



AGENDA STAFF REPORT

ASR Control 23-000837

MEETING DATE: 12/19/23
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): 5
SUBMITTING AGENCY/DEPARTMENT: OC Public Works (Approved)
DEPARTMENT CONTACT PERSON(S): James Treadaway (714) 667-9700
Charlene Reynolds (949) 252-5183

SUBJECT: Approve Contract for Airport Terminal Electrical Distribution Upgrades

Table with 3 columns: CEO CONCUR (Concur), COUNTY COUNSEL REVIEW (Approved Agreement to Form), CLERK OF THE BOARD (Discussion, 3 Votes Board Majority)

Budgeted: Yes Current Year Cost: See Financial Impact Section Annual Cost: N/A

Staffing Impact: No # of Positions: Sole Source: No
Current Fiscal Year Revenue: N/A
Funding Source: Fund 281: 100% County Audit in last 3 years: No
Levine Act Review Completed: Yes
Prior Board Action: N/A

RECOMMENDED ACTION(S):

- 1. Find that the project is categorically exempt from CEQA, Class 1 (Existing Facilities) pursuant to CEQA Guidelines Section 15301.
2. Approve a contract with Swinerton Builders to provide Pre-Construction Phase Services for the John Wayne Airport Terminal Electrical Distribution Upgrades Project, for a Maximum Contract Price of \$14,194,585, effective upon execution of all necessary signatures.
3. Authorize the Director of OC Public Works or designee to execute the Pre-Construction Phase Services contract with Swinerton Builders.

SUMMARY:

Approval of the contract for Pre-Construction Phase Services for the John Wayne Airport Terminal Electrical Distribution Upgrades Project will modernize John Wayne Airport's Terminal complex electrical distribution system, which includes replacing aging switchgear and unit substations, providing provision for future microgrid/load shedding controls and monitoring system and modifying emergency distribution systems.

**BACKGROUND INFORMATION:**

John Wayne Airport (JWA), located approximately 35 miles south of Los Angeles, between the cities of Costa Mesa, Irvine and Newport Beach, is owned and operated by the County of Orange (County) and is the only commercial service airport in Orange County. JWA’s service area includes more than three million people within the 34 cities and unincorporated areas of Orange County. In 2022, approximately 11.3 million passengers were served.

The proposed JWA Terminal Electrical Distribution Upgrades Project (Project) proposes to replace the aging main terminal medium-voltage switchgear and the five unit substations - one in Terminal A, two in Terminal B, one in Parking A2 and one in Parking B2, which have over 20 years of use and are ending their design life. The 12 kilovolt distribution for the terminals will be re-fed from the new switchgear to the unit substations. In addition, the existing emergency systems will be upgraded to replace old air traffic service (ATS) in Terminals A and B and to separate emergency (life safety) loads from other loads per California Electrical Code Article 700.5(D) in Terminal A, Terminal B, Parking A2 and Parking B2, which currently have emergency power systems and ATS serving a combination of emergency and standby loads

On April 4, 2023, OC Public Works issued a Request for Proposal (RFP) for Construction Manager At-Risk Pre-Construction Services (Services) the Project. The RFP was advertised in several industry publications and on the County online bid system. One proposal was received and deemed responsive. The evaluation panel composed of members from OC Public Works scored the responsive proposal. See Attachment C for Memorandum of Recommendation and Evaluation Ranking Summary.

<u>Contractors</u>	<u>Rank</u>
Swinerton Builders	1

OC Public Works is procuring Services for this Project in accordance with the 2020 Design and Construction Procurement Policy Manual (DCPM), Section 3. The Orange County Preference Policy is not applicable to contracts procured in accordance with the DCPM.

OC Public Works is recommending the Board of Supervisors (Board) approval of Contract MA-080-24010644 (Contract) with Swinerton Builders (Contractor) for Services for the Project, for a Maximum Contract Price of \$14,194,585, which is composed of Guaranteed Maximum Price (GMP) No. 1 for Pre-construction Services in the amount of \$1,794,585 and an allotment for additional GMP’s for procurement of long lead-time equipment and additional site investigations, effective upon execution of all necessary signatures. Upon substantial completion of the design by the Architect-Engineer and negotiation of a GMP for construction services with the Contractor, OC Public Works will return to the Board for award of the construction services contract.

The Contractor's license number was verified as current and active through the California Contractors State License Board database on May 26, 2023. A copy of the verification is on file. The Contractor is based in Contra Costa County.

An analysis was conducted to determine the cost/benefit of contracting out versus providing Services in-house. Based on this analysis, OC Public Works has determined that contracting for Services was required as the specialized engineering expertise needed to complete the work is currently unavailable utilizing in-house staff.

OC Public Works has conducted due diligence on the Contractor. Reference checks were satisfactory and completed with SC Consulting, Paslay Group and Long Beach Airport regarding similar Projects.

This Contract includes subcontractors. See Attachment B for Contract Summary Form.

**Compliance with CEQA:** The proposed Project is Categorically Exempt (Class 1) from the provisions of CEQA pursuant to CEQA Guidelines Section 15301, because the Project includes maintenance and repair of a public facilities and mechanical equipment, involving negligible expansion of the existing use.

**FINANCIAL IMPACT:**

Appropriations for this Contract are included in Fund 281, Airport Construction Fund, FY 2023-24 Budget and will be included in the budgeting process for future years. The Contract will be completed in phases and encumbered accordingly up to the Maximum Contract Price of \$14,194,585.

The proposed Contract includes a provision stating the Contract may be terminated for convenience of the County upon less than seven days written notice to the Contractor and upon 10 days written notice to the Contractor prior to the effective date of the termination for cause without penalty to the County.

**STAFFING IMPACT:**

N/A

**REVIEWING AGENCIES:**

John Wayne Airport

**ATTACHMENT(S):**

Attachment A - Contract MA-080-24010644 with Swinerton Builders

Attachment B - Contract Summary Form

Attachment C - Memorandum of Recommendation and Evaluation Ranking Summary

Attachment D - Summary of Evaluators' Scoring

**County of Orange, OC Public Works  
Swinerton Builders****Attachment A  
MA-080-24010644****CONTRACT MA-080-24010644  
FOR  
PRE-CONSTRUCTION SERVICES**

This Contract made and entered into this by and between the County of Orange, a political subdivision of the State of California, hereinafter referred to as "County" and *Swinerton Builders* with a place of business at *2001 Clayton Rd. 7<sup>th</sup> Floor, Concord, CA 92701*, hereinafter designated the "Construction Manager" or "CMARE," with County and CMARE sometimes individually referred to as "Party", or collectively referred to as "Parties.

**CONTRACT**

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

**ARTICLE 1 – TERMS AND DEFINITIONS**

1. "Addenda" means written, or graphic instruments issued prior to the submittal of the GMP (hereinafter defined) Proposal(s), which clarify, correct or change the GMP Proposal(s) requirements.
2. "Allowance" means an estimated dollar amount determined jointly by the County and the CMARE 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. Contract allowances are controlled by the County.
3. "Alternate Systems Evaluations" means 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 meets County requirements.
4. "Amendment" means a written instrument issued after execution of the Contract Documents signed by the County and CMARE, stating their Contract upon all of the following: 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.
5. "Construction Contract Time(s)" means the number of days or the dates related to the construction phase that as stated in Construction Documents applies to achievement of Substantial Completion of the Work.
6. "Construction Documents" means plans, specifications and estimates prepared by the Design Professional after correcting for permit review requirements, provided pursuant to 2.7.5 and utilized for the Guaranteed Maximum Price Proposal.
7. "Construction Fee" means the CMARE's Profit calculated on the overall Cost of the Work. Home office overhead is covered by the Construction Fee. The Construction Fee does not include CMARE's General Requirements, General Conditions, Cost of Work, bonds, General Insurance, Subcontractor Default Insurance, taxes, business license fees, construction contingency costs which be included in the GMP.



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8. "Construction Manager at Risk Entity (CMARE)" means the firm, corporation, or other approved legal entity with whom the County has entered into this Contract to provide services as detailed in this Contract.
9. "Contract" means the written document signed by the County and CMARE covering the pre-construction phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Contract, including the below referenced General Conditions.
10. "Contract Amount" means the cost for Pre-Construction Services for this Contract as identified in Article 4.
11. "Contract Documents" means the following items and documents in descending order of precedence executed by the County and the CMARE: (i) all written modifications, amendments; (ii) this Contract, including all exhibits and attachments; and (iii) Construction Documents.  
  
"Cost of the Work" means direct construction phase costs necessarily incurred by the CMARE in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, General Insurance, Subcontractor Default Insurance, gross receipts taxes, business license fees, construction contingency, 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 County), and related items. The Cost of the Work shall not include the CMARE's Construction Fee, General Conditions Cost, or taxes.
12. "County" means the County of Orange, a political subdivision of the State of California, and its representatives, alternate designation, County.
13. "Critical Path Schedule" means the sequence of activities from the start of the Work to the Substantial Completion of the Project. Any delay in the completion of these activities will extend the Substantial Completion date.
14. "Day" means calendar day unless otherwise specifically noted in the Contract Documents.
15. "Pre-Construction (Services)" means the work products prepared by the CMARE in performing the Scope of Work, attached hereto and as described in this Contract.
16. "Design Professional" means the qualified, licensed person, firm, corporation or in-house force who furnishes design, construction support, and/or construction administration services required for the Project.
17. "Float" means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.
18. "General Conditions" means those costs defined as General Conditions in the Construction Contract and its General Conditions as attached hereto.
19. "Guaranteed Maximum Price (GMP)" means the sum of the maximum Cost of the Work including the CMARE's Construction Fee, General Conditions Costs, sales tax, including any unallocated reserves.
20. "Guaranteed Maximum Price (GMP) Proposal" means the offer or proposal of the CMARE 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) are to be developed pursuant to Article 2 of this Contract.

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21. "GMP revisions" GMP revisions are modifications to the GMP proposal either reducing or increasing the original GMP values and executed when the SOV values differ from the initially accepted GMP values. GMP may be utilized to address reasonable unforeseen conditions, minor owner directed changes that are within the original character/scope of work and may be utilized to release any Unallocated Reserve amounts back to the Contract capacity. GMP revisions do not constitute a change to the original contract and the total of all GMPs shall not exceed the original contract value.
22. "Laws and Regulations; Laws or Regulations" means any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.
23. "Long lead equipment" Long Lead Equipment procurement involves identifying equipment/materials, determining lead time, creating procurement plan to ensure timely delivery & installation. Requires close work with suppliers/manufacturers/logistics providers. Crucial for project success to avoid costly delays/disruptions.
24. "Notice to Proceed (NTP)" means a written notice given by County to the CMARE fixing the date on which the CMARE will start to perform the CMARE's obligations under this Contract.
25. "Payment Request" means the form that is accepted by the County and used by the CMARE in requesting progress payments or final payment and which will include such supporting documentation as is required by the Contract Documents and or the County.
26. "Plans" means documents which visually represent the scope, extent and character of the Work to be furnished and performed by the CMARE during the Construction phase and which have been prepared or approved by the Design Professional and the County. 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 biddability reviews and in preparing cost estimates (e.g. conceptual design, Drawings, preliminary design Drawings, detailed design Drawings at 35%, 65%, 95% or 100% or schematic, design development, construction documents). Shop Drawings are not Drawings as so defined.
27. "Project" means the works to be completed in the execution of this Contract as described in the Recital above and in the Scope of Work attached.
28. "Project Engineer" shall mean design engineer or designer who is responsible charge of preparing the engineering plans, estimate, and specifications.
29. "Project Manager" means a County appointed personnel to act as liaison between the County and the CMARE, to carry out the administration of this Contract and to monitor the CMARE's compliance with all the terms and conditions stated herein. All requests for information from or decisions by the County on any aspect of the Work or Deliverables will be directed to the County's Project Manager. The County's Project Manager shall coordinate the activities of the County's staff assigned to work with the CMARE. The County's Project Manager shall have the right to require the removal and replacement of the CMARE project manager and key personnel. The Project Manager shall notify the CMARE in writing of such action. The CMARE shall accomplish the removal within seven (7) calendar days after written notice by the Project Manager. The Project Manager shall review and approve the appointment of the replacement for the CMARE's project manager and key personnel. Said approval shall not be unreasonably withheld. The Project Manager shall have the authority to administer the rights and responsibilities of County so long as the Project Manager's actions do not affect the legal rights and obligations of County.

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30. "Project Team" means Pre-Construction team consisting of the Design Professional, CMARE, County Project Manager, and other stakeholders who are responsible for making decisions regarding the Project.
31. "Schedule of Values (SOV)" means the detailed breakdown by discipline or unit prices and costs as defined for the project in the Schedule of Values in the Construction Contract and its General Conditions as attached hereto.
32. "Shop Drawings" means all drawings, diagrams, schedules and other data specifically prepared for the Work by the CMARE or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
33. "Site" means the land or premises on which the Project is located.
34. "Specifications" means to include, but is not limited to, the part(s) of the Contract Documents for the Construction Services consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
35. "Subconsultant" means a person, firm or corporation having a Contract with the CMARE to furnish services required as its independent professional associate or consultant with respect to the Project.
36. "Subcontractor" means an individual or firm having a direct Contract with the CMARE or any other individual or firm having a Contract with the aforesaid Contractors at any tier, who undertakes to perform a part of the Pre-Construction services or Construction Work at the site for which the CMARE is responsible. Subcontractors will be selected through the Subcontractor bid process described in paragraph 2.7 of this Contract.
37. "Supplier" means a manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct Contract with CMARE or with any Sub-contractor to furnish materials or equipment to be incorporated in the construction phase Work by CMARE or any Sub-contractor. Major Suppliers will be selected through the Supplier bid process described in paragraph 2.8 of this Contract.
38. "Updated schedule" means a current schedule developed from the baseline or subsequent schedule through regular monthly review to incorporate as-built progress and any planned changes.
39. "Value Engineering" means 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 meets County requirements.
40. "Work" means the entire completed construction 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.
41. "Unallocated Reserve" A Schedule of Values ("SOV") line item within each GMP proposal that contains no initial balance. Unallocated Reserve shall be updated in accordance with the requirements of the Article 2.6.

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**ARTICLE 2 – BASIC PRE-CONSTRUCTION SERVICES****2.1 GENERAL**

- 2.1.1 The CMARE, to further the interests of the County, will perform the services required by, and in accordance with this Contract, to the satisfaction of the County 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. The CMARE will, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practice. The services being provided under this Contract will not alter any real property owned by the County. The CMARE will provide these services as applicable from the Design Phase through the end of the project design and GMP process.
- 2.1.2 Program Evaluation: If requested, as a participating member of the Project Team, the CMARE will provide to the County and Design Professional a written evaluation of the County's Project and Project Budget, each in terms of the other, with recommendations as to the appropriateness of each.
- 2.1.3 Project Meetings: The CMARE will 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.
- 2.1.4 The CMARE will provide Pre-Construction services, described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. The CMARE will promptly notify the County in writing whenever the CMARE 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.
- 2.1.5 The CMARE, when requested by the County, will attend, make presentations and participate as may be appropriate in public agency and or community meetings, germane to the Project. The CMARE will 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.

**2.2 PROJECT MANAGEMENT PLAN**

- 2.2.1 If requested by the County, the CMARE will prepare and/or maintain a Project Management Plan (PMP), which may include the CMARE'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, (j) a matrix summarizing each Project Team member's responsibilities and roles, (k) a utility relocation strategy, (l) construction staffing requirements, right of way, temporary construction easement (TCE), right of entry, encroachment permit strategies and requirements, and (m) reduction to environmental resources and environmental regulatory permit acquisition strategies.

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2.2.2 The CMARE shall add detail to its previous version of the PMP as new information becomes available to keep it current throughout the Pre-Construction phase, so that the PMP 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 County, Design Professional or the CMARE, (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 County.

**2.3 PROJECT SCHEDULE**

2.3.1 The fundamental purpose of the "Project 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 member's compliance with the schedule requirements of the Project. The CMARE is responsible for developing, maintaining and monitoring compliance with the "Project Schedule: on behalf of and to be used by the Project Team based on input from the other Project Team members. The Project Schedule will be consistent with the most recent revised/updated PMP. The Project Schedule will use the Critical Path Method (CPM) technique, unless required otherwise, in writing by the County. The CMARE will use scheduling software to develop the Construction Schedule that is acceptable to the County. 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.

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

2.3.2.1 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.

2.3.2.2 The CPM diagram schedule shall indicate all relationships between activities.

2.3.2.3 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.

2.3.2.4 The CPM diagram schedule shall be based upon activities, which would coincide with the schedule of values.

2.3.2.5 The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.

2.3.2.6 The Construction Schedule shall show milestones, including milestones for County-furnished information, and shall include activities for County-furnished equipment when those activities are interrelated with the CMARE activities.

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- 2.3.3 The Construction Schedule shall consider the County's and the tenants' occupancy requirements showing portions of the Project having occupancy priority, and Contract Time, if applicable.
- 2.3.4 Float time shall be as prescribed below:
- 2.3.4.1 The total Float within the overall schedule, is for the exclusive use of the County, and is a resource available to the County as needed to meet Contract milestones and the Project completion date.
- 2.3.4.2 Omitted
- 2.3.4.3 Since Float time within the schedule is solely County owned, it is acknowledged that County-caused delays on the Project may be offset by County-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 CMARE, etc.). In such an event, the CMARE shall not be entitled to receive a time extension or delay damages until all County-caused time savings are exceeded, and the Substantial Completion date is also exceeded.
- 2.3.5 The Construction Schedule will be updated and maintained by the CMARE throughout the design phase such that it will not require major changes at the start of the construction phase to incorporate the CMARE's plan for the performance of the construction phase Work. The CMARE will 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. The CMARE will 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.
- 2.3.6 Construction Phasing: If phased construction is deemed appropriate and the County and Design Professional approve, the CMARE will 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. The CMARE will 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.
- 2.4 DESIGN DOCUMENT REVIEWS**
- 2.4.1 The CMARE will 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.
- 2.4.2 The CMARE will 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 CMARE to construct the Project. Before initiating construction operations, the CMARE 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.

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- 2.4.3 The CMARE will meet with the Project Team as required to review designs during their development. The CMARE will familiarize itself with the evolving documents through the various design phases. The CMARE will 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. The CMARE will furthermore advise the Project Team on proposed site improvements, excavation and foundation considerations including concerns that exist with respect to coordination of the Drawings and Specifications. The CMARE will recommend cost effective alternatives.
- 2.4.4 The CMARE will routinely conduct constructability and biddability 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.
- 2.4.4.1 Constructability Reviews: The CMARE will 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. The CMARE shall identify, to the greatest extent practicable, discrepancies and inconsistencies in the Construction Documents.
- 2.4.4.2 Biddability Reviews: The CMARE will 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. The CMARE shall identify, to the greatest extent practicable, discrepancies and inconsistencies in the Construction Documents.
- 2.4.4.3 The results of the reviews will be provided to the County 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. The written reports will be provided whenever required, but not less often than at the Project Milestones. If requested by the County, the CMARE will meet with the County and Design Professional to discuss any findings and review reports.
- 2.4.4.4 The CMARE'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 CMARE.
- 2.4.5 Notification of Variance or Deficiency: It is the CMARE's responsibility to assist the Design Professional in ascertaining that, in the CMARE's professional opinion, the Construction Documents are in accordance with applicable laws, statutes, ordinances,

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building codes, rules and regulations. If the CMARE 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 County 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.

- 2.4.6 Value Engineering 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 CMARE 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. The CMARE will include the cost of the alternatives into the cost estimate and any GMP Proposals.

**2.5 COST ESTIMATES**

- 2.5.1 Unless otherwise agreed by both Parties, within thirty (30) calendar days after receipt of the documents for the various phases of Pre-Construction, the CMARE shall provide a detailed cost estimate and a written review of the documents. The Design Professional and CMARE shall reconcile any discrepancies on the estimate to arrive at a GMP. If no consensus is reached, the County will make the final determination.
- 2.5.2 If any estimate submitted to the County exceeds previously accepted estimates or the County's Project budget, the CMARE shall make appropriate recommendations on methods and materials to the County and Design Professional that he believes will bring the project back into the Project budget.
- 2.5.3 The CMARE shall prepare a comprehensive cost estimate, including but not limited to, purchase cost, shipping fees, custom duties, taxes, and other associated expenses related to the procurement and delivery of long lead equipment. The cost estimate shall be itemized and presented clear and organized manner.
- 2.5.4 In between these milestone estimates, the CMARE 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 CMARE to keep the County and Design Professional informed as to the major trend changes in costs relative to the County's budget.
- 2.5.5 If requested by the County, the CMARE shall prepare a preliminary "cash flow" projection based upon historical records of similar type projects to assist the County in the financing process.
- 2.5.6 As this Contract is funded in whole or in part by the Federal Government, CMARE shall comply with Federal labor standards provisions set forth in the Contract. If the Federal prevailing wage determinations differ from the State's, CMARE shall not pay less than the higher of the two rates



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**2.6 GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS**

- 2.6.1 The proposed GMP for the entire Work (or portions thereof) will be presented in a format acceptable to the County. Due to the potential for the County to update procedures without notice, CMARE must verify with the County the current submittal requirements and procedures when entering into these services.
- 2.6.1.2 The County may request a GMP Proposal for all or any portion of the Project and at any time during the Pre-Construction phase. Any GMP Proposals submitted by the CMARE will 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.
- 2.6.2 Guaranteed Maximum Price is comprised of the following not-to-exceed cost reimbursable or lump sum amounts defined below.
- 2.6.2.1 The Cost of the Work is actual costs and is a not-to-exceed, reimbursable amount.
- 2.6.2.2 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.
- 2.6.2.3 The CMARE shall develop a GMP Proposal(s) that outlines the maximum price for services described in Attachment A. The GMP Proposal shall be presented to the County in a format specified by the County and shall include any necessary clarifications or assumptions upon which the GMP is based.
- 2.6.2.4 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.
- 2.6.3 As subcontractor's contracts are negotiated, the CMARE shall keep track of Buy-Out savings and Buy-Out losses as they occur (i.e. when the subcontracts for individual SOV line items are established). For each GMP update the Buy-Out savings and Buy-Out losses shall be summed together to establish an overall credit to, or debit from Unallocated Reserve. If this summation results in an overall deficit to Unallocated Reserve, the CMARE shall identify savings from other SOV line items and reduce the associated allocation or accepted price for that line item(s) equal to the deficit in Unallocated Reserve (i.e. Unallocated Reserve cannot be less than zero dollars for a submitted GMP update.).
- 2.6.4 GMPs are cumulative.
- 2.6.5 The CMARE, in preparing any GMP Proposal will prepare its GMP in accordance with the County's request and will obtain from the Design Professional, three (3) sets Construction Documents (including all addenda). The CMARE will mark the face of each document of each set upon which its proposed GMP is based. The CMARE will send one (1) set of those documents to the County's Project Manager, keep one (1) set and return the third set to the Design Professional.
- 2.6.6 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 paragraph 2.3.

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- 2.6.7 Upon completion of the scope of work for a GMP proposal, the CMARE shall prepare a GMP Revision which reduces the GMP in the amount equal to the Unallocated Reserve. This GMP Revision does not reduce the overall Contract Price defined in Article 4.1 of the Contract.
- 2.6.8 GMP Proposal(s) Review and Approval shall be prescribed below:
- 2.6.8.1 The CMARE will meet with the County and Design Professional to review the GMP Proposal(s) and the written statement of its basis. In the event the County or Design Professional discovers inconsistencies or inaccuracies in the information presented, the CMARE will make adjustments as necessary to the GMP Proposal, its basis or both.
- 2.6.8.2 The County upon receipt of any GMP proposal from the CMARE, 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.
- 2.6.8.3 If the CMARE's GMP Proposal is greater than the independent third party or Design Professional's estimate, the County may require the CMARE to reconfirm its GMP Proposal. The CMARE will 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 (7) days of a written request to the County identifying, explaining and substantiating the differences. The CMARE may be requested to, or at its own discretion, submit a revised GMP Proposal for consideration by the County. At that time the County may do one of the following:
- (a) Accept the CMARE's original or revised GMP Proposal, if within the County's budget, without comment.
  - (b) Accept the CMARE's original or revised GMP Proposal that exceeds the County's budget and indicate in writing to the CMARE that the Project Budget has been increased to fund the differences.
  - (c) Reject the CMARE's original or revised GMP Proposal because it exceeds the County's budget, the independent third party's or Design Professional's estimate, in which event, the County may terminate this Contract and/or elect to not enter into a separate Contract with the CMARE for the Construction phase associated with the scope of Work reflected in the GMP Proposal.
  - (d) Wait to accept the GMP Proposal if the County believes adequate funding will be available in the future.

If during the review and negotiation of GMP Proposals design changes are required, the County 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 CMARE. The CMARE will promptly notify the Design Professional and County in writing if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.

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- 2.7 MAJOR SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS**
- 2.7.1 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 CMARE. In any case, the CMARE is solely responsible for the performance of the selected Subcontractors/Suppliers.
- 2.7.1.1 The CMARE will prepare a Subcontractor/Supplier selection plan and submit the plan to the County for approval. This subcontractor selection plan shall identify those subcontractor trades anticipated to be selected by qualifications only per Article 2.7.2 and those subcontractor trades anticipated to be selected by qualifications and competitive bid in accordance with Article 2.7.3. 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.
- 2.7.2 Selection by qualifications only - The County may approve the selection of a Subcontractor(s) or Supplier(s) based only on their qualifications when the CMARE can demonstrate it is in the best interest of the Project.
- 2.7.2.1 Qualification based selection of a Subcontractor(s)/Supplier(s) should only occur during the Pre-Construction phase to achieve maximum benefit of the subcontractors' involvement prior to the submittal of the GMP Proposal.
- 2.7.2.2 The CMARE shall apply the approved subcontractor selection plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the County with its review and recommendation.
- 2.7.2.3 The CMARE must receive County approval of the selected Subcontractor(s)/Supplier(s).
- 2.7.2.4 The CMARE will negotiate costs for services/supplies from each Subcontractor/Supplier selected under this method.
- 2.7.3 Selection by qualifications and competitive bid - The CMARE shall apply the subcontractor selection plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the County 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 2.7.2 above. Competitive bids may occur prior to or after the GMP Proposal(s).
- 2.7.3.1 The CMARE will develop Subcontractor and Supplier interest, submit the names of a minimum of three (3) qualified Subcontractors or Suppliers for each trade in the Project for approval by the County and solicit bids for the various Work categories. The CMARE will identify the Small Business Enterprise Subcontractors and Suppliers and during the bidding process keep the County informed on the progress of meeting the desired DBE goal. If there are not three (3) qualified Subcontractors/Suppliers available for a specific trade or there are extenuating circumstances warranting such, the CMARE may request approval by the County to submit less than three (3) names. No change in the recommended Subcontractors/Suppliers will be allowed without prior written notice to the County.

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- 2.7.3.2 If the County objects to any nominated Subcontractor/Supplier or to any self-performed Work for reasonable grounds, the CMARE will nominate a substitute Subcontractor/Supplier that is acceptable to the County.
- 2.7.3.3 The CMARE will distribute Drawings and Specifications, and when appropriate, conduct a pre-bid conference with prospective Subcontractors and Suppliers with County's Project Manager or their designee present.
- 2.7.3.4 If the CMARE desires to self-perform certain portions of the Work, it will request to be one (1) of the approved Subcontractor bidders for those specific bid packages. The CMARE's bid will be evaluated in accordance with the process identified below. If events warrant and the County concurs that in order to ensure compliance with the Project Schedule and/or cost, the CMARE may self-perform Work without bidding or re-bidding the Work.
- 2.7.3.5 The CMARE 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. The CMARE 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 CMARE, 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 County Project Manager in attendance to observe and witness the process. The CMARE will resolve any Subcontractor/Supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.
- 2.7.4 The CMARE will be required to prepare two (2) different reports on the subcontracting process as prescribed below:
- 2.7.4.1 Within thirty-five (35) days after each major subcontractor/Supplier bid opening process, the CMARE will prepare a report for the County's review and approval identifying the recommended Subcontractors/Supplier for each category of Work. The report will provide (a) the name of the recommended Subcontractor/Supplier and the amount of the Subcontractor/Supplier bid for each subcontract, (b) the sum of all recommended Subcontractor/Supplier bids received, (c) a copy of the bids received from each subcontractor, and (d) trade work and it's cost that the CMARE intends to self-perform, if any.
- 2.7.4.2 Upon completion of the Subcontractor/Supplier bidding process, the CMARE shall submit a summary report to the County 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.
- 2.7.5 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.
- 2.7.6 If after receipt of sub-bids or after award of Subcontractors and Suppliers, the County objects to any nominated Subcontractor/Supplier or to any self-performed Work for good

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reason, the CMARE will 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 County, the CMARE's proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.

- 2.7.7 Promptly after receipt of the Notice of Intent to Award, the County will conduct a pre-award conference with the CMARE and other Project Team members. At the pre-award conference, the CMARE will (a) review the nominated slate of Subcontractors and Suppliers and discuss any concerns with or objections that the County has to any nominated Subcontractor or Supplier; (b) discuss County concerns relating to any proposed self-performed Work; (c) review the CMARE's proposed Contract Price for the Work during the construction phase; (d) resolve possible time frames for the Date of Commencement of the Contract time for the Construction phase Work; (e) schedule the pre-construction conference; and (f) discuss other matters of importance.

**ARTICLE 3**

- 3.1 Omitted

**ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS**

**4.1 CONTRACT AMOUNT FOR PRE-CONSTRUCTION SERVICES**

- 4.1.1 Based on the Pre-Construction services fee proposal submitted by the CMARE in a separate price proposal and accepted by the County (which by reference is made a part of this Contract); the County will pay the CMARE a *Maximum Contract Price* of **\$14,194,585** as follows:

The CMARE shall provide the basic services described in Article 2 and Attachment A for:

- <i>Guaranteed Maximum Price for Pre-Construction Services</i>	<b>\$1,794,585</b>
- <i>Additional GMPs</i>	<b>\$12,400,000</b>

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***Total Pre-Construction GMP Amount:*** **\$14,194,585**

***Construction Services Fee for the Project:*** **4.5%**  
***Bond Cost Fee for the Project:*** **1.16%**

**4.2 PAYMENTS**

- 4.2.1 Requests for monthly payments by the CMARE for Pre-Construction services will be submitted on the County's "Contract Payment Request" form and will be accompanied by a progress report, detailed invoices and receipts, if 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 Subconsultants' requests for payment, based on their respective fee schedules in *Attachment C*, plus similar narrative and listings of Deliverables associated with their Work. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of work completed during the preceding month. Services negotiated as a not-to-exceed fee will be paid in accordance with the work effort expended on that service during the preceding month.

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- 4.2.2 The fees for the CMARE and any Subconsultants will be based upon the hourly rate schedule in Attachment C.
- 4.2.3 The CMARE will pay all sums due Subconsultants for services and reimbursable expenses within fourteen (14) calendar days after the CMARE has received payment for those services from the County. In no event will the County pay more than 90 percent (90%) of the Contract Amount until final acceptance of all Pre-Construction services, and award of the final approved GMP for the entire Project by County, or County's election to not use CMARE for construction of the Project.
- 4.2.4 The CMARE 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 County during the progress of any portion of the services 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 between the Parties. It is understood and agreed, however, that permitting the CMARE to proceed to complete any services, 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 County of any of its legal rights herein.

**4.3 ADDITIONAL PRE-CONSTRUCTION SERVICES**

4.3.1 **CMARE'S EXPENSE:** CMARE 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.

4.3.2 **REIMBURSABLE ITEMS:** Reimbursable items are non-salary items that are not included in the Scope of Work but necessary for completion of the work and must be authorized in advance by the County Project Manager. CMARE may be entitled to reimbursement for the following, upon prior approval by County:

- 1) The actual costs of special equipment to be rented, leased, or purchased by CMARE for use exclusively in the performance of the Scope of Services, to the extent such rental, lease, purchase, and costs have been approved in writing by the County Project Manager.
- 2) Printing expenses paid to outside Contractors; to the extent such Contractors and reproduction rates have been approved by the County Project Manager.
- 3) Other actual costs and/or payments specifically approved and authorized in writing by the County Project Manager and actually incurred by CMARE in performance of this Contract.
- 4) Travel costs shall only be reimbursed if approved in advance in writing by County Project Manager and are subject to the following restrictions:
  - a. Reimbursement of mileage for the business use of a personal vehicle during the conduct of business within the Scope of Services of this Contract shall be based on the Internal Revenue Service Standard Mileage Rate in effect at the time. Mileage between the CMARE's "Home Based" office location and OC Public Works location, as well as mileage within OC Public Works property will not be reimbursed.

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- 5) Cost of “Home Based” Xerox copies, faxes, and other supplies and materials associated with them will not be reimbursed.
- 6) Cost of cellular phones, cell phone usage plans and usage minutes, and other mobile communication devices will not be reimbursed.
- 7) All reimbursable expenses must be itemized on CMARE invoice(s) and documented with receipts. Receipts for reimbursable expenses must be submitted with all CMARE invoices. Invoices for reimbursable expenses without back-up receipts will not be paid. CMARE is responsible for submitting reimbursable invoices in a format that is acceptable to the County. Reimbursable items shall be charged at cost. Any third-party or subcontractor services shall also be charged at cost; no mark-ups will be allowed.

**ARTICLE 5 - COUNTY'S RESPONSIBILITIES**

- 5.1 The County, at no cost to the CMARE, will furnish the following information:
  - 5.1.1 One copy of data the County determines pertinent to the Work. However, the CMARE will be responsible for searching the records and requesting information it deems reasonably required for the Project.
  - 5.1.2 All available data and information and requirements pertaining to relevant policies, standards, criteria, studies, etc.
  - 5.1.3 The name of the County employee or County’s representative who will serve as the Project Manager during the term of this Contract. The Project Manager has the authority to administer this Contract and will monitor the CMARE’s compliance with all terms and conditions stated herein. All requests for information from or decisions by the County on any aspect of the Work or Deliverables will be directed to the Project Manager. County shall give CMARE written notification if the person designated as the Project Manager changes.
- 5.2 The County additionally will:
  - 5.2.1 Contract separately with one (1) or more design professionals to provide architectural and/or engineering design/pre-construction 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 CMARE for its information. The CMARE will have no right, to limit or restrict any changes of such services that are otherwise mutually acceptable to the County and Design Professional.
  - 5.2.2 Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by the CMARE except for those copies whose cost has been reimbursed by the County.
  - 5.2.3 Give prompt written notice to the CMARE when the County 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 County may provide written notice to CMARE that it intends to terminate the Contract unless the problem cited is cured, or commenced to be cured, within three (3) days of CMARE’s receipt of such notice.
  - 5.2.4 Notify the CMARE of changes affecting the budget allocations or schedule.

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- 5.3 The County's Project Manager will have authority to approve the Project Budget and Project Schedule and render decisions and furnish information the Project Manager deems appropriate to the CMARE. This authority is only for the purpose of facilitating the Pre-Construction phase. This approval authority is not binding or a commitment upon the County for the purposes of Project construction.

**ARTICLE 6 – CONTRACT CONDITIONS**

**6.1 PROJECT DOCUMENTS AND COPYRIGHTS**

- 6.1.1 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 County and are to be delivered to the County's Project Manager before the final payment is made to the CMARE. Nonetheless, in the event these Projects Documents are altered, modified or adapted without the written consent of the CMARE, which consent the CMARE will not unreasonably withhold, the County agrees to hold the CMARE harmless to the extent permitted by law, from the legal liability arising out of and or resulting from the County's alteration, modification or adaptation of the Project Documents.
- 6.1.2 License to County for Reasonable Use: The CMARE hereby grants, and will require its Subconsultants to allow the County, 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. If the derivative works require the County to alter or modify the Project Documents, then Paragraph 6.1.1 applies.
- 6.1.3 Documents to Bear Seal: When applicable and required by state law, the CMARE and its Subconsultants will sign and stamp by an applicable California professional all plans, works, and Deliverables prepared by them for this Contract.

**6.2 AMENDMENT TO PRE-CONSTRUCTION WORK**

- 6.2.1 CMARE shall make no changes in the work or perform any additional work without the County'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 County, compensation shall be at hourly rates as indicated in the payment schedule.

Reimbursable Items, Article 4 and Changes in Services, Article 2 and Scope of Work, must be specifically approved by County in writing before work begins. All changes in Scope of Work that amend this Contract may be subject to approval by County of Orange Board of Supervisors.

- A. County Initiated: County may, at any time, upon written notice, direct any changes in the work within the general scope of the Contract. If County shall determine that a change in the scope of services of the CMARE is desirable, a written order



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called an "Amendment" shall be issued by County which shall set forth the nature of the change. When an Amendment has been issued, CMARE shall expeditiously proceed to implement the change set forth therein.

- B. If CMARE believes that a change in the scope of services is necessary and desirable to further the interests of the Project under this Contract, CMARE shall make a request, in writing, to County 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, County may reject the request; approve the request; negotiate with CMARE regarding the change in the scope of services, cost and/or change in schedule. A written Amendment will be processed by County and CMARE shall expeditiously proceed to implement such change.

**6.3 ALTERATION IN CHARACTER OF WORK**

- 6.3.1 Notwithstanding the foregoing, the Project Manager may approve increases resulting from a substantial change in this Contract for services within the existing Scope of Work amount does not exceed 25 percent (25%) of the existing Contract price or \$200,000, whichever is less.
- 6.3.2 Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to the CMARE may accordingly be adjusted by mutual Contract of the Parties.
- 6.3.3 No claim for extra work done or materials furnished by the CMARE during this Pre-Construction phase will be allowed by the County except as provided herein, nor will the CMARE 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 CMARE without such prior written authorization will be the CMARE's sole jeopardy, cost, and expense, and the CMARE hereby agrees that without prior written authorization no claim for compensation for such work or materials furnished will be made.

**6.4 DATA CONFIDENTIALITY AND DATA SECURITY**

- 6.4.1 Data Confidentiality: 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 CMARE or its subcontractors in the performance of this Contract.
- 6.4.1.1 The Parties agree that all data, regardless of form, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CMARE or its subcontractors in connection with the CMARE's or its subcontractor's performance of this Contract is confidential and proprietary information belonging to the County.
- 6.4.1.2 Except as specifically provided in this Contract, the CMARE or its subcontractors shall not divulge data to any third party without prior written consent of the County. The CMARE 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

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provided the CMARE or its subcontractors have first given the required notice to the County:

- 6.4.1.2.1 Data which was known to the CMARE or its subcontractors prior to its performance under this Contract unless such data was acquired in connection with work performed for the County.
- 6.4.1.2.2 Data which was acquired by the CMARE or its subcontractors in its performance under this Contract and which was disclosed to the CMARE or its subcontractors by a third party, who to the best of the CMARE's or its subcontractor's knowledge and belief, had the legal right to make such disclosure and the CMARE or its subcontractors are not otherwise required to hold such data in confidence; or
- 6.4.1.2.3 Data which is required to be disclosed by virtue of law, regulation, or court order, to which the CMARE or its subcontractors are subject.
- 6.4.1.3 In the event the CMARE or its subcontractors are required or requested to disclose data to a third party, or any other information to which the CMARE or its subcontractors became privy as a result of any other Contract with the County, the CMARE shall first notify the County as set forth in this Article of the request or demand for the data. The CMARE or its subcontractors shall give the County sufficient facts so that the County can be given an opportunity to first give its consent or take such action that the County may deem appropriate to protect such data or other information from disclosure.
- 6.4.1.4 The CMARE, unless prohibited by law, within ten (10) calendar days after completion of services for a third party on real or personal property owned or leased by the County, the CMARE or its subcontractors shall promptly deliver, as set forth in this Article, a copy of all data to the County. All data shall continue to be subject to the confidentiality Contracts of this Contract.
- 6.4.1.5 The CMARE or its subcontractors assume all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the County if any of the provisions of this Section are violated by the CMARE, its employees, agents or subcontractors. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this Article shall be deemed to cause irreparable harm that justifies injunctive relief in court. CMARE agrees that the requirements of this Article shall be incorporated into all subcontracts entered into by CMARE. A violation of this Article may result in immediate termination of this Contract without notice.
- 6.4.2 Personal Identifying Information-Data Security. Personal identifying information, financial account information, or restricted County information, whether electronic form to hard copy, must be secured and protected at all times. At a minimum, CMARE must encrypt and/or password protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.
- 6.4.2.1 When personal identifying information, financial account information, or restricted County 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.
- 6.4.2.2 In the event that data collected or obtained by CMARE or its subcontractors in connection with this Contract is believed to have been compromised, CMARE or its subcontractors shall immediately notify the Project Manager. CMARE agrees to reimburse the County for

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any costs incurred by the County to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

6.4.2.3 CMARE agrees that the requirements of this Article shall be incorporated into all subcontracts entered into by CMARE. It is further agreed that a violation of this Article shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Article may result in immediate termination of this Contract without notice.

6.4.2.4 The obligations of CMARE or its subcontractors under this Article shall survive the termination of this Contract.

**6.5 PROJECT STAFFING**

6.5.1 Prior to the start of any Work or Deliverable under this Contract, the CMARE will submit to the County, an organization chart for the CMARE staff and Subconsultants and detailed resumes with pictures of key personnel listed in its response to the County'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 County hereby acknowledges its acceptance of such personnel to perform such services under this Contract. In the event the CMARE desires to change such key personnel from performing such services under this Contract, the CMARE will submit the qualifications of the proposed substituted personnel to the County 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.

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

6.5.3 The CMARE shall comply with Public Contract Code Section 20146(c) regarding use of a skilled and trained workforce to perform all work on the project. The CMARE shall further ensure its subcontractors at every tier comply with the Section 20146(c).

6.6-6.7 Omitted

**6.8 TERMINATION OF CONTRACT FOR CAUSE**

6.8.1 If CMARE breaches any of the covenants or conditions of this Contract, including an event of default, County shall have the right to terminate this Contract upon ten (10) days written notice prior to the effective day of termination.

6.8.2 CMARE shall have the opportunity to cure the alleged breach prior to termination.

6.8.3 In the event the alleged breach is not cured by CMARE prior to termination, all work performed by CMARE pursuant to this Contract, which work has been reduced to plans or other documents, shall be made available to County.

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**6.9 NON-EMPLOYMENT OF COUNTY PERSONNEL**

6.9.1 CMARE agrees that it will neither negotiate, offer, or give employment to any full-time, regular employee of County 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.

6.9.2 Nothing in this Contract shall be deemed to make CMARE, or any of CMARE's employees or agents, agents or employees of the County. CMARE shall be an independent Contractor and shall have responsibility for and control over the details and means for performing the work, provided that CMARE is in compliance with the terms of this Contract. Anything in the Contract which may appear to give County the right to direct CMARE as to the details of the performance of the work or to exercise a measure of control over CMARE shall mean that CMARE shall follow the desires of County, only in the results of the work.

**6.10 NON-DISCRIMINATION**

6.10.1 In the performance of this Contract, CMARE agrees that it will comply with the requirements of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons.

6.10.2 CMARE acknowledges that a violation of this provision shall subject CMARE to all the penalties imposed for a violation of the California Labor Code.

**6.11 EMPLOYEE ELIGIBILITY VERIFICATION**

6.11.1 CMARE warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens, and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. CMARE shall obtain from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations, including but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324 et seq., as they currently exist and as they may be hereafter amended. CMARE shall retain all such documentation for all covered employees for the period prescribed by the law.

6.11.2 CMARE shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against CMARE or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

**6.12 TERMINATION FOR CONVENIENCE**

6.12.1 Notwithstanding any other provision of the Contract, County may at any time, and without cause, terminate this Contract in whole or in part, upon not less than seven (7) calendar days' written notice to the CMARE. Such termination shall be affected by delivery to the CMARE of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated.

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- 6.12.2 CMARE shall immediately stop Work in accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by County.
- 6.12.3 County shall pay the CMARE for the Work completed prior to the effective date of the termination, and such payment shall be the CMARE's sole remedy under this Contract.
- 6.12.4 Under no circumstances will CMARE be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph.
- 6.12.5 CMARE shall insert in all subcontracts that the subcontractor shall stop Work on the date of and to the extent specified in a notice of termination and shall require subcontractors to insert the same condition in any lower tier subcontracts.

**6.13 LAWS TO BE OBSERVED**

- 6.13.1 CMARE is assumed to be familiar with and, always, shall observe and comply with all federal, state and local laws, ordinances and regulations in any manner affecting the conduct of the Projects/Services.

**6.14 ERRORS AND OMISSIONS**

- 6.14.1 All Projects/Services submitted by CMARE shall be complete and shall be carefully checked prior to submission. CMARE understands that County's checking is discretionary, and CMARE shall not assume that County will discover errors and/or omissions. If County discovers any errors or omissions prior to approving CMARE's Projects/Services, the Projects/Services will be returned to CMARE for correction. Should County or others discover errors or omissions in the work submitted by CMARE after County's approval thereof, County's approval of CMARE's Projects/Services shall not be used as a defense by CMARE.
- 6.14.2 If CMARE subcontracts portions of the architectural or engineering design Projects/Services to be performed under the terms of this Contract, CMARE 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 CMARE under the terms of this Contract. Evidence of subcontractor's insurance shall be submitted to County upon request.

**6.15 INSURANCE**

- 6.15.1 Prior to the provision of services under this contract, the CMARE agrees to purchase all required insurance at CMARE's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this contract have been complied with. CMARE agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of CMARE pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for CMARE. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy.
- 6.15.2 CMARE shall ensure that all subcontractors performing work on behalf of CMARE pursuant to this Contract shall be covered under CMARE's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein

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for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from CMARE under this Contract. It is the obligation of CMARE 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 CMARE through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

- 6.15.3 All self-insured retentions (SIR)'s shall be clearly stated on the Certificate of Insurance. Any SIR in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee. The County reserves the right to require current audited financial reports from Contractor. If CMARE is self-insured, CMARE will indemnify the County for any and all claims resulting or arising from CMARE's services in accordance with the indemnity provision stated in this Contract.

Upon notice of any actual or alleged claim or loss arising out of subcontractor's work hereunder, subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Contractor and Additional Insureds.

- 6.15.4 If the CMARE fails to maintain insurance acceptable to the County for the full term of this Contract, the County 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 the CMARE shall provide the minimum limits and coverage as set forth below:

Commercial General Liability	\$5,000,000 per occurrence \$10,000,000 aggregate
Automobile Liability including converge for owned, non-owned and hired vehicles	\$1,000,000 combined single limit
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability	\$5,000,000 per claims made or per occurrence \$10,000,000 aggregate

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**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 at least 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**

1. The Commercial General Liability and policies shall contain the following endorsements, which shall accompany the Certificate of Insurance:
  - a. An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the ***County of Orange, and their respective elected and appointed officials, officers, employees and agents*** as Additional Insureds, or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT***.
  - b. A primary non-contributing endorsement ISO form CG 20 01 04 13 evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.
  - c. A Products and Completed Operations endorsement using ISO Form CG2037 04 13 or a form at least as broad.
2. 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***, or provide blanket coverage which shall state *As Required by Written Contract* within the scope of their appointment or employment. .
3. All insurance policies required by this Agreement shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees and agents when acting within the scope of their appointment or employment.
4. CMARE 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 Agreement, upon which the County may suspend or terminate this Agreement.
5. If CMARE's Professional Liability policy is a claims-made policy, CMARE shall agree to the following:
  - a. The retroactive date must be shown and must be before the date of the Contract or the beginning of the Contract services.
  - b. Insurance must be maintained, and evidence of insurance must be provided for at least three (5) years after expiration or earlier termination of Contract services.

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- c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Contract services, Contractor must purchase an extended reporting period for a minimum of three (5) years after expiration of earlier termination of the Contract.

**Required Endorsements**

1. The Commercial General Liability and Environmental/Pollution Liability policies shall contain the following endorsements, which shall accompany the Certificate of Insurance:
  - a. An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the *County of Orange, and their respective elected and appointed officials, officers, employees and agents* as Additional Insureds, or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT.***
  - b. A primary non-contributing endorsement ISO form CG 20 01 04 13 evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.
  - c. 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 from CG2010 (ed. 11/85).
2. 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, or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN AGREEMENT.**
3. All insurance policies required by this Agreement shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees and agents when acting within the scope of their appointment or employment.
4. CMARE 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 Agreement, upon which the County may suspend or terminate this Agreement.
5. If CMARE's Professional Liability policy is a claims-made policy, CMARE shall agree to maintain professional liability coverage for two (2) years following completion of Agreement.
6. The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).
7. Insurance certificates should be forwarded to the agency/department address listed on the solicitation.
8. If the CMARE fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.



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9. County expressly retains the right to require CMARE to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.
10. County shall notify CMARE in writing of changes in the insurance requirements. If CMARE 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 Agreement may be in breach without further notice to CMARE, and County shall be entitled to all legal remedies.
11. The procuring of such required policy or policies of insurance shall not be construed to limit CMARE's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

**6.16 INDEMNIFICATION**

CMARE agrees to, indemnify, defend with counsel approved in writing by County, and hold County, the County of Orange ("County"), their elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the CMARE. If judgment is entered against CMARE and County by a court of competent jurisdiction because of the concurrent active negligence of CMARE and County or County Indemnitees, CMARE and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve CMARE of any insurance requirements or obligations created elsewhere in this Contract.

**6.17 AMENDMENTS**

- 6.17.1 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 County unless authorized by County in writing.

**6.18 SUCCESSORS AND ASSIGNS**

- 6.18.1 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.

**6.19 ENTIRETY**

- 6.19.1 This Contract contains the entire Contract between the Parties with respect to the matters provided for herein.

**6.20 SEVERABILITY**

- 6.20.1 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.

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**6.21 BINDING OBLIGATION**

6.21.1 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.

**6.22 GOVERNING LAW AND VENUE**

6.22.1 This Contract 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 Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure, Section 394.

6.22.2 The Parties specifically agree that by soliciting and entering into and performing Projects/Services under this Contract, the CMARE shall be deemed to constitute doing business within Orange County from the time of solicitation of work, through the period when all Projects/Services under this Contract is completed and continuing until the expiration of any applicable limitations period.

**6.23 OMITTED****6.24 PUBLICATION**

6.24.1 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 CMARE and/or anyone acting under the supervision of CMARE to any person, partnership, company, corporation, or agency, without prior written approval by the County, 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 County approval.

The CMARE 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. CMARE must first obtain review and approval of said media contact from the County through the County's Project Manager. Any requests for interviews or information received by the media should be referred directly to the County. CMARE's are not authorized to serve as a media spokesperson for County projects without first obtaining permission from the County Project Manager.

**6.25 RECORDS AND AUDIT/INSPECTIONS**

6.25.1 CMARE shall keep an accurate record of time expended by CMARE and/or consultants employed by CM in the performance of this Contract.

6.25.2 Within ten (10) days of County's written request, CMARE shall allow County or authorized State or Federal agencies or any duly authorized representative to have the right to access, examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, timecards or other records relating to this Contract.

6.25.3 CMARE shall keep such material, including all pertinent cost accounting, financial records

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and proprietary data for a period of three (3) years after termination or completion of the Contract or until resolution of any claim or dispute between the Parties, whichever is later.

6.25.4 Should CMARE 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 County.

**6.26 NOTICES**

6.26.1 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.

6.26.2 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.

6.26.3 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.

CMARE: Swinerton Builders  
Attn: Jose Acosta  
200 North Main Street  
Santa Ana, CA 92701  
Phone: 213-896-3405  
E-mail: [jacosta@swinerton.com](mailto:jacosta@swinerton.com)

County: County of Orange, Public Works  
Attn: Casey Garrison, Project Manager  
Address: 601 North Ross Street  
Santa Ana, CA 92703  
Phone: 714-667-8320  
Email: [Casey.Garrison@ocpw.ocgov.com](mailto:Casey.Garrison@ocpw.ocgov.com)

cc: OC Public Works Procurement Services  
Attn: Jennifer Mason, DPA  
Address: 601 North Ross Street  
Santa Ana, CA 92703  
Phone: 714-667-9691  
Email: [Jennifer.mason@ocpw.ocgov.com](mailto:Jennifer.mason@ocpw.ocgov.com)

**6.27 ATTORNEY'S FEES**

6.27.1 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.

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**6.28 INTERPRETATION**

- 6.28.1 Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract.
- 6.28.2 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.
- 6.28.3 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.
- 6.28.4 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.
- 6.28.5 The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Contract.

**6.29 HEADINGS**

- 6.29.1 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.

**6.30 CONSENT TO BREACH NOT WAIVER**

- 6.30.1 No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented.
- 5.30.2 Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

**6.31 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.

**6.32 INDEPENDENT CONTRACTOR**

- 6.32.1 As referenced in Article 6.9.2 of this Contract, CMARE shall be considered an independent Contractor.
- 6.32.2 Neither CMARE its employees nor anyone working under CMARE shall qualify for workers' compensation or other fringe benefits of any kind through County.

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**6.33 BILLS AND LIENS**

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

**6.34 CHANGES**

6.34.1 CMARE shall make no changes in the work or perform any additional work without the County's specific written approval

**6.35 ASSIGNMENT**

6.35.1 The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-Contracted by CMARE, by any means whatsoever including but not limited to acquisition by merger, without the express written consent of County. Any attempt by CMARE to assign or sub-Contract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

**6.36 CHANGES IN OWNERSHIP**

6.36.1 CMARE agrees that if there is a change or transfer in ownership, including but not limited to merger by acquisition, of CMARE's business prior to completion of this Contract, the new owner shall be required under terms of sale or other transfer to assume CMARE'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.

**6.37 FORCE MAJEURE**

1.37.1 CMARE shall not be assessed with damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided CMARE gives written notice of the cause of the delay to County within thirty-six (36) hours of the start of the delay and CMARE avails itself of any available remedies.

**6.38 COMPLIANCE WITH LAWS**

6.38.1 CMARE represents and agrees that services to be provided under this Contract shall fully comply, at CMARE's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the Projects/Services at the time Projects/Services are provided to and accepted by County.

6.38.2 CMARE acknowledges that County is relying on CMARE for such compliance, and pursuant to the requirements of the indemnification paragraph above, CMARE agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all

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liability, damages, costs and expenses arising from or related to a violation of such laws.

**6.39 CALENDAR DAYS**

6.39.1 Any reference to the word “day” or “days” herein means calendar day or calendar days, respectively, unless otherwise expressly provided.

**6.40 BREACH OF CONTRACT**

6.40.1 The failure of the CMARE to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event, in addition to any other remedies available at law, in equity, or otherwise specified in this Contract, the County may:

1. Afford the CMARE written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
2. Discontinue payment to the CMARE for and during the period in which the CMARE is in breach; and
3. Offset those monies disallowed pursuant to the above, against any monies billed by the CMARE but yet unpaid by the County.

**6.41 DEFAULT**

6.41.1 In the event any equipment or service furnished by the CMARE in the performance of this Contract should fail to conform to the specifications therein within one (1) calendar year from the County’s acceptance of the equipment or service, or any performance period specifically specified within the specifications or Contract, whichever is greater, the County may reject same, and it shall become the duty of the CMARE to reclaim and remove the items without expense to the County and to immediately replace all such rejected equipment or service with others conforming to such specifications, provided that should the CMARE fail, neglect or refuse to do so within one hundred and twenty (120) calendar days, the County shall have the right to purchase on the open market a corresponding quantity of any such equipment or service and to deduct from any monies due or that may thereafter become due to the CMARE the difference between the price specified in this Contract and the actual cost to the County.

6.41.2 In the event the CMARE shall fail to make prompt delivery as specified of any equipment or service, the same conditions as to the rights of the County to purchase on the open market and to reimbursement set forth above shall apply, except as otherwise provided in this Contract.

6.41.3 In the event of the cancellation of this Contract, either in whole or in part, by reason of the default or breach by the CMARE, any loss or damage sustained by the County in procuring any equipment or service which the CMARE agreed to supply under this Contract shall be borne and paid for by the CMARE.

6.41.4 Default shall include failure to carry out any of the requirements of this Contract, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the Projects/Services as agreed to herein, or otherwise substantially violating any provision of this Contract.

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6.41.5 Upon termination of the Contract with CMARE, the County may begin negotiations with a third-party CMARE to provide goods and/or Projects/Services as specified in this Contract.

6.41.6 The right of either Party to terminate this Contract hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.

**6.42 CONFLICT OF INTEREST CONTRACTOR PERSONNEL**

6.42.1 The CMARE shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the CMARE; the CMARE's employees, agents, and relatives; sub-tier Contractors; and third parties associated with accomplishing work and Projects/Services hereunder.

6.42.2 CMARE'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 County.

**6.43 TITLE TO DATA**

6.43.1 All materials, documents, data or information obtained from the County data files or any County medium furnished to the CMARE in the performance of this Contract, will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the CMARE after completion or termination of this Contract without the express written consent of the County.

6.43.2 All materials, documents, data or information, including copies furnished by County and loaned to CMARE for his temporary use, must be returned to the County at the end of this Contract unless otherwise specified by the Director.

**6.44 AVAILABILITY OF FUNDS**

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

**6.45 CONTINGENCY OF FUNDING**

6.45.1 CMARE acknowledges that funding or portions of funding for this Contract may also be contingent upon receipt of funds from, and/or appropriation of funds by, the State of California or other funding sources to County. If such funding and/or appropriations are not forthcoming, or otherwise limited, County may immediately terminate or modify this Contract without penalty.

**6.46 CONTRACT CONSTRUCTION**

6.46.1 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

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amendment or exhibits hereto.

**6.47 LABOR CODE NOTICE**

6.47.1 All Contractors and subcontractors must comply with the requirements of Labor Code Section 1771.1(a), pertaining to registration of CMARE pursuant to Section 1725.5. Bids cannot be accepted from unregistered CMARE except as provided in Section 1771.1. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. After award of the Contract, CMARE and each subcontractor shall furnish electronic payroll records directly to the Labor Commissioner in the manner specified in Labor Code Section 1771.4.

**6.48 PAYROLL RECORDS**

6.48.1 The requirements of Labor Code Section 1776 provide in part:

CMARE 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 CMARE or any subcontractor(s) in connection with the work.

6.48.2 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.

6.48.3 The payroll records shall be certified and shall be available for inspection at the principal office of CMARE on the basis set forth in Labor Code Section 1776.

6.48.4 CMARE shall inform County 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.

6.48.5 Pursuant to Labor Code Section 1776, CMARE 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 CMARE or any subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, 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. CMARE acknowledges that, without limitation as to other remedies of enforcement available to County, 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 CMARE. CMARE is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.



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**6.49 WAGE RATES**

6.49.1 CMARE and any subcontractor(s) shall comply with the provisions of 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. CMARE shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County'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](http://www.dir.ca.gov). If the Contract is federally funded, CMARE 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.

**6.50 PUBLIC RECORDS ACT**

Pursuant to the California Public Records Act ("CPRA"), Government Code Sections 7920.000 et seq., all records provided by Contractor to County are subject to public disclosure upon request except as otherwise provided by law. Prior to their submission to County, Contractor 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, County will notify Contractor of such request. Unless Contractor obtains a protective order issued by a court restricting disclosure of the requested records, County may disclose the records if County determines that the Public Records Act requires disclosure. Contractor shall indemnify and defend County in any action to compel disclosure of such records.

**6.51 LEVINE ACT REQUIREMENT**

CMARE agrees to comply with Government Code Section 84308. CMARE further agrees to disclose to County any contribution of more than \$250 made to any members of the County Board of Supervisors or County Agency Officers by CMARE, CMARE's agent or lobbyist, or, if applicable, any subcontractor(s) for the twelve (12) months prior to and twelve (12) months following the approval, renewal, or extension of this Contract.

**7. FEDERAL AVIATION ADMINISTRATION AIRPORT IMPROVEMENT PROGRAM REQUIREMENTS**

This Contract may be grant funded by the Federal Aviation Administration, throughout the life of the contract, therefore the requirements of Title 2 of the Code of Federal Regulations (C.F.R.), part 200 and §200.317-200.326 of the Federal Aviation Administration (FAA) Airport Improvement Plan and 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Programs, will apply. The following are mandatory provisions of the Federal Aviation Administration, and it is the responsibility of the consultant and is subconsultant to comply.

In this Section 7, the following definitions apply:

1. References to "Sponsor" or "Owner" shall refer to County
2. References to "Bidder," "Offeror," "Contractor," and "consultant" shall refer to "CMARE"

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**7.1 ACCESS TO RECORDS AND REPORTS**

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the County, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

**7.2 GENERAL CIVIL RIGHTS PROVISIONS**

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

The above provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract.

**7.3 TITLE VI COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS:**

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

**Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

**Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

**Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

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**Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor (County) or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

**Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor (County) will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

**Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor (County) or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

**CMARE** is required to insert the above paragraphs one through six in every subcontract. Upon request by the County, Contractor will provide a copy of each subcontract to demonstrate that the above language has been inserted.

**7.4**

**TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES**

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- a. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- b. 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- c. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- d. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);

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- e. The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- f. Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- g. The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- h. Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, et seq) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- i. The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- k. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];
- l. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

CMARE is required to insert the above Title VI List of Pertinent Nondiscrimination Acts and Authorities into every subcontract at any tier. Upon request by the County, CMARE will provide a copy of each subcontract to demonstrate that the above language has been inserted.

**7.5**

**DISADVANTAGED BUSINESS ENTERPRISES**

**Contract Assurance (§ 26.13) –**

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments
- 2) Assessing sanctions
- 3) Liquidated damages

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4) Disqualifying the Contractor from future bidding as non-responsible

Contractor is required to insert the above language required under §26.13 in each subcontract. Upon request by the County, Contractor will provide a copy of each subcontract to demonstrate that the above language has been inserted.

**Prompt Payment (§26.29)** – The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the prime contractor receives from the County. The prime contractor agrees further to return retainage payments to each subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the County. This clause applies to both DBE and non-DBE subcontractors.

**Reporting Requirements.** The Contractor shall provide all information and reports required by the County, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County to be pertinent to ascertain compliance with the regulations or directives. If you include a DBE in the bid, monthly reports of DBE contract awards, work performed by DBE firms, and payments to DBE firms shall be submitted to the Project Manager within ten (10) days of the end of each month for the life of the contract. Said reports shall be furnished to the Project Manager in the format specified in **Attachment D**.

**Commercially Useful Function.** The Contractor and its subcontractors shall cooperate and comply with any audits, inspections, or requests for information, required by the County to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.

**Compliance.** All Contractors or subcontractors for this DOT-assisted contract are hereby notified that failure to carry out the DBE obligations, as set forth above, shall constitute a breach of contract which, after notification to the U.S. Department of Transportation, may result in termination of the contract, or such other remedy as deemed appropriate by the County.

7.6

**EQUAL OPPORTUNITY CLAUSE**

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration

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for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under this section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

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**7.7 STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION  
CONTRACT SPECIFICATIONS**

1. As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
  - d. "Minority" includes:
    - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
    - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation, and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR part 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has

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employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
  - c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
  - d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the



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Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's work force.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring

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- all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
  9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
  10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.
  11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
  12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

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13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR part 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**7.8 CLEAN AIR AND WATER POLLUTION CONTROL**

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 740-7671q) and the Federal Water Pollution Control Act as amended (33 USC § 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration. Contractor must include this requirement in all subcontracts that exceeds \$150,000.

**7.9 TEXTING WHEN DRIVING**

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," (10/1/2009) and DOT Order 3902.10, "Text Messaging While Driving," (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

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Swinerton Builders****MA-080-24010644****7.10 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

All contracts and subcontracts that shall incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

**7.11 VETERAN'S PREFERENCE**

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

**7.12 SEISMIC SAFETY**

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard that provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a "certification of compliance" that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

**7.13 BUY AMERICAN PREFERENCE**

The Contractor agrees to comply with 49 USC § 50101, BABA and other related Made in America Laws,<sup>1</sup> U.S. statutes, guidance, and FAA policies, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP funded projects are produced in the United States, unless the FAA has issued a waiver.

**7.14 DOMESTIC PREFERENCE FOR PROCUREMENT**

Contractor provides, to the greatest extent practicable, that it has provided a preference for the purchase, acquisition, or goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products) in compliance with 2 CFR § 200.322.

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<sup>1</sup> Per Executive Order 14005 "Made in America Laws" means all statutes, regulations, rules, and Executive Orders relating to federal financial assistance awards or federal procurement, including those that refer to "Buy America" or "Buy American," that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured products offered in the United States.

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**7.15 PROCUREMENT OF RECOVERED MATERIALS**

Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

- 1) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year;  
or
- 2) The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at [www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products](http://www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products).

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- b) Fails to meet reasonable contract performance requirements; or
- c) Is only available at an unreasonable price.

**7.16 COPELAND “ANTI-KICKBACK” ACT**

Contractor must comply with the requirements of the Copeland “Anti-Kickback” Act (18 USC 874 and 40 USC 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week. Owner must report any violations of the Act to the Federal Aviation Administration.

**7.17 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)**

All contracts and subcontracts must incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The Contractor shall monitor compliance in accordance with 29 CFR part 201, et seq, the Federal Fair Labor Standards Act (FLSA). Any claims or disputes that arise from this

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requirement must be addressed by the Contractor directly with the U.S. Department of Labor – Wage and Hour Division.

**7.18 FOREIGN TRADE RESTRICTION**

The Contractor certifies that with respect to this contract, the Contractor –

- 1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
- 2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- 3) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC § 1001.

The Contractor must provide immediate written notice to the Owner if the Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR § 30.17, no contract shall be awarded to a Contractor or subcontractor:

- 1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR; or
- 2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list; or
- 3) who incorporates in the public works project any product of a foreign country on such USTR list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Contractor must incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an

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erroneous certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

**7.19 LOBBYING AND INFLUENCING FEDERAL EMPLOYEES**

The Contractor certifies that to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**7.20 DEBARMENT**

Contractor agrees to satisfy the requirements of 2 CFR part 180 by certifying that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

**Certification of Contractor Regarding Debarment**

The Offeror/bidder or Contractor certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

**Certification of Lower Tier Contractors Regarding Debarment**

The successful bidder Contractor, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", must confirm each lower tier participant of a "covered transaction" under the project is not presently debarred or otherwise disqualified from participation in this federally-assisted project. The successful Contractor will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>.
2. Collecting a certification statement similar to the Certification of Offeror /Bidder Regarding Contractor, above.

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3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

**7.21 TAX DELINQUENCY AND FELONY CONVICTIONS**

Contractor represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability nor is it a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

**7.22 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

Contractor and Subcontractors agree to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)].

**8. AIRPORT REQUIREMENTS: AIRPORT SECURITY AND ID BADGE REQUIREMENTS**

Contractor, Contractor's employees and Contractor's subcontractors must complete the following in order to obtain an Airport-Issued Security Identification Badge (ID Badge).

**A. Airport-Issued Badge Acquisition, Retention, and Termination:** Prior to issuance of airport security ID Badge(s), designated Contractor personnel who shall be working on-site in JWA restricted areas and engaged in the performance of work under this Contract must pass JWA's security screening requirements, which include fingerprinting to complete an F.B.I. Criminal History Records Check (CHRC) and a Security Threat Assessment (STA). Contractor should anticipate four to six weeks for new employees to receive an airport security ID badge which includes the following general steps:

1. Company designates at least two representatives as Authorized Signatories by submitting a letter on company letterhead using the airport's template.
2. Subcontractors and tenant contractors must also have two Authorized Signatories at a minimum.
3. All company employees requiring unescorted access to restricted airport areas are scheduled for fingerprint appointments.
4. Background check fees are provided at the first appointment
5. Employees must provide two government-issued IDs at the first appointment.
6. STA and/or CHRC results are received.
7. All ID Badge applicants successfully passing the STA and/or CHRC are scheduled for required training.
8. ID Badge related fees are provided, and any additional information requested is provided at the training appointment.



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9. Upon successful completion of the required training, employees will receive their ID Badge.
10. Authorized Signatories are required to maintain the ID Badge process for the onboarding of future employees, employee ID Badge renewals, scheduling, and other actions detailed below.
11. Contractor's designated personnel must, at a minimum, complete the following required training based on contractors work to be provided and access areas:
  - i. Authorized Signatory Training: All organizations must designate at least two Authorized Signatories by providing a letter on company letterhead using the ID/Access Control Office template. The designated Authorized Signatories will be responsible for the entire ID Badge process for their organization including, but not limited to, the onboarding of new employees, renewing employees, scheduling employees for appointments, payment coordination, ID Badge audits, resolution to safety/security violations caused by the organization's employees, subtenants, or subcontractors. Authorized Signatories must attend this approximate one (1) hour course initially and annually
  - ii. Security Identification Display Area (SIDA) Training: All employees with an operational need to have unescorted access to the Airport SIDA must complete this approximate one and one half (1.5) hour course and pass a written test.
  - iii. Sterile Area (Elevator) Training: All Non-SIDA employees with an operational need to have unescorted access to the Sterile Area of the terminal must complete an approximate 30-minute training session and pass a written test.
  - iv. Non-Movement Area or Movement Area Driver Training: All employees with an operational need to drive on airfield service roads and/or ramps must attend the approximate one (1) hour Non-Movement Area Driver course and pass a written test. Employees with an operational need to drive on active taxiways and/or active runways must coordinate this training with the Airport Operations Division.
  - v. Contractors' designated personnel must successfully complete the badge acquisition within six weeks of Contract execution, unless other arrangements have been coordinated by County Project Manager or designee in writing.
  - vi. All personnel assigned to this contract must be in possession of a current, valid Airport-Issued ID Badge prior to fulfilling an independent shift assignment.
  - vii. Contractor is responsible for terminating and retrieving Airport-Issued ID Badges as soon as an employee no longer needs unescorted access to airport restricted areas. Terminated ID Badges must be returned to the ID/Access Control office within three business days. Failure to do so will result in a \$250.00 fee.
  - viii. Contractor shall be responsible for all cost associated with the Airport-Issued ID Badge process. The ID/Access Control Office maintains the current list of fees. Below is a list of estimated costs for new ID Badge applications and ID Badge renewals:

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- a. STA Fee: Approximately \$11.00
  - b. Fingerprint/CHRC Fee: Approximately \$31.00
  - c. ID Badge Fee: Approximately \$10.00
  - d. Terminated, Unreturned ID Badge Fee: Approximately \$250.00
- ix. Contractor shall abide by all the security requirements set forth by the Transportation Security Agency (TSA) and JWA.

**B. Airport Driving Endorsement:** In addition to obtaining a JWA access control badge, Contractor's service staff with an operational need to drive on airport service roads and ramps must also take an Airport provided training course and pass a test to acquire an airfield driving endorsement.

Some Air Operations Area projects will require vehicles to be equipped with visible company placards on both sides of the vehicle, an orange/white checkered flag, an amber, rotating beacon, and a two-way radio to monitor FAA Air Traffic Control Tower frequencies; or be escorted by a vehicle with this equipment and markings. Only vehicles, equipment, and personnel who have prior authorization by the ASP may operate on runways, taxiways and movement areas, or cross runways and taxiways. Under no circumstance shall any vehicle operate on or cross a runway, taxiway, or any movement area unless permission from the Tower is granted. Vehicles requiring an escort must be escorted by Airport Operations, or authorized company vehicles, equipped with two-way radios, and in constant radio communication with the FAA Tower Control.

**C. Airport ID Badge Holder Requirements and Responsibilities:** TSA 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.

- i. All persons within the restricted air operation areas 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. Each JWA employee, JWA Contractor, subcontractor or tenant employee who has been issued a JWA security badge is responsible for challenging any individual who is not properly displaying a JWA issued or approved and valid identification 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.
- ii. JWA security badge is the property of County and must be returned upon termination of Contractor personnel employment and/or termination, expiration or completion of Contract. The loss of a badge shall be reported within 24 hours to the Sheriff's Department - Airport Police Services by calling (949) 252-5000. Individuals that lose their badge shall be required to pay a fee before receiving a replacement badge. The charge for lost badge replacement shall be at the current posted rate located in the JWA Administration Office. A report shall be made before a replacement badge shall be issued.
- iii. JWA security badge is nontransferable.
- iv. In the event that a contractor's badge is not returned to JWA upon termination of Contractor personnel employment and/or termination or expiration of Contract, a fine of \$250.00 per badge shall be charged to Contractor.

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Contractor's final payment may be held by County or a deduction from contractor's payment(s) may be made to ensure that funding is available to cover the fine in the event that badges are not returned.

- v. Contractor shall submit the names, addresses, and driver's license numbers for all Contractor personnel who shall be engaged in work under this Contract to County Project Manager within seven days after award of the Contract or within seven days after the start of any new Contractor personnel and/or prior to the start of any work.
- vi. No worker shall be used in performance of this work that has not passed the background check.

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

**SWINERTON BUILDERS,**  
a California Corporation,

Date: 11/14/2023

By Ray Haj  
Signature

Ray Haj / Senior Vice President  
Print Name & Title

*(If a corporation, the document must be signed by two corporate officers. The 1<sup>st</sup> must be either Chairman of the Board, President or any Vice President.)*

Date: 11/14/2023

By Brad Peterson  
Signature

Brad Peterson / CFO & Executive Vice President  
Print Name & Title

*(If a corporation, the 2nd signature must be either the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer.)*

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

Date: \_\_\_\_\_

By \_\_\_\_\_

Print  
Name \_\_\_\_\_

Title \_\_\_\_\_

**APPROVED AS TO FORM**  
Office of the County Counsel  
Orange County, California

By: Mark Sanchez  
Deputy

Date: 11/14/2023

**ATTACHMENT A  
PRE-CONSTRUCTION SERVICES  
SCOPE OF WORK**

**1. Project Location**

The Project is located at John Wayne Airport (18601 Airport Way, Santa Ana, CA 92707).

**2. Project Background**

The performance of this project will modernize the John Wayne Airport (JWA) Terminal complex electrical distribution system including replacing aging switchgear and unit substations, providing provisions for future Microgrid/load shedding controls and monitoring system, and modifying emergency distribution systems.

**3. Project Description**

The main terminal complex at John Wayne Airport is fed from a 12kV distribution system originating at the Central Utility Plant and distributed to various unit substations within the airport. The original Thomas F. Riley Terminal and associated parking structures were opened in 1989 and was powered directly from Southern California Edison (SCE) to the terminal medium voltage switchgear, designated 'B2-MVCP-MS' or 'MSG', located in the basement of the Southeast Parking Structure. This switchgear currently has five (5) fused switches that feed seven (7) unit substations that form the low-voltage power distribution system for the majority of the original Terminal A, Terminal B, Northwest Parking Structure A1, Southeast Parking Structure B2, Northeast Parking Structure A2, and baggage screening in Terminals A and B. The three (3) double ended unit substations serving Terminals A and B are connected in a daisy chain configuration from two (2) of the fused switches (feeders 'F6A' and 'F6B') to serve the six (6) unit substation transformers that were originally installed as part of the main terminal construction in 1989. One fused switch is dedicated to each single-ended unit substation in the Northeast Parking Structure A2 (via feeder 'F6C') and Southeast Parking Structure B2 (via feeder 'F6D'), which were also installed in 1989. The 5th fused switch (feeder 'F6E') is shared by the two (2) single-ended unit substations serving Terminal A and Terminal B baggage screening systems that were installed in 2002.

The Project proposes to address the challenges identified in the previous assessments by replacement of the main terminal medium-voltage switchgear ('BS-MVCP-MS') and the five (5) unit substations in Terminal A (double-ended 'AS-MVMS-AA/AB'), Terminal B (double-ended 'BS-MVMS-BA/BB' and 'BS-MVMS-BC/BD'), Parking A2 ('A2-MVMS-S2'), and Parking B2 ('B2-MVMS-S1'). In addition, the existing emergency systems associated with these five (5) units substations will be upgraded to replace old ATs and to separate "emergency" (class 1) loads from other loads per CEC Article 700.5(D) requirements.

The proposed new medium-voltage switchgear (designated 'CP-MVCP-MS') is a double-ended 12kV switchgear with main-tie-main configuration, which will provide flexibility of performing maintenance on half of the switchgear at a time and to feed the equipment from either incoming feed. It is proposed to utilize the existing feeder and an existing available spare breaker/feeder from the CUP paralleling switchgear ('CP-MVSE-CP').

The new switchgear will have electronic circuit breakers dedicated to each unit substation with metering and protection capabilities / relays and communications requirements for power distribution system control and monitoring requirements as well as future Microgrid integration.

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The switchgear will have spare breakers for future use and will be rated to handle anticipated future loads. The switchgear will have a DC battery bank and battery charger for ensuring power is available to on-board relaying and controls during a power outage.

The new switchgear is proposed to be located in a new dedicated switchgear building adjacent to the Central Utility Plant. The switchgear is proposed to be provided in a prefabricated walk-in “e-house” or “power distribution center” (PDC) building to reduce costs and field installation duration vs construction of a new building. Replacement of the switchgear will require phased installation and refeed of existing unit substations in order to minimize power system outages and utilize night-time outage windows as able during construction.

New 12kV cables are proposed to be installed between the new switchgear and unit substations requiring a new underground duct bank between the new switchgear location and existing electric manholes in the arrivals roadway. From these existing manholes, new cables are proposed to be installed through existing or new pathways to the existing unit substations based on final design. In addition, Terminal C unit substation (‘CS-MVCP-CC/CD’) and Parking Structure C transformer (‘CP-MVC1-X1’) will be disconnected from the CUP paralleling switchgear and connected to the new terminal switchgear; new cables will be installed from the new switchgear to existing manhole ‘EMH-1’ and utilize existing duct banks from ‘EMH-1’ to the equipment to be refeed.

The five (5) older unit substations will be replaced with new units which will include remote control and monitoring capability. The double-ended unit substations are proposed to include automatic 480V main-tie-main operation to transfer loads to a single feed in event of feeder outage. Each unit substation feed should be supplied from an independent breaker from the new terminal MV switchgear to ensure redundancy within the system and flexibility for maintenance and testing. The new 480V load circuit breakers shall include necessary metering and control capabilities to incorporate a future load shedding/Microgrid control functions to provide smaller load steps than the medium voltage distribution level. The replacement unit substations are planned to be installed in the same location as the existing unit substations with the exception of Parking A2 and B2 which are planned to be replaced with a separate 480V switchboard and 12kV-480V transformer due to space constraints.

The main aging equipment within the emergency systems associated with Terminal A, Terminal B, Parking A2, and Parking B2 are also proposed for replacement, which applies to the automatic transfer switches in Terminal A and in Terminal B, which would be replaced with a new ATS including maintenance bypass switches. New ATSs should be provided with monitoring capability for integration into a future electrical distribution monitoring (and Microgrid/load shed controls system as applicable) including ATS status, generator run and alarm status. There may also need to be provisions to ensure ATS would not inadvertently transfer during outage events and disrupt load management during island mode operation of the system without utility power.

To perform the emergency load separation per CEC for each 480V distribution system being modified, it is likely that a new distribution board from generator output will be required to feed the existing ATS plus the new ATS dedicated to emergency life safety systems. From the new ATS, a new emergency distribution board dedicated to emergency life safety systems will be installed as required to refeed existing panels serving emergency systems. Any circuits serving emergency loads from existing panels not connected to the new dedicated emergency life safety system would be relocated to these panels. Normal power to new ATS will require an additional circuit breaker in the new unit substations.

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**4. Schedule Considerations**

Due to the critical nature of the project, the project construction schedule must reflect a comprehensive timeline including equipment procurement. The procurement period should be given careful consideration, as delays in obtaining necessary equipment can have significant impacts on the overall project delivery. Therefore, it is essential to identify and secure equipment suppliers well in advance and ensure that procurement timelines are realistic and achievable. Factors such as lead times, availability, and delivery schedules should be carefully assessed and incorporated into the project construction schedule to minimize potential delays and ensure the successful completion of the project.

**5. Traffic Considerations**

The arrival roadway is one of the busiest areas on the JWA. Because of the criticality and location of the proposed trenching at the arrival roadway, a careful planning which will maximize safety and minimize impact to airport operations will be essential.

**6. Compliance with the California Environmental Quality Act (CEQA)**

Compliance with the California Environmental Quality Act (CEQA) requires state and local agencies to consider the environmental impacts of proposed projects through an environmental review process, which identifies and analyzes potential impacts and considers alternatives. CEQA compliance aims to ensure environmentally responsible and sustainable projects, with adverse impacts mitigated or minimized.

**7. Water Quality**

Construction activities must comply with regulations and best practices to ensure that water quality is protected and maintained. Measures to protect water quality in construction may include sediment and erosion control, stormwater management, water treatment and filtration, and use of eco-friendly materials and methods. Water quality monitoring and testing may also be conducted to assess the effectiveness of these measures and identify potential issues.

**8. Status of Utility Investigation**

This project involves identifying and mapping the location of utility lines, such as gas, water, and electrical lines, to avoid damage to these utilities during construction activities. The status of utilities investigations may include a review of available utility records, field surveys, and coordination with utility companies to identify the location of underground infrastructure.

**9. Permits**

Permits are required to ensure that construction projects meet applicable building codes, zoning regulations, and environmental standards. Effective management of permits in construction requires careful planning and coordination to ensure that all necessary permits are obtained in a timely manner, and that construction activities comply with applicable regulations and permit conditions.

**10. Geotechnical**

The services provided may vary depending on the type and complexity of the project and may include site investigation, soil and rock testing, slope stability analysis, foundation design, and construction monitoring.

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**11. Pre-Construction Services**

The Pre-construction services will involve all planning, coordination, and preparation activities required before actual construction begins. This includes site assessment, permitting, budgeting, scheduling, and procurement, among other activities. Effective pre-construction planning will help identify potential risks and challenges, minimize delays and disruptions, and ensure that the project meets its overall goals and objectives.



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**Attachment A  
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**ATTACHMENT B  
PRE-CONSTRUCTION PHASE SERVICES  
STAFFING PLAN**

**I. KEY PERSONNEL\***

<b>Name</b>	<b>Classification/Designation</b>	<b>Years of Experience</b>	<b>License/Certifications (include license number)</b>
Keith Law	Project Executive	25	PE 82135, DBIA, LEED AP
Anup Kiwalker	Project Manager	17	OSHA 30
Mark Renz	Regional MEP Superintendent	38	STSC
Rob Sitton	Senior Estimator	33	LEED Certified

\*This shall include the Key Personnel information for both the CMARE and the Subconsultants.

CMARE understands that the personnel represented as assigned to the Contract must remain working on the Contract throughout the duration of the Contract unless otherwise requested or approved by the County. Substitution or addition of CMARE's key personnel in any given category or classification shall be allowed only with written approval of the County's Project Manager. ***Note: The written approval of substituted CMARE Key Personnel is for the departmental use only and shall not be used for auditing purposes outside OC Public Works.***

CMARE may reserve the right to involve other CMARE personnel, as their services are required. The specific individuals will be assigned based on the need and timing of the services/classification required. Assignment of additional key personnel shall be subject to County Project Manager written approval. ***Note: the written approval of additional CMARE Key Personnel is for departmental use only and shall not be used for auditing purposes outside OC Public Works.*** County reserves the right to have any CMARE personnel removed from providing services to County under this Contract. County is not required to provide any reason for the request for removal of any CMARE personnel.

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**II. SUBCONTRACTORS(S) (IF APPLICABLE)**

Listed below are subcontractor(s) anticipated by CMARE to perform services specified in Attachment A. Deletion, substitution, or addition of CMARE's subcontractor(s) in any given project function shall be allowed only with prior written approval of the County Project Manager.

<b>Corporate Name &amp; Corporate Address</b>	<b>Local Office Address*</b>	<b>Contact Name &amp; Telephone Number</b>	<b>Project Function (Division of Work/Trade)</b>	<b>Contract or License Number</b>	<b>DIR Registration Number</b>	<b>DBE If Yes, enter DBE Certification Number</b>	<b>Gross Receipts Category (Table 1 below)</b>	<b>Age of Firm (Years)</b>	<b>DVBE If Yes, enter DVBE Certification Number</b>	<b>SBA If Yes, enter DUNNS Certification Number</b>
Morrow-Meadows Corporation	231 Benton Court, City of Industry, CA 91789	Trevor Musia 909-598-7700	Electrical/ Datacom Contractors and Engineers	230813	1000000078	WBE 2005121975	7	60	No	No

**County of Orange, OC Public Works  
Swinerton Builders**

**Attachment A  
MA-080-24010644**

**ATTACHMENT C  
PRE-CONSTRUCTION SERVICES  
FEE SCHEDULE**

**A. FEE SCHEDULE:**

ITEM	DESCRIPTION	VALUE
1	GMP for Pre-Construction Services:	\$ 1,794,585
2	Additional GMPs:	\$ 12,400,000
<b>TOTAL PRE- CONSTRUCTION GMP AMOUNT:</b>		<b>\$ 14,194,585</b>

*\*Construction Services Fee for the Project:* 4.5%  
*Bond Cost Fee for the Project:* 1.16%

**B. CLASSIFICATION RATES:**

<b>CMARE</b>	
<b>Classification Titles</b>	<b>Hourly Rate</b>
Operations Manager	\$262
Project Executive	\$215
Sr. Project Manager	\$184
Project Engineer	\$88
Field Operation manager	\$267
Sr. Superintendent	\$206
Superintendent	\$170
Assistant Superintendent	\$149
Sr. Estimator	\$171
Estimator	\$125
Sr. Scheduler	\$173
VDC Manager	\$173
Sr. Mechanical/Electrical Superintendent	\$180
Mechanical/Electrical Superintendent	\$155
Safety Manager	\$152
Quality Control Manager	\$138
Project Accountant	\$93
Sr. Project Field Administrator	\$99
Project Field Administrator	\$82

**County of Orange, OC Public Works  
Swinerton Builders**

**MA-080-24010644**

**ATTACHMENT D**

**MONTHLY REPORT OF DBE PARTICIPATION FOR THE MONTH OF:**

**Submitted By:  
Name of Firm**

NAME AND ADDRESS OF DBE FIRM	CONTACT PERSON AND PHONE NUMBER	SUBCONTRACTING ITEM	TOTAL COMMITMENT	CURRENT MONTH PAYMENTS	CONTRACT TO-DATE PAYMENTS

**County of Orange, OC Public Works  
Swinerton Builders**

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**Commercially Useful Function.** The Contractor and its subcontractors shall cooperate and comply with any audits, inspections, or requests for information, required by the County to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.

**Compliance.** All Contractors or subcontractors for this DOT-assisted contract are hereby notified that failure to carry out the DBE obligations, as set forth above, shall constitute a breach of contract which, after notification to the U.S. Department of Transportation, may result in termination of the contract, or such other remedy as deemed appropriate by the County.

**1. TABLE 1 - ANNUAL GROSS RECEIPTS CATEGORIES**

<b>Annual Gross Receipt (Most recent fiscal year)</b>	<b>Gross Receipts Category</b>
Less than \$500,000	1
\$500,000 - \$1,000,000	2
\$1,000,000 - \$2,000,000	3
\$2,000,000 - \$5,000,000	4
\$5,000,000 - \$10,000,000 5	5
\$10,000,000 - \$15,000,000	6
Over \$15,000,000	7

# Contract Summary Form

OC Expediter Requisition #: 1582392

### Swinerton Builders

Corporate Address: 2001 Clayton Rd. 7th Floor, Concord, CA 92701

Local Address: 200 North Main Street, Santa Ana, CA 92701

### SUMMARY OF SIGNIFICANT CHANGES

N/A

### SUBCONTRACTORS

This contract includes the following subcontractors or passes through to other providers:

Subcontractor	Services	Amount
Morrow-Meadows Corporation	Electrical/ Datacom Contractors and Engineers	Unknown at this time

### CONTRACT OPERATING EXPENSES

The below operating expenses are anticipated costs. Actual costs and quantities may vary. The Contract includes provisions for the following:

ITEM	DESCRIPTION	AMOUNT
1	GMP for Pre-Construction Services:	<b>\$ 1,794,585</b>
2	Additional GMPs:	<b>\$ 12,400,000</b>
<b>TOTAL PRE- CONSTRUCTION GMP AMOUNT:</b>		<b>\$ 14,194,585</b>

**Memorandum of Recommendation and Evaluation Ranking Summary**

**RFP-080-2385801-JM**

<b>FINAL RANKINGS</b>	
<b>Respondents</b>	<b>Rank</b>
SWINERTON BUILDERS	1

**Summary of Evaluators' Scoring  
RFP-080-2385801-JM**

<b>EVALUATOR 1</b>	<b>1</b>
<b>Written Evaluation</b>	<b>SWINERTON BUILDERS</b>
Related Experience in Pre-Construction and Construction of Similar Projects (100 pts.)	90
Proposed Work Plan/Project Approach (235 pts.)	200
Proposed Staffing and Project Organization Include Sub-Contractor Selection plan (100 pts.)	90
Financial Condition and Safety Record (25 pts.)	25
Proposal Organization/Completeness of Response/Additional Information (15 pts.)	14
Compliance with County Model Contract (25 pts.)	25
<b>WRITTEN EVALUATION SCORE TOTAL</b>	<b>444</b>
<b>Interview Evaluation</b>	
QUESTION 1 (100 pts.)	90
QUESTION 2 (100 pts.)	90
QUESTION 3 (100 pts.)	80
QUESTION 4 (50 pts.)	40
QUESTION 5 (50 pts.)	50
<b>INTERVIEW EVALUATION SCORE TOTAL</b>	<b>350</b>
<b>COMBINED WRITTEN &amp; INTERVIEW</b>	<b>794</b>
<b>OBJECTIVE COST SCORE (ADDED TO EVALUATOR'S SCORE)</b>	<b>100</b>
<b>COMBINED WRITTEN, INTERVIEW &amp; COST</b>	<b>894</b>
<b>FINAL RANKING</b>	<b>1</b>



<b>EVALUATOR 2</b>	<b>1</b>
<b>Written Evaluation</b>	<b>SWINERTON BUILDERS</b>
Related Experience in Pre-Construction and Construction of Similar Projects (100 pts)	95
Proposed Work Plan/Project Approach (235 pts.)	218
Proposed Staffing and Project Organization Include Sub-Contractor Selection plan (100 pts.)	94
Financial Condition and Safety Record (25 pts.)	24
Proposal Organization/Completeness of Response/Additional Information (15 pts.)	14
Compliance with County Model Contract (25 pts.)	25
<b>WRITTEN EVALUATION SCORE TOTAL</b>	<b>470</b>
<b>Interview Evaluation</b>	
QUESTION 1 (100 pts.)	98
QUESTION 2 (100 pts.)	98
QUESTION 3 (100 pts.)	98
QUESTION 4 (50 pts.)	45
QUESTION 5 (50 pts.)	49
<b>INTERVIEW EVALUATION SCORE TOTAL</b>	<b>388</b>
<b>COMBINED WRITTEN &amp; INTERVIEW</b>	<b>858</b>
<b>OBJECTIVE COST SCORE (ADDED TO EVALUATOR'S SCORE)</b>	<b>100</b>
<b>COMBINED WRITTEN, INTERVIEW &amp; COST</b>	<b>958</b>
<b>FINAL RANKING</b>	<b>1</b>

<b>EVALUATOR 3</b>	<b>1</b>
<b>Written Evaluation</b>	<b>SWINERTON BUILDERS</b>
Related Experience in Pre-Construction and Construction of Similar Projects (100 pts)	90
Proposed Work Plan/Project Approach (235 pts.)	200
Proposed Staffing and Project Organization Include Sub-Contractor Selection plan (100 pts.)	80
Financial Condition and Safety Record (25 pts.)	25
Proposal Organization/Completeness of Response/Additional Information (15 pts.)	12
Compliance with County Model Contract (25 pts.)	25
<b>WRITTEN EVALUATION SCORE TOTAL</b>	<b>432</b>
<b>Interview Evaluation</b>	
QUESTION 1 (100 pts.)	90
QUESTION 2 (100 pts.)	80
QUESTION 3 (100 pts.)	90
QUESTION 4 (50 pts.)	40
QUESTION 5 (50 pts.)	40
<b>INTERVIEW EVALUATION SCORE TOTAL</b>	<b>340</b>
<b>COMBINED WRITTEN &amp; INTERVIEW</b>	<b>772</b>
<b>OBJECTIVE COST SCORE (ADDED TO EVALUATOR'S SCORE)</b>	<b>100</b>
<b>COMBINED WRITTEN, INTERVIEW &amp; COST</b>	<b>872</b>
<b>FINAL RANKING</b>	<b>1</b>

<b>EVALUATOR 4</b>	<b>1</b>
<b>Written Evaluation</b>	<b>SWINERTON BUILDERS</b>
Related Experience in Pre-Construction and Construction of Similar Projects (100 pts)	90
Proposed Work Plan/Project Approach (235 pts.)	175
Proposed Staffing and Project Organization Include Sub-Contractor Selection plan (100 pts.)	90
Financial Condition and Safety Record (25 pts.)	25
Proposal Organization/Completeness of Response/Additional Information (15 pts.)	14
Compliance with County Model Contract (25 pts.)	25
<b>WRITTEN EVALUATION SCORE TOTAL</b>	<b>419</b>
<b>Interview Evaluation</b>	
QUESTION 1 (100 pts.)	90
QUESTION 2 (100 pts.)	90
QUESTION 3 (100 pts.)	90
QUESTION 4 (50 pts.)	40
QUESTION 5 (50 pts.)	40
<b>INTERVIEW EVALUATION SCORE TOTAL</b>	<b>350</b>
<b>COMBINED WRITTEN &amp; INTERVIEW</b>	<b>769</b>
<b>OBJECTIVE COST SCORE (ADDED TO EVALUATOR'S SCORE)</b>	<b>100</b>
<b>COMBINED WRITTEN, INTERVIEW &amp; COST</b>	<b>869</b>
<b>FINAL RANKING</b>	<b>1</b>

<b>EVALUATOR 5</b>	<b>1</b>
<b>Written Evaluation</b>	<b>SWINERTON BUILDERS</b>
Related Experience in Pre-Construction and Construction of Similar Projects (100 pts)	88
Proposed Work Plan/Project Approach (235 pts.)	200
Proposed Staffing and Project Organization Include Sub-Contractor Selection plan (100 pts.)	80
Financial Condition and Safety Record (25 pts.)	25
Proposal Organization/Completeness of Response/Additional Information (15 pts.)	12
Compliance with County Model Contract (25 pts.)	25
<b>WRITTEN EVALUATION SCORE TOTAL</b>	<b>430</b>
<b>Interview Evaluation</b>	
QUESTION 1 (100 pts.)	90
QUESTION 2 (100 pts.)	85
QUESTION 3 (100 pts.)	80
QUESTION 4 (50 pts.)	40
QUESTION 5 (50 pts.)	47
<b>INTERVIEW EVALUATION SCORE TOTAL</b>	<b>342</b>
<b>COMBINED WRITTEN &amp; INTERVIEW</b>	<b>772</b>
<b>OBJECTIVE COST SCORE (ADDED TO EVALUATOR'S SCORE)</b>	<b>100</b>
<b>COMBINED WRITTEN, INTERVIEW &amp; COST</b>	<b>872</b>
<b>FINAL RANKING</b>	<b>1</b>