specified in the “Contract Time” Section of the Contract. The Contract Time shall be deemed to take into account the number of working days specified in the Contract (“anticipated weather days”) that stoppage of work can reasonably be expected at the Project site due to rain or other adverse weather conditions, and CMAR agrees that the number of weather days indicated in the Contract is a reasonable approximation of the number of weather days that may impact the Work. CMAR’s construction schedule shall include this number of anticipated weather days. Time extensions for weather days will only be considered when the number of days in question exceeds the number of days specified in the Contract, those days impact a critical path element of the Project, and CMAR cannot redirect work efforts to unaffected portions of the Project. If CMAR believes that the progress of the Work has been adversely affected by weather, CMAR shall submit a written request for extension of time to OWNER.
- 14.2.2. A written request for any extension of the Contract Time shall be delivered to OWNER within 7 days of the first date of commencement of each delay. CMAR’s failure to submit such request within the time specified will be considered grounds for refusal by OWNER to consider such request.
- 14.2.3. If the Project involves the construction of a permanent structure, no extensions of time will be made for weather after the principal portions of the Work are enclosed. OWNER shall determine when the structure is “enclosed” for purposes of this provision.
- 14.2.4. Extensions of time due to weather or force majeure, when granted, will be on the basis of 1.4 calendar days credit for every working day lost, with the credit for each separate extension rounded off to the nearest whole calendar day. A “working day lost” will not include any day during which at least 60% of the normally scheduled workforce is able to work for at least five hours of the day.
- 14.2.5. CMAR shall not be entitled to any extension under this Section if the unforeseen circumstances occur beyond the Contract Time.

14.3. CONDITIONS AFFECTING THE WORK

- 14.3.1. Existing Site Conditions: Information regarding the work site represented in the Plans and Special Provisions is believed to be correct, but unless expressly stated in the Contract Documents, OWNER does not warrant either the completeness or accuracy of such information. CMAR shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work and the general and local conditions that can affect the Work or the cost thereof. Any failure by CMAR to do so will not relieve CMAR from responsibility for successfully performing the Work without additional expense to OWNER.
- 14.3.2. Site Investigation and Representation: CMAR acknowledges satisfaction as to the nature and location of the Work; the general and local conditions, particularly those bearing upon availability of transportation and access to the site; disposal, handling and storage of materials; availability of labor, water, electric power, telephone, and roads; uncertainties of weather or physical conditions at the site; the conditions of the ground; the character of equipment and facilities

needed prior to and during the performance of the Work; and all matters that can in any way affect the Work or the cost thereof under this Contract.

- 14.3.3. CMAR further acknowledges satisfaction as to character, quality, and quantity of surface and subsurface materials to be encountered from CMAR's inspection of the site and from reviewing any available records of exploratory work furnished by OWNER or included in the Contract Documents. Failure by CMAR to become acquainted with the physical conditions of the site and all the available information will not relieve CMAR from responsibility for properly estimating the difficulty or cost of successfully performing the Work.
- 14.3.4. CMAR warrants that as a result of examination and investigation of all the above-described data, CMAR can perform the Work in a good and workmanlike manner and to the satisfaction of OWNER. OWNER assumes no responsibility for any representations made by any of its officers or agents during or prior to the execution of the Contract unless: (1) such representations are expressly stated in the Contract Documents; and (2) the Contract Documents expressly provides that the responsibility therefore is assumed by OWNER.

14.4. INFORMATION ON SITE CONDITIONS

- 14.4.1. Any information obtained by the OWNER regarding site conditions, subsurface information, groundwater elevations, existing construction of site facilities as applicable, and similar data will be available for inspection upon request. Such information is offered as supplementary information only and not part of the Contract Documents. OWNER assumes no responsibility for the completeness or interpretation of such information.
- 14.4.2. Topographic Maps: Topographic maps were used in the Project design. Bidders may inspect such maps upon request to the OWNER, or may obtain copies upon payment of the cost to reproduce the copies.
- 14.4.3. Subsurface Investigation: When test holes, if any, have been excavated to indicate subsurface materials at particular locations, OWNER assumes no responsibility whatsoever in respect to the sufficiency or accuracy of borings made, or of the log of test borings, or of other investigations, or of the interpretations made thereof, and there is no warranty or guarantee, either express or implied, that the conditions indicated by such investigations are representative of those existing throughout such area, or any part thereof, or that unforeseen developments may not occur. A log of test borings, if any, showing a record of the data obtained on subsurface conditions may be examined upon request. CMAR may make arrangements with OWNER for permission to conduct such additional subsurface investigation as may be necessary to verify existing conditions. CMAR shall examine the site and may make arrangements with OWNER to conduct CMAR's own subsurface investigation.
- 14.4.4. Changed Conditions: CMAR shall promptly, but in no event more than 7 days after the condition is first observed, notify OWNER in writing of the following site conditions ("Changed Conditions") and shall leave such conditions undisturbed until otherwise directed by OWNER:
- 14.4.5. Subsurface or latent physical conditions at the site differing materially from those represented in the Contract Documents;
- 14.4.6. Unknown physical conditions at the site differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract; and

- 14.4.7. Material differing from that represented in the Contract Documents which CMAR believes may be hazardous waste pursuant to Health & Safety Code Section 25117.
- 14.4.8. Upon written notice of Changed Conditions from CMAR, OWNER shall promptly investigate such conditions. If OWNER finds that such conditions do materially differ and cause an increase or decrease in the cost of or the time for performance of the Work, OWNER may, at its discretion: (a) terminate all or part of the Contract in accordance with "Termination For Convenience Of OWNER" Section of these General Conditions; (b) issue a written change to the Contract in accordance with the "Changes" Section of these General Conditions; or (c) make any other appropriate arrangements to address the Changed Conditions. Any claim by CMAR for adjustment hereunder shall not be allowed unless CMAR has given proper notice.
- 14.4.9. In the event that a dispute arises between the Parties as to whether the conditions constitute Changed Conditions or affect the price or time for performance of any part of the Work: (i) CMAR shall submit a written notice of potential claim to OWNER; (ii) CMAR shall then proceed with all work to be performed under the Contract; and (iii) CMAR shall not be excused from any scheduled completion date provided for by the Contract. CMAR shall retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes between the Parties.

14.5. PROSECUTION OF CHANGED WORK

CMAR shall promptly proceed with the Work described in a Change Order. Nothing provided in this "Changes" Section shall excuse the CMAR from proceeding with the prosecution of the Work as changed.

14.6. DIRECTOR'S AUTHORITY

The Director is authorized by the Orange County Board of Supervisors to order changes or additions in the Work where the cost of such change does not exceed the limits specified in Public Contract Code Section 20142. Only the Board of Supervisors may approve changes greater than those limits.

14.7. MINOR CHANGES IN THE WORK

OWNER shall have OWNER to order minor changes in the Work not involving an adjustment in the Contract Price or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on CMAR. CMAR shall carry out such written orders promptly.

15. TERMINATION

15.1. TERMINATION FOR CONVENIENCE OF OWNER

Notwithstanding any other provision of the Contract, OWNER may at any time and without cause terminate the Contract, in whole or in part, upon not less than 30 days' written notice to the CMAR. Such termination shall be effected by delivery of a Notice of Termination to CMAR specifying the effective date of the termination, whether the Contract shall be terminated in whole or in part, and, if applicable, the portion of work to be terminated. CMAR shall immediately stop work in accordance with the Notice of Termination and comply with any other direction as may be specified in the Notice of Termination or as provided subsequently by OWNER. OWNER shall pay CMAR for the Work completed and accepted by OWNER prior to the effective date of

the termination, and such payment shall be CMAR's sole remedy. Under no circumstances will CMAR be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination in whole or in part under this provision. CMAR shall insert in all subcontracts that the Subcontractors shall stop work on the date of and, if applicable, the portion of work to be terminated in a Notice of Termination and shall require Subcontractors to insert the same condition in any lower tier subcontracts.

15.2. TERMINATION FOR CAUSE

- 15.2.1. If CMAR fails to carry out the requirements of the Contract, including but not limited to by: failing to commence the Work within the time specified; failing to prosecute the Work with such diligence as will ensure its completion within the Contract Time; failing to complete the Work within the Contract Time; failing to execute the Work in the manner specified in the Contract Documents; persistently, willfully, or knowingly failing to comply with applicable laws and regulations; becoming insolvent; assigning or subcontracting any part of the Work without OWNER's consent; or if in the opinion of the Board of Supervisors CMAR is not complying in good faith with the Contract; then OWNER may, by written notice to CMAR, terminate for cause CMAR's right to proceed with the Work or such part of the Work as to which there has been delay, breach, or other default.
- 15.2.2. Upon receipt of written notice from OWNER of a termination for cause, CMAR shall cease operations as directed by OWNER in the notice and take all actions necessary, or as OWNER directs, for the protection and preservation of the Work.
- 15.2.3. After issuing a Notice of Termination for cause, OWNER may take over the Work and prosecute the same to completion by whatever means OWNER deems reasonable, by contract or otherwise, and may take possession of and utilize in completing the Work such materials, equipment, supplies, Contract Documents, and other information in whatever form as may be on the site for the Work and necessary therefor.
- 15.2.4. If OWNER terminates for cause CMAR's right to proceed with the Work, or CMAR otherwise fails to prosecute the Work to completion, then the resulting damage will include but not be limited to Liquidated Damages for such reasonable period of time as may be required for completion of the Work together with any costs incurred by OWNER to complete the Work in excess of the unpaid Contract Price. CMAR shall not be entitled to receive any further payment under the Contract until the Work is complete. If OWNER's cost of completing the Work, Liquidated Damages, and other damages exceed the unpaid balance of the Contract Price, then CMAR and CMAR's sureties shall pay the difference to OWNER within thirty days of OWNER's demand therefor.
- 15.2.5. Whether or not OWNER issues a written Notice of Termination for cause, CMAR and CMAR's sureties shall be liable for any damage to OWNER resulting from CMAR's refusal or failure to complete the Work within the specified time or from CMAR's other breach or default with respect to the performance of the Work.
- 15.2.6. CMAR's right to proceed shall not be terminated for cause nor will CMAR be charged with resulting damage if the delay in the completion of the Work arises from causes beyond the control and without the fault or negligence of CMAR, including but not limited to those circumstances described in the "Weather Days And Force Majeure" Section of the General Conditions, acts of OWNER, or acts of another contractor in the performance of a contract with OWNER.

15.2.7. The rights and remedies of OWNER provided in this Section are in addition to any other rights and remedies provided by law or under this Contract.

16. DISPUTES AND CLAIMS

16.1.1. California Public Contract Code Section 9204 establishes a claim resolution process applicable to any claim by a contractor related to a public works project. The terms “claim” and “public works project” are defined in Section 9204(c)(1)(A)-(C) and (c)(4) respectively. For all public works claims, County and Contractor shall follow the steps set forth in Public Contracts Code 9204 and summarized here as follows:

“9204(d)(1)(A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying which portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

“9204(d)(1)(B) The claimant shall furnish reasonable documentation to support the claim.

“9204(d)(1)(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

“9204(d)(1)(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

“9204(d)(2)(A) If the claimant disputes the public entity’s written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

“9204(d)(2)(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claims remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and the claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree on a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the undisputed portion of the claim. Each party shall bear the fees and cost charged by its respective mediator in connection with the selection of the neutral mediator. If the mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

“9204(d)(2)(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

“9204(d)(2)(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

“9204(d)(2)(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties’ dispute.”

- 16.1.2. Additionally, failure by a public entity to respond to a claim renders the claim rejected in its entirety. But amounts not paid in the time required by this statute shall bear 7% interest per annum. Section 9204(d)(5) sets forth the means for a contractor to submit a claim on behalf of a subcontractor.
- 16.1.3. A waiver of rights granted in the section is void. However, upon presentation of a claim, the parties may agree to waive mediation in writing and proceed to the commencement of a civil action.
- 16.1.4. Existing law set forth in Public Contracts Code Section 20104 et seq. sets forth a process for claims of \$375,000 or less. Section 20104 et seq has not been repealed, but is superseded in many parts by Section 9204. In the event Section 9204 sunsets on January 1st, 2020 as it is currently scheduled to, Section 20104 et seq. will then fully apply to claims for \$375,000 or less.

17. OCCUPANCY

17.1. PARTIAL OCCUPANCY

- 17.1.1. OWNER reserves the right to enter and install equipment within each portion of the Project as it is ready to receive same, upon the condition that CMAR shall not be responsible for equipment so placed other than loss or damage caused by the acts or omissions of CMAR or those in CMAR’s employ. Such partial occupancy by OWNER shall not constitute acceptance of the Project or of work not completed in accordance with the Contract Documents, nor shall it in any way relieve CMAR from correcting Defective Work or materials in the area where OWNER has installed equipment.
- 17.1.2. OWNER reserves the right to take possession of or use all or part of any work prior to completion and final acceptance of all the Work. If OWNER exercises this right, CMAR shall be relieved of liability for loss or damage to completed portions of the Work other than loss or damage caused by the acts, omissions, or breaches of warranty by CMAR. Such taking of possession by OWNER shall not relieve CMAR from any other provisions of the Contract Documents, shall not constitute a final acceptance of any such work or of work not completed in accordance with the Contract Documents, and shall not relieve CMAR from responsibility for correcting Defective Work or materials in the area so occupied.
- 17.1.3. OWNER may at any time during the performance of the Work enter the Work area for the purpose of performing any necessary work by OWNER labor or other contractors, and for any other purpose in connection with the installation of facilities. In doing so, OWNER shall endeavor not

to interfere with CMAR, and CMAR shall not interfere with other work being done by or on behalf of OWNER.

18. ACCEPTANCE

Unless otherwise provided in the Contract Documents, OWNER's acceptance of CMAR's work shall be accomplished by OWNER recording a Notice of Completion as promptly as practicable after completion, inspection, and testing of all work required by the Contract Documents. OWNER's acceptance of the Work shall be the start date of CMAR's obligations under the "One-Year Correction Period" Section of the General Conditions, and of the manufacturers' and installers' warranties required by the Contract Documents. OWNER's acceptance of the Work shall not be construed to limit OWNER's rights under the Contract Documents or release CMAR from any responsibility for latent defects, for correcting Defective Work, or for honoring any warranty obligations of the Contract Documents.

19. ASSIGNMENT

19.1. PROHIBITION ON ASSIGNMENT

19.1.1. Neither the Contract nor any portion thereof may be assigned by CMAR unless approved in writing by OWNER. If CMAR is not a corporation with publicly traded stock, then the transfer of more than 10% of the stock held by shareholders of the corporation or a change in the composition of the board of directors of the corporation shall be deemed an assignment for purposes of this clause. Any attempted assignment contrary to the provisions of this Section shall be void.

19.1.2. Notwithstanding the foregoing, claims for monies due or to become due to CMAR from OWNER under the Contract may be assigned with the written consent of the Director to a surety, bank, trust company, or other financial institution and may thereafter be further assigned or reassigned to any such institution. To effect such assignments, CMAR, or CMAR's assignee, shall submit a written request to OWNER enclosing a letter from the proposed assignee indicating that it will accept such assignment.

19.2. CHANGES IN OWNERSHIP

CMAR agrees that if there is a change or transfer in ownership, including but not limited to merger or acquisition, of CMAR's business prior to completion of this Contract, the new OWNERS shall be required under terms of sale or other transfer to assume CMAR's duties and obligations contained in this Contract and to obtain the written approval of County of such merger or acquisition, and complete the obligations and duties contained in the Contract to the satisfaction of County.

19.3. SUCCESSORS AND ASSIGNS

The terms and provisions of this Contract shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

20. DATA

20.1. DATA CONFIDENTIALITY

- 20.1.1. As used in the Contract, “data” means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by, obtained by, or transmitted to the CMAR or its subcontractors in the performance of this Contract.
- 20.1.2. The parties agree that all data, regardless of form, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CMAR or its subcontractors in connection with the CMAR’s or its subcontractor’s performance of this Contract is confidential and proprietary information belonging to the OWNER.
- 20.1.3. Except as specifically provided in this Contract, the CMAR or its subcontractors shall not divulge data to any third party without prior written consent of the OWNER. The CMAR or its subcontractors shall not use the data for any purposes except to perform the services required under this Contract. These prohibitions shall not apply to the following data provided that the CMAR or its subcontractors have first given the required notice to the OWNER:
- a) Data which was known to the CMAR or its subcontractors prior to its performance under this Contract, unless such data was acquired in connection with work performed for the OWNER;
 - b) Data which was acquired by the CMAR or its subcontractors in its performance under this Contract and which was disclosed to the CMAR or its subcontractors by a third party, who to the best of the CMAR’s or its subcontractor’s knowledge and belief, had the legal right to make such disclosure and the CMAR or its subcontractors are not otherwise required to hold such data in confidence; or
 - c) Data that must be disclosed by virtue of law, regulation, or court order, to which the CMAR or its subcontractors are subject.
- 20.1.4. In the event the CMAR or its subcontractors are required or requested to disclose data to a third party, or any other information to which the CMAR or its subcontractors became privy as a result of any other Contract with the OWNER, CMAR shall first notify the OWNER as set forth in this Section of the request or demand for the data. The CMAR or its subcontractors shall give the OWNER sufficient facts so that the OWNER can be given an opportunity to first give its consent or take such action that the OWNER may deem appropriate to protect such data or other information from disclosure.
- 20.1.5. The CMAR, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the OWNER, the CMAR or its subcontractors shall promptly deliver, as set forth in this Section, a copy of all data to the OWNER. All data shall continue to be subject to the confidentiality Contracts of this Contract.
- 20.1.6. The CMAR or its subcontractors assume all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the OWNER if any of the provisions of this Section are violated by the CMAR, its employees, agents or subcontractors. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. CMAR agrees that the requirements

of this Section shall be incorporated into all subcontracts entered into by CMAR. A violation of this Section may result in immediate termination of this Contract without notice.

- 20.1.7. Personal Identifying Information-Data Security. Personal identifying information, financial account information, or restricted OWNER information, whether electronic form to hard copy, must be secured and protected at all times. At a minimum, CMAR must encrypt and/or password protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.
- 20.1.8. When personal identifying information, financial account information, or restricted OWNER information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.
- 20.1.9. In the event that data collected or obtained by CMAR or its subcontractors in connection with this Contract is believed to have been compromised, CMAR or its subcontractors shall immediately notify the Project Administrator. CMAR agrees to reimburse the OWNER for any costs incurred by the OWNER to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.
- 20.1.10. CMAR agrees that the requirements of this Section shall be incorporated into all subcontracts entered into by CMAR. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Contract without notice.
- 20.1.11. The obligations of CMAR or its subcontractors under this Section shall survive the termination of this Contract.

20.2. TITLE OF DATA

- 20.2.1. All materials, documents, data or information obtained from the OWNER data files or any OWNER medium furnished to the CMAR in the performance of this Contract, will at all times remain the property of the OWNER. Such data or information may not be used or copied for direct or indirect use by the CMAR after completion or termination of this Contract without the express written consent of the OWNER.
- 20.2.2. All materials, documents, data or information, including copies furnished by OWNER and loaned to CMAR for his temporary use, must be returned to the OWNER at the end of this Contract unless otherwise specified by the Director.

21. PUBLICATIONS

- 21.1.1. No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by CMAR and/or anyone acting under the supervision of CMAR to any person, partnership, company, corporation, or agency, without prior written approval by the OWNER, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after OWNER approval.
- 21.1.2. CMAR agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort

under, this Contract. CMAR must first obtain review and approval of said media contact from the OWNER through the OWNER's Project Manager. Any requests for interviews or information received by the media should be referred directly to the OWNER. CMAR's are not authorized to serve as media spokespersons for OWNER projects without first obtaining written permission from the OWNER's Project Manager.

22. PUBLIC RELATIONS

- 22.1.1. All inquiries of any kind pertaining to the Project, presented to the CMAR in any form including, but not limited to, written or oral requests, and originating from any media source, such as the press and other print publications, television or radio networks, the World Wide Web, or instruments thereof, community or public interest groups, or any other limited or mass media systems, shall be immediately referred by the CMAR to JWA. The CMAR, its Sub-consultants, and its Subcontractors shall not disseminate information on behalf of the County or JWA pertaining to the nature, scope, or details of the Project without the prior specific written consent of JWA.
- 22.1.2. CMAR shall not release information in any manner or form on behalf of the County or JWA pertaining to the nature, scope, or details of the Project in any organized public or private event, setting, or ceremony without the prior specific written consent of JWA.
- 22.1.3. CMAR and any of its Subcontractors at any tier shall not publish, or allow to be published, any press releases without prior written authorization from County.

23. RECORDS AND AUDIT/INSPECTIONS

- 23.1.1. CMAR shall keep an accurate record of time expended by CMAR and/or consultants employed by CMAR in the performance of this Contract.
- 23.1.2. Upon ten (10) days' notice, OWNER, the California State Auditor, and their contracted representatives, shall have the right to examine and audit CMAR's accounting procedures and internal controls of CMAR's financial systems and to inspect and copy any books and records relating to this Contract. Such an examination, audit, and/or inspection may be requested at any time during the Project. CMAR shall cooperate fully with OWNER and the California State Auditor in the conduct of such examinations, audits, and inspections, shall grant full access at all reasonable times to its offices, the Project site, and its books and records relating to the Contract, and shall allow OWNER to interview CMAR's employees who might reasonably have information related to CMAR's books and records, provided that OWNER has given CMAR at least one working day's advance notice of OWNER's or the California State Auditor's intent to examine, audit, inspect, and interview employees. All examinations, audits, inspections, and interviews shall be conducted during normal business hours. CMAR shall include in all its subcontracts a provision giving OWNER and the California State Auditor the same rights to examine and audit the Subcontractor's accounting procedures and internal controls of its financial systems, inspect the Subcontractor's books and records relating to the Project, and interview Subcontractor's employees as CMAR has given the OWNER and the California State Auditor in this Section.
- 23.1.3. CMAR shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract. CMAR's accounting and control system shall be in accordance with generally accepted accounting practices of the construction industry. CMAR shall preserve all of its books and records relating to this Contract, including but not limited to its job cost records, payables/receivables records, accounting books, bids, cancelled

checks, receipts, subcontracts, purchase orders, journals, vouchers, payrolls, correspondence, drawings, daily logs, photographs, and memoranda, for a period of 4 years after Final Payment. Should CMAR cease to exist as a legal entity, CMAR shall forward its records pertaining to this Contract to the surviving entity in a merger or acquisition, or, in the event of liquidation, to OWNER.

- 23.1.4. Should CMAR cease to exist as a legal entity, records pertaining to this Contract shall be forwarded within a reasonable period of time not to exceed sixty (60) days to its successor in interest or surviving entity in a merger or acquisition, or, in the event of liquidation, to OWNER.

24. MISCELLANEOUS PROVISIONS

24.1. GOVERNING LAW AND VENUE – CODE OF CIVIL PROCEDURE SECTION 394

- 24.1.1. This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

- 24.1.2. The parties specifically agree that by soliciting and entering into and performing services under this agreement, CMAR shall be deemed to constitute doing business within Orange County from the time of solicitation of work, through the period when all work under this agreement is completed, and continuing until the expiration of any applicable limitations period. Furthermore, the parties have specifically agreed, as part of the consideration given and received for entering this agreement, to waive any and all rights to request that an action be transferred for trial to another county under Code of Civil Procedure Section 394.

24.2. PUBLIC RECORDS ACT

Pursuant to the California Public Records Act (“CPRA”), Government Code Sections 6250 et seq., all records provided by CMAR to OWNER are subject to public disclosure upon request except as otherwise provided by law. Prior to their submission to OWNER, CMAR shall identify any records it believes are exempt from disclosure, and identify the applicable CPRA exemption. If the disclosure of such records is subsequently requested, OWNER will notify CMAR of such request. Unless CMAR obtains a protective order issued by a court of competent jurisdiction restricting disclosure of the requested records, OWNER may disclose the records if OWNER determines that the Public Records Act requires disclosure. Under no circumstances shall OWNER be held liable to CMAR for the public disclosure of any such records.

24.3. PATENT INFRINGEMENT

CMAR shall promptly report to OWNER any notice or claim of patent infringement arising from the performance of the Contract. CMAR shall, upon OWNER’s request, furnish to OWNER any and all information in CMAR’s possession relevant to such notice or claim. CMAR shall indemnify and defend OWNER from any and all claims or lawsuits on account of any alleged patent infringement arising out of the performance of the Contract, and shall pay any judgment rendered against OWNER, its officers, or its employees resulting from such claim or lawsuit.

24.4. ASSIGNMENT OF ANTITRUST ACTIONS

Public Contract Code Section 7103.5 provides: “In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor and/or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders Final Payment to the contractor, without further acknowledgment by the parties.” CMAR acknowledges and agrees to the foregoing provision, and shall cause it to be included in full in its Subcontractor agreement(s) to effectuate this assignment and the requirements of Section 7103.5.

24.5. ENTIRETY

This Contract contains the entire Contract between the parties with respect to the matters provided for herein.

24.6. AMENDMENTS

No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or Contract not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on OWNER unless authorized by OWNER in writing.

24.7. SEVERABILITY

If any part of this Contract is held, determined, or adjudicated to be illegal, void, or unenforceable by a court of competent jurisdiction, the remainder of this Contract shall be given effect to the fullest extent reasonably possible.

24.8. BINDING ARBITRATION

The parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity enforceable in accordance with its terms.

24.9. EMPLOYEE ELIGIBILITY VERIFICATION

CMAR hereby certifies that it complies with all applicable laws and regulations regarding the eligibility of its employees to work in the United States, and that all of its employees performing work under this Contract meet all citizenship or immigration status requirements to do so. CMAR shall obtain all documentation necessary to verify the employment eligibility status of covered employees as described by U.S. Citizenship and Immigration Services Form I-9. CMAR shall retain such documentation for the period prescribed by law. CMAR shall indemnify, defend with counsel approved in writing by OWNER, and hold harmless the OWNER, its agents, officers, and employees from any sanctions or liability that may be assessed in connection with any alleged violation of federal or State laws or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

24.10. NON-EMPLOYMENT OF OWNER PERSONNEL

CMAR agrees that it will neither negotiate, offer, or give employment to any full-time, regular employee of OWNER in professional classifications of the same skills required for the performance of this Contract who is involved in this Project in a participatory status during the life of this Contract regardless of the assignments said employee may be given or the days or hours employee may work. Nothing in this Contract shall be deemed to make CMAR, or any of CMAR's employees or agents, agents or employees of the OWNER. CMAR shall be an independent Contractor and shall have responsibility for and control over the details and means for performing the Work, provided that CMAR is in compliance with the terms of this Contract. Anything in the Contract which may appear to give OWNER the right to direct CMAR as to the details of the performance of the Work or to exercise a measure of control over CMAR shall mean that CMAR shall follow the desires of OWNER, only in the results of the Work.

24.11. ATTORNEY'S FEES

In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.

24.12. INTERPRETATION

This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite having the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the parties and this Contract.

24.13. CONTRACT CONSTRUCTION

The parties acknowledge that each party and its counsel have reviewed this Contract and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract or any amendment, appendices or exhibits hereto.

24.14. HEADINGS

The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

24.15. ORAL MODIFICATION

No oral statement shall in any manner modify the Contract. All changes to the Contract must be in writing.

24.16. NO WAIVER BY OWNER

No failure on the part of OWNER to exercise any right or remedy under the Contract Documents shall operate as a waiver of any other right or remedy that OWNER may have. No term or provision of this agreement shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. A waiver by OWNER of any breach or failure to perform under the Contract Documents shall not constitute a waiver of any subsequent breach or failure. The failure of OWNER to enforce a requirement of the Contract Documents in one or more instances shall not preclude OWNER from subsequently enforcing such requirement(s).

24.17. REMEDIES NOT EXCLUSIVE

The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either party to any other remedies provided by law.

24.18. INDEPENDENT CONTRACTOR

As referenced in the section titled “Non-Employment of OWNER Personnel” of this Contract, CMAR shall be considered an independent Contractor. Neither CMAR its employees nor anyone working under CMAR shall qualify for workers’ compensation or other fringe benefits of any kind through OWNER.

24.19. BILLS AND LIENS

CMAR shall pay promptly all indebtedness for labor, materials and equipment used in performance of the Work. CMAR shall not permit any lien or charge to attach to the Work or the premises, but if any does so attach, CMAR shall promptly procure its release and, in accordance with the requirements of the indemnification paragraph above, indemnify, defend, and hold OWNER harmless and be responsible for payment of all costs, damages, penalties and expenses arising from or related thereto.

24.20. OWNER’S PROPERTY ON SITE

All of OWNER’s property removed or displaced pursuant to this Contract shall remain the property of OWNER unless expressly stated otherwise in the Contract Documents, and CMAR shall exercise reasonable care to prevent loss or damage to such property and shall promptly deliver it to the place designated by OWNER. In particular, all excavated clean soil is the property of OWNER and shall remain on site unless otherwise provided in the Contract Documents or otherwise directed by OWNER in writing.

25. AIRPORT REQUIREMENTS

25.1. AIRPORT SECURITY

CMAR shall comply with all security requirements of the Transportation Security Administration (TSA), Federal Aviation Administration (FAA), United States Customs and Border Protection (USCBP), John Wayne Airport security regulations and all applicable Federal, State, and local regulations regarding airport security. CMAR is responsible for fines imposed by any regulatory agency as a result of CMAR’s failure to comply with applicable rules and regulations regarding airport security.

CMAR may be required to obtain airport security clearance in order to perform work under this Contract. CMAR, CMAR's employees, and its subcontractors must complete a background clearance SIDA class in order to obtain an I. D. badge and a driving permit for access to secure areas and to drive on the airfield.

25.2. JWA INFORMATION TECHNOLOGY REQUIREMENTS

25.2.1. OWNER shall provide connection to its Information Technology network in support of CMAR's required access to JWA's Electronic Project Management System, Oracle Primavera Unifier (Unifier).

25.2.2. CMAR shall submit to the OWNER a JWA User Access Request Form within seven (7) days following Contract Award. The JWA User Access Request Form is required for each employee requiring access to Project documentation, including, but not limited to correspondence, monthly reports, schedules, RFIs, daily reports, payment requests, deliverables/submittals, change documentation, plans and drawings, and all other communication.

25.2.3. For each user, JWA will create a user ID with approved access rights and provide an initial password to the user in a secure manner. As remote users, the CMAR's employees shall acknowledge and comply with JWA's Portal Usage Policy attached hereto.

25.2.4. Such internet connection will allow CMAR secured access to JWA's Electronic Project Document Management System.

25.2.5. CMAR shall utilize Unifier as the predominant means of communication with JWA and its representatives for all Project documentation.

25.2.6. JWA Process for Gaining Access and Using Unifier and Other Allowable Information Technology Domains:

a) Process for Gaining Access to JWA Systems. CMAR shall complete and submit the following forms to obtain equipment, software, and/or access to JWA systems:

- IT Usage Policy Acknowledgement
- User Access Request Form – Non-COUNTY Employees

User shall fill out the all relevant User Information sections and then sign the form. The User Access Request Form will not be processed without user's company manager's signature. User then submits the form to the JWA Project Manager. The JWA Project Manager will then obtain the JWA Manager's signature to begin processing the request through JWA IT Section.

For Unifier access, new companies may take as long as a week to process; existing companies with new access requests should only require one to three business days to process. Once processed, the requestor will receive two separate e-mails from the JWA IT Section. The first will have the user's user name and the other will have the password, respectively. The first time the user logs on the web-based application user will be required to reset the password and configure settings.

b) Help Desk.

If user experience any errors or have difficulties with any of the equipment/software, a request must be submitted to the Help Desk at (949) 852-4004. User will need to provide name, e-mail, phone number, location, and a brief description of the problem. Once the information is entered into the system, a call ticket will be created and sent to a JWA IT representative, who will contact user within one to three business days.

25.2.7. JWA will provide Unifier training upon receipt of the JWA User Access Request Form(s).

1) Unifier Training.

For Unifier training, Contractor shall coordinate with the Project Manager to schedule a time and date.

User's account will be deactivated if user does not log on within a 30 day period. To reactive the account, user shall submit a help desk request for Unifier reactivation. Also, after 4 failed attempts to log on user will be locked out of Unifier. To unlock the account and re-set password the user must call in a help desk request.

2) Access to Unifier Document Manager.

If access is needed to a folder in Unifier Document Manager, Contractor shall contact the Project Manager.

25.3. BADGE ACQUISITION

Prior to issuance of a security badges(s), designated CMAR personnel who will be working on site at JWA terminal, the Air Operations Area (AOA), or other designated areas, and are engaged in the performance of work under this Contract must pass JWA's screening requirements, which include an FBI Criminal History Records Check and payment of approximately \$38.00 fee per person, and a Security Threat Assessment (no charge). Upon successful completion of the background checks, CMAR's designated personnel will be required to attend a 3-hour Security Identification Display Area (SIDA) class and pass a written test. Those personnel who may be permitted by JWA to drive on the AOA perimeter road must also complete a Driver's Training class and written test. JWA identification badges are not issued until designated CMAR personnel have: 1) completed appropriate forms and submitted proof of identity and employment eligibility, 2) passed both background checks, 3) completed and passed appropriate classroom training and 4) paid an identification badge fee of approximately \$10.00 per person. The CMAR should anticipate a minimum of twenty (20) business days to complete the security badge process if all requirements listed above are fulfilled by individual badge applicants in a timely manner. The CMAR shall be responsible for all costs associated with the background checks, and abide by all of the security requirements set forth by the FAA, TSA, and JWA. CMAR's designated personnel must successfully complete the badge acquisition process, unless other arrangements have been coordinated by the COUNTY Project Manager.

25.4. BADGE HOLDER REQUIREMENTS AND RESPONSIBILITIES.

The Federally approved security program for JWA requires that each person issued a JWA security badge is made aware of his/her responsibilities regarding the privilege of access to restricted areas of JWA. All persons within the restricted Air Operations Area of JWA are required to display, on their person, a JWA security badge unless they are specifically exempted for safety reasons or they are under escort by a properly badged individual. When working in a secure area, each badged person is responsible for challenging any individual who is not properly displaying a JWA issued or approved and valid ID badge. Any person who is not properly

displaying or who cannot produce a valid JWA security badge must immediately be referred to the Sheriff's Department - Airport Police Services Office for proper handling.

The JWA security badge is the property of the County of Orange and must be returned upon termination of CMAR personnel employment and/or termination or expiration of Contract at JWA. The loss of a badge shall be reported within 24 hours to the Sheriff's Department - Airport Police Services by calling (949) 252-5000. A person who loses their badge shall be required to pay a fee before receiving a replacement badge. The charge for lost badge replacement will be at the current posted rate located in the JWA Administration Office. A report shall be made before a replacement badge will be issued.

The JWA security badge is not transferable.

In the event that a CMAR's badge is not returned to JWA upon termination of CMAR's personnel and/or termination or expiration of Contract, \$250.00 per badge will be charged to the CMAR. CMAR's Final Payment may be held by JWA or a deduction from the CMAR's payment(s) may be made to ensure that funding is available to cover the fine in the event that badges are not returned.

25.5. PUBLIC SAFETY

The CMAR shall have at the work site, copies or suitable extracts of Construction Safety Orders and General Industry Safety Orders issued by the State Division of Industrial Safety. The CMAR shall comply with provisions of these and all other applicable laws, ordinances, and regulations.

Payment for performing all Work necessary to provide safety measures shall be included in the prices bid for other items of Work, except where separate bid items for excavation safety are provided.

25.6. PUBLIC RELATIONS

All inquiries of any kind pertaining to the Project, presented to the CMAR in any form including, but not limited to, written or oral requests, and originating from any media source, such as the press and other print publications, television or radio networks, the World Wide Web, or instruments thereof, community or public interest groups, or any other limited or mass media systems, shall be immediately referred by the CMAR to JWA. The CMAR and its Subcontractors shall not disseminate information on behalf of the County or JWA pertaining to the nature, scope, or details of the Project without the prior specific written consent of JWA.

The CMAR shall not release information in any manner or form on behalf of the County or JWA pertaining to the nature, scope, or details of the Project in any organized public or private event, setting, or ceremony without the prior specific written consent of JWA.

The CMAR and any of its Subcontractors at any tier shall not publish, or allow to be published, any press releases without prior written authorization from County.

26. QUALITY CONTROL REQUIREMENTS

26.1. GENERAL

26.1.1. The CMAR is responsible and shall provide Quality Control (QC) for all aspects of the Work.

26.1.2. The CMAR shall provide a licensed and independent testing and inspection agency to verify compliance with the requirements specified or indicated in the Contract Documents. These services do not relieve the CMAR of its responsibility for compliance with the Contract Documents.

26.2. DEFINITIONS

As used throughout this section, the following terms shall have the meanings as indicated:

26.2.1. Quality Assurance (QA). Tests, inspections, procedures, and related actions performed by JWA to verify accuracy, as well as consistency, in CMAR's QC Program.

26.2.2. Quality Control Services. Tests, inspections, procedures, and related actions prior to, during, and after execution of the Work to evaluate that completed construction complies with requirements. CMAR is fully responsible for all specified QC tests and inspections in a manner depicted in the QC Plan. No separate payment shall be made by JWA for any testing, inspection, or other QC activities required by its QC Plan.

26.2.3. Testing and Inspection Agency. An independent contractor/agency working under the direction of the Quality Control Manager and hired by the CMAR that is engaged to perform inspections, as well as perform specific tests, inspections, or both. The CMAR shall be responsible for ensuring cooperation between trades, as well as ensuring that adequate time is allotted for the testing to be performed and the results to be received and reviewed whenever necessary.

26.2.4. Fabricator. A firm experienced in producing products similar to those indicated for this Project and with a record of successful in-service performance, as well as sufficient production capacity to produce required units.

26.2.5. Installer. A firm or individual experienced in installing, erecting, or assembling Work similar in material, design, and extent to that indicated for this Project, whose Work has resulted in construction with a record of successful in-service performance.

26.2.6. Manufacturer. A firm experienced in manufacturing products or systems similar to those indicated for this Project and with a record of successful in service performance.

26.2.7. Professional Engineer. A professional engineer who is legally qualified to practice in California and who is experienced in providing engineering services of the kind indicated. Engineering services are defined as those performed for installations of the system, assembly, or products that are similar to those indicated for the Project in material, design, and extent.

26.2.8. Specialist. Certain sections of the Specifications require that specific construction activities shall be performed by entities who are recognized experts in those operations. Specialists shall satisfy qualification requirements indicated and shall be engaged for the activities indicated. Requirements for specialists shall not supersede building codes and similar regulations governing the Work, nor interfere with local train-union jurisdictional settlements and similar conventions.

26.2.9. Preconstruction Testing. Testing that is conducted at the source by a Certified Testing agency employed by the manufacturer that performs preconstruction testing for compliance with contract specifications.

26.2.10. Quality Control (QC) Manager. A person employed by the CMAR to manage and ensure that procedures submitted in their Quality Control Program are adhered to. The Quality Control Manager shall be employed by the CMAR and will be an independent, dedicated entity within the organization with no other responsibilities but quality.

26.3. CMAR'S QUALITY CONTROL RESPONSIBILITIES

26.3.1. CMAR shall commit its full resources as needed, to provide on-site Quality Control (QC) management so as to meet the demands of the Work and as requested by JWA.

26.3.2. The CMAR shall submit for approval a QC Plan listing requirements for all construction activities as specified in the Specifications.

26.3.3. The CMAR shall provide specified tests, inspections, and related procedures as stipulated in the Contract Documents and QC submittal; however, these do not limit the CMAR's responsibility to take further actions deemed necessary, including any additional testing, or that facilitates compliance with the Contract Documents.

26.3.4. The CMAR shall provide an outstanding issues report at the weekly progress meetings and shall be prepared to discuss all outstanding quality issues and CMAR's proposed corrective actions.

26.3.5. The CMAR shall provide products and systems complying with specific performance and design criteria required by the Contract Documents.

26.3.6. The CMAR shall submit a written request for additional information to the Construction Manger if provisions stipulated in the Contract Documents are not sufficient to perform services or provide certifications required.

26.3.7. The CMAR shall be responsible for Costs for re-testing and re-inspecting Work deemed noncompliant.

26.3.8. The CMAR shall submit a certified written daily report into Oracle Primavera Unifier of all QC testing performed and documentation of results, as well as corrective actions to be performed, as described in the Quality Control Documentation section.

26.3.9. The CMAR shall be responsible for testing and inspection requested by the CMAR that is not required by the Contract Documents.

26.3.10. The CMAR shall provide additional QC services required due to changes in the Work. The cost for additional testing will be included in the CMAR's overhead costs provided in the allowable change order mark-ups.

26.3.11. The CMAR shall be responsible for overtime expenses and schedule delays incurred by JWA as a result of executing QC services.

26.3.12. The CMAR shall coordinate the sequence of activities to accommodate required QC services with no delay and avoid costs associated with removing and replacing construction to accommodate testing and inspection.

26.3.13. CMAR shall submit a Quality Control Plan, in accordance with the Quality Control Plan section. The plan will be updated and be submitted with any Construction Schedule updates.

26.3.14. CMAR will coordinate and conduct Pre-Activity Meetings prior to the start of any new activities of construction. These will include a review of the pertinent specification section, safety procedures to be employed, schedule and materials to be used, and their approval status. The Quality Control Manager shall notify JWA and its Construction Manager (CM) of scheduled Pre-Activity meetings at least 3 days in advance.

26.3.15. CMAR shall schedule and chair weekly Quality Control Meetings. CMAR shall submit an agenda for approval prior to the first Quality Control Meeting taking place. Quality Control meetings will include, at a minimum, safety requirements; a review of the two-week look-ahead and its interaction with testing or inspection duties required; and a review of the QC deficiency list and proposed corrections.

26.3.16. The CMAR shall notify JWA at least 3 days in advance of any testing or inspection required by the Contract Documents.

26.3.17. The CMAR shall verify dimensions as an integral part of any operation as necessary.

26.3.18. The CMAR shall comply with the Specification requirements for Division 01 Section - Cutting and Patching upon completion of testing, inspecting, sample taking, and similar services; repair damaged construction; and restore substrates and finishes as required.

26.3.19. The CMAR shall repair and protect construction exposed by or for QC service activities.

26.3.20. CMAR is to supply mockups or test panels prior to beginning work on elements of construction required by the Contract.

26.4. QUALITY CONTROL SUBMITTALS

26.4.1. Qualification Data. The CMAR shall assure that the testing agency (the "Testing Agency") demonstrate its capabilities, experience, and proof of qualifications in the form of a recent report on the inspection of the testing agency by a recognized authority as documented by ASTM E548, and that specializes in types of tests and inspections to be performed.

26.4.2. Quality Control Plan. The CMAR's QC Plan shall include, at a minimum:

- a) An organizational chart complete with names of individuals, including the dedicated Quality Control Manager, responsible for implementation of the CMAR's QC Plan.
- b) A Project-specific inspection and testing plan that lists and describes the inspections that the CMAR will conduct, all tests that will be performed, their frequencies, and acceptance criteria. The list shall identify items that are to be inspected and/or tested by the CMAR, Supplier, fabricator, and Testing Agency (or Agencies).
- c) Identification and resume of the individual within the CMAR's organization who will be responsible for Quality, including his/her role and responsibility (the "Quality Control Manager"). Such individual must have at least 5 years of experience as a Quality Control Manager in airport construction.

- d) Upon completion of Construction Manager's review of the CMAR's QC Plan, there may be a meeting to resolve any outstanding issues among the parties and to coordinate inspection efforts by all JWA representatives and Consultants.

26.4.3. Schedule of Tests and Inspections. The CMAR shall include the following items:

- a) Specifications Section number and title
- b) Description of test and inspection
- c) Identification of applicable standards
- d) Identification of test and inspection methods
- e) Frequency of tests and inspections required
- f) Time schedule or time span for tests and inspections
- g) Entity responsible for performing tests and inspections
- h) Requirements for obtaining samples
- i) Document, register, or otherwise log approvals of testing and inspections

26.5. QUALITY CONTROL DOCUMENTATION

The CMAR shall maintain current QC records of all inspections and tests performed. These records shall include factual evidence that the required inspections or tests have been performed, including type and number of inspections or tests involved; results of inspections or tests; nature of defects, deviations, causes for rejection; proposed remedial action; and corrective actions taken.

These records shall be maintained by the Quality Control Manager.

These records must cover both conforming and defective or deficient features, and they must include a statement that all supplies and materials incorporated in the Work are in full compliance with the terms of the Contract. Legible copies of these records shall be furnished to JWA, and its designated representative, daily. The records shall cover all Work placed subsequent to the previously furnished records and shall be verified and signed by the CMAR's Project Manager. Failure of the CMAR to maintain, verify, and provide JWA with the records described herein shall be grounds for the County to reject, in its entirety, any request for payment by the CMAR, withhold any payment due to the CMAR, and order that all Work be stopped.

Specific CMAR QC records required for the Contract shall include, but are not necessarily limited to, the following records:

26.5.1. Daily Inspection Reports. CMAR QC personnel shall maintain a daily log of all inspections performed for both CMAR and Subcontractor operations on a form acceptable to the Engineer. These will include all testing and certifications performed at the source by the manufacturer. These daily reports shall provide factual evidence and certify that continuous QC inspections have been performed and shall, at a minimum, include the following:

- a) Date of Issue

- b) Project Title and Number
 - c) Name, address, and telephone number of testing agency
 - d) Dates and locations of samples and tests or inspections
 - e) Names of individual making tests and inspections
 - f) Description of the Work and any test and inspection method
 - g) Identification of Product and Technical specification item number and description
 - h) Complete test or inspection data
 - i) Test and inspection results and interpretation of test results
 - j) Ambient conditions at the time of sample taking, and comments or professional opinion on whether statement certifying testing and inspection tested or inspected Work complies with the Contract Document requirements
 - k) Name and signature of laboratory inspector
 - l) Recommendations on retesting and re-inspecting
 - m) Compliance with approved submittals materials and equipment received
 - n) Safety inspection
- 26.5.2. The CMAR shall assure that the daily inspection reports shall identify inspections conducted, results of inspections, noncompliant Work location and nature of defects found, causes for rejection, and remedial or corrective actions taken or proposed.
- 26.5.3. The CMAR shall cause the daily inspection reports to be signed by the responsible QC technician and the CMAR's Project Manager, or other principal designee. The CMAR shall submit to JWA, and its designated representative, through Oracle Primavera Unifier at least 1 copy of each daily inspection report on the second workday following the day of record.
- 26.5.4. Daily Test Reports. The CMAR shall be responsible for establishing a system that will record all QC test results. Daily test reports shall document the following information:
- a) Technical specification item number and description;
 - b) Test designation;
 - c) Location;
 - d) Date of test;
 - e) Control requirements;
 - f) Test results;
 - g) Causes for rejection;

- h) Suggested remedial actions; and
- i) Retests

26.5.5. Test results from each day's work period shall be submitted to the JWA Project Manager prior to the start of the next day's work period.

26.5.6. The CMAR shall be responsible to assure that the Testing Agency complies with the following:

- a) Submit a certified written report of each test, inspection, and similar QC service to the JWA Project Manager, with a copy to the CMAR.
- b) Interpret tests and inspections and state in each report whether tested and inspected Work complies with or deviates from the Contract documents.
- c) Submit resume of all testing personnel performing testing and inspections for approval prior to performing any tests or inspections.

26.5.7. Permits, Licenses, and Certificates. The CMAR shall submit copies of permits, licenses, certifications, inspection reports, releases, jurisdictional settlements, notices, receipts, for fee payments, judgments, correspondence, records, and similar documents, established for compliance with standards and regulations bearing on performance of the Work for the County's records.

27. CONSTRUCTION TESTING

27.1. OWNER'S CONSTRUCTION TESTING RESPONSIBILITIES

The County may engage a qualified testing agency to perform testing services for QA services. JWA retains the right to require the use of a different testing agency for retesting and re-inspecting.

27.2. CMAR'S CONSTRUCTION TESTING RESPONSIBILITIES

27.2.1. The CMAR shall engage an independent qualified Testing Agency to perform testing services for QC services.

27.2.2. The CMAR shall not employ the same entity engaged by the County, unless agreed to in writing by the County.

27.2.3. The CMAR shall be responsible for costs incurred during retesting and re-inspecting construction that replaces or is necessitated by Work that failed to comply with the Contract documents.

27.2.4. The CMAR shall be responsible for overtime expenses and schedule delays accruing as a result of executing QC services and shall not be charged to the County.

27.2.5. The CMAR shall coordinate sequence of activities to accommodate required QC services with a minimum of delay and to avoid necessity of removing and replacing construction to accommodate testing and inspection.

27.2.6. The CMAR shall assure that the Testing Agency will provide the following:

- a) Cooperation with JWA, its Project Manager, Program Manager, Construction Manager, Commissioning Agent, and CMAR in performance of duties.
- b) Provide qualified personnel to perform required tests and inspections.
- c) Notify JWA, its Project Manager, Program Manager, Construction Manager, Commissioning Agent, and CMAR promptly of irregularities or deficiencies observed in the Work during performance of its services.
- d) Provide tests and inspections and state in each report whether tested and inspected Work complies with or deviates from requirements.
- e) Submit a written report of each test, inspection, and similar QC services through the CMAR.
- f) Not release, revoke, alter, or increase requirements of the Contract Documents or approve or accept any portion of the Work.
- g) Not perform any duties of CMAR.
- h) Attend Project progress meetings as requested by JWA.
- i) Cooperate with other agencies performing required tests, inspections, and similar QC services, and provide reasonable auxiliary services as requested.
- j) Notify other agencies sufficiently in advance of operations to permit assignment of personnel as required, and provide the following:
 - (1) Access to the Work.
 - (2) Incidental labor and facilities necessary to facilitate tests and inspections.
 - (3) Adequate quantities of representative samples of materials that require testing and inspecting.
 - (4) Assist such other agencies in obtaining samples.
 - (5) Facilities for storage and field curing of test samples.
 - (6) Delivery of samples to testing agencies or arranging for pickup of test samples after normal business hours.
 - (7) Preliminary design mix proposed for use for materials mixes that require control by testing agency.
 - (8) Security and protection for samples and for testing and inspecting equipment at Project site.

27.3. CORRECTIVE ACTION REQUIREMENTS

- 27.3.1. The CMAR shall establish detailed requirements in its QC Program that assures the County that actions will be taken whenever a process is determined to be out of control or out of tolerance.

The requirements for corrective action shall include both general requirements and individual items of Work contained in the technical specifications.

- 27.3.2. The CMAR shall provide the detail of its QC Program detailing how the results of QC inspections and tests will be used for determining the need for corrective action and shall contain clear sets of rules to gauge when a process is out of control and the type of correction to be taken to regain process control.
- 27.3.3. The CMAR shall establish and utilize statistical QC charts for individual QC tests when applicable or required by the technical specifications or Contract Documents. The requirements for corrective action shall be linked to the control charts.

27.4. NONCOMPLIANCE

- 27.4.1. The County shall notify the CMAR of any noncompliance with any of the foregoing requirements.
- 27.4.2. The CMAR shall, after receipt of such notice, immediately take corrective action. Any notice, when delivered by the Engineer or his/her authorized representative to the CMAR or his/her authorized representative at the site of the Work, shall be considered sufficient notice.
- 27.4.3. In cases where QC activities do not comply with either the CMAR's QC Program or the Contract Documents, or where the CMAR fails to properly operate and maintain an effective QC Program, as determined by JWA, its Program Manager, Construction Manager, or Commissioning Agent, JWA or its Construction Manager may:
- a) Order the CMAR to replace ineffective or unqualified QC personnel or Subcontractor; or
 - b) Order the CMAR to stop operations until appropriate corrective actions are taken.

28. HEALTH AND SAFETY PROVISIONS

The CMAR shall at all times conduct all operations under the Contract in a manner to avoid the risk of bodily harm to persons or risk of damage to any property. The safety provisions of applicable laws and building and construction codes shall be observed. Work, materials, and equipment used will comply with Title 8 California Code of Regulations (CCR) and the Federal Occupational Safety & Health Administration (OSHA) requirements.

28.1. COMPLIANCE

The CMAR shall have at the work site copies of or suitable extracts of "Construction Safety Orders" and "General Industry Safety Orders" issued by the California State Division of Industrial Safety. The CMAR shall comply with the provisions of these and all other applicable laws, ordinances, and regulations including, but not limited to:

28.1.1. REQUIREMENTS OF THE STATE OF CALIFORNIA INCLUDING CAL/OSHA:

Comply with applicable and pertinent recommendations contained in State of California, California Administrative Code, Title 8, Industrial Relations, Chapter 3.2 California Occupational Safety and Health Regulations (CAL/OSHA), Chapter 3.3 Occupational Safety and Health Appeals Board, Chapter 3.5 Occupational Safety and Health Standards Board, Chapter 4

Division of Industrial Safety (Industrial Safety Orders), published by Office of Administrative Hearings, Department of General Services, current edition.

28.1.2. OSHA COMPLIANCE:

All articles and services covered by this specification shall meet or exceed the safety standards established under the Federal Occupational Safety and Health Act, 29 U.S.C. 600, *et seq.*, together with all amendments in effect as of the date of this specification.

28.1.3. CMAR shall fully comply with Title 8 CCR, Subchapter 7. General Industry Safety Orders Group 16. Article 109, and Section 5194, Appendices B&C, and shall be responsible for protecting employees and invitees from all hazardous chemicals known to be present in the workplace. CMAR shall provide their employees and the Airport with Manufacturers' Material Safety Data Sheets (MSDSs) for all hazardous materials that shall be furnished to or used on this Project.

28.2. OPERATIONAL REQUIREMENTS

28.2.1. CMAR shall comply with FAA Advisory Circular AC 150/5370-2E, or the most recent edition, "Operational Safety on Airports during Construction Activity," all of which must be fully complied with during the term of the Contract.

28.2.2. The height and use of any construction equipment and cranes shall be subject to conditional approval by FAA. At least 60 days prior to beginning construction, the CMAR shall submit to JWA information regarding the height of the tallest equipment (greater than 15 feet) planned to be used at various points on the site, when the equipment will be used, and the specific location at the airport where the equipment is planned to be used. The CMAR will assist JWA with the preparation of FAA Form 7460 (Notice of Proposed Construction or Alteration) and JWA will submit the form for conditional approval by FAA. As a guideline, the CMAR is advised of the following draft conditions for the use of tall construction equipment and cranes that will be placed on the FAA conditional approval for their temporary use at JWA:

28.2.3. The use of tall construction equipment and cranes shall be coordinated with the Manager of the Airport Traffic Control Tower (ATCT) to ensure that the appropriate Notice to Airmen (NOTAM) is issued.

28.2.4. All cranes and tall equipment shall be equipped with checkered flags during the daytime and equipped with red lights on the boom at all times and for nighttime use, and lowered during periods of non-use. The flag shall be not less than 3 feet square consisting of five 1-foot squares of international orange color and four 1-foot squares of white color. Obstruction marking and lighting shall be installed in accordance with the provisions of FAA Advisory Circular 70/7460-1K, Obstruction Marking and Lighting.

28.2.5. Construction cranes shall not impair the line of sight view from the ATCT at any time or interfere with airport operations at any time. The final determination of the allowable heights and conditions of approval will be made by FAA. CMAR shall operate all construction cranes and equipment subject to this determination in compliance with the conditions and as directed by JWA. Crane booms or other equipment shall not exceed a height of 25 feet without prior permission of the Airport Operations Representative. Permission for the operation of a crane will not be granted when visibility is less than 3 miles or during thunderstorm activity.

28.3. COMMUNICATION WITH THE FAA CONTROL TOWER

The CMAR is advised that all communications with FAA Tower personnel will be made through the County and not by the CMAR. This is important, as the number of people having contact with the tower should be limited to prevent a misunderstanding or conflicting information. The Airport will have direct radio contact with the FAA Tower, and all communication regarding the use of construction equipment and cranes shall be made by JWA.

28.4. TRENCH EXCAVATION

28.4.1. Before excavating any trench 5 feet or more in depth, the CMAR is to submit to JWA a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for the protection from the hazards of caving ground during the excavation of such trench. If the plan varies from the Construction Safety Orders for shoring systems, then it will be prepared and stamped by a registered Civil Engineer. No excavation will start until JWA has accepted the plan and the CMAR obtains a permit from the state's Division of Industrial Safety. A copy of the permit is to be submitted to JWA.

28.4.2. All excavation and trenching activities at JWA must be supervised by a competent person as defined by CAL-OSHA and conducted in accordance with Title 8 CCR, Subchapter 4. Construction Safety Orders, Article 6 Excavations (Sections 1539-1547). The CMAR is responsible for contacting the local utility locating agency. The CMAR shall have an additional second independent entity conduct utility locations to confirm the local utility locating agencies' initial analysis. The CMAR must follow all erosion control procedures and ensure all dust mitigation measures are in place.

29. HEALTH, SAFETY, AND ENVIRONMENTAL (HSE) REQUIREMENTS

JWA requires that all Contractors and Subcontractors impose the same priority and emphasis on Health, Safety, and Environment (HSE) protection as JWA imposes on its own employees. Contractors must comply with all applicable contractor, client, State, and Federal health, safety, and environmental and FAA regulations.

Certain specific JWA HSE requirements may exceed CAL-OSHA and Federal OSHA standards or the CMAR's normal HSE procedures. CMAR is responsible for reviewing and implementing the most stringent HSE requirements set forth in this section. CMAR is also responsible for ensuring that all lower-tier Subcontractors review and implement these HSE requirements.

29.1. DOCUMENTATION AND REPORTING REQUIREMENTS

29.1.1. The CMAR shall submit for approval, in accordance with the Agreement, a comprehensive Project-Specific Safety Plan outlining code of safe practices and procedures as described in the Project-Specific Safety & Health Plan Guidelines in the General Conditions, for all construction activities including, but not limited to, trenching and shoring, fall protection, confined space entry, hazardous materials, night work, and lockout/tagout. Such Plan shall provide a list of competent persons for activities for which competent persons are defined and are required by State law and shall also describe Airport security procedures including the ANSI A.10 standard for the Protection of the Public during Construction Activities.

29.1.2. The Project-Specific Safety Plan shall contain directions to the closest hospital and provide a map showing the Airport and the location of hospitals. Information regarding spill response and

hazardous materials is to be included. The Plan shall identify the project-included limits, describe operational safety during construction, type of construction activities, and aircraft movement areas.

- 29.1.3. The review and approval shall not relieve the CMAR of its responsibility for safety, nor shall such review be construed as limiting in any manner the CMAR's obligation to undertake any action that may be necessary or required to establish and maintain safe working conditions at the airport. The Project-Specific Safety Plan shall comply with the safety and health rules governing the conduct of its employees, agents, consultants, and Subcontractors at and about the Project site. CMAR agrees that it shall ensure that its supervisory personnel, employees, agents, and Subcontractors comply strictly with such rules. JWA reserves the right to, from time to time, revise any such rules and the CMAR shall comply fully with such rules as revised in accordance with the foregoing provisions.
- 29.1.4. CMAR is required to submit the information in [Exhibit 1](#), CMAR HSE Data Form, along with the Project-Specific Safety Plan.
- 29.1.5. A Project-specific HSE Action Plan or, in the case of hazardous waste operations, a Health and Safety Plan (HSP), must be generated by the CMAR mobilizing on the Project. Such Plan must include a Project-specific Emergency Response Action Plan in accordance with JWA, State, Federal, and FAA requirements.
- 29.1.6. If, at any time, the Project is regulated as a hazardous waste or emergency response operation, as defined in 29 CFR 1926.65 or 29 CFR 1910.120, then the CMAR has the choice of adopting the site HSP or developing a similar plan that is, at a minimum, equally protective and compliant. CMAR site personnel shall read and acknowledge by signature that they will comply with the applicable HSP.
- 29.1.7. CMAR shall furnish to JWA the names and qualifications of the Competent Persons and Qualified Persons who may be required for their scope of Work by Federal, State, or local regulations. Examples include Competent Persons and/or Qualified Persons for steel erection, excavation, scaffold erection, confined space entry, annual crane inspections, horizontal lifeline systems, etc.
- 29.1.8. CMAR shall include a First Aid Register form in the Project-Specific Safety Plan and shall be responsible for maintaining the Register for all employee injuries and illnesses reported on the Project.
- 29.1.9. Contractor must immediately inform JWA and Construction Managers of any CAL-OSHA, United States Environmental Protection Agency (EPA), South Coast Air Quality Management District (SCAQMD), or other HSE regulatory agencies' inspections or other actions involving the Contractor's Work.
- 29.1.10. Contractor employees must promptly report all potentially Work-related incidents, injuries, or illnesses to their Supervisor or their Site HSE Representative.
- 29.1.11. Contractor must promptly report all potential Work-related incidents, injuries, or illnesses to JWA and its Project Manager after the appropriate level of medical assistance has been arranged.
- 29.1.12. Injuries, illnesses, or any incident involving a third party or a member of the general public must be promptly reported by Contractor to JWA and its Project Manager.

- 29.1.13. Incidents involving potential exposures to hazardous materials and releases or spills of such materials must be promptly reported by Contractor to JWA in accordance with the section on Spills.
- 29.1.14. Accident investigation reports for all Contractor accidents, injuries, and Work-related illnesses shall be forwarded to JWA and the JWA Project Manager within 24 hours of the occurrence.
- 29.1.15. Contractor's employees are required to participate in documented, daily task-specific Safe Plans of Action ([Exhibit 3](#)) and regular Safety Observation Reports ([Exhibit 4](#)).
- 29.1.16. Contractor will conduct weekly HSE meetings, and signed copies of the meeting reports shall be made available to JWA.
- 29.1.17. Contractor shall complete the Monthly Contractor's Accident Statistics Report ([Exhibit 2](#)) for each month in which they conduct Work on the Project. These reports are due to JWA by the fifth business day of the month for the preceding month.
- 29.1.18. Contractor shall submit a shoring and fall protection plan to JWA and its Construction Manager's HSE representative for approval prior to starting any concrete operations.

29.2. HSE TRAINING/COMMUNICATION REQUIREMENTS

- 29.2.1. Contractor employees must complete HSE training as required by applicable Contractor, JWA, State, and Federal HSE requirements. Such training may include, but is not limited to, a site-specific orientation and quiz provided by the Contractor, OSHA 10-Hour Construction Safety & Health Outreach Program, Safety Leadership Training for Supervisory Personnel, and ergonomics training. Documentation of all HSE training shall be maintained at the Project site by the Contractor and provided to JWA upon request.
- 29.2.2. Workers involved with hazardous waste operations, as defined by 29 CFR 1910.120 or equivalent applicable State regulations, shall have met, prior to any fieldwork activity or exposure, the training requirements of the standard. Certification of individual worker training shall be provided to JWA prior to commencing Work.
- 29.2.3. Contractor must certify that all operators of mobile equipment, such as forklifts, cranes, boom lifts, and buses, have been trained and/or certified on the proper operation of the equipment. Copies of this training and certification shall be maintained on the Project site by the Contractor and forwarded to JWA prior to the employee being allowed to operate the equipment. Mobile crane operators must be qualified on each specific crane (type and rating) that they are assigned to operate through a testing and qualification procedure recognized by JWA. All crane operators shall possess an NCCCO certification or equivalent for the specific crane they are operating.
- 29.2.4. Contractor must establish a prompt and effective method of providing HSE communications, such as HSE alerts, advisories, bulletins, and regulatory updates, to all site employees.

29.3. BASIC HSE REQUIREMENTS

The following HSE rules list JWA's fundamental requirements for Contractor HSE. When there are multiple rules that may apply, the most stringent (i.e., Contractor, JWA, State, or Federal) HSE regulations that govern the Work shall be followed.

- 29.3.1. Contractor shall, prior to commencing construction, designate a full-time onsite HSE Representative with the necessary qualifications and experience (i.e., a degree or college coursework from an accredited university or college program, and/or equivalent experience, and/or appropriate industry/professional certification) to supervise the implementation and monitoring of all safety precautions and programs related to the Work. At a minimum, the HSE Representative shall submit a Project-Specific Safety Plan for approval, shall make routine daily inspections of the site, and shall hold safety meetings with Contractor personnel, Subcontractors, and others as applicable. The HSE Representative shall liaise and coordinate activities with the TSA Safety Coordinator and JWA's HSE representative.
- 29.3.2. Contractor shall also obtain the services of a certified Industrial Hygienist for regular monitoring of dust and other conditions in and around the site, especially in the TSA facility.
- 29.3.3. The Contractor shall conduct a preconstruction and Safety Kick-off meeting with their personnel and their Subcontractors, at which time a list of safety considerations will be discussed.
- 29.3.4. The Contractor shall hold safety meetings at the start of the project, every 7 days thereafter, at the beginning of each phase of the Project, at the introduction of new personnel onsite, and when new security procedures are established. The meeting shall cover the items in the Project-Specific Safety Plan and review security procedures.
- 29.3.5. Hard hats (ANSI Z89.1 or equivalent) shall be worn at all times regardless of the worker's activities. This includes welders when using welding hoods.
- 29.3.6. Shirts with at least 4-inch sleeves shall be worn at all times. No tank tops are allowed. Loose or frayed clothing, loose or hanging long hair, ties, rings, body jewelry, etc. shall not be worn around moving machinery or other areas where they may become tangled.
- 29.3.7. Hearing protection shall be worn when exposures exceed 85 dBA.
- 29.3.8. Hard-toe footwear (ASTM F2412 or F2413, or equivalent) shall be worn by all workers when in the construction environment or in areas where there is a danger of foot injuries due to falling, rolling, or piercing objects or when employee's feet are exposed to electrical hazards.
- 29.3.9. Safety glasses with rigid side shields (ANSI Z87.1, or equivalent) shall be worn at all times when in the construction environment and in any area where eye hazards exist. This includes under welding hoods and for workers with prescription eyewear. Safety goggles may be worn over non-safety prescription eyewear.
- 29.3.10. Face shields must be worn in addition to safety glasses when grinding, chipping, jack hammering, and power sawing or when conducting other tasks that involve such face and/or eye hazards.
- 29.3.11. Gloves, appropriate for the hazard present, shall be worn when hands are exposed to absorption of harmful substances, cuts, abrasions, punctures, biological hazards, chemical burns, thermal burns, or harmful temperature extremes.
- 29.3.12. Contractor shall comply with the 100% Fall Protection Policy, which states "anytime employees are working from an unprotected elevation of six feet or more, fall protection must be used." Working as stated above means while traveling, stationary, or at any time exposed to a fall from a surface not protected by approved handrails, guardrails, or some other approved fall elimination device. JWA prohibits the use of positioning devices as the sole means of fall protection when

- working above 6 feet. Positioning device means a body harness system rigged to allow a worker to be supported on an elevated vertical surface, such as a wall, and work with both hands free.
- 29.3.13. The use of “passive” systems, such as safety nets, monitoring systems, or controlled access zones, as the sole means of fall protection when working above 6 feet is prohibited. Safety nets are prohibited as an independent means of fall protection.
- 29.3.14. Workers in mechanical lifts, including scissor lifts, boom trucks, suspended or supported personnel baskets, articulating lifts, and other similar devices must use fall protection equipment at all times. Handrails on lifts may only be used for fall protection anchor points if approved by the manufacturer. Such devices shall not be used as elevators to transport workers to different Work locations.
- 29.3.15. All portable ladders must be clearly marked with the Contractor/ Subcontractor’s name.
- 29.3.16. The common types of portable ladders are: fiberglass or reinforced plastic ladders. Metal ladders are not allowed on site. It is not the purpose of this program to specify all the details of construction for all the portable ladders. The scope is to provide information on the most common types used. See, the American National Standard Institute, ANSI A14.1-1994, ANSI A14.2-1990, *et al.* provided in Title 8, CCR, Subchapter 4 CSO, Article 25 Ladders, Sections 1675-1678.
- 29.3.17. The safest means of worker access for overhead Work (e.g., rolling scaffolds, mechanical lifts, platform ladders) shall be considered as alternatives to the use of portable ladders. The top of all ladders shall be tied to a substantial anchor point and extend at least 3 feet above the landing before use, and a second worker must hold the ladder until the tie-off is secure.
- 29.3.18. Detailed requirements relating to fall protection for employees working on scaffolds are provided in Title 8 CCR, Subchapter 4 CSO, Article 21, Scaffolds – General Requirements, Sections 1635.1-1637, and Article 22, Scaffolds – Various Types, Sections 1640-1655. Anyone erecting, maintaining or using scaffolding shall also comply with the requirements set forth by this standard, as well as any applicable state or local safety or building code. Anyone who works on a scaffold must be trained to recognize hazards associated with the type of scaffold they are using and to understand the procedures to control or minimize these hazards.
- 29.3.19. Three-point contact is considered acceptable fall protection for fall exposures of less than 6 feet. Personal fall arrest system must be used for fall exposure above 6 feet.
- 29.3.20. Decking sections shall be laid tightly and immediately secured upon placement to prevent accidental movement. During initial placement, decking sections shall be placed in such a manner to ensure full support by structural members, and each piece shall be individually secured. Pre-installation or shake-out of multiple sections of decking using temporary methods of attachment, such as tack welding, is not allowed. The use of controlled decking zones is not allowed.
- 29.3.21. Equipment and tools shall not be altered in any way to adapt it for a job for which the manufacturer does not intend it, without written approval of the manufacturer. Only trained and authorized persons shall operate machinery or equipment.
- 29.3.22. All hand-held power tools must be equipped with constant pressure switches that will automatically shut off power when the pressure (worker’s hand) is removed. Hand-held power tools with on/off or lock-on switches are not allowed.

- 29.3.23. Ground Fault Circuit Interrupters (GFCIs) shall be used to protect all temporary electrical wiring and cord sets. The use of assured grounding (quarterly equipment inspections) in lieu of GFCIs is not an option.
- 29.3.24. Lock-out/tag-out procedures must be followed to minimize the potential exposure of workers to hazardous energy. Hazardous pipelines or vessels will be isolated by using a double block and bleed system or by blanking. Every effort must be made to de-energize electrical equipment to be worked on and other electrical equipment in the area that may affect the Work. If the equipment cannot be isolated or de-energized, then written approval must be obtained from JWA/Construction Manager before Work proceeds. Only “Qualified Electricians” may work on energized or potentially energized circuits. See Title 8 CCR, Subchapter 5 Electrical Safety Orders, and Groups 1 & 2 for qualified electrician requirements. JWA considers equipment rated at 480 volts and above as “high voltage.”
- 29.3.25. Contractor shall comply with the provisions of NFPA 70E, “Standard for Electrical Safety in the Workplace.” Contractors shall ensure that their employees are trained in safe work practices, that they are qualified, and that they are provided equipment, tools, and personal protective equipment (PPE) that are specified in NFPA 70E.
- 29.3.26. Confined space entry Work must follow a documented hazard assessment and safe work planning process, which must be submitted to JWA/Construction Manager for review prior to entry. Contractors that encounter potential confined spaces shall notify JWA Construction Manager’s HSE Representative. Each confined space will be evaluated by the Contractor’s Industrial Hygienist to determine its status as permit or non-permit required. All confined space activities at JWA must conform to the Confined Space standard 29 CFR 1910.146.
- 29.3.27. High-visibility reflective safety apparel/vests (ANSI/ISEA 107, Class 2, or 3) must be worn by all personnel in the construction environment. Vests are also required for other work that places personnel, such as flaggers, riggers, and survey crews, near mobile equipment.
- 29.3.28. Motor vehicles and mobile equipment shall never be left running without an operator at the controls. Proper use of seatbelts by all occupants is mandatory. Motor vehicle operators are prohibited from using a mobile phone or two-way radio. This applies to both hands-free and non-hands-free devices. If the use of such a device by the motor vehicle operator is necessary, then it is only allowed when the motor vehicle is stationary and in a safe location off the roadway.
- 29.3.29. For movement of mobile equipment in congested areas, a designated flag-person shall be in full view of the operator and shall direct the movement. In some cases, multiple flag-persons may be required.
- 29.3.30. Mobile lifts having any of the following characteristics or conditions are defined as “critical lifts” and require approval from JWA for their operation by Contractor:
- a) over 50 tons,
 - b) exceeding 85 percent of the crane’s capacity,
 - c) involving more than one crane,
 - d) of a non-rigid object,
 - e) over active Work areas,
 - f) in active process facilities,

- g) over pipelines,
- h) near power lines or public property, or
- i) in confined or tight Work areas.

29.3.31. All outriggers on mobile cranes must be fully extended and fully deployed when the crane is used to lift or support a load. If, due to configuration or physical location, all outriggers cannot be fully deployed, then calculations must be made from the “on-rubber” section of the load chart. On-rubber lifts and pick-and-carry operations require JWA/Construction Manager written approval.

29.3.32. Anti two-block devices that automatically disengage crane hoist/boom functions when the hook or block approaches the jib or boom tip are required on all cranes.

29.3.33. Multiple lift rigging (Christmas tree lift) is not allowed.

29.3.34. All skid-steer style loaders shall be fitted with a manufacturer-approved safety glass front door, front cage cover of equivalent effectiveness, or other device designed to keep the operator’s hands and arms inside the protective cage. Operators are also required to use a manufacturer-approved shoulder harness.

29.3.35. Smoking is allowed only in designated smoking areas that have been approved by JWA.

29.4. CERTIFICATION, INSPECTIONS, AND REGULATORY AGENCY PERMITS

29.4.1. Certain operations may require a JWA permit. Such activities may include, but are not limited to, hot Work, confined space/vessel entry, excavations, asbestos abatement, and lead abatement. The Contractor shall obtain a JWA permit for such operations when required.

29.4.2. Contractor is responsible for securing and complying with any permit required by state or local authority for specific activities such as excavations, heavy lifts, asbestos/lead abatement, air permits, water permits, and hazardous waste generation. Copies of all permits shall be forwarded to JWA prior to Work beginning.

29.4.3. A third-party certified inspector shall make a thorough annual inspection of all cranes and powered hoisting equipment. Cranes assembled onsite shall receive an annual inspection prior to being put into service. Documentation of all crane inspections shall be provided to JWA and must be maintained onsite by the Contractor.

29.4.4. All scaffolding must be inspected and tagged by a Competent Person prior to initial use, before each work shift, and after any event that could affect its structural integrity. Suspended scaffolds must receive documented daily pre-use inspections. Untagged scaffolds must not be used.

29.4.5. Mobile equipment must receive daily pre-use inspections, which will be documented. Examples include forklifts, backhoes, and personnel lifts/manlifts.

29.5. HAZARDOUS CHEMICALS

29.5.1. Contractors shall include planning for environmental compliance in the preparation of their HSP or HSE Action Plan. Issues to be considered include, but are not limited to, release reporting, air permits, water permits, asbestos/lead permits or notifications, hazardous waste generation and related disposal procedures, spill mitigation, and clean -up methods.

- 29.5.2. If hazardous materials (e.g. asbestos, lead, PCBs) are suspected to exist in an unidentified area, or are found in any place within the construction environment the Contractor shall immediately stop work and notify JWA and the Construction Manager. Contractor will initiate the abatement of any such hazardous materials that are the result of operations as required by law, prior to construction work continuing. Abatement of preexisting hazardous materials whether known or found during the course of the Work under this agreement will be the responsibility of the County. The County, at its option, may request the Contractor to submit a Request for Change Order for the abatement of hazardous materials under "Changes."
- 29.5.3. Contractor shall have a written Hazard Communication Program and comply with the requirements of that program. A copy of the program shall be forwarded to JWA and the Construction Manager prior to mobilization, and a copy shall be in the possession of the Contractor on the site.
- 29.5.4. Any potentially hazardous material or chemical brought onto the site shall be accompanied by an MSDS and other permits and reporting requirements described below. Copies of MSDSs and other reporting requirements shall be forwarded to JWA and the Construction Manager before the product is brought onto the site.
- 29.5.5. Small quantities (less than 10 gallons) of hazardous liquids, such as gasoline, diesel fuels, and solvents, brought onto the site shall be stored in a properly labeled safety container with a flame arrestor and self-closing lid.
- 29.5.6. JWA and its Construction Manager shall be notified before any chemical or material is used that could create foul-smelling, noxious, or toxic vapors or gases.
- 29.5.7. If Contractor spills, or detects a release, of a hazardous material on JWA property, it must report such condition immediately to the Orange County Sheriff at JWA at (949) 252-5000 and the Construction Manager as described in Spills section. Analytical testing may be necessary to determine the extent of the contamination and the acceptable cleanup level. Contractor shall clean up and restore the contaminated area to levels acceptable to JWA and any applicable regulatory standards. If the Contractor performs the cleanup, proper documentation, including manifests, for the disposal of the hazardous material, contaminated soil, and any other materials contaminated during the spill or release must be provided to JWA.
- 29.5.8. All accidents involving exposure to potentially hazardous materials and hazardous material releases (as defined by EPA-RCRA), whether or not caused by the Contractor, must be immediately reported to the Orange County Sheriff at JWA and the Construction Manager as described in Spills section. It is important to report all releases or exposures even though the incident may be considered minor or no adverse health effects or symptoms are apparent at the time.

29.6. RESPIRATORY PROTECTION

- 29.6.1. If Contractor plans to use respirators as a part of its Work operations, then Contractor is required to forward to JWA Project Manager a copy of Contractor's written Respiratory Protection Program. Refer to 8 CCR, Subchapter 7 GISO, Group 16, Article 107, Section 5144.
- 29.6.2. Contractor shall use wet cutting methods to eliminate the hazard of air-borne silica and other particles.

29.7. HSE SURVEYS

- 29.7.1. JWA will conduct periodic HSE surveys of the site. Any HSE discrepancy observed shall be reported to the appropriate Contractor representative for immediate correction.
- 29.7.2. These HSE surveys do not relieve the Contractor, or its Subcontractors, of their responsibility to self-inspect their Work and equipment and to conduct their Work in a safe and environmentally compliant manner.

29.8. PLANNING AND OBSERVATION PROCEDURES

To achieve JWA's goal of Zero Incidents, the following shall be implemented by the Contractor:

- 29.8.1. The Safe Plan of Action (SPA), the Task Awareness (TA), and the Safety Observation Report (SOR) process require each worker to receive on-the-job training from their direct Supervisor. Subcontractor employees shall also be trained and educated on their individual responsibilities contained in these tools by Contractor after mobilization.

29.8.2. SAFE PLAN OF ACTION

The SPA is developed by the crew assigned to perform the Work with guidance from their Supervisor ([Exhibit 3](#)). The Supervisor identifies the Work area and task to be performed and then leads the crew in developing an SPA.

Creating the SPA requires the Supervisor to solicit crew participation in identifying hazards and hazard control measures, such as PPE, training requirement, permits, and procedures.

Members of the team are required to sign the SPA document to indicate their understanding and agreement to follow the plan.

29.8.3. TASK AWARENESS

The Task Awareness (TA) meeting is a daily HSE briefing associated with the task(s) that are scheduled for the crew during the work shift.

These meetings generally take from 2 to 10 minutes and address the HSE measures specific to the tasks.

TA meetings shall be conducted at least daily and whenever a task presents a change of hazards from the previous tasks.

29.8.4. SAFETY OBSERVATION REPORTS

The SOR, [Exhibit 4](#), is a proactive process designed to identify and document HSE-related acts and conditions in the Work environment. All Contractor/Subcontractor's supervisors are required to participate in the SOR process by generating written SORs and turning them in to JWA Site/Project Management at least weekly.

The SOR allows any site worker to record observed proper or improper HSE practices and identifies the cause of any deficiencies so that corrective action can be taken.

29.9. ACCIDENT/INCIDENT INVESTIGATION

- 29.9.1. A formal accident investigation must be conducted when an accident occurs, including non-injury incidents, most first-aid type accidents, and environmental releases or spills.
- 29.9.2. In the event of a workplace accident, injury, or illness, the most important immediate actions are to provide medical assistance to those who may need it and to ensure the safety of others that may be affected or acting as emergency responders.
- 29.9.3. Securing the accident scene is essential to ensure an effective accident investigation. No materials or equipment shall be moved until a review of the accident is completed, except when securing equipment or materials that could result in further injury.
- 29.9.4. Obtain witnesses' names, permanent addresses, and signed statements of their complete factual observations ([Exhibit 6](#)).
- 29.9.5. All accident investigations must be documented using the Accident Investigation Report ([Exhibit 5](#)). All required reports shall be completed and copies provided within 24 hours to the JWA/Construction Manager.

29.10. DRUGS, ALCOHOL, AND CONTRABAND

- 29.10.1. Contractor shall implement a Drug, Alcohol, and Contraband Policy, including post-incident testing, which meets the requirements of JWA. JWA, except where prohibited by law, shall have access to Pre-access/Pre-assignment testing.
- 29.10.2. Post-incident testing is required of any worker involved in a Project-related workplace incident that results, or could have resulted, in injury to any person requiring medical treatment beyond first aid, any type of medical attention given by a third-party medical services provider (e.g., hospital, clinic, doctor), a motor vehicle incident, or property damage.
- 29.10.3. Post-incident testing must be conducted as soon as possible after the incident occurs.
- 29.10.4. Reasonable suspicion testing: Upon reasonable suspicion by Contractor or Subcontractor management that a worker is under the influence of a drug, alcohol, or other prohibited substance, the worker(s) shall be immediately removed from the Project and surrender their Project credentials. Personnel so removed may only be allowed to return with a negative test result and written permission of JWA.
- 29.10.5. Periodic random or unannounced testing: For workers randomly selected or chosen by job classification or worksite, the percentage of the workforce or the number of workers selected for testing shall be specified on a Project-specific basis and stated in the Project's HSP.
- 29.10.6. Possession or use of alcohol in any company-provided vehicle or on the Project site is prohibited.
- 29.10.7. Any worker whose drug or alcohol test is positive will be removed from the Project and required to surrender their Project credentials. Refusal to submit to drug or alcohol testing, or attempts to tamper with, adulterate, dilute, or otherwise tamper with a test sample will be treated the same as a positive test result.

29.10.8. Contractor shall adopt collection, chain-of-custody, and other related procedures consistent with sound industry practice.

29.10.9. JWA's drug and alcohol testing requirements may be more stringent than the Contractor minimums. If so, JWA requirements shall be enforced.

29.10.10. If JWA suspects that a worker is in possession of illegal drugs, alcohol, or contraband, JWA may request the individual to submit to a search of his or her person, personal effects, vehicles, lockers, and baggage. Any suspected contraband will be confiscated and turned over to law enforcement, as appropriate. JWA shall have the right to review the Contractor's Drug, Alcohol, and Contraband Policy and to audit the Contractor's implementation of their program at the jobsite.

29.10.11. Contractors shall comply with all applicable federal, state, and local alcohol and drug-related laws and regulations.

29.11. MEDICAL AND EXPOSURE MONITORING

29.11.1. In the event that the Contractor is involved with operations, such as those involving hazardous waste, asbestos or lead abatement, or certain carcinogenic compounds, the Contractor shall describe its medical and exposure monitoring procedures and its proposed compliance methods in their HSE Action Plan or HSP.

29.11.2. Employees involved in these operations shall have met, prior to any fieldwork activity or exposure, the medical requirements of applicable regulations or standards including, but not limited to, a baseline medical exam and periodic update exams, as required.

29.11.3. Employee medical requirements and limitations shall be considered prior to the use of certain types of PPE, such as respirators.

29.12. IMMINENT DANGER SITUATIONS

29.12.1. Upon discovery of any situation that may, in the opinion of JWA, JWA/Construction Manager/HSE representative, reasonably be expected to cause serious physical harm, illness, death, or significant environmental damage, shall suspend the related Work immediately. Work may resume only after the HSE concern(s) have been corrected, to the satisfaction of JWA. Examples of "imminent danger" situations may include, but are not limited to, the following:

- a) Falls from elevations
- b) Excavations not properly sloped or shored
- c) Electrocuting hazards
- d) Work activities posing injury hazards to the general public
- e) Operation of vehicles, machinery, or heavy equipment in an unsafe manner
- f) Improper Lock Out/Tag Out procedures

29.12.2. In addition to the immediate suspension of Work, the procedure for correction of imminent danger situations follows the "HSE Adherence Policy" set forth below.

29.13. HSE ADHERENCE POLICY

The following three-step, progressively administered system shall be followed to correct compliance problems; however, noncompliance issues may be cause for termination of the Contract.

29.13.1. Action Level One – A written “Notice of HSE Non-Compliance” (Exhibit 7) shall be issued by JWA or the Construction Manager if a Contractor fails to comply with an applicable HSE standard. JWA or the Construction Manager may inform other company officials.

29.13.2. Action Level Two – If item(s) of HSE noncompliance are not corrected by Action Level One, or if the Contractor repeatedly fails to comply with the applicable HSE regulations, then JWA/Construction Manager will issue a “Written Notice of Temporary Job Suspension” (Exhibit 8) to the Contractor. The Contractor’s Work may not resume until the Contractor has proposed corrective actions that are acceptable to JWA. Actions that may be considered include, but are not limited to:

- a) Removal of certain Contractor personnel from the project;
- b) Alteration of the Contractor’s job procedures; or
- c) Implementation of corrective action by JWA with back charges to the Contractor.

The Contractor shall not resume Work until JWA Management accepts the proposed corrective actions. Contractor shall be responsible for, and shall not have any right for additional time or compensation due to the stoppage.

29.13.3. Action Level Three – If Action Levels One and Two do not result in the Contractor’s HSE performance being brought into compliance, then Contract termination may result. JWA Management may terminate the Contract after verifying with JWA Site/Project Management that the HSE adherence procedure has been followed and after giving the Contractor applicable notice.

29.14. EXHIBITS

Exhibit 1, [Contractor HSE Data Form](#)

Exhibit 2, [Monthly Subcontractor HSE Statistics Report](#)

Exhibit 3, [Safe Plan of Action](#)

Exhibit 4, [Safety Observation Report](#)

Exhibit 5, [Accident/Incident Investigation Report](#)

Exhibit 6, [Witness Statement](#)

Exhibit 7, [HSE Notice of Non-Compliance](#)

Exhibit 8, [HSE Temporary Stop Work Notice](#)

Exhibit 9, [Project-Specific Safety & Health Plan Guidelines](#)

Exhibit 1 — Contractor HSE Data Form

Provide HSE Performance History for Last Three Full Years

Enter Year	20__	20__	20__
Workers Compensation Experience Modification Rate (EMR)			
If self-insured, provide employee work hours per claim			
Number of employee hours worked			
Number of fatalities (Column G on OSHA Form 300; provide explanation on separate sheet for each fatality)			
Number of cases involving days away from work (Column H on OSHA Form 300)			
Number of job transfer or restricted duty cases (Column I on OSHA Form 300)			
Number of “other recordable cases” (Column J on OSHA Form 300)			
Total of all cases above (fatalities, days away from work, transfers or restricted duty, and other recordable cases, i.e., the total of Columns G, H, I, and J)			
OSHA Incidence Rate (total recordable cases x 200,000/total work hours)			
Number of citations by OSHA and other HSE regulatory agencies (provide details for each on a separate sheet)			
Number of miles driven on company business			
Number of motor vehicle accidents			
Miles driven divided by number of vehicle accidents			

HSE Program

	Yes	No
Do you have a written hazard communication program?		
Do you have a written HSE program?		
Do you have a written drug and alcohol abuse prevention program, which includes pre-employment, reasonable suspicion, and post incident testing?		
Do you have a written respiratory protection program?		
Do you have a new employee orientation program? If yes, does it contain instructions on:		
• Company HSE Policy		
• Company HSE Record		
• Company HSE Rules		
• Driving Safety		
• Electrical Safety		

	Yes	No
• Fall Protection		
• Fire Protection		
• First Aid		
• Hazard Recognition		
• Hazard Reporting		
• Hearing Conservation		
• Housekeeping		
• HSE Meeting Attendance		
• Injury Reporting		
• Ladders and Stairway Safety		
• Lock-out/Tag-out		
• Personnel Protective Equipment		
• Personnel Protective Equipment		
• Toxic Substances		
• Trenching and Excavation		
Do you have a training program for newly hired or promoted first line supervisors? If yes, does it contain instructions on:		
• Accident Investigation		
• Emergency Procedures		
• First Aid Procedures		
• Hazard Recognition		
• HSE Supervision		
• Incident Reporting		
• New Employee Orientation		
• Safe Work Practices		
• Tailgate/Toolbox HSE Meetings		
Supervisor HSE meetings are conducted:		
• Weekly		
• Bi-weekly		
• Monthly		
• Less often, as needed		
Do you conduct field HSE inspections of work in progress?		

Exhibit 2— Monthly Contractor HSE Statistics Report

Monthly Project Safety Performance Summary Form

Month/Year: _____

College: _____

Project Manager: _____

Project No.:	Title/Description:			
Contractor/Subcontractor Name(s):			Date:	
Contractor Project Manager/Superintendent:			Reporting Period: _____ through _____	
	This Month	Year to Date	Project to Date	Remarks
Hours Worked				
First Aid Cases				
Doctor Cases				
Recordable Cases				
Lost-Time Cases				
Days Lost				
Recordable Incident Rate				
Lost-Time Incident Rate				
Days-Lost Incident Rate				

Notes:

Recordable Incident Rate =	$\frac{\text{Recordable Cases}}{\text{Hours Worked}} \times 200,000$
Lost-Time Incident Rate =	$\frac{\text{Lost Time Cases}}{\text{Hours Worked}} \times 200,000$
Days-Lost Incident Rate =	$\frac{\text{Days Lost}}{\text{Hours Worked}} \times 200,000$

Required Permits	Hazards	Safe Plan
<input type="checkbox"/> Confined Space		<input type="checkbox"/> Power de-energization required <input type="checkbox"/> Insulation blankets required
<input type="checkbox"/> Critical Lift	<input type="checkbox"/> Overhead Utilities	<input type="checkbox"/> Wire watcher required <input type="checkbox"/> Required clearance distance = _____ Ft. <input type="checkbox"/> Safe work zone marked
<input type="checkbox"/> Hot Work	<input type="checkbox"/> Crane or other Lifting Equipment	<input type="checkbox"/> Signalman assigned <input type="checkbox"/> Tag lines in use <input type="checkbox"/> Area around crane barricaded <input type="checkbox"/> Lifting equipment inspected <input type="checkbox"/> Personnel protected from overhead load
<input type="checkbox"/> Lock Out/Tag Out	<input type="checkbox"/> Underground Utilities	<input type="checkbox"/> Reviewed as-builts <input type="checkbox"/> Subsurface surveys <input type="checkbox"/> Received dig permit <input type="checkbox"/> Required clearance distance = _____ Ft. <input type="checkbox"/> Safe work zone Marked
<input type="checkbox"/> Soil Disturbance (Over 12")		
<input type="checkbox"/> Utility Clearance		
Required PPE		
<input type="checkbox"/> Hard Hat, Class C	<input type="checkbox"/> Electrical	<input type="checkbox"/> Lock Out/Tag Out/Try Out <input type="checkbox"/> Permit required? <input type="checkbox"/> Confirm that equipment is de-energized <input type="checkbox"/> Reviewed electrical safety procedures
<input type="checkbox"/> Hard Hat, Class E (Elect. Protect)	<input type="checkbox"/> Excavations	<input type="checkbox"/> Permits <input type="checkbox"/> Inspected prior to entering <input type="checkbox"/> Proper sloping/shoring <input type="checkbox"/> Barricades provided <input type="checkbox"/> Access/egress provided <input type="checkbox"/> Protection from accumulated water
<input type="checkbox"/> Ear Plugs/Ear Muffs	<input type="checkbox"/> Fire Hazard	<input type="checkbox"/> Hot Work Permit <input type="checkbox"/> Fire Extinguishers <input type="checkbox"/> Fire watch <input type="checkbox"/> Adjacent area protected <input type="checkbox"/> Unnecessary flammable material removed
Eye Protection:	<input type="checkbox"/> Vehicular Traffic or Heavy Equipment	<input type="checkbox"/> Traffic Barricades <input type="checkbox"/> Cones <input type="checkbox"/> Signs <input type="checkbox"/> Flagmen <input type="checkbox"/> Lane closure <input type="checkbox"/> Communication with equipment operator
<input type="checkbox"/> Safety Glasses	<input type="checkbox"/> Noise >85 dB	Hearing protection is required: <input type="checkbox"/> Ear plugs <input type="checkbox"/> Ear Muffs <input type="checkbox"/> Both
<input type="checkbox"/> Face Shield	<input type="checkbox"/> Hand & Power Tools:	<input type="checkbox"/> Inspect general cond. <input type="checkbox"/> GFCI in use <input type="checkbox"/> Identified PPE required for each tool <input type="checkbox"/> Reviewed safety requirements in operators manual(s) <input type="checkbox"/> Guarding OK <input type="checkbox"/>
<input type="checkbox"/> Chemical Goggles	<input type="checkbox"/> Hand Hazards	List sharp tools, material, equipment: _____ <input type="checkbox"/> PPE gloves, etc. <input type="checkbox"/> Protected sharp edges as necessary
<input type="checkbox"/> Welding Hood	<input type="checkbox"/> Manual Lifting	<input type="checkbox"/> Reviewed proper lifting tech. <input type="checkbox"/> Identified material requiring lifting equipment <input type="checkbox"/> Hand protection required <input type="checkbox"/> Back support belts
Hand Protection:	<input type="checkbox"/> Ladders	<input type="checkbox"/> Inspect general cond. before use <input type="checkbox"/> Ladder inspected with in last quarter <input type="checkbox"/> Ladder tied off or held <input type="checkbox"/> Proper angle and placement <input type="checkbox"/> Reviewed ladder safety
<input type="checkbox"/> Cut Resistant Gloves	<input type="checkbox"/> Scaffolds	<input type="checkbox"/> Inspect general condition before use <input type="checkbox"/> <input type="checkbox"/> Tags in place <input type="checkbox"/> Properly secured <input type="checkbox"/> Toe boards used <input type="checkbox"/> Footings adequate <input type="checkbox"/> Materials properly stored on scaffold
<input type="checkbox"/> Welders Gloves	<input type="checkbox"/> Slips, Trips Falls	<input type="checkbox"/> Inspect for trip hazards <input type="checkbox"/> Hazards marked <input type="checkbox"/> Tools & material properly stored <input type="checkbox"/> Extension cords properly secured <input type="checkbox"/> Work zone free of debris
<input type="checkbox"/> Nitrile Gloves	<input type="checkbox"/> Pinch Points	List potential pinch points: _____ <input type="checkbox"/> Working near operating equipment <input type="checkbox"/> Hand/Body positioning
<input type="checkbox"/> Surgical Gloves	<input type="checkbox"/> Working w/ Chemicals	<input type="checkbox"/> List specific chemicals involved and list hazards and precaution on front side. <input type="checkbox"/> Reviewed MSDS <input type="checkbox"/> Exposure Monitoring required <input type="checkbox"/> Have proper containers and labels. <input type="checkbox"/> Identified proper PPE (respirators, clothing, gloves, etc.) <input type="checkbox"/>
<input type="checkbox"/> Rubber Gloves	<input type="checkbox"/> Asbestos or Lead Paint Potential	<input type="checkbox"/> Areas to be worked may contain asbestos or lead paint <input type="checkbox"/> Asbestos controls incorporated <input type="checkbox"/> Lead based point controls in place <input type="checkbox"/> Exposure monitoring conducted.
<input type="checkbox"/> Elect. Insulated Gloves	<input type="checkbox"/> Heat Stress Potential	<input type="checkbox"/> Heat stress monitoring (>85°) <input type="checkbox"/> Liquids available <input type="checkbox"/> Cool down periods <input type="checkbox"/> Sun Screen <input type="checkbox"/> Reviewed Heat Stress symptoms
<input type="checkbox"/> Arm Sleeves	<input type="checkbox"/> Cold Stress Potential	<input type="checkbox"/> Proper clothing (i.e., gloves, coat, coveralls) <input type="checkbox"/> Wind chill <32° <input type="checkbox"/> Reviewed Cold Stress symptoms <input type="checkbox"/> Warm up periods
Foot Protection:	<input type="checkbox"/> Environmental	<input type="checkbox"/> Air emissions <input type="checkbox"/> Water discharge <input type="checkbox"/> Hazardous wastes <input type="checkbox"/> Other wastes <input type="checkbox"/> Pollution prevention <input type="checkbox"/> Waste minimization
<input type="checkbox"/> Sturdy Work Boots	<input type="checkbox"/> Natural or Site Hazards	<input type="checkbox"/> Weather <input type="checkbox"/> Terrain <input type="checkbox"/> Adjacent operations or processes <input type="checkbox"/> Biological hazards <input type="checkbox"/> Animals/reptiles/insects hazards
<input type="checkbox"/> Safety Toe Boots	<input type="checkbox"/> Adjacent Work/ Processes	<input type="checkbox"/> Notified them of our presence <input type="checkbox"/> Other workers adjacent, above, or below. <input type="checkbox"/> Coordinated with adjacent supervisor/customer/operator <input type="checkbox"/> Need barriers between.
<input type="checkbox"/> Rubber Boots	<input type="checkbox"/> Barricades/ covers	<input type="checkbox"/> Caution barricade tape required <input type="checkbox"/> Danger barricade tape required <input type="checkbox"/> Rigid railing required <input type="checkbox"/> Covers over opening <input type="checkbox"/> Warning signs required
<input type="checkbox"/> Rubber Boot Covers		
<input type="checkbox"/> Dielectric Footwear		
Respiratory Protection:	Additional Information:	
<input type="checkbox"/> Dust Mask		
<input type="checkbox"/> Air Purifying Respirator		
<input type="checkbox"/> Supplied Air Respirator		
<input type="checkbox"/> SCBA		
<input type="checkbox"/> Emergency Escape Respirator		
Special Clothing:		
<input type="checkbox"/> Tyvek ®		
<input type="checkbox"/> Poly Coated Tyvek ®		
<input type="checkbox"/> Fire Resistant Coveralls		
<input type="checkbox"/> Rain Suit		
<input type="checkbox"/> Safety Vest		
Fall Protection:		
<input type="checkbox"/> Harness		
<input type="checkbox"/> Double Lanyard Required		
<input type="checkbox"/> Anchorage Point Available		
<input type="checkbox"/> Additional Anchorage Connector Needed e.g. Cross Arm Strap, etc.		
<input type="checkbox"/> Retractable Device Needed		
<input type="checkbox"/> Horizontal Life Line System Req'd.		
<input type="checkbox"/> Fall Clearance Distance Adequate		
<input type="checkbox"/> Fall Rescue/Retrieval Plan Set Up		

Exhibit 4 — Safety Observation Report

SAFETY OBSERVATION REPORT (SOR)	
Date:	_____ Time: _____ Location: _____
Contractor:	_____
Person Submitting This Report:	_____
Observation:	_____ _____ _____
Action Taken:	_____
Action to Prevent Recurrence:	_____
Indirect Cause:	_____
Corrective Action:	_____
Further Action or Help Needed?	_____ _____ _____
Signature:	_____

Exhibit 5 — Accident/Incident Investigation Report

Date of Accident: _____ Time of Accident: _____ Company: _____

Date of Investigation: _____ Job Number: _____ Client: _____

Location of Accident: _____

Did injury result? Yes / No If yes, provide Employee Name(s): _____

S.S. No.: _____ Skill: _____ Yrs. in this Skill: ___ Yrs. with Company: ___

Describe Type of Injury: _____

Was JWA property damaged? Yes / No If yes, describe damage: _____

Was Other Contractor property damaged? Yes/No If yes, describe damage: _____

Is damaged property secured / maintained? Yes / No, Person Maintaining _____

Names of Witnesses/Coworkers (With Social Security No.): _____

Weather / Wind Conditions: _____

List/Describe all personal protective equipment (PPE) in use by person exposed or injured:

If Chemicals Involved:

Name(s) of Chemical(s) Encountered: _____

Form of Chemicals (Solid, Liquid, Gas, Vapor, Dust, Mist Fume): _____

Describe Radiological Materials (if any): _____

Volume or Quantity Released: _____

Description of Accident:

Contributing Factors:

What corrective actions are being taken to prevent recurrence? Also list the person responsible for implementing and the target completion date for each item.

Was an SPA/JSA developed for the task being performed? Yes / No If yes, attach a copy.

Was a permit issued? Yes / No If yes, attach a copy of the permit in effect at time of the accident.

Indirect cause of accident: **Lack of:** Training __, Resources __, Belief __ (*explain)

Basic cause of accident: **Failure to:** Plan __, Direct __, Organize __, Control __ (*explain)

INVESTIGATION TEAM MEMBERS:

Injured / Involved:

Name

Signature

Supervisor:

Name

Signature

Site Manager:

Name

Signature

Health and Safety
Representative:

Name

Signature

Name (Others)

Title

Signature

Name (Others)

Title

Signature

Client Representative(s) Contacted: _____

Agency Representative(s) Contacted: _____

* Attach additional sheets and supplemental data & information as necessary.

** Distribution: Original must be filed onsite; 1 copy must be sent promptly to the Corporate Health and Safety Department.

Exhibit 9 — Project-Specific Safety & Health Plan Guidelines

SITE SAFETY AND HEALTH PLAN BASICS CHECKLIST

CONCESSION:
CONTRACTOR:

Include the following when preparing your JWA Site-Specific Safety and Health Plan:

PROJECT CONTACT INFORMATION

- Primary Site Safety Contact (name, cell phone number)
- General Superintendent (name, cell phone number)
- Site Superintendent (name, cell phone number)
- Foreman (name, cell phone number)
- JWA Project Manager (name, cell phone number)
- JWA Inspector (name, cell phone number)
- Subcontractor List (include contact persons and phone numbers)

EMERGENCY CONTACT INFORMATION

Provide the following instructions/emergency phone numbers:

- Specify in Safety Plan: "IN CASE OF EMERGENCY, DO NOT CALL 911"
- All Emergencies/JWA Airport Police Services 949.252.5000
- Fire 949.252.5000
- JWA Airside Operations 949.252.5256
- JWA Landside Operations 949.252.5244
- JWA Maintenance Service Desk 949.852.4004
- Ambulance 949.252.5000
- Hospital Contractor to provide telephone number
- Clinic Contractor to provide telephone number
- CAL/OSHA (for serious injuries) 714.558.4451
- Provide map, phone number and written directions to nearest hospital (attach map showing directions)
- Provide map, phone number and written directions to nearest clinic (attach map showing directions)

PROJECT OVERVIEW

- Construction Schedule
- If nighttime work is proposed, discuss any special lighting provisions
- Operations Base (i.e. construction trailer location, if any)
- Identify Emergency Evacuation location
- Toilet and washing facilities for workers, superintendent and inspectors.
- Provide Job Hazard Analysis to identify and evaluate job-specific workplace hazards and mitigation plan.
- If the traveling public will be impacted by this project, describe plan for controlling the operation, employees, subcontractors and suppliers to assure the least inconvenience to the traveling public, with safety being the most important consideration.
- Dust and noise considerations and mitigation
- If barricades, warning signs and hazard markings are used, identify how this equipment shall be furnished, erected and maintained in order to protect the public and work, such as being suitably laminated during periods of darkness.
- There will be restricted movement of construction vehicles to construction areas. Address procedures for this activity i.e. identify flagging, barricading, erecting temporary fencing and/or providing escorts.
- Describe method to ensure that no construction employees, subcontractors, suppliers, or other persons enter any part of the Air Operations Area (AOA), from the construction site unless authorized, badged, or properly escorted.
- Be familiar with the latest FAA Advisory Circular if Airfield work is in the scope of work.

SAFETY AND HEALTH

- Provide company Injury and Illness Prevention Plan (IIPP)
- Include Code of Safe Practices that is site specific to JWA. **Note:** The Job Specific Code of Safe Practices is to be posted in a conspicuous location at each job site office/location, or be provided to each supervisor who shall have it readily available.
- Contractor shall have at the worksite copies of, or suitable extracts of “Construction Safety Orders” and “General Industry Safety Orders”.
- List Competent Persons for any and all activities for which competent persons are required by law and your project, such as Confined Space, Scaffolding, Lockout/Blockout, etc.

- List any chemicals to be used on the job and supply MSDS for each product listed.
- Identify required PPE for all aspects of the project.
- Describe method used to communicate safety and health matters to employees. Include Weekly Toolbox/Tailgate Safety Meeting handouts that emphasize safety on the job. The meetings will cover topics noted in the Safety Plan. Topics should reflect current work schedule activities.
Note: Project JWA Project Manager with copies of weekly Tailgate Safety Meeting topics covered, and completed sign-in sheets.

DISCUSS/ADDRESS/DESCRIBE THE FOLLOWING (AS APPLICABLE AND SPECIFIC TO PROJECT AT JWA)

- Identify Fall Protection plan.
- If ladders are to be used on this project, describe ladder safety policy.
- Describe procedure for using high/scissor lift if this equipment will be used.
- If Crane Work is conducted, identify the Competent Person(s) and describe their certification/training. Identify pick up location and transport route.
- If project requires “Lockout/Blockout”, describe when, where, and why this program will be used. List Competent Person(s) and credentials/training.
- If project requires “Confined Space Entry”, describe when, where, and why this program will be conducted. List Competent Person(s) and credentials/training. **Note:** All Confined Space projects at JWA are considered “Permit Required”.
- Describe any work involving Welding and Burning and the procedures for such work. Include in the narrative that JWA requires the use of Hot Work Permits signed by the Project Superintendent.
- Describe any plans/need for the deactivation of the local fire alarm system, and discuss Fire Watch Plan.
- Note in the Safety Plan: “JWA PROHIBITS THE USE OF POWDER ACTIVATED TOOLS”.

COUNTY OF ORANGE SAFETY AND LOSS PREVENTION RESOURCE MANUAL PART 306

- Review, sign and date the following County of Orange Safety and Loss Prevention Resource Manual, Part 306, “Contractor Safety Responsibilities”

**County of Orange
Safety and Loss Prevention Resource Manual**

NUMBER:	306	DATE ISSUED:	07/01/91
SUBJECT:	Contractor Safety Responsibilities	EFFECTIVE DATE:	07/01/91
		LAST REVISED:	06/01/14

PURPOSE: To establish written responsibilities for all Contractors while performing a service for the County

POLICY: Contractors doing business with the County, and lessees utilizing county facilities, are required to conduct all operations under contractual agreements and arrangements with the county in a safe manner.

OBJECTIVE: Contractors shall maintain a safe and healthful environment consistent with the County of Orange's Safety and Loss Prevention Program, Cal/OSHA and all applicable laws and regulations.

SCOPE: All Contractors doing business with the County.

REFERENCES: California Code of Regulations, Title 8, General Industry Safety Orders, Construction Safety Orders, and other Safety Orders that apply to the operation being performed.
California Labor Code, Sections 6300 and 6400

I. Introduction

County of Orange and its departments recognize that many hazards are inherent in construction and other contract work. Compliance with safety regulations can prevent most serious injuries. This procedure will serve as notification of County of Orange safety requirements to contractors, including subcontractors, who perform work for County of Orange. It should not be assumed that this procedure covers all applicable safety and health laws. While onsite, contractors are required to follow applicable federal, state and local safety and health regulations, as well as, County of Orange Policies.

The contractor is responsible and accountable for the safety of their employees. However, the county reserves the right to require the contractor to discontinue operation at any time it determines that the contractor's actions are exposing non-contractor individuals to an unsafe situation or environmental requirements/regulations are NOT being met.

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II. Emergency Information

Contractors must abide by all alarms and evacuation procedures as established by County departments. Any alarm triggered by the contractor must be reported immediately and a representative must be available to address the incident. The County Department Safety Representative (DSR) should be notified.

Important Telephone Numbers:

All Emergencies	9-1-1
County Safety Officer	714-285-5535
County of Orange Project Manager	_____
Cal/OSHA (for serious injuries) 2000 E. McFadden, Suite 122, Santa Ana, CA 92705	714-558-4451

CAL/OSHA DEFINES A FATAL, SERIOUS INJURY OR ILLNESS AS:

- *An employee who is hospitalized for a period in excess of twenty-four hours, other than for medical observation.*
- *An employee who suffers any serious degree of permanent disfigurement or amputation of any part of his / her body.*
- *An employee who is killed while in the performance of his / her duties.
California Code of Regulation (CCR), Title 8, Section 330 and 342*

As of January 1, 2003 – If an employer fails to report to Cal/OSHA a fatal injury or serious injury or illness to an employee within 8 hours will be subject to a minimum civil penalty of \$5,000.

Reporting a Fatality or Serious Injury: A Fatality or serious injury sustained by an employee of the general contractor or its sub-contractors must be immediately reported via telephone within 8 hours of an incident to Cal/OSHA (see phone number above). The contractor shall also **IMMEDIATELY** notify the County Safety Officer during normal work hours at (714) 285-5535 and for after hours (714) 981-6288. Within 48 hours furnish the County Safety Officer with a copy of any accident/incident report that is

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generated to: Risk Management/Safety, P.O. Box 327, Santa Ana, CA 92702). If a person is seriously injured, the general contractor will keep the county informed of that person's condition through the County Project Manager.

III. General Requirements

Those projects involving offending odors, excessive noise, or other irritating environmental agents may require work during "after hours" and or weekends.

The contractor must maintain all required permits and licenses for the job. Such permits and licenses must be available at the job site for inspection/audit.

Emergency Evacuations

Upon hearing any alarms or obtaining notification from the department, the contractor must stop all work. This includes ceasing all welding and burning activities and shutting off all equipment. Contractor's personnel shall evacuate to a location 150 feet away from the building, which has been pre-determined by the contractor. The contractor shall account for all contract personnel. The contractor will report any individuals that cannot be accounted for to building emergency personnel to coordinate possible rescue attempts with emergency response personnel. Contractor personnel shall remain in the area until the "ALL CLEAR" is announced and they are instructed to return to work.

California Code of Regulation (CCR), Title 19, Section 3.10 and CCR, Title 8, Section 3220

Fire Alarms

Fire alarms must remain operational at construction sites involving occupied buildings. In the event that the alarm system must be deactivated for more than four hours, the contractor must notify the Project Manager and the County Safety Officer (714-285-5535). Whoever monitors the alarm activation must be notified along with the local fire district. Approval to shut down a system will be given only with sufficient prior notice, where there is a demonstrated need, and the occupants of the building are not exposed to undo risk.

A fire watch is required whenever a fire alarm system is deactivated for more than four hours. The contractor is responsible for funding a fire watch.

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Contractor Employee Conduct

Each contractor shall insure that their employees and sub-contractor employees conduct themselves in a proper manner while working within County operations. Gestures, remarks, cat calls, whistling, or anything of a derogatory nature will not be tolerated.

Housekeeping

The contractor shall keep the work area, specifically walking and working surfaces, clean and free from debris and trash which could cause slipping and tripping hazards. Tools and materials shall be kept and stored in an orderly fashion.

California Code of Regulation (CCR), Title 8, Section 1513

Injury and Illness Prevention Program

Contractors shall submit a copy of their general Injury and Illness Prevention Program (IIPP) to the Project Manager prior to the start of the project. The contractor's IIPP shall meet the minimum requirement of California Code of Regulations (CCR), Title 8, Sections 1509 or 3203. Contractors shall submit other safety programs that pertain to the type of job that will be performed on site. Some examples are, but not all inclusive: confined space, fall protection, lockout/tagout, trenching and shoring, and asbestos and lead certifications. The County Safety Office is available to assist County project management in evaluating the contractor's IIPP.

California Code of Regulation (CCR), Title 8, Sections 1509 and 3203

Lighting

Walkways must remain lighted for the safety of the pedestrian. When construction activity impacts the lighting of the surrounding area or walkways, the contractor must provide temporary lighting to compensate for the loss. The county requires a minimum of (1) one foot candles for walkways and parking lots. Building entrances must be maintained at (5) five foot candles.

1994 Uniform Building Code (UBC) 400A

Material Safety Data Sheets/Safety Data Sheets (MSDS/SDS)

MSDSs/SDSs on all material used on the project must be submitted to the Project Manager for review prior to the start of the project. Products containing carcinogens, asbestos and lead are not allowed to be brought onsite and used for any project without prior approval from the Project Manager. The Industrial Hygienist with CEO/Risk Management can assist project management regarding questions on an MSDS/SDS.

California Code of Regulation (CCR), Title 8, Section 5194

Noise

The contractor shall endeavor to keep the work area as quiet as possible. If power activated tools, screw guns, or other such devices must be used to accomplish the work,

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the contractor shall notify the Project Manager and advise him of the type of equipment to be used and the duration of the work to be done. At times it will become necessary for the contractor to stop work immediately when advised by the Project Manager, the department or County Safety Officer that the work is adversely affecting employees and or work areas.

Personal Protection

All required personal protective equipment (PPE) will be provided by the contractor. Its use is mandatory and enforcement is the responsibility of the contractor. Contractor's supervisor shall ensure that his employees wear appropriate clothing that provides adequate protection from normal hazards associated with the job. Examples of PPE are head, eye, hearing, hand, respiratory and fall protection equipment. All PPE used must meet ANSI or Cal OSHA standards.

California Code of Regulation (CCR), Title 8, Section 1514

Smoking

In accordance with California State Law and the COUNTY OF ORANGE policy, there is no smoking inside any county facility or within 20 feet of any entrance, exit and operable service window.

California Government Code, Sections 7596-7598 and OCCO 4-7-1

Stairways and Corridor Egress

Stairwells, elevator lobbies and corridors are intended to provide a safe means for occupants to exit the building and emergency personnel to access the scene. The exit corridors of all areas are required to be kept clear and unblocked at all times, regardless of their width. All carts, supplies, ladders, tools, etc. must be kept out of corridors or stairways when not in use. Some projects may require construction occupying part of the corridor width. When this happens, it is extremely important that the remaining corridor(s) be clear. If an entire corridor or exit must be blocked off for a project, the contractor must get permission from the Project Manager.

Uniform Fire Code, Article 12 and California Code of Regulation (CCR), Title 8, Section 3215

Trash, Waste, and Scrap Disposal

All trash, waste, and scrap must be disposed of each day in proper containers supplied by the contractor. All hazardous waste storage and disposal is to be coordinated with the project management.

Take measures to protect adjacent areas to the construction area from dirt, dust, and debris. Debris shall not be allowed to accumulate within or around the work area. The

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worksite and surrounding area, especially stairways, corridors, and walkways, must be kept clear of obstructions, waste, and dust which may create tripping, slipping, or egress hazards.

California Code of Regulation (CCR), Title 8, Section 1736

Tools (Powered or Non-Powered)

Power tools shall be maintained in a safe working condition. Designed safety features such as guards and interlocks shall NOT be removed or disabled. Tools shall be tied off when used overhead. Tools powered by gasoline shall not be used inside county buildings unless prior permission given by the Project Manager and safeguards are put in place to reduce exposure to building occupants.

California Code of Regulation (CCR), Title 8, Section 1707

IV. Construction Safety and Hazard Communication Requirement

Asbestos / Lead

Asbestos and lead may be present in buildings where the contractor is working. Contractors must consult with the Project Manager to determine if contracted work will involve the disturbance of asbestos and/or lead. Contractors conducting asbestos or lead abatement work must meet all eligibility requirements established by regulatory agencies.

Any time the contractor finds suspected asbestos containing materials that were not previously identified, the contractor must immediately stop work and contact the Project Manager for the County.

All work shall, at a minimum, comply with all requirements specified by the Environmental Protection Agency (EPA), and California Code of Regulations (CCR), Title 8 pertaining to asbestos or lead.

Contractors shall submit a copy of their work plan to the Project Manager or designated safety consultant prior to commencing any abatement project. The work plan shall include, at a minimum, the scope of work, all up-to-date training and medical records, all required licenses, MSDSs of chemicals used for the project, and all permits.

All hazardous and non-hazardous waste generated from abatement projects MUST be properly manifested per EPA/DOT regulations and signed by the contractor or his designee.

Prior to any hazardous material abatement job such as asbestos or lead abatement, the contractor MUST notify and coordinate with Facilities Management personnel to shut down the air handler unit(s) serving the abatement area.

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The contractor will obtain necessary permits or registrations from applicable environmental agencies (e.g. South Coast Air Quality Management District, Cal OSHA, etc.) **PRIOR** to beginning any work that will require such a permit. Copies of all permits/registrations will be included in the work plan and submitted to the Project Manager **in advance** of such work.

California Code of Regulation (CCR), Title 8, Sections 1529 and 5208

Barricades and Opening Protection

Barricades and warnings are required around all construction sites. In addition, adequate protection must be given to excavations, holes, or openings in floors or roofs, elevated platforms, and around overhead work to protect people from falling objects.

- Unless the general area is protected, barricades must be erected before any excavation and extended as the excavation progresses.
- Barricaded areas which contain an opening or hole for access must be protected during working hours and must be secured at the end of each day.
- All holes or openings through floors or decking at all elevations must be immediately covered or barricaded. Material or equipment must never be stored on an excavation cover or inside an excavated area.
- Hole covers must be secured or cleated so they CANNOT slip, and they must extend adequately beyond the edge of the hole.
- Barricade shall not create a trip hazard. Any potential trip hazards should be clearly marked.
- The type of barricading system, whether it is fencing, caution tape or some other means must be discussed with the Project Manager and/or in consultation with the County Safety Officer to provide protection for County employees and public users of that service.
- Warning signs should be placed on barricade/fence for the duration of the construction project. Warning sign verbiage shall be coordinated through the Project Manager.

California Code of Regulation (CCR), Title 8, Section 3212

Confined Space

The contractor must notify the Project Manager and submit a copy of their Confined Space Program if work in a confined space is planned. The contractor's Confined Space program shall, at a minimum, comply with California Code of Regulations (CCR), Title 8 requirements pertaining to confined spaces. The contractor is responsible for providing his own monitoring and rescue equipment necessary for safe confined space entry.

California Code of Regulation (CCR), Title 8, Section 5157

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Electrical

Contractors conducting high-voltage electrical work must be approved for such work by Cal/OSHA. All work shall, at a minimum, comply with all requirements specified in California Code of Regulations (CCR), Title 8 pertaining to High Voltage, Electrical, and specifically to Subchapter 5 – Electrical Safety Orders.

Household electrical extension cords are never permitted in County operations. If a heavy duty electrical cord is used on a temporary basis (a one day use and then unplugged and put away), it must be in good condition and must not create a trip hazard in hallways or on pedestrian walkways. Cords that stretch across walkways must be entirely covered, secured, elevated, or protected by other means when exposed to damage, water, or where they create tripping hazards.

Keep all electrical room doors secured when unoccupied.

Lockout/tagout procedures must be observed when working with electrical equipment. Please refer to Lockout/tagout section of this document.

Machinery or equipment must not be operated within fifteen (15) feet of electric power lines, except where the electrical distribution or transmission lines have been de-energized at the point of work.

All cranes, backhoes and similar lifting or excavating equipment must be effectively grounded when there is a possibility of such equipment coming into contact with an electric power line or power facility, located overhead or underground.

California Code of Regulation (CCR), Title 8, Electrical Safety Orders, Sections 2299-2974

Excavation Safety

Excavation and trenching shall be in accordance with all applicable regulations including CCR, Title 8, Trenching and Excavation requirements. The contractor is responsible for providing a “Competent Person” at every excavation site. This individual must be capable of identifying existing and predictable hazards in the excavation area and determining the suitability of equipment or materials used for support systems, shield systems, and other protective systems. Inspection records are subject to review by the Project Manager or County Safety Officer.

California Code of Regulation (CCR), Title 8, Section 1541

Fall Protection

Safety harnesses must be worn and tied off to independent lifelines when working from elevated areas under the following conditions:

- Roof pitch equals or exceeds 7 in 12.

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- Job requires workers to be closer than four (4) feet from the roof edge without parapets or other acceptable fall protection system.
- Two-point suspension scaffolds or stages are used.
- Boatswain's chairs are used.
- Scaffolds with incomplete handrails and decking are used.
- Ladders are placed near an opening.
- Elevated work is being performed with no protection available to prevent the worker from falling.

Every employee issued a safety harness shall be instructed by a qualified person in the proper method of wearing, using, and securing it to an approved anchorage point.
California Code of Regulation (CCR), Title 8, Sections 1670 and 1671.1

Hazardous Materials

Use of any hazardous material is subject to the prior approval of the Project Manager. The Project Manager reserves the right to require substitution of materials planned for use. Hazardous materials being used for the project must be properly stored in secondary containment for the duration of the project. Approved chemical storage cabinets should be used and all applicable fire and building codes shall be followed. In order to protect County employees and members of the public, all hazardous materials storage areas are subject to inspection by Project Management and/or the County Safety Officer.

Flammable liquids in quantities less than fifty-five (55) gallon drums are to be kept in "safety" cans that have been properly labeled as to their contents. Drums and tanks of fifty-five (55) gallons or more must be labeled, grounded, equipped with self-venting bungs, top-dispensing and must be placed at least twenty-five (25) feet away from smoking, welding, burning, or other heat sources.

Gas Cylinders must be securely held upright. Fasten them with an approved restraint device to rigid structures so they will not fall or be knocked over. For earthquake safety, all cylinders should be double strapped. Locate cylinders away from pedestrian traffic areas. Make sure they are in well ventilated locations, at least 20 feet from highly combustible material. Keep cylinders out of the direct sun and do not allow them to be heated.

Read the labels on all the materials you use and be aware of their hazardous properties. Take all appropriate precautions advised on the container labels or MSDSs. Before using odorous chemical compounds or products such as glues, epoxies, paints, thinners, advise the Project Manager. If the compound will cause problems for building occupants, you may be asked to limit or suspend work until further notice.
California Code of Regulation (CCR), Title 8, Section 5191

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Lockout/Tagout

A contractor's Lockout/tagout program shall at a minimum comply with California Code of Regulations (CCR), Title 8 requirements pertaining to lockout/tagout. A contractor must request permission through local Facilities Management Personnel and the Project Manager prior to performing any lockout/tagout of county equipment.

California Code of Regulation (CCR), Title 8, Sections 3314 and 4413

Scaffolding

All scaffolding shall be erected and maintained in compliance with applicable standards, including CCR Title 8, Article 21, 22 and 23 and the manufacturer's requirements. Each scaffold must be erected and dismantled by licensed scaffolding contractors. Inspection of scaffolding must be made by a **competent person** assigned by the contractor for the work to be performed. All scaffold platforms must be equipped with standard forty-two (42) inch high handrails and mid-rail, rigidly secured and completely decked with safety plank or manufactured scaffold decking. Rigidly secured four (4) inch high toe-boards must be used on all scaffolding. Scaffolds must be tied off to the building or structure at proper intervals.

Welding and Burning

Prior to commencing welding or burning operations, the contractor must notify the Project Manager. The following are general requirements when performing any welding and/or burning operations:

- All exposed combustible materials below welding and burning areas must be removed to a safe location. In addition, an approved spark catcher must be used for overhead welding.
- A dry chemical (ABC) or water type fire extinguisher (at least five-pound) must be maintained within twenty-five (25) feet of any welding, burning or open-flame work.
- No welding or burning is to be done on a closed vessel or tank, or any vessel previously in use unless it has been decontaminated and is certified gas-free. Permission must be obtained prior to commencing of operations.
- Adequate ventilation must be provided at all times.
- Flashback arrestors must be installed on all oxy-acetylene torches.
- All arc welding must have a separate and adequate ground, pulled from the machine to work locations in all operating areas.
- All arcs are to be shielded in operating areas by the use of such barriers as welding curtains, screens and enclosures.
- All welding near halogenated solvents (i.e. Methylene Chloride, Carbon Tetrachloride, TCA, TEC, etc.) is strictly prohibited.
- Approved welding eye protection or goggles must be used when welding or burning.

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- An approved welding helmet must be worn.
- Compressed gas cylinders must be secured vertically to an adequate support while in storage, transit, or use. The protective cap must be on during storage and transit.
- Oil and grease must be kept away from oxygen regulators, hoses and fittings. Do not store wrenches, dies, cutters or other grease-covered tools in the same compartment with oxygen equipment.
- Cylinders and hoses should be placed where they are not exposed to sparks and slag from a burning operation.
- A fire watch must be maintained for a minimum of **thirty (30) minutes** after completion of hot work to detect and extinguish smoldering fires. The fire watcher requires training in emergency procedures and contact numbers before hot work begins.

V. Environmental Requirements

Air Emissions

In order to protect County employees and members of the public, any operation or procedure that will involve the release of significant quantities of dust, vapors, fumes or mist shall be approved by the Project Manager prior to start of work. Examples are large applications of floor, wall or roof coatings, spray applications, cement cutting, sandblasting, etc.

South Coast Air Quality Management District (SCAQMD)

Environmental Permits, Registrations, and Notifications

The contractor will obtain necessary permits or registrations from applicable environmental agencies (e.g. South Coast Air Quality Management District, California Air Resources Board, Cal OSHA, etc.) **PRIOR** to beginning any work that will require such a permit. Copies of all permits/registrations will be included in the work plan and submitted to the Project Manager **in advance** of such work.

Hazardous Material Spills

The contractor must report any spills immediately to the Project Manager and take immediate action to contain the spill. Regulatory agencies require containment and remediation of all spills of hazardous materials, including fuels and oil. Contractors who spill any such substances on county property are responsible for clean up. Clean-up of the contaminated area must be performed to the regulatory accepted level based on testing. Testing and disposal will be coordinated through the Project Manager and paid for by the contractor.

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Hazardous Waste

The contractor shall comply with all federal, state and local regulations pertaining to the management of hazardous waste as well as county requirements. Hazardous waste must be handled and accumulated on site in a safe manner and by properly trained contractor personnel.

Code of Federal Regulations (CFR), 40 and 49

- Fluorescent lamps are to be removed from fixtures with care and placed in special cartons and disposed of properly. Do not dispose of lamps in regular trash containers.
- Asbestos containing materials removed under abatement contracts may be considered hazardous waste and it is the responsibility of the general and abatement contractors to dispose of hazardous waste properly.
- Lead-based paint removed from structures is considered hazardous waste and must be disposed of properly.
- Hazardous waste generated on-site shall not be transported from that site without proper manifest and signatures. Hazardous waste will be transported and disposed in accordance with all applicable Federal, State, and local regulations. All hazardous and non-hazardous waste generated from abatement projects MUST be properly manifested per EPA/DOT regulations and signed by a designated person.
- Contractors are required to furnish the Project Manager with documentation of proper disposal whenever the contract calls for disposal of hazardous waste including spills.

Storm Drains / Sanitary Sewer

No hazardous, toxic liquid or solid material(s) shall be discharged to the storm drain and/or sanitary sewer system. Contractors performing planned work that will create potential runoffs such as water blasting, wet method surface removal, etc, must consult with the Project Manager to ensure proper protection of drainage system and adequate product collection procedures.

Care must be taken to locate chemical storage and transfer areas to prevent the possibility of accidental spillage of chemical products.

VI. Additional Requirements

Work which involves offending odors, excessive noise, or other irritating environmental agents may be required to be performed during "off-hours"

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Safety and Loss Prevention Resource Manual**

Contractor must maintain all required permits and licenses for the job. Such permits and licenses must be available at the job site for inspection/audit.

The County retains the right to protect its employees and other County interests by enforcing the provisions of this policy as well as the project contract sections pertaining to compliance with applicable laws and regulations if the work is deemed immediately dangerous to employees or the public. Notwithstanding that right, it is understood and agreed that sole legal and contractual responsibility for ensuring occupational safety and health compliance on contractor worksites remains with the contractor and that the County is not exercising control over worksite safety in the context of California Code of Regulations section 336.10.

Training Documentation

Contractor must keep required training documentation for each contractor employee assigned to work within County operations current. Documentation of required training for each contractor personnel must be made available for examination by Cal/OSHA or County Safety Staff if requested. Contractor shall complete and sign contractor Safety Acknowledgement form provided by the project manager on page 14 of the document.
California Code of Regulation (CCR), Title 8, various sections

Mold

To prevent mold, contractors should fully enclose a structure before installing insulation, drywall, or other materials that support mold growth. The enclosure should prevent rain or other moisture infiltration from creating water damage or affecting building materials.

Cal/OSHA Regulations can be found on the internet at:

<http://government.westlaw.com/linkedslice/default.asp?Action=TOC&RS=GVT1.0&VR=2.0&S P=CCR-1000> OR

<http://www.dir.ca.gov/Samples/search/query.htm> For CCR, Title 8 Regulations

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**COUNTY OF ORANGE
SAFETY AND LOSS PREVENTION OFFICE
CONTRACTOR SAFETY POLICY ACKNOWLEDGEMENT FORM**

I, _____, certify that I have read the contractor Safety Policy and fully understand my responsibilities with respect to the policy and procedures as outlined. I further agree to comply with the provisions of this program.

(Name of Contractor/Company)

(Signature)

(Printed Name)

(Date of Signature)

NOTE: The County Project Manager shall retain a copy of this signed agreement with the file for this contractor.

30. ENVIRONMENTAL COMPLIANCE

30.1. COMPLIANCES

Contractor shall fully comply with all Environmental Laws and other relevant federal, state, common law and local laws, regulations, orders, and permits protecting human health and the environment including, but not limited to, A and B below. Contractor shall provide JWA with copies of all permits obtained, and reports filed pursuant to federal, state, or local Environmental Laws and regulations.

30.1.1. OSHA HAZARD COMMUNICATION STANDARD

Contractor shall fully comply with the Federal OSHA Hazard Communication Standard 29 CFR 1910.1200 Revised, and furnish to their employees and JWA MSDSs for all hazardous materials that shall be furnished to and/or used on this project.

30.1.2. PROPOSITION 65

California's "Safe Drinking Water and Toxic Enforcement Act of 1986" (California Health and Safety Code Chapter 6.6 Division 20") requires identification of any chemicals on the California list of chemicals known to cause cancer or reproductive toxicity that are contained in any products being furnished for this project.

A list of currently regulated chemicals is available from the State of California Health and Welfare Agency, 1600 Ninth Street, Room 450, Sacramento, California 95814. For Contractor to be assured of knowing the chemicals currently on the list, and those that will be listed, it is necessary that the Contractor request to be included on the Health and Welfare Agency distribution list of Proposition 65 materials

30.1.3. WASTE MANAGEMENT

Contractor shall submit a Waste Management Plan that details how the amount of project-generated waste that is sent to the landfill will be minimized through reuse, recycling, and material estimating practices. The project goal is to divert 90% of all waste from the landfill (e.g., recycling, reuse, repurpose, composting, or anaerobic digestion/food to energy). The plan shall address general waste as well as construction and demolition waste including all concrete, steel, asphalt, carpeting, soil, packaging etc., resulting from project execution. The contractor shall provide a monthly summary of waste generation and diversion that shows type and quantity (in tons) of waste, date, and final disposition. In addition, contractor shall submit associated documentation including all waste receipts, tickets, and/or manifests showing quantities, dates, and final disposition.

30.2. STORM WATER LAWS AND REGULATIONS

30.2.1. Federal regulations for storm water discharges were issued by EPA (40 CFR Parts 122, 123, and 124). The regulations require operators of specific categories of facilities, such as airports, where discharges of storm water associated with industrial activity (i.e., storm water) occur, to obtain an NPDES permit.

30.2.2. Three types of activities are required to be permitted. The airside airfield of JWA is considered an industrial activity; therefore, it is covered by an industrial permit. The landside of the airport, parking lots, and roadways are considered a municipal activity and are covered by a municipal

- permit issued to the County. Construction activities are regulated by a construction permit issued to JWA.
- 30.2.3. The County's Water Quality Ordinance (OCCO Title 4, Division 13, Sections 4-13-10 *et seq.*) regulates the Non-Storm Water Discharge into the County's Separate Storm Water Sewer System to reduce the discharge of pollutants into the waters of the State. The Clean Water Act (CWA) and the resulting NPDES permit (CAS 618030) require the County to take steps to reduce pollutants leaving its systems to the maximum extent practicable. In early 2002, the California RWQCB, Santa Ana Region, issued revised NPDES permit (Board Order R8-2002-0010) to the County of Orange, OCFCD, and all incorporated cities as co-permittees hereinafter referred to as the Orange County Municipal Permit (OCMP). The revised permit requires the County to adapt and implement a Local Implementation Plan (LIP) to implement new and stricter programs and procedures and the revision of applicable ordinances. The purpose of the LIP is to eliminate all prohibited discharges that contain any pollutant from public or private property to the storm water drainage system.
- 30.2.4. In the furtherance of these regulations and Section 402 of the CWA, the State of California has adopted a General Permit for discharges of Storm Water associated with industrial activities: "State Water Resources Control Board (State Water Board) Water Quality Order No. 97-03-DWQ, NPDES General Permit No. CAS 000001 (General Permit)." JWA and its tenants have applied for and received coverage for Storm Water and authorized Non-Storm Water Discharge pursuant to the general permit for the industrial activities and are subject to the permit's requirements, conditions, and penalties. The permit prohibits discharges of materials other than Storm Water (i.e., Non-Storm Water Discharges) that discharge either directly or indirectly to waters of the United States. The permit requires the development and implementation of an effective Storm Water Pollution Prevention Plan (SWPPP) and Monitoring Program Plan (MPP).
- 30.2.5. JWA will file a Notice of Intent (NOI) to be covered by the statewide General Storm Water Permit for construction activities for all projects that disturb 1-acre or more of soil. Unless Contractor is conducting Work solely within the confines of a building or structure and they have no construction lay-down areas, Contractor shall submit to JWA for approval an SWPPP. Contractor shall comply with all applicable laws, regulations, and permits pertaining to storm water control and discharge.
- 30.2.6. Where provisions of the pertinent specifications, standards, codes, etc., conflict with one another, the most stringent provisions shall govern. See Definitions section for a list of definitions and terms as used throughout this Contract.
- 30.2.7. JWA's NPDES permit does not allow for any discharge into the Storm Drain System. Non-Storm Water Discharge that results from discharges of water from fire-fighting or training, or flushing of fire hydrants is excluded from Non-Storm Water Discharge regulations. Likewise, irrigation water and water used to establish erosion control landscaping are excluded from prohibition.
- 30.2.8. Contractor is advised that the NPDES permit does not allow water from the hydrants to be used to wash down or clean Work areas and/or equipment. Contractor agrees that any water or other fluid used for such purposes shall be contained within the site and prevented from discharging to the storm drains or other areas. Such requirement includes groundwater or any other water obtained from on or off site. Contractor agrees that excess water used onsite shall be disposed of appropriately offsite, unless otherwise specified by this Contract. Contractor is advised that temporary onsite storage of fluids may be allowed in tanks or by using other methods, subject to approval by JWA.

30.2.9. Discharge from dewatering activities will require the Contractor to obtain a separate NPDES permit. JWA will take reasonable measures to assist Contractor in acquiring such separate NPDES permit. Contractor shall meet the permitting and reporting requirements of the RWQCB, Santa Ana Region.

30.2.10. Prior to the issuance of a certificate of use and occupancy, the Contractor shall demonstrate to JWA the Contractor's compliance with the Water Quality Management Plan (WQMP) in a manner meeting the satisfaction of the Manager, Inspection Services Division, including (Ref. MMT, WQ-7).

30.2.11. Demonstrate to JWA that all structural Best Management Practices (BMPs) described in the Project's WQMP have been implemented, constructed, and installed in conformance with approved plans and specifications.

30.3. STORM WATER PLAN AND METHODOLOGY

30.3.1. Contractor shall prepare a site-specific SWPPP, which will demonstrate how storm water runoff will be controlled, how the discharge of unauthorized non-storm water discharges will be contained and prevented, and how soil erosion and sedimentation of surface runoff will be prevented at the site (Ref. MMT, WQ-1-5)

30.3.2. Contractor shall select BMPs for the site-specific SWPPP. The plan must cover the construction area, construction lay-down areas, haul routes, and offsite migration or tracking of contaminants such as mud. This includes keeping Airport Operations Areas (AOAs) clear of mud and debris. The plan must minimize potential soil and water quality impacts, including impacts resulting from total suspended solids (TSS), oil and grease, total petroleum hydrocarbons (TPH), or chemicals or materials used for construction. The plan must also include leak or spill cleanup procedures.

30.3.3. The BMPs must address the materials and chemicals used for construction including, but not limited to:

- a) Adhesives, resins, sealers, tars, batteries, and tires
- b) Cleaners, polishes, bleaching agents, and curing compounds
- c) Plumbing materials, solder, and pipe shavings
- d) Paints, solvents, lacquers, MEK, strippers, and hydraulic fluids
- e) Coolant, fuels, oils, and grease

30.3.4. Examples of BMPs include, but are not limited to:

- a) Using drip pans under construction equipment and trucks
- b) Lining Work areas with plastic sheeting
- c) Creating sand bag barriers to contain/prevent runoff and spills
- d) Providing secondary containment for all hazardous material
- e) Appropriate offsite disposal of hazardous materials
- f) Creating onsite settlement basins and filters for potential runoff

- g) Prevent soil erosion and potential sedimentation of surface water by using landscaping or other means
- h) Sweeping paved areas

30.3.5. Training meetings shall be held and documented at the preconstruction meetings and at the introduction of new personnel onsite. The meetings shall discuss the environmental pollution prevention issues in the SWPPP.

30.3.6. Prior to the start of construction, Contractor must receive approval of a final SWPPP for the project from JWA. Upon approval, Contractor must implement the SWPPP and make all required inspections, repairs, and improvements to BMPs, as noted below, to comply with permit requirements.

30.3.7. Contractor shall furnish street sweeping equipment for dust control and to clean up mud and debris from paved surfaces, and maintain it in operation, "as deemed necessary" or "as directed" to control offsite tracking of pollutants, such as mud, or interference with aircraft operations.

30.3.8. Maintenance, Inspection, and Repair:

The SWPPP shall include a discussion of the program to inspect and maintain all BMPs as identified in the site plan or other narrative documents throughout the entire duration of the Project. Contractor shall designate a qualified person to conduct inspections. The name and telephone number of that person shall be listed in the SWPPP document. Contractor shall perform inspections before and after storm events and once each 24-hour period during extended storm events to identify BMPs effectiveness and implement repairs or design changes as soon as feasible depending upon field conditions. Equipment, materials, and workers must be available for rapid response to failures and emergencies. Contractor shall perform all corrective maintenance to BMPs as soon as possible after the conclusion of each storm depending upon worker safety.

Contractor shall complete an inspection checklist, to include the following:

- a) Inspection date.
- b) Weather information: best estimate of beginning of storm event, duration of event, time elapsed since last storm, and approximate amount of rainfall (inches).
- c) List observations of all BMP erosion controls, sediment controls, chemicals and waste controls, and non-storm water controls. If the inclement weather prevents access to BMPs, then Contractor shall list results of visual inspection at relevant outfall, discharge point, or downstream location and projected required maintenance activities.
- d) Corrective actions required, including any changes, to SWPPP necessary and implementation dates.
- e) Inspector's name, title, and signature.
- f) Contractor shall prepare their inspection checklists using the inspection checklist form provided by the State Water Resources Control Board (SWRCB) or RWQCB or on forms that contain the equivalent information.
- g) Contractor shall retain these checklists onsite and will submit them to JWA upon completion of Work, and assist JWA to file a Notice of Completion.

30.3.9. Training:

Contractor shall train its personnel responsible for SWPPP preparation, implementation, and permit compliance, and the SWPPP shall document all training. This includes those personnel responsible for installation, inspection, maintenance, and repair of BMPs. Those responsible for overseeing, revising, and amending the SWPPP shall also document their training. Training should be both formal and informal, occur on an ongoing basis when it is appropriate and convenient, and should include training workshops offered by the SWRCB, RWQCB, or other locally recognized agencies or professional organizations.

30.3.10. List of Responsible Parties:

Contractor shall include a list of names of all Contractors or Subcontractors and individuals responsible for implementation of the SWPPP. This list shall include telephone numbers and addresses. Specific areas of responsibility of each Subcontractor and emergency contact numbers shall also be included.

30.4. HAZARDOUS MATERIALS OR SUBSTANCES

Contractor shall comply with all material usage limitations, permit record keeping, and reporting requirements imposed by federal, state, and local laws and regulations. All products used in construction must be free of PCBs, asbestos, and mold. Before bringing any material subject to requirements under this section onto the jobsite, Contractor is to notify JWA what type and quantity of material will be used and shall provide JWA with the Manufacturer's MSDSs as required by law. Contractor shall provide JWA with copies of all permits obtained and reports filed pursuant to federal, state, or local laws or regulations concerning materials brought onto and/or used at the jobsite. By this requirement, JWA does not assume responsibility for assuring or controlling Contractor's environmental compliance.

30.5. COMPLIANCE WITH ENVIRONMENTAL LAWS

Contractor shall comply with all Environmental Laws, rules, and regulations including, but not limited to, those applicable to:

- 30.5.1. Underground storage tanks (USTs) or aboveground storage tanks (ASTs), pipelines, pumps, and other equipment; and
- 30.5.2. The storage, distribution, use, processing, handling and/or disposal of hazardous materials including, but not limited to, gasoline, aviation fuel, jet fuel, diesel fuel, lubricants, coolants, pesticides, herbicides, fertilizers, PCBs, mold, ACM, batteries, and/or solvents; whether the obligation for such compliance is placed on the OWNER of the land, OWNER of the improvements, or user of the improvements.
- 30.5.3. Whenever references are made to published documents (e.g., specifications, standards, codes), it shall be understood that the applicable editions are those in effect, or which bear the latest publication date, on the date that the Work is advertised for bids, unless otherwise specified. Where provisions of the pertinent specifications, standards, codes, etc., conflict with one another, the most stringent provisions shall govern. See Definitions section for a list of definitions and terms as used throughout this Contract.

30.6. REMEDIATION

Contractor agrees that it shall be responsible for the investigation, characterization, containment, clean up, removal, and remediation of any hazardous materials or contamination caused by Contractor or any of its Subcontractors or agents.

Contractor shall promptly take all actions at its sole cost and expense as are necessary to investigate, characterize, contain, clean, remove, and restore any spills or contamination of JWA property to its condition prior to the introduction of such hazardous materials. If this involves clean-up of a significant spill or leak, then Contractor shall notify JWA, and first have obtained approval by County/JWA and the approval of any necessary governmental entities before commencing clean-up procedures unless the spill is of a life threatening nature or would allow the spill to continue to spread (see section on Spills).

30.7. SPILLS

30.7.1. Contractor shall, when engaged in fueling or defueling, take appropriate care to prevent the overflow of fuel.

30.7.2. Contractor shall be prepared to clean up small-scale fuel spills. Inert, absorbent materials shall be available onsite in a visible area at all times. Contractor's fueling personnel shall be trained in fuel spill response (to be reviewed at Health & Safety meetings). Contractor shall properly transport and dispose of all used absorbent material.

30.7.3. Contractor shall immediately notify the Orange County Sheriff at JWA at (949) 252-5000 and then notify the CM of any fuel or hazardous materials spill or leak.

30.7.4. Contractor shall be responsible to clean up or pick up and properly dispose of all other hazardous materials spills or leaks that they are qualified to safely remove.

30.7.5. Contractor shall have a licensed Hazardous Materials Contractor on call to clean up all spills or leaks (a) that are of a significant size; or (b) that cannot be cleaned up quickly; or (c) when the safety of any persons or property may be in question. This condition will be upon direction of the OCFA or JWA Operations or Facilities Division personnel. Disputes over responsibility for clean-up costs must be submitted in writing to JWA within 48 hours of completion of clean-up activity.

END OF GENERAL CONDITIONS

APPENDIX 1

DESIGN PHASE SERVICES COST AND COMPENSATION

I. **COMPENSATION:** CMAR agrees to accept the specified compensation as set forth in this Contract for performing the Design Phase Services and for furnishing all staffing, labor, vehicles, equipment, tools, materials, overhead, travel, and all other services required in the course of performing said Design Phase Services including usual and customary pre-construction services that precede the CMAR Construction Phase Services. CMAR shall only be compensated as set forth herein below for Design Phase Services performed in accordance with the Contract.

1) **Compensation**

• Conceptual Estimate	\$7,944
• Design Development Review	\$7,500
• Constructability/Value Engineering	\$24,308
• Construction Documents Review	\$24,604
• Design Phase Services Owner Allowance	<u>\$30,000 (*)</u>
Total Design Phase Services	\$94,356

(*) Note: Design Phase Services Owner Allowance services and activities will be determined and specified at the sole discretion of the Owner. CMAR shall not perform any Owner Allowance services or work, nor shall CMAR request payment for same, unless authorized in writing by Owner, and only after a cost estimate for such services or work has been reviewed and agreed to by Owner. Invoicing and payment for Design Phase Services Owner Allowance services or work shall be processed in accordance with the "Payments" section of the Contract.

2) **Reimbursable Items**

Reimbursable expenses are included in the fixed fee of each task above.

3) **Design Phase Hourly Rates**

The following list of CMARs staff hourly rates are required as part of evaluation of proposed additional services. Hourly rates shall be reflected in services defined above.

Hourly Rates Including Overhead and Profit:

Vice President	\$205/hr
Project Director	\$173/hr
Senior Project Manager	\$150/hr
Project Manager	\$119/hr
Sr. Superintendent	\$161/hr
Superintendent	\$130/hr
Site Safety Manager	\$110/hr
Senior Project Engineer	\$80/hr
VDC Manager	\$119/hr
Senior Project Accountant	\$90/hr
Senior Estimator	\$136/hr
Construction Manager	\$178/hr

4) **Major Subcontractor/Subconsultant List**

Listed below are subcontractor(s) anticipated by Construction Manager at Risk to perform services specified in the Contract. Substitution or addition of Construction Manager at Risk's subcontractors in any given project function shall be allowed only with prior written approval of the Owner.

Company Name & Address	Contact Name and Telephone Number	Project Function
Not known at this time.		

II. **CMAR EXPENSE:** CMAR will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.

INFORMATION TECHNOLOGY USAGE POLICY

COUNTY OF ORANGE



1 INTRODUCTION:

The County of Orange Information Technology (IT) Usage Policy is the foundation of the County's information security efforts. Each member of the County workforce is responsible for understanding his/her role in maintaining County IT security. This policy summarizes your information technology responsibilities. To learn more about information security, please see the Information Technology Security Policy.

Complete **Section 5: Acknowledgement** after you have finished reading this document. Your signature on the Acknowledgement indicates that you understand and will comply with County security policy. If you disregard security policies, standards, or procedures, you can be subject to County and agency-specific disciplinary action.

2 TERMS YOU NEED TO KNOW:

Authentication	The process of verifying the identity of anyone who wants to use County information before granting them access.
Back Up	To copy files to a second medium (for example, a disk or tape) as a precaution in case the first medium fails.
Confidentiality / Non-Disclosure Agreement	An agreement that outlines sensitive materials or knowledge that two or more parties wish to share with one another. By way of such agreement, the parties to the agreement agree not to share or discuss with outside parties the information covered by the agreement.
System or Software Configuration Files	Highly important files that control the operation of entire systems or software.
Electronic Communication	Messages sent and received electronically through any electronic text or voice transfer/storage system. This includes e-mail, text messages, instant messages (IM) and voicemail.
Encryption	The translation of data into a secret code. Encryption is the most effective way to achieve data security. To read an encrypted file, you must have access to a secret key or password that enables you to <i>decrypt</i> it. Unencrypted data is called <i>plain text</i> ; encrypted data is referred to as <i>cipher text</i> .
Information Security	Safeguarding an organization's data from unauthorized access or modification to ensure its availability, confidentiality, and integrity.
Information Technology (IT)	The broad subject concerned with all aspects of managing and processing information within an organization.
Local Security Administrator (LSA)	The person at each agency who is responsible for the operational maintenance of IT security resources within the agency.
Network	Two or more linked computer systems. There are many different types of computer networks.
Password	Sequence of characters (letters, numbers, symbols) used in combination with a User ID to access a computer system or network. Passwords are used to authenticate the user before s/he gains access to the system.

Personally Identifiable Information (PII)	Any piece of information that could be used to uniquely identify, contact, or locate a single person. Examples include: full name; national identification number; email address; IP address; driver's license number; and Social Security Number.
User	Any individual who uses a computer.
User ID	Unique name given to a user for identification to a computer or telephone network, database, application, etc. Coupled with a password, it provides a minimal level of security.
Virus / Malicious Software	A software program that interferes with computer operation, damages or destroys electronic data, or spreads itself to other computers. Viruses and malicious software are often transmitted via email, documents attached to email, and the Internet.
Workforce Member	Any member of the County workforce, including employees, temporary help, contractors, vendors and volunteers.

3 POLICY OVERVIEW

As a member of the County workforce, you are expected to comply with the County's Information Technology Usage Policy. Your agency may have additional policies that you must follow as part of your job.

The following are key concepts of the County's policy:

- Information created or used in support of County business activities is the property of the County.
- Your assigned information technology resources are meant to facilitate the efficient and effective performance of your duties. It is your responsibility to ensure that resources are not misused and that you comply with policy.
- If you need to access confidential information as part of your duties, you will be asked to sign a confidentiality or non-disclosure agreement before you access the County network.
- Many County facilities house sensitive or critical information systems. You are expected to comply with all physical access controls designed to restrict unauthorized access.
- You may not remove County equipment or data in any format from the workplace unless you have received prior written approval from your supervisor or manager.
- The use of the network and Internet is a privilege, not a right. If you violate policy, you may lose your network and/or Internet access. The County may refuse to reinstate your access for the remainder of your employment at the County. The County may also take other disciplinary action as appropriate under County policy, departmental policy and applicable employment MOUs.

4 YOUR RESPONSIBILITIES

Your security responsibilities fall under several different Information Technology categories. Each category and the key responsibilities associated with it are listed below:

USER IDs AND PASSWORDS

- You will be issued a network user ID unique to you. Only you may use your user ID to access County resources (e.g. computer, telephone, FAX).
- You will be issued a default password at the same time as your user ID. You will be prompted to change your password the first time you log in to the system.
- Do not share user IDs and passwords with other users or individuals, including coworkers and supervisors. Treat your password as sensitive and highly confidential information.
- You are agreeing to follow the Information Technology Usage Policy when you accept a password from the County and use it to access the County data or telephone networks, the Internet, or the Intranet.
- Change your password immediately if you think someone else knows it. Report your suspicions to management.
- If you lose or forget your password, you are required to request a password reset. No one else can do it for you.

HARDWARE AND SOFTWARE

- The County will provide, and employees may request, peripheral equipment such as ear buds for cellular phones or Blackberry devices, as may be necessary to enable compliance with all local laws which pertain to the use of mobile communication equipment or the individual workplace needs for the employee to perform his or her employment.
- Never download or install any hardware or software without prior written approval of your agency IT representative.
- Do not make any changes to system and/or software configuration files unless specifically authorized in writing by your agency IT.
- Maintain your business data files on a network (or "shared") drive so that they can be backed up according to your agency's regular backup schedule.
- Use the "lock workstation" feature any time you leave your workstation logged on to the network and you are away from your desk.
- Do not connect a County laptop or other mobile device to the network until it has been scanned for viruses and malicious software.
- Follow the authentication procedures defined by your agency whenever you log in to the County network via Remote Access.
- Do not attempt to connect your workstation, laptop, or other computing device to the Internet via an unauthorized wireless or other connection while simultaneously connected to any County network.
- Retain original software installed on your computer if it is provided to you. The software must be available when your system is serviced in case it needs to be reinstalled.
- Do not keep liquids or magnets on or near computers, as they can cause serious damage.
- Ensure that your equipment is plugged into a surge protector at all times.

- Report all computer problems in detail on the appropriate form and/or when you contact the County Service Desk or discuss the problem with your agency's Help Desk.
- Report equipment damage immediately to the County Service Desk or your agency's Help Desk.

EMAIL and TELEPHONE

- The e-mail and telephone systems and networks are primarily for official County business.
- Management can freely inspect or review electronic mail and data files including voicemail. Employees should have no expectation of privacy regarding their internet usage, electronic mail or any other use of County computing or telephone equipment.
- Do not use a County email account or voicemail box assigned to another individual to send or receive messages unless you have been authorized, in writing, to act as that individual's delegate.
- Use of personal Internet (external) email systems from County networks and/or desktop devices is prohibited unless there is a compelling business reason for such use and prior written approval has been given by agency management and agency IT.
- Do not configure or use automated forwarding to send County email to Internet-based (external) email systems unless specifically authorized to do so, in writing, by County management.
- Send confidential information via email only with the written permission of management and only via an approved method. Mark the email according to agency policy.
- Treat confidential or restricted files sent as attachments to email messages as confidential or restricted documents. This also applies to confidential or restricted information embedded within an email message as message text or a voicemail message.
- Do not delete email or voicemail messages or other data if management has identified the subject matter as relevant to pending or anticipated litigation, personnel investigation, or other legal processes.

THE INTERNET / INTRANET

- Internet/Intranet access is primarily for County business.
- You may access the Internet for limited personal use only during nonworking time and in strict compliance with policy. If there is any doubt about whether an activity is appropriate, consult with your Department Head or his/her designee.

INFORMATION SECURITY

- Treat hardcopy or electronic Personally Identifiable Information (PII) as confidential and take all precautions necessary to ensure that it is not compromised. Intentional – or even accidental – disclosure of PII to unauthorized users is a violation of policy.
- Don't leave PII unattended or unsecured for any period of time.
- Be sure to follow your agency's policy for disposing of confidential data. This may include the physical destruction of data through shredding or other methods.
- Information created, sent, stored or received via the email system, network, Internet, telephones (including voicemail), fax or the Intranet is the property of the County.

- Do not expect information you create and store on County systems, including email messages or electronic files, to be private. Encrypting or using other measures to protect or "lock" an email message or an electronic file does not mean that the data are private.
- The County reserves the right to, at any time and without notice, access, read and review, monitor, and copy all messages and files on its computer system as it deems necessary.
- The County may disclose text or images to law enforcement without your consent as necessary.

PROHIBITED ACTIVITY

Unless you are specifically authorized by your manager or agency in writing, the following uses are prohibited by the Information Technology Security Policy:

- Using, transmitting, or seeking inappropriate or offensive materials, including but not limited to vulgar, profane, obscene, abusive, harassing, belligerent, threatening, or defamatory (harming another's reputation by lies) language or materials.
- Accessing, attempting to access, or encouraging others to access controversial or offensive materials.
- Revealing PII without permission, such as another's home address, telephone number, credit card number or Social Security Number.
- Making offensive or harassing statements or jokes about language, race, color, religion, national origin, veteran status, ancestry, disability, age, sex, or sexual orientation.
- Sending or soliciting sexually oriented messages, images, video or sound files.
- Visiting sites featuring pornography, terrorism, espionage, theft, drugs or other subjects that violate or encourage violation of the law.
- Gambling or engaging in any other activity in violation of local, state, or federal law.
- Uses or activities that violate the law or County policy or encourage others to violate the law or County policy. These include:
 - Accessing, transmitting, or seeking confidential information about clients or coworkers without proper authorization.
 - Intruding, or trying to intrude, into the folders, files, work, networks, or computers of others, or intercepting communications intended for others.
 - Knowingly downloading or transmitting confidential information without proper authorization.
- Uses that cause harm to others or damage to their property, including but not limited to:
 - Downloading or transmitting copyrighted materials without the permission of the copyright owner. Even if materials on the network or the Internet are not marked with the copyright symbol, ©, assume that they are protected under copyright law.
 - Using someone else's password to access the network or the Internet.
 - Impersonating another user or misleading message recipients into believing that someone other than the authenticated user is communicating a message.

- Uploading a virus, other harmful component, or corrupted data or vandalizing any part of the network.
- Creating, executing, forwarding, or introducing computer code designed to self-replicate, damage, or impede the performance of any computer's memory, storage, operating system, application software, or any other functionality.
- Engaging in activities that jeopardize the security of and access to the County network or other networks on the Internet.
- Downloading or using any software on the network other than that licensed or approved by the County.
- Conducting unauthorized business or commercial activities including, but not limited to:
 - Buying or selling anything over the Internet.
 - Soliciting or advertising the sale of any goods or services.
 - Unauthorized outside fund-raising activities, participation in any lobbying activity, or engaging in any prohibited partisan political activity.
 - Posting County, department and/or other public agency information to external news agencies, service bureaus, social networking sites, message boards, blogs or other forums.
- Uses that waste resources, including, but not limited to:
 - Printing of personal files.
 - Sending chain letters for any reason.
 - Including unnecessary recipients on an email. Only copy others on an email or voicemail message who should be "in the loop" on the topic addressed.
 - Indiscriminate use of distribution lists. Before using a distribution list, determine whether or not it is appropriate for everyone on that list to receive the email.
 - "All hands" emails. Emails of this type are to be sent only after management permission has been obtained.

5 ACKNOWLEDGEMENT

- If you violate security policies, standards, or procedures, you can be subject to County and agency-specific disciplinary action up to and including discharge.

By signing this document, I acknowledge that I have read, understand and will comply with this County of Orange Information Technology Usage Policy. I understand that the complete Information Technology Usage Policy is available for me to review on the County's intranet. I also may request a copy from the County Service Desk, my agency's Help Desk, or my agency's Local Security Administrator.

Workforce Member Name (please print): _____

Workforce Member Signature: _____

Agency/Department: _____

Date: _____



User Access
Request Form:
**IT Services
Request**

(For Unifier or P6,
complete other side)

1. USER INFORMATION

User Name (First): _____ (Last): _____
 Title: _____ Phone: _____
 Supervisor's Name: _____ Start Date: _____
 If Applicable, JWA
 Company Name: _____ Contact: _____

2. HARDWARE REQUIRED

- Desktop Computer Telephone
 Portable Computer County Cellular Phone

* Standard PC setup: MS Windows 10 and Office 2016 (Outlook, Word, Excel, PowerPoint, Anti-virus and Adobe Reader).

Other: _____

3. ACCESS REQUIRED

- OCAIR User ID and E-mail CAPS/CAPS+ ERMI
 PropWorks On-Base AVI, Gatekeeper, Great Plains
 CAMS/ASR CMMS Off-site remote Access (JWA laptop only)

Other: _____

4. ADDITIONAL SOFTWARE REQUIRED

- Adobe Acrobat Professional Microsoft Project
 Adobe Illustrator Microsoft Visio
 Costworks (RS Means) Other: _____
-

5. ADDITIONAL REQUIREMENTS, NOTES

6. EMPLOYEE SIGNATURE

Signature Date

7. AGENCY APPROVAL

Manager

Deputy Airport Director

Print Name

Print Name

Signature Date

Signature Date

**Please Return Completed
Form To:**

JWA IT
 John Wayne Airport
 3160 Airway Ave.
 Costa Mesa, CA 92626



UNIFIER / P6

Access Request Form

(Complete this side for Unifier and/or P6 access only)

1. USER INFORMATION

User Name (Last):	_____	First Name	_____
User Title:	_____	User Phone:	_____
User Start Date:	_____	User Email:	_____
Supervisor's Name:	_____	Company:	_____
		Address 1:	_____
		Address 2:	_____
		City:	_____
		State:	_____
		Zip Code:	_____
To which project do you request access:	_____	JWA PM:	_____

2. ACCESS REQUIRED

Unifier (Oracle Primavera) P6 (Oracle Primavera)

3. ADDITIONAL REQUIREMENTS, NOTES

4. USER SIGNATURE

 Signature Date

5. JWA APPROVAL

Project Manager

Deputy Airport Director/Assignee

 Print Name

 Print Name

 Signature Date

 Signature Date

Please return completed forms to:

ANITA BEUKMAN (abeukman@ocair.com)/PAUL LOVETTE (plovette@ocair.com)
 JOHN WAYNE AIRPORT, 3160 Airway Ave, Cost Mesa, CA 92626

JOHN WAYNE AIRPORT
Terminal Building Curtain Wall Modifications
PROJECT NO.: P447
REQUEST FOR PROPOSAL (RFP)
CMAR SELECTION
CMAR EVALUATION SUMMARY

Proposal Evaluation Score Summary					
(maximum score 100 per evaluator)					
EVALUATOR:	1	2	3	4	TOTALS
2H Construction, Inc.	41.5	51.0	59.0	48.5	200.0
Swinerton Builders	62.5	75.5	81.0	76.0	295.0
Webcor	86.5	83.5	91.0	87.5	348.5

Evaluation Summary & Ranking			
(maximum score 400)			
FIRM	TOTAL	Percentage of Total	Ranking
Webcor	348.5	87.1%	1
Swinerton Builders	295.0	73.8%	2
2H Construction, Inc.	200.0	50.0%	3

Terminal Building Curtain Wall Modifications

PROJECT NO. P447

**REQUEST FOR PROPOSAL (RFP)
CMAR ELECTION
WRITTEN PROPOSAL SCORESHEET**

FIRM: 2H

<i>Evaluation Criteria</i>	<i>Weight</i>	<i>Rating (0-5)</i>	<i>Score (Weight/5)* Rating</i>	<i>Comments</i>
<i>I. Qualifications</i>	25	2.5	12.5	
15 years of direct experience as GC or CMAR, Valid B license, Profile of company, General financial condition, Experience with similar projects, At least 3 comparable airport projects, Other OC projects, License revocation history.				
<i>II. Staffing Plan/Organization Structure</i>	20	2.5	10	
Key staff, proposed subcontractors, history of work, resumes, organization chart.				
<i>III. Work Plan/Project Approach</i>	25	2	10	
Project approach, outline sequence of activities, schedule, major issues and remedies, subcontractor selection plan, management approach, similar projects, project staff, work plan, methods.				
<i>IV. Subcontractor Selection Plan</i>	15	0	0	
Subcontractor selection plan				
<i>V. Organization/Completeness</i>	15	3	9	
General organization and completeness				
			41.5	Respondent's Score

Evaluator: /

Date: 2/4/20

FIRM: ZH

Evaluation Criteria	Weight	Rating (0-5)	Score (Weight/5)* Rating	Comments
I. Qualifications	25	3	15	
15 years of direct experience as GC or CMAR, Valid B license, Profile of company, General financial condition, Experience with similar projects, At least 3 comparable airport projects, Other OC projects, License revocation history.				
II. Staffing Plan/Organization Structure	20	3	12	
Key staff, proposed subcontractors, history of work, resumes, organization chart.				
III. Work Plan/Project Approach	25	3	15	
Project approach, outline sequence of activities, schedule, major issues and remedies, subcontractor selection plan, management approach, similar projects, project staff, work plan, methods.				
IV. Subcontractor Selection Plan	15	0	0	
Subcontractor selection plan				
V. Organization/Completeness	15	3	9	
General organization and completeness				
			51.0	Respondent's Score

Evaluator: 2

Date: 02-04-20

Terminal Building Curtain Wall Modifications

PROJECT NO. P447

REQUEST FOR PROPOSAL (RFP)

CMAR ELECTION

WRITTEN PROPOSAL SCORESHEET

FIRM: 2H

Evaluation Criteria	Weight	Rating (0-5)	Score (Weight/5)* Rating	Comments
I. Qualifications	25	3 1/2	17 1/2	
15 years of direct experience as GC or CMAR, Valid B license, Profile of company, General financial condition, Experience with similar projects, At least 3 comparable airport projects, Other OC projects, License revocation history.				
II. Staffing Plan/Organization Structure	20	3 1/2	14	
Key staff, proposed subcontractors, history of work, resumes, organization chart.				
III. Work Plan/Project Approach	25	2 1/2	12 1/2	
Project approach, outline sequence of activities, schedule, major issues and remedies, subcontractor selection plan, management approach, similar projects, project staff, work plan, methods.				
IV. Subcontractor Selection Plan	15	1	3	
Subcontractor selection plan				
V. Organization/Completeness	15	4	12	
General organization and completeness				
			59	Respondent's Score

Evaluator: 3

Date: 2/4/2020

Terminal Building Curtain Wall Modifications

PROJECT NO. P447

REQUEST FOR PROPOSAL (RFP)

CMAR ELECTION

WRITTEN PROPOSAL SCORESHEET

FIRM:

JH

<i>Evaluation Criteria</i>	<i>Weight</i>	<i>Rating (0-5)</i>	<i>Score (Weight/5)* Rating</i>	<i>Comments</i>
I. Qualifications	25	<i>2.5</i>	<i>12.5</i>	
15 years of direct experience as GC or CMAR, Valid B license, Profile of company, General financial condition, Experience with similar projects, At least 3 comparable airport projects, Other OC projects, License revocation history.				
II. Staffing Plan/Organization Structure	20	<i>3</i>	<i>12</i>	
Key staff, proposed subcontractors, history of work, resumes, organization chart.				
III. Work Plan/Project Approach	25	<i>3</i>	<i>15</i>	
Project approach, outline sequence of activities, schedule, major issues and remedies, subcontractor selection plan, management approach, similar projects, project staff, work plan, methods.				
IV. Subcontractor Selection Plan	15	<i>0</i>	<i>0</i>	
Subcontractor selection plan				
V. Organization/Completeness	15	<i>3</i>	<i>9</i>	
General organization and completeness				
			<i>48.5</i>	Respondent's Score

Evaluator: _____

(4)

Date: _____

2/4/20

Terminal Building Curtain Wall Modifications

PROJECT NO. P447

**REQUEST FOR PROPOSAL (RFP)
CMAR ELECTION
WRITTEN PROPOSAL SCORESHEET**

FIRM: Swinerton

<i>Evaluation Criteria</i>	<i>Weight</i>	<i>Rating (0-5)</i>	<i>Score (Weight/5)* Rating</i>	<i>Comments</i>
<i>I. Qualifications</i>	25	3.5	17.5	
15 years of direct experience as GC or CMAR, Valid B license, Profile of company, General financial condition, Experience with similar projects, At least 3 comparable airport projects, Other OC projects, License revocation history.				
<i>II. Staffing Plan/Organization Structure</i>	20	3	12	
Key staff, proposed subcontractors, history of work, resumes, organization chart.				
<i>III. Work Plan/Project Approach</i>	25	3	15	
Project approach, outline sequence of activities, schedule, major issues and remedies, subcontractor selection plan, management approach, similar projects, project staff, work plan, methods.				
<i>IV. Subcontractor Selection Plan</i>	15	3	9	
Subcontractor selection plan				
<i>V. Organization/Completeness</i>	15	3	9	
General organization and completeness				
			62.5	Respondent's Score

Evaluator: /

Date: 2/4/20

Terminal Building Curtain Wall Modifications

PROJECT NO. P447

REQUEST FOR PROPOSAL (RFP)

CMAR ELECTION

WRITTEN PROPOSAL SCORESHEET

FIRM: SWINERTON

<i>Evaluation Criteria</i>	<i>Weight</i>	<i>Rating (0-5)</i>	<i>Score (Weight/5)* Rating</i>	<i>Comments</i>
I. Qualifications	25	4	20	
15 years of direct experience as GC or CMAR, Valid B license, Profile of company, General financial condition, Experience with similar projects, At least 3 comparable airport projects, Other OC projects, License revocation history.				
II. Staffing Plan/Organization Structure	20	3.5	14	
Key staff, proposed subcontractors, history of work, resumes, organization chart.				
III. Work Plan/Project Approach	25	3.5	17.5	
Project approach, outline sequence of activities, schedule, major issues and remedies, subcontractor selection plan, management approach, similar projects, project staff, work plan, methods.				
IV. Subcontractor Selection Plan	15	4	12	
Subcontractor selection plan				
V. Organization/Completeness	15	4	12	
General organization and completeness				
			75.5	Respondent's Score

Evaluator: 2

Date: 02-04-20

Terminal Building Curtain Wall Modifications

PROJECT NO. P447

**REQUEST FOR PROPOSAL (RFP)
CMAR ELECTION
WRITTEN PROPOSAL SCORESHEET**

FIRM: SWINERTON

Evaluation Criteria	Weight	Rating (0-5)	Score (Weight/5)* Rating	Comments
I. Qualifications	25	4 1/2	22 1/2	
15 years of direct experience as GC or CMAR, Valid B license, Profile of company, General financial condition, Experience with similar projects, At least 3 comparable airport projects, Other OC projects, License revocation history.				
II. Staffing Plan/Organization Structure	20	4	16	
Key staff, proposed subcontractors, history of work, resumes, organization chart.				
III. Work Plan/Project Approach	25	4	20	
Project approach, outline sequence of activities, schedule, major issues and remedies, subcontractor selection plan, management approach, similar projects, project staff, work plan, methods.				
IV. Subcontractor Selection Plan	15	3 1/2	10 1/2	
Subcontractor selection plan				
V. Organization/Completeness	15	4	12	
General organization and completeness				
			81	Respondent's Score

Evaluator: 3

Date: 2/4/2020

Terminal Building Curtain Wall Modifications

PROJECT NO. P447

REQUEST FOR PROPOSAL (RFP)

CMAR ELECTION

WRITTEN PROPOSAL SCORESHEET

FIRM:

SWINERTON

Evaluation Criteria	Weight	Rating (0-5)	Score (Weight/5)* Rating	Comments
I. Qualifications	25	4	20	
15 years of direct experience as GC or CMAR, Valid B license, Profile of company, General financial condition, Experience with similar projects, At least 3 comparable airport projects, Other OC projects, License revocation history.				
II. Staffing Plan/Organization Structure	20	3	12	
Key staff, proposed subcontractors, history of work, resumes, organization chart.				
III. Work Plan/Project Approach	25	4	20	
Project approach, outline sequence of activities, schedule, major issues and remedies, subcontractor selection plan, management approach, similar projects, project staff, work plan, methods.				
IV. Subcontractor Selection Plan	15	4	12	
Subcontractor selection plan				
V. Organization/Completeness	15	4	12	
General organization and completeness				
			76.0	Respondent's Score

Evaluator: _____

(4)

Date: _____

2/4/20

Terminal Building Curtain Wall Modifications

PROJECT NO. P447

**REQUEST FOR PROPOSAL (RFP)
CMAR ELECTION
WRITTEN PROPOSAL SCORESHEET**

FIRM: Webcor

<i>Evaluation Criteria</i>	<i>Weight</i>	<i>Rating (0-5)</i>	<i>Score (Weight/5)* Rating</i>	<i>Comments</i>
<i>I. Qualifications</i>	25	5	25	
15 years of direct experience as GC or CMAR, Valid B license, Profile of company, General financial condition, Experience with similar projects, At least 3 comparable airport projects, Other OC projects, License revocation history.				
<i>II. Staffing Plan/Organization Structure</i>	20	4	16	
Key staff, proposed subcontractors, history of work, resumes, organization chart.				
<i>III. Work Plan/Project Approach</i>	25	4	20	
Project approach, outline sequence of activities, schedule, major issues and remedies, subcontractor selection plan, management approach, similar projects, project staff, work plan, methods.				
<i>IV. Subcontractor Selection Plan</i>	15	4.5	13.5	
Subcontractor selection plan				
<i>V. Organization/Completeness</i>	15	4	12	
General organization and completeness				
			86.5	Respondent's Score

Evaluator: /

Date: 2/4/20

Terminal Building Curtain Wall Modifications

PROJECT NO. P447

REQUEST FOR PROPOSAL (RFP)

CMAR ELECTION

WRITTEN PROPOSAL SCORESHEET

FIRM: WEBCOR

<i>Evaluation Criteria</i>	<i>Weight</i>	<i>Rating (0-5)</i>	<i>Score (Weight/5)* Rating</i>	<i>Comments</i>
I. Qualifications	25	5	25	
15 years of direct experience as GC or CMAR, Valid B license, Profile of company, General financial condition, Experience with similar projects, At least 3 comparable airport projects, Other OC projects, License revocation history.				
II. Staffing Plan/Organization Structure	20	4	16	
Key staff, proposed subcontractors, history of work, resumes, organization chart.				
III. Work Plan/Project Approach	25	4	20	
Project approach, outline sequence of activities, schedule, major issues and remedies, subcontractor selection plan, management approach, similar projects, project staff, work plan, methods.				
IV. Subcontractor Selection Plan	15	3.5	10.5	
Subcontractor selection plan				
V. Organization/Completeness	15	4	12	
General organization and completeness				
			83.5	Respondent's Score

Evaluator: 2

Date: 02-04-20

Terminal Building Curtain Wall Modifications

PROJECT NO. P447

REQUEST FOR PROPOSAL (RFP)

CMAR ELECTION

WRITTEN PROPOSAL SCORESHEET

FIRM: WEBCOR

Evaluation Criteria	Weight	Rating (0-5)	Score (Weight/5)* Rating	Comments
I. Qualifications	25	5	25	
15 years of direct experience as GC or CMAR, Valid B license, Profile of company, General financial condition, Experience with similar projects, At least 3 comparable airport projects, Other OC projects, License revocation history.				
II. Staffing Plan/Organization Structure	20	4½	18	
Key staff, proposed subcontractors, history of work, resumes, organization chart.				
III. Work Plan/Project Approach	25	4½	22½	
Project approach, outline sequence of activities, schedule, major issues and remedies, subcontractor selection plan, management approach, similar projects, project staff, work plan, methods.				
IV. Subcontractor Selection Plan	15	4½	13½	
Subcontractor selection plan				
V. Organization/Completeness	15	4	12	
General organization and completeness				
			91	Respondent's Score

Evaluator: 3

Date: 2/4/2020

FIRM:

WBB COR

Evaluation Criteria	Weight	Rating (0-5)	Score (Weight/5)* Rating	Comments
I. Qualifications	25	5	25	
15 years of direct experience as GC or CMAR, Valid B license, Profile of company, General financial condition, Experience with similar projects, At least 3 comparable airport projects, Other OC projects, License revocation history.				
II. Staffing Plan/Organization Structure	20	5	20	
Key staff, proposed subcontractors, history of work, resumes, organization chart.				
III. Work Plan/Project Approach	25	4	20	
Project approach, outline sequence of activities, schedule, major issues and remedies, subcontractor selection plan, management approach, similar projects, project staff, work plan, methods.				
IV. Subcontractor Selection Plan	15	3.5	10.5	
Subcontractor selection plan				
V. Organization/Completeness	15	4	12	
General organization and completeness				
			87.5	Respondent's Score

Evaluator: _____

(4)

Date: _____

2/4/00

Contract Summary Form

Webcor Builders, Inc.

SUMMARY OF SIGNIFICANT CHANGES

N/A

SUBCONTRACTORS

This contract does not currently include subcontractors or pass through to other providers.

CONTRACT OPERATING EXPENSES

Appropriations for this project are included in the FY 2019-20 Budget for Airport Construction Fund 281. The total cost of the construction phase services is estimated to not exceed \$6.4 million at this time, and will be included in next fiscal year's budget.

Indirect costs are unknown as department has not yet determined these costs for the project.