



AGENDA STAFF REPORT

Control: 26001790

MEETING DATE: 10/13/2026

LEGAL ENTITY TAKING ACTION: Board of Supervisors

BOARD OF SUPERVISORS DISTRICT(S): District 5

SUBMITTING AGENCY/DEPARTMENT: John Wayne Airport

DEPARTMENT CONTACT PERSON(S): Charlene Reynolds, 949-252-5183
Steven Carrillo, 949-252-6088

SUBJECT: Select Respondent for Facilities Security Improvements

CEO CONCUR

Concur

COUNTY COUNSEL REVIEW

Approve agreement to form

CLERK OF THE BOARD

DISCUSSION

3 Votes Board Majority

Budgeted: Yes

Current Year Cost: \$2,500,000

Annual Cost:

FY 2027-28 \$25,000,000

FY 2028-29 \$24,000,000

Staffing Impact: No

Current Fiscal Year

Revenue: N/A

Levine Act Review

Completed? Yes

Prior Board Action: N/A

Funding Source: Fund 281: 100%

Sole Source: No

County Audit in Last 3 years: No

RECOMMENDED ACTION(S):

1. Find that the subject activity is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines Section 15378 and is therefore not subject to review under CEQA.
2. Select and approve a Respondent and an Alternate Respondent from the Solicitation Results in Attachment B, resulting from Request for Proposal No. 280-3010603-GK.
3. Approve Model Contract for Construction Manager-at-Risk Pre-Construction Phase Services for Facilities Security Improvements and authorize the Airport Director or designee to negotiate and execute, upon approval as to form by County Counsel, a contract without substantive changes to the Model Contract, with the Respondent selected by the Board of Supervisors, with a cumulative contract amount, including all future Guaranteed Maximum Price (GMP) amendments, not to exceed \$51,500,000, for a term effective upon execution of all necessary signatures, to be completed within 1,004 calendar days of the effective date of the Notice to Proceed. If negotiations with the selected Respondent are unsuccessful, authorize the Airport Director or designee, to proceed to negotiate and execute the approved Contract, upon County Counsel's approval as to

form, without substantive changes, with the Alternate Respondent selected by the Board of Supervisors.

4. Delegate authority to the Airport Director or designee to execute amendments establishing Guaranteed Maximum Prices for individual phases, provided that the cumulative contract amount, including all amendments, does not exceed \$51,500,000.

SUMMARY:

Approval of the Model Contract for Facilities Security Improvements and authorization to negotiate and execute a contract with the Respondent selected by the Board of Supervisors will support the full modernization of John Wayne Airport's new security infrastructure.

BACKGROUND INFORMATION:

Airport Security infrastructure at John Wayne Airport (JWA) has been periodically updated over the past several decades in conjunction with terminal construction and redevelopment projects. As a result, the existing infrastructure consists of equipment and systems of varying ages and conditions. Much of the equipment is nearing the end of life and requires replacement or modernization to meet current security and operational standards, and to ensure the continued reliability and effectiveness of the critical infrastructure system.

Security infrastructure upgrades will include: (i) a new single mode fiber loop and airfield utility infrastructure, (ii) replacement and upgrade of the entire JWA Access Control Alarm Monitoring System (ACAMS) that includes 726 doors, (iii) replacement of the existing Closed-Circuit Television (CCTV) system and addition of new CCTV camera devices, for a total of 1,635 CCTV cameras, including associated video storage, and (iv) installation of the new Perimeter Intrusion Detection System (PIDS) around airfield.

Replacement and upgrades to these systems will be implemented to comply with current Transportation Security Administration (TSA) guidelines and aviation security requirements under Title 49 Code of Federal Regulations (CFR) 1542 – Airport Security. Approval of the proposed Model Contract for Construction Manager-at-Risk (CMAR) Pre-Construction Phase Services for Facility Security Improvements (Services) will support the replacement and modernization of aging security infrastructure throughout JWA. The improvements will bring the facility up to current standards, enhance system redundancy, and help ensure the continued safety and security of JWA, its operators, and passengers while maintaining compliance with the Airport Security Program (ASP) and applicable TSA requirements.

On June 30, 2026, JWA issued the Request for Proposals (RFP) for Services for the Project to the pre-qualified contractors and advertised it through the County's online bidding system. Four proposals were submitted and deemed responsive. JWA is procuring CMAR construction services for this Project in accordance with Section 3.5-113 of the 2026 Contract Policy Manual (CPM).

The evaluation panel, comprised of representatives from JWA and SG Engineering Solutions Inc., reviewed and scored the responsive proposals in accordance with the evaluation criteria established in the RFP. The evaluation included the written proposals, interviews and objective cost scoring. A protest was received from PCL Construction Services, Inc. After careful review, the protest was denied.

Evaluation Criteria

Criteria	Points
Qualifications, Related Experience, and Technical Expertise	100
Proposed Work Plan/Project Approach	100
Proposed Staffing and Project Organization	100
Financial Condition and Safety Record	80
Proposal Organization/Completeness of Response/Additional Information	100
Compliance with County Model Contract	20
Interview	400
Cost Proposal (Scored Administratively)	100
Total	1000

A Notice of Solicitation Results was issued on August 31, 2026. See Attachment B for the Solicitation Results. The evaluation results are as follows:

Respondent	Score
Swinerton Builders	2671
PCL Construction Services, Inc.	2665
AJK Communications	2397

JWA requests that the Board of Supervisors approve the Model Contract and authorize the Airport Director or designee to negotiate and execute the approved Contracts with the Selected Respondents as referenced in the Recommended Actions above.

Following issuance of the NTP for the Pre-Construction Phase, the Construction Manager-at-Risk Entity (CMARE) will initiate design and constructability review with the Design Engineer of Record (EOR) and complete GMP proposals at the 75%, 90%, 100%, and Issued for Construction (IFC) design milestones. Additionally, the CMARE will conduct necessary field investigation, provide input to the EOR, and facilitate the completion of the design and submittal of the plans to the building department for plan check review. The CMARE will comply with all requirements specified in the Contract's General Conditions and obtain JWA's review of each GMP submission during the preconstruction and design development phases. The Project's critical path schedule will be structured around separate GMP phases. GMP 1 will include pre-construction services, while GMP 2 will include construction services, construction work, and any additional related work.

The appropriate due diligence has been conducted, and JWA has verified that all Respondents are in good standing. Reference checks were satisfactory regarding similar Services. The Respondents' license numbers were verified as current and active through the Contractors' State License Board and Department of Consumer Affairs database. Copies of the reference checks and verification are on file.

An analysis was completed to verify that the Contract will provide the County with persons specially trained, experienced, expert and competent to perform the specialized services in accordance with the law.

Compliance with CEQA: This action is not a project within the meaning of CEQA Guidelines Section 15378 and is therefore not subject to CEQA, since it does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Approval of this agenda item does not commit the County to a definite course of action in regard to a project because the action is limited to pre-construction services and does not authorize construction at this time. This proposed activity is therefore not subject to CEQA. Any future action connected to this approval that constitutes a project will be reviewed for compliance with CEQA.

FINANCIAL IMPACT:

Appropriations for this Contract are included in JWA Construction Fund 281 FY 2026-27 Budget and will be included in the budgeting process for future years.

The proposed Contract includes provisions stating the Contract is subject to, and contingent upon, applicable budgetary appropriations being approved by the Board for each fiscal year during the term of the Contract. If such appropriations are not approved, or are reduced, the Contract may be immediately modified or terminated without penalty to the County. The proposed Contract includes a provision stating the Contract may be terminated for convenience upon not less than seven Calendar days written notice to the CMARE and immediately for cause without penalty to the County.

STAFFING IMPACT:

N/A

REVIEWING AGENCIES/DEPARTMENTS:

N/A

ATTACHMENTS:

Attachment A - Model Contract

Attachment B - Solicitation Results

Attachment C – Title 49 Code of Federal Regulations (CFR) 1542 – Airport Security

MODEL CONTRACT - PRE-CONSTRUCTION PHASE SERVICES

MODEL CONTRACT MA-280-TBD
FOR
PRE-CONSTRUCTION PHASE 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 **CONTRACTOR NAME** with a place of business at **ADDRESS**, hereinafter designated the “Construction Manager-at-Risk Entity” 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 CMARE’s General Administrative & Overhead Fee (administrative costs, home office overhead and additional indirect costs), whether at the CMARE’s principal or branch offices, and Profit. The CMARE’s Project Manager, Project Engineer, Superintendent and Safety Officer shall be included as indirect project costs with the appropriate utilization rates. All other indirect labor shall be included in the general administration and overhead portion of the Construction fee.

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. “Contingency (CMARE’s)” or “CMARE’s Contingency” means a fund to cover cost growth during the Project used at the discretion of the CMARE usually for costs that result from Project circumstances. The amount of the CMARE’s Contingency will be negotiated as a separate line item in each GMP package. Use and management of the CMARE’s Contingency during the construction phase is described in Section 2.7.
10. “Contingency (County’s)” or “County’s Contingency” means a fund to cover cost growth during the Project used at the discretion of the County usually for costs that result from County directed changes or unforeseen site conditions. The amount of the County’s Contingency will be set by the County and will be in addition to the project costs included in the CMARE’s GMP packages. Use and management of the County’s Contingency during the construction phase is described in Section 2.7.
11. “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.
12. “Contract Amount” means the cost for Pre-Construction Phase Services for this Contract as identified in Article 4.
13. “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.
14. “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, 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), materials testing, and related items. The Cost of the Work shall not include the CMARE’s Construction Fee, General Conditions Cost, or taxes.
15. “County” means the County of Orange, a political subdivision of the State of California, and its representatives, alternate designation, County.
16. “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.
17. “Day” means calendar day unless otherwise specifically noted in the Contract Documents.
18. “Pre-Construction Contingency (CMARE’s)” or “CMARE’s Pre-Construction Contingency” means a fund to cover additional costs associated with an increased level of effort to accomplish the scope of work usually for costs that results from Project circumstances. The amount of the CMARE’s Pre-Construction Contingency is described in Article 4. Use and management of the CMARE’s Pre-Construction Contingency is at the CMARE’s discretion with County approval.
19. “Pre-Construction Contingency (County’s)” means a fund to cover cost growth during the Project used at the discretion of the County usually for costs that result from County directed changes or

unforeseen site conditions. The amount of the County's Pre-Construction Contingency is described in Article 4.

20. "Pre-Construction Phase" or Pre-Construction Phase Services" means the work products prepared by the CMARE in performing the Scope of Work, attached hereto and as described in this Contract.
21. "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.
22. "Float" means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.
23. "General Conditions" means those costs defined as General Conditions in the Construction Contract and its General Conditions as attached hereto.
24. "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, and CMARE's Contingency or CMARE's Pre-Construction Contingency.
25. "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 Pre-Construction Phase or Construction Phase. The GMP Proposal(s) are to be developed pursuant to Article 2 of this Contract.
26. "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.
27. "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.
28. "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.
29. "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.
30. "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.
31. "Project Engineer" shall mean design engineer or designer who is responsible charge of preparing the engineering plans, estimate, and specifications.
32. "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 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.

33. "Project Team" means Pre-Construction Phase Services team consisting of the Design Professional, CMARE, County Project Manager, and other stakeholders who are responsible for making decisions regarding the Project.
34. "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.
35. "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.
36. "Site" means the land or premises on which the Project is located.
37. "Specifications" means to include, but is not limited to, the part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
38. "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.
39. "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 Phase Services or Construction Phase Work at the site for which the CMARE is responsible. Subcontractors will be selected through the Subcontractor bid process described in paragraph 2.8 of this Contract.
40. "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.
41. "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.
42. "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.

43. “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.

ARTICLE 2 – BASIC PRE-CONSTRUCTION PHASE 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 CMARE 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 Pre-Construction 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 Phase 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.
- 2.1.6 The success of this project, including the quality of the design documents, design development efforts, and Guaranteed Maximum Price (GMP) development, will depend on conducting thorough site investigations throughout the terminals, parking structures, and airfield to assess existing security systems and site conditions. These investigations are critical to developing an effective phasing and cutover strategy and incorporating those requirements into the GMP. This approach will help ensure the development of complete and coordinated construction documents, an accurate and reliable budget, and a comprehensive construction plan that maintains airport operations, preserves security requirements, and minimizes operational impacts throughout the construction period.

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 pre-construction 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.

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 of 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.
- 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 Pre-construction 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. During Pre-Construction Phase Services, 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.

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, as well as 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, 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.

2.6 COST ESTIMATES

- 2.6.1 Unless otherwise agreed by both Parties, within 14 calendar days after receipt of the documents for the various phases of design, 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.
- 2.6.2 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.
- 2.6.3 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.

- 2.6.4 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.
- 2.6.5 If this Contract is funded in whole or in part by the Federal Government, CMARE agrees to comply with the Federal labor standards provisions set forth in the Special Provisions. If the Federal prevailing wage determinations differ from the State’s, CMARE shall not pay less than the higher of the two rates.
- 2.7 GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS**
- 2.7.1 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.
- 2.7.1.2 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.
- 2.7.2 Guaranteed Maximum Price is comprised of the following not-to-exceed cost reimbursable or lump sum amounts defined below.
- 2.7.2.1 The Cost of the Work is actual costs and is a not-to-exceed, reimbursable amount.
- 2.7.2.2 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.
- 2.7.2.3 CMARE’s Pre-Construction Contingency and CMARE’s Contingency are amounts the CMARE shall use under the following conditions:
- (1) At its discretion, with Project Manager written consent for increases in the Cost of the Work which are not the County’s responsibility, or
 - (2) With written approval of the County for increases in General Condition Costs. CMARE’s Contingency is assumed to be a direct project cost so will receive all markups at the time of GMP submission.
- 2.7.2.4 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.
- 2.7.3 County’s Contingency are funds to be used at the sole discretion of the County to cover any increases in Project costs that result from County-directed changes or unforeseen site conditions. County’s Contingency will be added to the GMP amount provided by the CMARE, the sum of which will be the full Contract price for construction. Markups for Construction Fee and taxes will be applied by the CMARE at the time that County’s Contingency is used. Any unused portion of County’s Pre-Construction Contingency,

County's Contingency, CMARE's Pre-Construction Contingency, or CMARE's Contingency, remaining at the completion of any Project phase, whether the Pre-Construction Phase or Construction Phase, shall revert to the County upon completion of such Project Phase.

- 2.7.4 GMPs are cumulative except for CMARE's Contingency. The amount of CMARE's Contingency for each GMP amendment will be negotiated separately and shall reflect the CMARE's risk from that point in the project forward.
- 2.7.5 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 sets of 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 set of those documents to the County's Project Manager, keep one set, and return the third set to the Design Professional.
- 2.7.6 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.
- 2.7.7 GMP savings resulting from a lower actual project cost than anticipated by the CMARE remaining at the end of the project will revert to County.
- 2.7.8 GMP Proposal(s) Review and Approval shall be as prescribed below:
- 2.7.8.1 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.
- 2.7.8.2 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.
- 2.7.8.3 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 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.

2.7.8.4 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.

2.8 MAJOR SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

2.8.1 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.

2.8.1.1 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 2.8.2 and those subcontractor trades anticipated to be selected by qualifications and competitive bid in accordance with Article 2.8.3. 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.

2.8.2 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.

2.8.2.1 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.

2.8.2.2 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.

2.8.2.3 The CMARE must receive County approval of the selected Subcontractor(s)/Supplier(s).

2.8.2.4 The CMARE will negotiate costs for services/supplies from each Subcontractor/Supplier selected under this method.

- 2.8.3 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 2.8.2 above. Competitive bids may occur prior to or after the GMP Proposal(s).
- 2.8.3.1 The CMARE will develop Subcontractor and Supplier interest, submit the names of a minimum of three qualified Subcontractors or Suppliers for each trade in the Project for approval by the 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 SBE goal. If there are not three 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 names. No change in the recommended Subcontractors/Suppliers will be allowed without prior written notice to the County.
- 2.8.3.2 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.
- 2.8.3.3 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.
- 2.8.3.4 If the CMARE desires to self-perform certain portions of the Work, it will request to be one of the approved Subcontractor bidders for those specific bid packages. The 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.
- 2.8.3.5 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.
- 2.8.4 The CMARE will be required to prepare two different reports on the subcontracting process as prescribed below:
- 2.8.4.1 Within fifteen (15) 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 its cost that the CMARE intends to self-perform, if any.

- 2.8.4.2 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.
- 2.8.5 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.
- 2.8.6 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 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.
- 2.8.7 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) discuss the conditions, if any, under which the County will agree to leave any portion of the remaining CMARE's Contingency within the Contract Price for the construction phase Work; (e) resolve possible time frames for the Date of Commencement of the Contract time for the construction phase Work; (f) schedule the pre-construction conference; and (g) discuss other matters of importance.
- 2.8.8 No performance of this Contract or any portion thereof may be subcontracted or otherwise delegated by Contractor, in whole or in part, without first obtaining the prior express written consent of County. Any attempt by Contractor to subcontract or delegate any performance of this Contract without the prior express written consent of County shall be invalid and shall constitute a material breach of this Contract, and any attempted assignment or delegation in derogation of this paragraph shall be void.

In the event that Contractor is authorized by County to subcontract, this Contract shall take precedence over the terms of the agreement between Contractor and subcontractor, and any agreement between Contractor and a subcontractor shall incorporate by reference the terms of this Contract. Contractor shall remain responsible for the performance of this Contract and indemnification of County notwithstanding the County's consent to Contractor's request for approval of a subcontractor. Under no circumstances shall County be required to directly monitor the performance of any subcontractor. All work performed by a subcontractor must be monitored by Contractor and must meet the approval of the County of Orange pursuant to the terms of this Contract.

ARTICLE 3

3.1 Omitted

ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS

4.1 CONTRACT AMOUNT FOR PRE-CONSTRUCTION PHASE SERVICES

4.1.1 Based on the Pre-Construction Phase Services fee proposal submitted by the CMARE 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 \$_____ as follows:

The CMARE shall provide the basic services described in Article 2 and Attachment A for a **Guaranteed Maximum Price** of \$_____

Pre-Construction Contingency (CMARE's): \$_____

Pre-Construction Contingency (County's): \$_____

Total Pre-Construction Services Contract Price for the Project: \$_____

Construction Services Profit Margin: _____%

Construction General Administration & Overhead Fee: _____%

Total Construction Fee for the Project: _____%

4.2 PAYMENTS

4.2.1 Requests for monthly payments by the CMARE for Pre-Construction Phase 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.

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/Subcontractors for services and reimbursable expenses within 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 of the Contract Amount until final acceptance of all Pre-Construction Phase 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 PHASE SERVICES

- 4.3.1 **CMARE’S EXPENSE:** CMARE will be responsible for all costs related to photocopying, 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 County location, as well as mileage within County property will not be reimbursed.
- 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 or more design professionals to provide architectural and/or engineering design services for the Project if it does not use its in-house forces. The scope of services for the Design Professional will be provided to the 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 days of CMARE's receipt of such notice.
 - 5.2.4 Notify the CMARE of changes affecting the budget allocations or schedule.
 - 5.2.5 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) files, 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. In the event that 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 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 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 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 Section 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 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 Article 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 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).

6.8 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.

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.
- 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, at all times, 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 carry 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 current, provide Certificates of Insurance, and endorsements to the County during the entire term of this Contract. The County reserves the right to request the declarations page showing all endorsements and a completed 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 carry insurance subject to the same terms and conditions as set forth herein 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 CMARE. 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 the subcontractor's work hereunder, subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the CMARE 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**). .

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 Including Products – Completed Operations	\$3,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned or scheduled, non-owned and hired vehicles	\$1,000,000 combined single limit \$5,000,000 combine single limit (When accessing the AOA)
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per accident or disease
Professional Liability	\$1,000,000 per claims made or per occurrence \$2,000,000 aggregate
Pollution Liability (Optional coverage to be required when hazardous materials are involved)	\$1,000,000 per claims-made or occurrence

Increased insurance limits may be satisfied with Excess/Umbrella policies. Excess/Umbrella policies when required must provide Follow Form coverage.

Required Coverage Forms

The Commercial General Liability coverage shall be written on occurrence basis Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad. The Commercial General Liability policy shall not exclude coverage for Explosion, Collapse, or Underground Hazard (XCU).

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:
 - 1) An Additional Insured endorsement using ISO form CG 2026 04 13 10 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**.
 - 2) A primary non-contributing endorsement ISO form CG 20 01 04 13, or a form at least as broad evidencing that the CMARE's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.
 - 3) Products and Completed Operations endorsement using ISO Form CG 20 37 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** when acting within the scope of their appointment or employment.

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

1. An Additional Insured endorsement naming the **County of Orange, its elected and appointed officials, officers, employees, and agents** as Additional Insureds or provide blanket coverage which shall state **As Required by Written Contract**.
2. A primary non-contributory endorsement evidencing that the Contractor's insurance is primary, and any insurance or self-insurance maintained by the County shall be excess and non-contributing.

The Pollution Liability insurance must include coverage for bodily injury and property damage, including coverage for loss of use and/or diminution in property value, and for clean-up costs arising out of, pertaining to, or in any way related to the actual or alleged discharge, dispersal, seepage, migration, release or escape of contaminants or pollutants resulting from any services or work performed by, or behalf of, Contractor, including the transportation of hazardous waste, hazardous materials, or contaminants.

If the Pollution Liability is a claims-made policy, Contractor shall agree to the following:

1. The retroactive date must be shown and must be before the date of the Contract or the beginning of the Contract services.
2. Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after expiration or earlier termination of Contract services.
3. 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 (3) years after expiration of earlier termination of the Contract.

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 provide thirty (30) days prior written notice to the County of any policy cancellation or non-renewal and ten (10) days prior written notice where cancellation is due to 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. The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).
6. Insurance certificates should be forwarded to the agency/department address listed on the solicitation.
7. 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.
8. 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.
9. County shall notify CMARE in writing of changes in the insurance requirements. If CMARE does not provide copies of acceptable Certificates of Insurance and endorsements to 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.
10. 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 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.

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 CONFIDENTIALITY

All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, and all written or other information submitted to A-E in connection with the performance of this Contract shall be held confidential by A-E and/or anyone acting under the supervision of A-E and shall not, without the prior written consent of County, be used for any purposes

other than the performance of the Projects/Services described in Attachment A, nor be disclosed to any person, partnership, company, corporation or agency, not connected with the performance of the Projects/Services.

Nothing furnished to A-E which is generally known among counties in Southern California shall be deemed confidential.

A-E and/or anyone acting under the supervision of A-E shall not use County name or insignia, photographs of the work, or any other publicity pertaining to the work in any magazine, trade paper, newspaper, or other medium without the express written consent of County.

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.

6.24.2 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 CMARE 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 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: Name: TBD
 Address
 City
 Attn:
 Phone:
 E-mail:

County: County of Orange/John Wayne Airport
 Attn: TBD, Project Manager
 Address:
 Phone:
 Email:

cc: John Wayne Airport
 Attn: <Insert Buyer Name>, DPA
 Address:
 Phone:
 Email:

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.

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.

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 himself of any available remedies.

6.38 COMPLIANCE WITH LAWS

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.

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

CMARE shall remain in compliance and in good standing, maintaining current and active business entity and/or nonprofit registration status, with all applicable federal, state and local registration requirements at the time of execution of the contract through the duration of the term of the Contract, and shall provide annual confirmation of current and active status to County through the term of the Contract.

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:

- 6.40.2 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;
- 6.40.3 Discontinue payment to the CMARE for and during the period in which the CMARE is in breach; and
- 6.40.4 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.
- 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 CONTRACTOR PERSONNEL:

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.

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.

The CMARE shall notify County, in writing, of any potential or actual conflicts of interest between Contractor and County that may arise prior to, or during the period of, Contract performance, including, but not limited to, whether any known County public officer's child is an officer or director of, or has an ownership interest of ten (10) percent or more in, Contractor. While Contractor will be required to provide this information without prompting from County any time there is a change regarding conflict of interest, Contractor must also provide an update to County upon request by County.

6.42.2 COUNTY PERSONNEL:

County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. Contractor shall not, during the period of this Contract, employ any County employee for any purpose.

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 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 Article due to the failure of a subcontractor to comply with this Article.

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. 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 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.

6.52 CIVIL RIGHTS AND NONDISCRIMINATION

A. 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, creed, sex, 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.

B. Nondiscrimination: In the performance of this contract, Contractor agrees that it will

comply with the requirements of Section 1735 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. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

C. 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:

1. **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.
2. **Non-Discrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, creed, sex, 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 including amendments thereto.
3. **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.
4. **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 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.
5. **Sanctions for Noncompliance:** In the event of a Contractor’s noncompliance with the nondiscrimination provisions of this contract, the Sponsor 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.

6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one (1) through six (6) 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 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. Upon request by the County, Contractor will provide a copy of each subcontract to demonstrate the above language has been inserted.

D. 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 nondiscrimination statutes and authorities; including but not limited to:

1. 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);
2. 49 CFR part 21 (Nondiscrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964) including amendments thereto;
3. 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);
4. 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);
5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
7. 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);
8. 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;

9. 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).

Contractor 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, Contractor will provide a copy of each subcontract to demonstrate that the above language has been inserted.

E. Civil Rights Training: Upon request by the County, Contractor is required to disseminate and provide training materials and other information related to Title VI Civil Rights to its staff as specified by the County.

ARTICLE 7 AIRPORT REQUIREMENTS: AIRPORT SECURITY AND ID BADGE REQUIREMENTS

7.1 CMARE, CMARE's employees, and CMARE'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.
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:
 - 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. 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.

- D. Anti-Idling Policy:** Within six months of Contract execution, CMARE must develop, implement and submit to the Airport Director for approval a fleet-wide anti-idling policy. At a minimum, the anti-idling policy shall include the requirement that vehicle engines shall be turned off when vehicles are not occupied, and that occupied vehicles be turned off after no more than a five-minute idling period. CMARE's policy shall also include all third-party vehicles that enter Airport property at the direction of CMARE.

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

TBD
 a California Corporation,

Date: _____

By _____
 Signature

 Print Name & Title

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

Date: _____

By _____
 Signature

 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: _____
 Deputy

Date: _____

**ATTACHMENT A
PRE-CONSTRUCTION PHASE 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 Facility Security Improvement Project will update and replace aging IT and Security infrastructure at John Wayne Airport.

3. Project Description

Existing IT and Security equipment at John Wayne is approaching end of life. Additional security and safety standards need to be accounted for as part of ongoing evolution of the Transportation and Safety Administration (TSA) regulations and requirements. Additional record keeping standards have been adopted by the County of Orange. Improvements and upgrades to the existing system will support a more robust IT Network and Security System at John Wayne Airport to meet the current and future needs of the Airport.

Scope will include replacement of IT Fiber Loop around airport, upgrade and replacement of Access Control System and associated doors/hardware, along with replacement and addition of CCTV/VMS systems throughout airport. Security improvements will also include the installation of an enhanced Perimeter Detection System around the airfield.

All scope shall be sequenced in a manner to maintain existing system and equipment capabilities during installation and until cutovers are complete to new systems. Work shall be scheduled in a manner to support daily airport operations at all times. Ongoing coordination will be required with various stakeholders including JWA Operations, OC Sherriff, JWA CALM, JWA IT, and JWA Maintenance, along with various lease holders around airfield and within the terminals and parking garages.

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. 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

6. 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.

7. 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.

8. 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.

9. 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.

10. Pre-construction Phase Services

The Pre-construction Phase 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.

11. Proposed Project Schedule of Major Milestones (subject to change)

To be developed and finalized in the Pre-Construction phase.

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

*****RESPONDENTS SHALL SUBMIT THIS WITH THEIR PROPOSAL (PER SECTION 7) *****

I. KEY PERSONNEL*

Name	Classification/Designation	Years of Experience	License/Certifications (include license number)

*Includes 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 John Wayne Airport.***

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 John Wayne Airport.*** 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.

II. SUBCONSULTANTS

COMPANY NAME & ADDRESS	CONTACT NAME & TELEPHONE NUMBER	PROJECT FUNCTION

ATTACHMENT C
PRE-CONSTRUCTION PHASE SERVICES
FEE SCHEDULE

****DO NOT SUBMIT WITH YOUR PROPOSAL. TO BE SUBMITTED AT TIME OF INTERVIEW BY
SHORTLISTED RESPONDENTS****

A. FEE SCHEDULE:

1.	<u>GMP 1 - Pre-Construction Phase Services</u> A fixed fee price	\$
2.	<u>Pre-Construction Contingency (CMARE):</u>	\$
3.	<u>Estimated Cost of Pre-Construction Services</u>	
4.	<u>CMARE's Construction Fee*</u> Must be stated as a percentage and then applied to Line 3.	% \$
5.	Sum of Components 1 through 4	\$
6.	<u>Bond Cost</u> Must be stated as a percentage for payment and performance bonds and then applied to Line 5.	% \$
7.	<u>Basis of Comparison</u> Sum of Components 5 and 6	\$

*Refer to Model Contract Pre-Construction Phase Services – Article 1, Definition of “Construction Fee”

B. CLASSIFICATION RATES:

CMARE	
Classification Titles	Hourly Rate

SUBCONSULTANT(S)	
Classification Titles	Hourly Rate

SERVICES/REIMBURSABLES	
Item	Allowance

(Use additional sheets if necessary)

MODEL CONTRACT - CONSTRUCTION PHASE SERVICES

MODEL CONTRACT MA-280-TBD
FOR
CONSTRUCTION PHASE SERVICES
FACILITY SECURITY IMPROVEMENTS

This Contract is made and entered into the ____ day of _____, 20____, by and between the County of Orange (“County”) and _____, (“CMARE”) with County and CMARE sometimes individually referred to as “Party”, or collectively referred to as “Parties”.

County and CMARE agree as follows:

1. CONTRACT DOCUMENTS

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

2. SCOPE OF WORK

CMARE shall perform all work as required by, and in strict accordance with, the Contract Documents (the “Project”), which consists in general of the *Facility Security Improvements* project.

3. CONTRACT PRICE, CONTINGENCY AND CONTRACT TIME

3.1 CONTRACT PRICE

The Total Contract Price shall be the summation of the Guaranteed Maximum Price and Contingencies in the not to exceed amount of _____ Dollars (\$ _____), as it may be adjusted pursuant to the “CHANGES” section of the General Conditions, and in accordance with the “PAYMENTS” section of the General Conditions.

3.2 CONTINGENCY

- 3.2.1 “Contingency (CMARE’s)” means a fund to cover cost growth during the Project used at the discretion of the CMARE usually for costs that result from Project circumstances.

The amount of the CMARE’s Contingency will be _____ Dollars (\$ _____). Use and management of the CMARE’s Contingency during the construction phase is as presented in the Pre-Construction Phase Services Contract, as reproduced in part below for reference.

CMARE’s Contingency is an amount the CMARE shall use under the following conditions:

- (1) With written approval of the County for increases in the Cost of the Work which are not the County's responsibility, or
- (2) With written approval of the County for increases in General Condition Costs, or

Markups (as established in the Pre-Construction Phase Services Contract) will be applied by the CMARE at the time that the CMARE submits a request for use of the CMARE's contingency to the County for approval. The County will not reasonably withhold approval of use of CMARE's contingency under condition (1) above.

- 3.2.2 "Contingency (County's)" means a fund to be used at the discretion of the County to cover any increases in Project costs that result from County directed changes or unforeseen site conditions. County's Contingency will be added to the GMP amount provided by the CMARE, the sum of which will be the full contract price for construction. Markups for Construction Fee and taxes will be applied by the CMARE at the time that County's Contingency is used. Any County Contingency not utilized shall revert to the County after Project completion.

The amount of the County's Contingency will be _____ Dollars (\$_____). The County, at their sole discretion, can reduce the County's Contingency amount at any time.

3.3 CONTRACT TIME

Within 10 calendar days of the County's execution of the Contract, CMARE shall submit to County for its review of bonds (as detailed below); proof of insurance; and initial job Construction Schedule. If County rejects the submitted documents, CMARE will have 5 additional calendar days to resubmit. If CMARE fails to submit documents within the required time(s), the Contract Time (as defined below) will be reduced by the number of days which exceed the time for submittal. If CMARE fails to submit acceptable documents by the second submission, County may, at its sole discretion, reduce the Contract Time by the number of days between County's rejection of the second submission and County's approval of the documents.

Upon County's approval of the bonds, insurance, and initial job Construction Schedule, County will deliver to CMARE a signed copy of the Contract and a Notice to Proceed with the work. CMARE shall not commence construction until County issues the Notice to Proceed. CMARE shall complete all work required by the Contract Documents within 730 Calendar Days of the effective date of the Notice to Proceed ("Contract Time"). The Contract Time includes 7 days of anticipated weather days necessitating stoppage of work, and a time extension due to rain or other adverse weather conditions will only be granted in accordance with the "DELAYS DUE TO WEATHER AND FORCE MAJEURE" Section of the General Conditions.

The County and A-E will not be responsible for the failure of the CMARE to plan, schedule, and execute the work in accordance with the approved schedule or the failure of the CMARE to meet the Contract completion dates or the failure of the CMARE to schedule and coordinate the work of his own trades and subcontractors or to coordinate with others separate Contractors.

4. BONDS

Within 14 calendar days after award of each Contract GMP, the awarded CMARE shall furnish a Faithful Performance Bond and a Labor and Material Payment Bond, each in an amount equal to 100% of the GMP Contract Price, issued by a surety in accordance with the requirements of the General Conditions of the Contract. The bonds shall be in the form of the models included in the

Request for Proposal documents and must be approved by County's Risk Manager and County Counsel. The successful CMARE shall submit the bonds in duplicate, all of which shall bear original signatures. The signature of the surety representative must be notarized.

5. LIQUIDATED DAMAGES

Time is of the essence for all work to be performed. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that County will sustain in the event of and by reason of CMARE's delay. Therefore, in accordance with Government Code Section 53069.85 and Public Contract Code section 7203, CMARE agrees to forfeit and pay to County the sum of \$1,000.00 per day ("Liquidated Damages") for each calendar day that completion of all the work required by the Contract Documents is delayed beyond the Contract Time, or specified portion of work if designated in a GMP, as may be adjusted by Change Order. County may deduct such sum from any payments due to or to become due to CMARE. It is hereby understood and agreed that the Liquidated Damages amount are not penalties.

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

County may deduct Liquidated Damages from any payments due to become due to CMARE. CMARE's forfeiture of Liquidated Damages to County, and County right to retain Liquidated Damages are as indicated in Government Code section 53069.85 and as indicated herein. Liquidated Damages are automatically and without notice of any kind forfeited and payable by CMARE upon the accrual of each day of the delay. Neither County's failure or delay in deducting Liquidated Damages from payments otherwise due the Contractor, nor County's failure or delay in notifying Contractor of the forfeiture and payment of Liquidated Damages, shall be deemed a waiver of County's right to Liquidated Damages and/or County's right to withhold Liquidated Damages from any amounts that would otherwise be payable to CMARE

6. CMARE SHALL PERFORM 5% OR MORE OF THE WORK

CMARE shall be capable of performing, and shall perform with its own organization, work amounting to at least 5% of the GMP amount. However, any Bid Item designated as a Specialty Bid Item will be excluded from the GMP amount for purposes of this Section only.

7. EMPLOYEE ELIGIBILITY VERIFICATION

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

8. SECURING WORKERS' COMPENSATION INSURANCE CERTIFICATION

CMARE, by executing this Agreement, hereby certifies that it will comply with the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for

workers' compensation and/or to undertake self-insurance in accordance with the provisions of that code before commencing performance of the work.

9. PARTIES' REPRESENTATIVES

9.1 COUNTY'S REPRESENTATIVES

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: TBD
 Attn: TBD
 Address TBD
 Phone: TBD
 Email: TBD

County: County of Orange, John Wayne Airport
 Attn: TBD Project Manager
 Address: TBD
 Phone: TBD
 Email: TBD

cc: County of Orange, John Wayne Airport
 TBD
 Attn: <Buyer name>, DPA
 Email: TBD

9.1.1 John Wayne Airport. The Project is under the general direction of County's Board of Supervisors. The Board of Supervisors authorizes John Wayne Airport to be County's representative in connection with the Project.

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

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

9.2 COUNTY

County has the final authority in all matters affecting the work. County has the authority to enforce CMARE's compliance with the Contract Documents. County's decision is final and binding on all questions relating to: quantities; acceptability of material, equipment, or work; execution, progress, or sequence of work; and interpretation of the Contract Documents. All labor, materials, tools,

equipment furnished by CMARE and all work performed by CMARE shall be subject to the approval of County.

- 9.2.1 The County and A-E shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work and will not be responsible for the CMARE's failure to carry out the work in accordance with the Contract Documents.
- 9.2.2. The County will not be responsible for the acts or omissions of the CMARE, or any subcontractor, or any CMARE's or subcontractor's agents or employees, or any other persons performing any of the work.

9.3 CMARE'S REPRESENTATIVES

- 9.3.1 Representative and Alternate: Before starting work, CMARE shall designate in writing a representative who shall have complete authority to act for it. The representative shall be the same as proposed during original Request for Proposal selection process. CMARE may also designate an alternate representative (also as identified during original Request for Proposal selection process) with complete authority to act for it. County may rely on such representative or alternate as having the authority to execute Change Orders in any amount unless CMARE identifies to County in writing the officer(s) or employee(s) with such authority. Any order or communication given to this representative shall be deemed delivered to CMARE. In the absence of CMARE's representative, instructions or directions may be given by County to the project manager or superintendent. Such order shall be complied with promptly and referred to CMARE or its representative. CMARE's representative and alternate must be able to read, write, and speak English fluently.
- 9.3.2 CMARE's Project Manager: CMARE shall provide the services of the project manager, as proposed during original Request for Proposal selection process. CMARE's project manager, if different than designated representative, shall represent CMARE in the absence of CMARE's designated representative or alternate, and all directions given to the project manager shall be binding as if given to CMARE. County may require CMARE to replace the project manager whose conduct or performance is unsatisfactory. CMARE shall not change its project manager without County's consent unless the project manager is unsatisfactory to CMARE or ceases to be in CMARE's employ. If CMARE's project manager leaves the Project, CMARE shall replace him or her within 24 hours (unless additional time is agreed upon by County) with a new, well-qualified project manager acceptable to County.
- 9.3.3 Superintendent(s): CMARE shall provide the services of the superintendent(s) as proposed during original Request for Proposal selection process. A superintendent shall be present at the work site whenever work is in progress including whenever weather conditions necessitate its presence to take measures necessary to protect the work, persons, or property. CMARE's superintendent shall represent CMARE in the absence of CMARE's designated representative, alternate or project manager, and all directions given to the superintendent(s) shall be binding as if given to CMARE. The superintendent must read, write, and speak English fluently. County may require CMARE to replace a superintendent whose conduct or performance is unsatisfactory. CMARE shall not change its superintendent without County's consent unless the superintendent is unsatisfactory to CMARE or ceases to be in CMARE's employ. If CMARE's superintendent leaves the Project, CMARE shall replace him or her within 24 hours (unless additional time is agreed upon by County) with a new, well-qualified superintendent acceptable to County.
- 9.3.4 Emergency Contacts: CMARE shall provide County with a list of names and telephone numbers at which CMARE's representative, alternate, superintendent, and other key personnel can be reached during non-working hours in the case of an emergency.

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

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 hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

The parties specifically agree that by soliciting and entering into and performing 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 work under this Contract is completed and continuing until the expiration of any applicable limitations period. Furthermore, the parties have specifically agreed, as part of the consideration given and received for entering this Contract, to waive any and all rights to request that an action be transferred for trial to another county under Code of Civil Procedure Section 394.

11. SIGNATURE REQUIREMENTS

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

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

12. ENTIRE CONTRACT

The Contract Documents represent the entire and integrated Contract between County and CMARE and supersede all prior representations, statements, or Contracts concerning the subject matter of this Contract, whether verbal or written.

13. LEVINE ACT REQUIREMENTS

CMARE agrees to comply with Government Code Section 84308. CMARE further agrees to disclose to County any contribution made to any members of the 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.

14. AIRPORT REQUIREMENTS: AIRPORT SECURITY AND ID BADGE REQUIREMENTS

CMARE, CMARE's employees and CMARE'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.
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.

Contractor's designated personnel must, at a minimum, complete the following required training based on contractors work to be provided and access areas:

1. 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 organizations employees, subtenants, or subcontractors. Authorized Signatories must attend this approximate 1 hour course initially and annually.
2. Security Identification Display Area (SIDA) Training: All employees with an operational need to have unescorted access to the Airport SIDA must complete this approximate 1.5 hour course and pass a written test.
3. 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.
4. 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 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.
5. 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.
6. 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.

7. 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.
8. 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:
 - STA Fee: Approximately \$11.00
 - Fingerprint/CHRC Fee: Approximately \$31.00
 - ID Badge Fee: Approximately \$10.00
 - Terminated, Unreturned ID Badge Fee: Approximately \$250.00
9. Contractor shall abide by all the security requirements set forth by the Transportation Security Agency (TSA), Federal Aviation Administration (FAA), United States Customs and Border Protection (CBP), JWA and all applicable federal, state and local regulations regarding airport security.

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.

1. 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.
2. 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.

3. JWA security badge is nontransferable.
 4. 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. 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.
 5. 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.
 6. No worker shall be used in performance of this work that has not passed the background check.
- D. Anti-Idling Policy:** Within six months of Contract execution, CMARE must develop, implement and submit to the Airport Director for approval a fleet-wide anti-idling policy. At a minimum, the anti-idling policy shall include the requirement that vehicle engines shall be turned off when vehicles are not occupied, and that occupied vehicles be turned off after no more than a five-minute idling period. CMARE's policy shall also include all third-party vehicles that enter Airport property at the direction of CMARE.

SIGNATURE PAGE FOLLOWS

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

TBD
a California Corporation

Date: _____

By: _____

Print Name & Title

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

Date: _____

By: _____

Print Name & Title

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

COUNTY OF 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: _____

Date: _____

GENERAL CONDITIONS

1. DEFINITIONS

As used in the Contract Documents, the following terms shall have the following definitions as set forth below:

Term	Definition
"calendar day"	Each day shown on the calendar beginning at 12:00 Midnight, including Saturdays, Sundays and Holidays.
"day"	Unless otherwise specified within the Contract Documents, all references to any "day" or number of "days" shall mean consecutive calendar days (including all holidays and weekends).
"working day"	Monday through Friday, except: Saturday, Sunday or any day designated as a holiday the County.
Abbreviations	The language of specifications and other Contract Documents is of the abbreviated type in certain instances, and implies words and meanings appropriately interpreted. Singular words will be interpreted as plural and plural words will be interpreted as singular where applicable and where full context of the Contract so indicates.
Accepted Project Schedule	CMARE's Project progress schedule after it has been accepted by County and designated as the Accepted Project Schedule and updated by each accepted monthly Schedule Update. The CMARE's Project Schedule was initiated upon execution of the Pre-Construction Phase Services Contract.
Amendment	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.
Application for Payment	CMARE's periodic or one-time claim for payment based on work completed.
Approve	Where used in conjunction with the Architect or Engineer's response to submittals, requests, applications, inquiries, reports and claims by the CMARE, the meaning of the term "approved" will be held to limitations of the Architect or Engineer's responsibilities and duties as specified in General Conditions. In no case, will "approved" by the Architect or Engineer be interpreted as a release of the CMARE from responsibilities to fulfill requirements of the Contract, nor as any modification to those requirements.
Architect-Engineer (A-E)	County's Architect or Engineer of Record for the Project, whether County's own employee or a third-party individual or firm hired to provide A-E services.
Board of Supervisors	County's governing body.
Bulletin	Written or graphic instrument issued prior to the opening of Bids which clarifies or answers general questions about the Contract Documents.
CCR	California Code of Regulations.
Change Order	A modification of the Contract as provided by the "Changes" Section of the General Conditions.

Term	Definition
Change Order Request	County's request for CMARE to provide a proposal and price/time quote for County's desired Change Order, or County's description of work to be performed pursuant to CMARE's Request for Change.
Changed Conditions	Site conditions or materials of an unexpected nature or differing from those represented in the Contract Documents as provided by the "Changes" Section of the General Conditions.
Code Sections	Except where otherwise specified, all statutory references (e.g. "Labor Code" or "Public Contract Code") shall mean those laws enacted by the State of California, as they may be amended.
Construction Fee	CMARE's General Administration & Overhead Fee (administrative costs, home office overhead and additional indirect costs), whether at the CMARE's principal or branch offices, and Profit. The CMARE's Project Manager, Project Engineer, Superintendent and Safety Officer shall be included as indirect project costs with the appropriate utilization rates. All other indirect labor shall be included in the general administration and overhead portion of the construction fee.
Construction Schedule	CMARE's initial construction schedule after it has been accepted by County and designated as the Project Construction Schedule and updated by each monthly schedule update.
Contract	The complete Contract between County and CMARE covering the Project, as represented by the Contract Documents.
Contract Documents	Documents comprising the complete Contract between County and CMARE as enumerated in the "Contract Documents" Section of the Contract.
Contract Price	The total dollar amount of the Contract identified in the "Contract Price and Time" Section of the Contract as it may be adjusted in accordance with the "Changes" Section of the General Conditions.
Contract Time	The number of calendar days specified in the "Contract Price and Time" Section of the Contract that CMARE has to complete the work after the issuance of a Notice to Proceed, as it may be adjusted in accordance with the "Changes" Section of the General Conditions.
Construction Manager At-Risk Entity (CMARE)	The Respondent ("Party") awarded the Contract by County.
County	The County of Orange, a political subdivision of the State of California, and its representatives, alternate designation, County, a body corporate and public.
Defective Work	CMARE's performance that does not conform to the requirements of the Contract Documents, industry standards, manufacturers' recommendations, or requirements of the "Quality of Materials and Workmanship" Section of the General Conditions.
Director	Except where otherwise provided, references to "Director" shall mean the Director of John Wayne Airport or his or her designee.
Directed, Requested, etc.:	Where not otherwise explained, terms such as "directed," "requested," "authorized," "selected," "approved," "required," "accepted," and "permitted" mean "directed by A-E," "requested by A-E," "requested by A-E," and similar phrases. However, no such implied meaning will be interpreted to extend A-E's responsibility into the CMARE's area of construction responsibility.

Term	Definition
Dust Control Plan	CMARE's plan for compliance with County's Fugitive Dust Emission Control Plan in conformance with the SCAQMD Rule 403 (See the "Performance" Section of the General Conditions.)
Emergency/Contingency Plan	CMARE's provisions for handling spills of hazardous, liquid, or nuisance materials prepared in accordance with the "Hazardous or Contaminated Materials" subsection of the "Performance" Section of the General Conditions.
Engineer or Architect of Record	The California-registered architect or engineer in responsible charge for the design of the Project and whose seal appears on the Plans and Special Provisions.
Final Payment	The last and complete payment by County to CMARE under the Contract as provided by the "Payments" Section of the General Conditions.
General Conditions	The portion of the Contract Documents setting forth various conditions and requirements of the Contract.
GMP	Guaranteed Maximum Price
GMP Item	An item of work or task listed in the GMP Schedule including the description, quantity (where applicable), and unit cost.
GMP Item, Deletable	A GMP Item that is considered part of the GMP but which may or may not be deleted from the Contract Price at any time prior to completion of the work.
GMP Item, Specialty	A GMP Item that is considered part of the GMP but not considered part of the CMARE's obligation to perform at least 25 percent (25%) of the work.
GMP Proposal	A GMP Proposal is an offer made by the CMARE to the County in accordance with the Instruction to Respondents.
GMP Schedule	The detailed list of items of work with associated quantities, prices, and type of cost, submitted with each GMP.
Liquidated Damages	Damages specified in the "LIQUIDATED DAMAGES" Section of the Contract, payable to County for CMARE's failure to complete the work within the Contract Time.
Lump Sum (LS)	"Lump Sum", "L.S." or "Job" prices are paid according to a flat total for all labor, materials, overhead, and other costs associated with the work item (see the PAYMENTS" section of the General Conditions).
Manifests	Required documents that identify the generator, transporter, disposal facility and type of hazardous material(s). Manifests include, but are not limited to: documents entitled Uniform Hazardous Waste Manifest(s), Bills of lading, or similar documentation concerning the handling, transportation, and disposal of materials (See the "Hazardous Or Contaminated Materials" subsection of the "Performance" Section of the General Conditions.)
Notice of Completion	The document recorded by County in accordance with Civil Code Section 8182 after completion of the work.
Notice of Termination	County's notice to CMARE specifying the effective date of a termination of the Contract (in whole or in part), as provided by the "Termination for Convenience of County" Section of the General Conditions.
JWA	John Wayne Airport, A County of Orange Agency/Department

Term	Definition
Party / Parties	The County and/or CMARE.
Plans	The drawings, profiles, cross sections, standard plans, working drawings, and shop drawings, or reproductions thereof, approved by County, which show the location, character, dimensions, or details of the Project.
Project	All work performed by CMARE as required by, and in strict accordance with, the Contract Documents.
Project Manager (PM)	The County OR CMARE representative identified in the Contract Documents or otherwise specified by County or CMARE in writing.
Promptly	One (1) week beginning with the County's notice to the CMARE to acknowledge and initiate action(s).
Reference Specifications	Those bulletins, standards, rules, methods of analysis or testing, codes, and specifications of other agencies, engineering societies or industrial association referred to in the Contract Documents. These shall refer to the latest edition, including amendments in effect and published at the time of advertising the Contract or issuing the permit, unless specifically referred to by edition, volume or date.
Retention	The amount of progress payments withheld by County as security for CMARE's complete and proper performance of the Contract as provided by the "Payments" Section of the General Conditions.
Retention Payment	Payment of the Retention in accordance with Public Contract Code 7107 and the "Retention Payment" Section of the General Conditions.
Request for Change	CMARE's request that County issue a Change Order.
Schedule of Values	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.
Schedule Update(s)	CMARE's monthly update of work progress. (See the "Project Schedules" and "Payments" Sections of the General Conditions.)
Special Provisions	The portion of the Contract Documents describing the specific requirements of the Project, which may include additions and revisions to the Standard Specifications setting forth conditions and requirements peculiar to the Project.
Standard Plans	Details of standard structures, devices, or instructions referred to on the Plans or in the Special Provisions by title or number.
Standard Specifications	The Standard Specifications for Public Works Construction (SSPWC), known as the "Greenbook," 2015 Edition, Parts 2 through 5, including any supplements effective as of the time of Bid opening.
Subcontractor(s)	Those contractors independently engaged by CMARE to perform portions of the work.
Submittals	Items that the Contract Documents require CMARE to submit to County after award of the Contract and issuance of the Notice to Proceed, as provided by the "Submittals" Section of the General Conditions.
Substantially Complete	The point in a construction project in which the contemplated premises or improvements have been completed to the point where the owner can move in and use the premises or improvements for their intended purposes. If applicable, issuance of a Certificate of Occupancy by all Authorities having jurisdiction is required for the project to be deemed Substantially Complete.

Term	Definition
Supplementary General Conditions	The portion of the Contract Documents identified describing additions and revisions to the General Conditions setting forth conditions and requirements peculiar to the Project.
Traffic Control Plan (TCP)	CMARE's provisions for coordination of its traffic at the Project site. (See the "Performance" Section of the General Conditions.)
Unilateral Change Order	A Change Order issued by the County where County and CMARE cannot reach an agreement on a proposed modification to the Contract.

2. A-E STATUS

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

3. COMPLIANCE WITH LAWS AND REGULATIONS

CMARE shall remain in compliance and in good standing, maintaining current and active business entity and/or nonprofit registration status, with all applicable federal, state and local registration requirements at the time of execution of the contract through the duration of the term of the Contract, and shall provide annual confirmation of current and active status to County through the term of the Contract.

4. CONTRACTOR'S LICENSE

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

4.1 LICENSED SUBCONTRACTOR

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

4.2 COMMUNICATIONS

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

4.3 RESPONSIBILITY

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

4.4 CONTRACTUAL RELATIONS

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

4.5 LISTING AND SUBSTITUTION OF SUBCONTRACTORS

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

5. INTERPRETATION OF CONTRACT DOCUMENTS

5.1 PLANS AND SPECIFICATIONS

- 5.1.1** Checking: CMARE shall review all Contract Documents immediately upon receiving them and shall promptly notify County of any discrepancies. CMARE shall notify County about the absence of a specification or detail, and such absence shall not excuse CMARE from following standard practices in the industry. Dimensions marked on drawings shall in general be followed in preference to scale measurements. Larger-scale, more detailed drawings shall in general govern over smaller-scale, less detailed drawings. Architectural and engineering schedules shall take precedence over other portions of the Plans. CMARE shall compare all Plans and verify the dimensions before laying out the work and will be responsible for any errors that might have been avoided by doing so. If measurements are affected by site conditions, CMARE shall take new measurements for which CMARE bears full responsibility, and which shall be treated as if represented in the Plans and Specifications.
- 5.1.2** Omissions and Mistakes: CMARE shall call to County's attention as soon as identified any omissions in the Contract Documents or mistakes in details of work that are necessary to carry out the intent of the Contract Documents or that are customarily performed. County shall promptly notify CMARE in writing of the correction. If warranted, County shall issue a Change Order in accordance with the "Changes" Section of these General Conditions. If CMARE makes any adjustment to the work without first receiving the County's written correction, such adjustment shall be at CMARE's own risk and expense.
- 5.1.3** Conflicting Information: In case of conflicting information in the Contract Documents, CMARE shall bid the most expensive alternative.
- 5.1.4** Documents at the Site: CMARE shall keep available at the site for ready reference a complete set of the Contract Documents. CMARE also shall maintain a complete set of plans, specifications, approved shop drawings, Requests for Information manufacturers' recommendations and

instructions, and copies of all Project correspondence at the site. CMARE shall provide County with a set of manufacturers' recommendations and instructions.

- 5.1.5 "As-Built" Plans at the Site: CMARE shall maintain at the site a complete "As-Built" set of Plans for the Project. CMARE shall update the As-Built Plans each day with all County Building Department Approved deviations (permit revisions) from the County Building Department approved "permit set" of plans. CMARE shall make As-Built Plans available to County immediately upon request. Any delay by CMARE in providing County with access to properly updated As-Built Plans may result in a commensurate delay in County's processing of progress payment applications. Prior to final payment, CMARE shall deliver a complete set of the As-Built Plans to County in a format acceptable to County and suitable for use in preparing a reproducible set of record drawings for the Project. Failure to provide accurate, field-verified As-Built Plans may result in a withholding of 3% of the total contract amount.
- 5.1.6 Deviations: CMARE shall not deviate from the Plans and the dimensions included in the Scope of Work, whether or not CMARE believes an error exists, without first obtaining County's written permission for the deviation.

5.2 PRECEDENCE OF CONTRACT DOCUMENTS

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

The precedence shall be:

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

6 PRE-CONSTRUCTION

6.1 CONTRACTOR'S PRE-CONSTRUCTION OBLIGATIONS

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

7 BONDS, INDEMNITY, AND INSURANCE

7.1 BONDS

7.1.1 Payment and Performance Bonds

Within 14 days after award of the Contract, CMARE shall furnish a payment bond for 100% of the amount of the Contract, in accordance with Civil Code Section 9554, and a performance bond for 100% of the amount of the Contract, guaranteeing the faithful performance of the Contract. CMARE shall take steps to assure that the penal sum of the bonds shall be increased by the amount of any additive adjustments to the Contract Price as a result of Change Orders.

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

The payment and performance bonds shall be in the form provided with the Instructions to Bidders and are subject to approval by the County.

7.1.2 County's Right to Replace Surety

If any surety upon any bond furnished in connection with this Contract becomes objectionable to County and fails to submit to County the documents described in California Code of Civil Procedure Sections 995.660(a)(1) through (a)(4) within the time specified in those Sections, then CMARE shall promptly furnish such additional security as may be required by County to protect the interests of County and of persons entitled to make a claim against the payment bond. Failure to furnish such additional security shall constitute a material breach of the Contract.

7.2 INDEMNIFICATION

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

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

If judgment is entered against CMARE and County by a court of competent jurisdiction because of the concurrent active negligence of 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.

7.3 INSURANCE

Prior to the provision of services under this Contract, the CMARE agrees to carry 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 current, provide Certificates of Insurance, and endorsements to the County during the entire term of this Contract. The County reserves the right to request the declarations page showing all endorsements and a complete certified copy of the policy.

CMARE shall ensure that all subcontractors performing work on behalf of CMARE pursuant to this Agreement shall be covered under CMARE's insurance as an Additional Insured or carry insurance subject to the same terms and conditions as set forth herein for CMARE. CMARE shall not allow subcontractors to work if subcontractors has 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.

All self-insured retentions (SIRs) 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 CMARE. 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 CMARE and Additional Insureds.

If the CMARE fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

7.3.1 Qualified Insurer

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).

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:

7.3.2 Minimum Policy Limits and Coverage

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

<u>Coverage</u>	<u>Minimum Limit(s)</u>
Commercial General Liability Including Products – Completed Operations	\$5,000,000 per occurrence \$5,000,000 aggregate
Automobile Liability including coverage for owned, or scheduled non-owned and hired vehicles	\$1,000,000 combined single limit \$5,000,000 combine single limit (When accessing the AOA)
Workers’ Compensation Employers’ Liability Insurance	Statutory \$1,000,000 per accident or disease
Contractor’s Pollution Liability	\$2,000,000 per claims-made, or occurrence

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

<u>Coverage</u>	<u>Minimum Limit(s)</u>
Commercial General Liability Including Products-Completed Operations	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, or scheduled, non-owned and hired vehicles	\$1,000,000 combined single limit \$5,000,000 combine single limit (When accessing the AOA)
Contractor’s Pollution Liability (optional required when coverage when hazardous materials involved.	\$1,000,000 per occurrence \$2,000,00 aggregate
Workers’ Compensation Employers’ Liability Insurance	Statutory \$1,000,000 per accident or disease

7.3.3 Required Coverage Forms

The Commercial General Liability coverage shall be written on occurrence basis Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad. The Commercial General Liability policy shall not exclude coverage for Explosion, Collapse, or Underground Hazard (XCU).

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.

7.3.4 Required Endorsements

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

- a. An Additional Insured endorsement using ISO form CG 2026 04 13 10 or a form at least as broad naming the **County of Orange, its elected and appointed officials, officers, employees and agents** as Additional Insureds, or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT**.
 - b. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the CMARE'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 Pollution Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
 - a. An Additional Insured endorsement naming the **County of Orange, its elected and appointed officials, officers, employees and agents** as Additional Insureds or provide blanket coverage which shall state **As Required by Written Contract**.
 - b. A primary non-contributing endorsement evidencing that the CMARE's insurance is primary and any insurance or self-insurance maintained by the County of Orange, shall be excess and non-contributing.
3. 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** when acting within the scope of their appointment or employment.
4. The Pollution Liability insurance must include coverage for bodily injury and property damage, including coverage for loss of use and/or diminution in property value, and for clean-up costs arising out of, pertaining to, or in any way related to the actual or alleged discharge, dispersal, seepage, migration, release or escape of contaminants or pollutants resulting from any services or work performed by, or behalf of, Contractor, including the transportation of hazardous waste, hazardous materials, or contaminants.
5. If CMARE's Pollution 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 (3) years after expiration or earlier termination of Contract services.
 - 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 (3) years after expiration of earlier termination of the Contract.
6. All insurance policies required by this Contract 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.

7. CMARE shall provide thirty (30) days prior written notice to the County of any policy cancellation or non-renewal and ten (10) days prior written notice where cancellation is due to non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.
8. The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).
9. Insurance certificates should be forwarded to the agency/department address listed on the solicitation.
10. 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 CMARE.
11. 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 Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.
12. 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 days of receipt of such notice, this Contract may be in breach without further notice to CMARE, and County shall be entitled to all legal remedies.
13. 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 Contract, nor in any way to reduce the policy coverage and limits available from the insurer.

7.4 RESPONSIBILITY FOR DAMAGES OR INJURY

- 7.4.1 County and its officers and employees shall not be liable in any manner for any loss or damage to any portion of the work, any loss or damage to any of the materials or equipment used in the work, or any injury to any person or property by any cause that might reasonably have been prevented by CMARE, its employees, or its Subcontractors. CMARE shall indemnify and defend County against any claims or liability under this Section pursuant to the "Indemnification Provisions" Section of these General Conditions.
- 7.4.2 CMARE shall remove and dispose of any waste materials, including soils or other materials that become contaminated directly or indirectly as a result of CMARE's performance under this Contract, according to the "Hazardous or Contaminated Materials" Section of the General Conditions.
- 7.4.3 Payment of any penalties, fines, or other liability assessed to County by regulatory agencies due to CMARE's or any Subcontractor's action or inaction in performing the work shall be CMARE's sole responsibility.
- 7.4.4 CMARE shall pay any assessments or damages covered by this Section directly, or, at County's discretion, County may pay or retain the amount of such assessments or damages and deduct its costs from payments owed or as they become due to CMARE.

8 SCHEDULES, SUBMITTALS, SUBSTITUTIONS, AND INSPECTIONS

8.1 PROJECT SCHEDULES

- 8.1.1 Construction Schedules: As part of GMP, CMARE shall submit to County for County's review an initial job progress schedule.

Once the Notice to Proceed is issued, the Construction Schedule shall be updated to reflect the Contract Time as defined in the Contract. Unless a specific software application is called for elsewhere in the Contract Documents, CMARE shall use Microsoft Project, SureTrak Project Manager, Primavera Project Planner, or other scheduling software acceptable to County to configure all versions of its job progress schedule. CMARE shall prepare the Construction Schedule using the Critical Path format. Schedule activities shall be of sufficient detail to assure that adequate planning has been done for proper execution of all of CMARE's work. The job progress schedule shall show the sequence, duration, and interdependence of activities required for the complete performance of all of CMARE's work.

CMARE shall include on the Construction Schedule the schedule for submittals, shop drawings, procurement, fabrication, and delivery for major materials and equipment required for the Project, and shall allow no less than 21 days for County's review of each such submittal. After CMARE's initial Construction Schedule is accepted by County, it will be designated as the "Accepted Construction Schedule". An Accepted Construction Schedule is a condition precedent to County's obligation to make the initial progress payment to CMARE.

- 8.1.2 Weekly Meetings and Look-Ahead Charts: CMARE shall participate in weekly meetings with County during which the parties shall exchange information regarding the actual progress of construction. County and CMARE shall attempt to agree upon quantities and percentages of completion that reflect the actual progress of construction. At each meeting CMARE shall submit 4 copies of a 2-week look-ahead chart. The 2-week look-ahead chart shall include only those activities that will be started, in progress, or completed during the next 2-week period. The format of the look-ahead chart shall be subject to County's approval.
- 8.1.3 Monthly Schedule Updates: Each month, CMARE shall submit to County for its review an update of the Accepted Construction Schedule. The monthly Schedule Update shall reflect agreed assessments of actual completion reached during weekly meetings. If County and CMARE cannot agree, then CMARE shall use County's assessment of actual progress to prepare the Schedule Update. CMARE's monthly Schedule Update shall include: (a) a diagram showing the target versus actual dates for each activity; (b) an updated CPM report; and (c) a narrative report that includes, but is not limited to, a description of problems, current and anticipated delays and their causes, impacts of delays, and corrective actions that CMARE has taken or proposes to take to overcome problems and recover from delays. CMARE shall identify any events that will delay the completion of an interim milestone or the completion of the overall Project in the monthly Schedule Update. On County's acceptance of the monthly Schedule Update, it shall become the current Accepted Construction Schedule. Any request for an extension of the Contract Time must be based on the Accepted Construction Schedule. The submission of an acceptable monthly Schedule Update will be part of the basis of the progress payment and shall be a condition precedent to County's obligation to make such progress payment to CMARE.
- 8.1.4 Recovery Schedule: If any activity on the Critical Path is more than 7 days behind the Accepted Construction Schedule and it appears that CMARE may not complete all work within the Contract Time, then County may require CMARE to submit a recovery schedule demonstrating its proposed plan to make up all lost time and complete the Project within the Contract Time. CMARE shall submit its recovery schedule within 7 calendar days of County's request. If County finds the proposed recovery schedule unacceptable, it may require CMARE to submit a revised plan or to take actions that are, in County's judgment, necessary to recapture lost time, including but not

limited to increasing: (a) manpower; (b) the number of working hours per day; (c) the shifts per working day; (d) the number of working days per week; (e) the amount of equipment; or (f) any combination of the foregoing. CMARE's entitlement to additional compensation, if any, will be determined in accordance with the provisions of the "Changes" Section of the General Conditions.

8.2 SCHEDULE OF VALUES

Within 14 calendar days of the issuance of the Notice to Proceed, CMARE shall submit a proposed Schedule of Values for County's review and approval. The Schedule of Values shall include sufficient detail and be supported by sufficient data as County, in its sole discretion, may deem necessary to substantiate its accuracy and to evaluate progress at any point in the Project. The Schedule of Values shall include the general categories noted in the GMP, subdivided into their various components for the costs of trade subcontractors' services, labor, and material based when possible upon actual subcontract, purchase order, or vendor prices. Subdivisions of work should be described by easily identifiable and measurable units.

The data from the Schedule of Values shall be transferred and correspond directly to the appropriate construction activities on Construction Schedule. County will accept the Schedule of Values with review of the Construction Schedule. The Schedule of Values along with the Construction Schedule will be the basis for CMARE's Progress Payment Request and therefore, must be reviewed by County before the first Progress Payment Request is submitted to County.

To substantiate the accuracy of the Schedule of Values, County and CMARE may review such supporting data as County may require which includes, but is not limited to, subcontractor contracts, material contracts, supply and services contracts, etc.

8.3 CONTRACTOR'S SUBMITTALS

- 8.3.1 General: Include within the Construction Schedule a schedule for submittals ("submittal schedule") in accordance with Contract Time and Contract Document requirements.

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

- 8.3.2 Time for submittals: Each submittal must be received by the A-E in time to permit at least 21 calendar days for their review. If a submittal is not received in time to allow sufficient time, 21 calendar days for the A-E's review without delaying construction, the CMARE shall reimburse County for the A-E's costs incurred by checking on an accelerated basis.
- 8.3.3 A-E or County Responsibility: (1) The A-E's or County's responsibility for time consumed in review of construction data and any claim made by the CMARE (including Subcontractors and suppliers) that such time is excessive and has caused or will cause delay in completion of the work, will only be considered as starting from the time drawings, samples and other construction data are complete and correct in all respects and so submitted and signed as approved by CMARE. (2) Preliminary and incomplete or incorrect submittals of said drawings and samples shall not be considered as the beginning of the official approved time.
- 8.3.4 Construction Data: Obtain and review all construction data and such other data as required for the coordination of the work of the CMARE and each of his subcontractors, whether such submittals are requested.
- 8.3.5 Submittal Requirements: CMARE shall submit to County electronic copies of all initial submittals required by the Contract Documents, including but not limited to: shop drawings, working

drawings, descriptions of materials and equipment to be supplied, samples, supporting information, and other submittals (collectively “Submittals”) and 2 hard copies of each approved submittal. All submittals shall be provided at CMARE’s expense. CMARE shall carefully review each Submittal before delivering it to County. CMARE shall provide a signed, dated transmittal letter with each Submittal certifying that the Submittal is correct and in strict conformance with the Contract Documents. CMARE shall allow no less than 21 days for County to review each Submittal. CMARE is expected to make a complete and acceptable Submittal by the second submission as to any item, and County reserves the right to withhold moneys otherwise due CMARE to cover additional costs of County’s reviews beyond the second Submittal.

- 8.3.6 County’s Review: When the Contract Documents require a Submittal, CMARE shall not furnish or fabricate any materials or equipment and shall not perform any work covered by the Submittal until County has reviewed and notified CMARE that County takes no exceptions to the Submittal. Any fabrication or other work performed in advance of receiving County’s notice of no exceptions shall be entirely at CMARE’s risk and expense. CMARE is responsible for the correctness of each Submittal. County’s review of a Submittal shall not relieve CMARE from responsibility for any errors or omissions in the Submittal or from any performance requirements of the Contract Documents. In the transmittal letter that accompanies the Submittal, CMARE shall call to County’s attention any deviations from the Contract Documents. CMARE shall furnish all materials and perform all work for which Submittals are required in accordance with the Submittals that County has reviewed and has taken no exception.
- 8.3.7 A-E’s Review: Review of submittals is only to check for general conformance with the project design concept and general compliance with the Contract Documents. Responsibility will not be assumed by County or the A-E for any of the following:
- (1) Correctness of dimensions, details, quantities, or procedures indicated on the submittals.
 - (2) Any violation indicated on shop drawings, or other construction data, of local, county, state or federal laws, rules, ordinances, or rules and regulations of commissions, boards or other authorities or public utilities having jurisdiction.
 - (3) Any deviation made from Contract Documents requirements, even with approval from the A-E and County, will not relieve the CMARE from any responsibility for errors or omissions in the construction data.
- 8.3.8 Review of construction data submittals will only be performed as specifically required in the various Specification Sections.
- 8.3.9 Review of a separate item shall not indicate approval of an assembly in which the item functions.
- 8.3.10 Review of shop drawings will be general, for design, arrangement and appearance only, and shall not relieve CMARE of responsibility for accuracy of such shop drawings, dimensions, proper fitting, construction of work, providing materials required by the Contract Documents, even though such materials and their installation are not indicated on shop drawings. Review of shop drawings shall not be construed as approving departure from Contract requirements or as acceptance of any responsibility by County or the A-E for any errors, omissions, or discrepancies shown thereon.
- 8.3.11 No portion of the work requiring a submission shall be commenced until the submission has been reviewed and returned to the CMARE with the A-E's stamp of approval. All such portions of the work shall be in accordance with approved construction data.
- 8.3.12 Working Drawings: Working drawings are drawings showing details not shown on the Plans, which details CMARE must design. CMARE must prepare working drawings of a sufficient size and scale to show clearly all necessary details. CMARE shall ensure that when required by California law or the Contract Documents, working drawings are prepared by engineers holding valid professional licenses in the applicable engineering discipline.

- 8.3.13 Shop Drawings: Shop drawings are drawings showing details of manufactured or assembled products that CMARE proposes to incorporate into the work. CMARE shall submit the shop drawings required by the Contract Documents.
- 8.3.14 Shop Drawing Variations:
- (1) If shop drawings show variations from Contract Documents because of standard shop practice, questions, or any other reason, make specific mention of variations in transmittal letter to the A-E as well as encircle variations or questions on shop drawings to identify and call them to the A-E's attention.
 - (2) If the CMARE has not notified the A-E in writing of variations, deviations or omissions, the CMARE will be required, at its sole expense, to repair, replace, furnish whatever materials are required, perform the work, including adjacent work of other trades affected thereby, necessary to rectify such deviations and variations, all as directed by County. Replacement and repair shall be mandatory in such instances, even though this occurs after shop drawings have been stamped "Review Completed" and the work in question has been completed. All work pertaining to this condition or situation shall be performed at no additional cost to the County.
- 8.3.15 Samples:
- (1) Samples shall be the precise item proposed to be furnished.
 - a. Submit one sample to be retained by the A-E, one to be retained by County, plus the number required by the CMARE for his and his subcontractor's use.
 - (2) Identify each sample with the manufacturer's name, model number or type, and its intended location in the work.
 - (3) Samples of value will be returned to the CMARE for use in the work after review by the A-E and County.
 - (4) Failure of samples to conform to specific requirements may, at County option, constitute a bar against submission of other samples by the same manufacturer, vendor or supplier.
 - (5) Acceptance of samples will not preclude rejection, prior to final acceptance of completed work, of any material upon discovery of defects in material which said sample failed to represent, even though such material or equipment has been installed or erected in place.
 - (6) After samples have been reviewed, no change in brand or make will be permitted unless satisfactory written evidence is presented, to the A-E and County, that the manufacturer cannot make scheduled delivery of approved material, or that material delivered has been rejected and substitution of an alternate material is an urgent necessity, or that other conditions are apparent which indicate acceptance of such substitute materials to be in the best interest of the County.
 - (7) All samples of materials requiring laboratory tests shall be tested sufficiently in advance of the time they are required to be delivered to the Project Site for: (1) A-E's review of test results, (2) re-testing and re-submittal as necessary to obtain A-E's acceptance, (3) manufacture or fabrication, and (4) delivery to Project Site without delaying the scheduled progress of the work.
 - (8) Each sample shall have physically attached to it, in a manner not easily removed, a label bearing the following information:
 - a. Project identification.
 - b. CMARE's and subcontractor's identification.
 - c. Sample identification including full information as to manufacturer, model, catalog number, finish number, and other required information.

- d. Space for A-E's review stamp.
 - (9) When samples are rejected by the A-E, submit new samples immediately after notification of rejection, and mark them "Resubmitted Samples," in addition to other information required on label.
 - (10) The right to require additional submission of samples of any materials or material lists is reserved, whether or not specifically mentioned in Specifications.
- 8.3.16 Field Samples (When required by these specifications)
- (1) Field samples (mock-ups), when required, shall be prepared at the site, at location designated by County's Resident Engineer.
 - (2) Approved mock-ups will be used as the standard for all other similar work on the Project. Protect such approved mock-up sample areas at all times, until directed by County to remove.
- 8.3.17 Supporting Information: Supporting information is information required by the Contract Documents or requested by County when reviewing a submittal that County determines is necessary to analyze and verify that the submittal conforms to the Contract Documents or will be needed by County to operate and maintain a manufactured product or system to be constructed as part of the work. CMARE shall submit supporting information for a system bound together and include information about all manufactured items for the system. Unless otherwise specified in the Contract Documents, supporting information shall comply with applicable requirements of the Specifications and shall include but not be limited to the following:
- (1) List of Subcontractors;
 - (2) List of Materials;
 - (3) Manufacturer's certifications that materials to be supplied meet the requirements of the Contract Documents, where the Contract Documents allow such certifications or County waives materials testing requirements. County may require materials test data as part of the certification;
 - (4) Data including but not limited to catalog sheets, manufacturer's brochures, technical bulletins, specifications, diagrams, product samples, and other information necessary to describe a system, product or item. This information may be required for irrigation systems, street lighting systems, and traffic signals, and may also be required for any product, manufactured item, or system.

8.4 SUBSTITUTIONS – BRAND OR TRADE NAMES

- 8.4.1 Unless County has made a finding under Public Contract Code Section 3400(c), whenever the Contract Documents specify any materials, products, things, or services by brand, trade, or proprietary name, by patent, or by manufacturer, such specifications shall be deemed to be a measure of quality and utility or a standard and shall be deemed to be followed by the words "or equal".
- 8.4.2 If CMARE desires to use any other brand or manufacturer of equal quality, performance, and utility to that specified, it shall apply to County in writing within 35 days after the award of the Contract. CMARE shall submit to County 6 copies of each application for an "or equal" determination. CMARE's application shall include all information required for County to evaluate the substitute items, including but not limited to shop drawings, product data, and certified test results.
- 8.4.3 CMARE shall have the item tested as required by County to determine that the quality, strength, performance, physical, chemical, or other characteristics including but not limited to durability, finish, efficiency, dimensions, service, suitability, and compatibility with County's operations are such that the item will be equal in quality and utility to the item specified. CMARE's written application constitutes its representation that:

- a) CMARE has investigated the proposed item and determined that it meets or exceeds in all respects the quality, performance, and utility of the specified item.
 - b) CMARE will provide the same warranty as for the specified item.
 - c) CMARE will coordinate installation and make such modifications, which may be required for the work to be complete in all respects, with no addition to the Contract Time or the Contract Price.
 - d) CMARE waives all claims for reimbursement for additional costs which may subsequently become apparent by reason of the acceptance and use of such “or equal” materials, equipment, products, processes, or articles.
- 8.4.4 County will then determine, in its sole discretion, whether or not the proposed materials, products, things, or services are equal in quality, performance, and utility to those specified, and its decision shall be final and binding. CMARE shall not use or install any materials, products, things, or services proposed as “or equal” without County’s prior approval. CMARE shall remain solely responsible for the suitability of such proposed material, products, things, or services notwithstanding any determination by County. CMARE shall bear all expenses associated with its application for determination of “or equal” status.
- 8.4.5 Any request by CMARE to change materials, products, things, or services required by the Contract Documents that does not fall within the above provisions relating to Public Contract Code Section 3400 shall be considered pursuant to the “Changes” Section of these General Conditions. County will determine, in its sole discretion, whether or not to accept the requested change.

9 PAYMENTS

9.1 PAYMENT REQUIREMENTS

- 9.1.1 Form and Contents of Applications for Payment: CMARE must submit applications for payment on a form approved by County.

Each application for payment must include:

- a) An accepted Schedule of Values and monthly Schedule Update with a narrative report (if requested), all approved in writing by County and all developed in accordance with the “Schedules, Submittals, Substitutions, And Inspections” Section of the General Conditions. CMARE’s submissions of an Accepted Construction Schedule, monthly Schedule Updates, and Schedule of Values are conditions precedent to County’s processing of applications for payments;
- b) Photographic documentation of completed work (as requested);
- c) If requested, CMARE shall provide three copies of certified payrolls from CMARE and all Subcontractors for the period covered by the application for payment, with one copy having all pertinent information visible and two copies having the workers’ names, addresses, and social security numbers blacked out;
- d) Evidence satisfactory to County that CMARE is fulfilling its obligations under the Contract Documents with respect to preparing daily reports and maintaining up-to-date As-Built Plans;
- e) Conditional waivers and releases on progress payment or final payment (as applicable) from CMARE, those Subcontractors of any tier, and those suppliers claiming funds covered by the application for payment, and unconditional waivers and releases on progress payment or final payment from CMARE, those Subcontractors of any tier, and those suppliers who received funds through the preceding applications for payment, all in the form prescribed by Civil Code Sections 8120 through 8138; and

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

County reserves the right to adjust a payment application if a prior payment application is determined to have been overstated or understated.

- 9.1.2 Lump Sum Work and Unit Prices: County shall pay for work shown on the Schedule of Values as "Lump Sum", "L.S.", or "Job" at the lump sum price shown. Any contract work for which a unit price has been agreed upon, will be paid for at the actual quantities constructed in accordance with the Contract Documents. Upon completion of the work, if the actual quantities show either an increase or decrease from the quantities stated in the Contract, the unit price stated will apply unless a change to the unit price is warranted under the "Changes" Section of the General Conditions.
- 9.1.3 Allowances: Payment for any Allowance identified in the Bid Schedule shall be for direct cost reimbursement only, unless the Bid Schedule identifies it as a "Time and Materials" or "T&M" item. Reimbursable direct costs shall be verified by invoices and shall include any amounts paid to third parties, and do not include markups, including but not limited to supervision, labor, overhead, or profit related to the item. Payment for Allowances based on T&M pricing shall be proposed by CMARE subject to County's acceptance using the same criteria and proposal breakdown as that specified in the "Time-and-Materials Change Orders" subsection of the "Changes" Section of the General Conditions. Any work to be performed in connection with any Allowance identified in the Bid Schedule must first be approved in writing by County. Any costs that exceed the maximum amount of any Allowance line item shall be addressed as a change to the Contract consistent with "Changes" Section of the General Conditions, but in such event there shall be no markup for overhead and profit on the additional actual costs. Upon completion of the Project, each Allowance will be corrected for unused balances and a credit to the Contract Price will be issued by Change Order to reflect the actual sums authorized for work as Allowance items.
- 9.1.4 Time for Submitting and Reviewing Applications for Payment: CMARE shall submit each application for payment to County for its review on the last business day of the month for which it is seeking payment. County will review the application for payment as soon as practicable and, no later than 7 days after receiving it or as provided by Public Contract Code Section 20104.50, will return to CMARE any application for payment that County determines is not a proper application for payment suitable for payment along with a written explanation of the reasons why the application for payment is not proper. The grounds on which the County may conclude the application for payment is not proper and not suitable for payment include, but are not limited, to: (i) the application is missing documents required under the preceding Section "Form and Contents of Applications for Payment"; (ii) the application does not accurately reflect the progress of the work; (iii) the quality of the work is not in conformance with the requirements of the Contract Documents; (iv) CMARE has failed to remedy defective work; (v) there are third party claims filed against County arising out of CMARE's work; (vi) CMARE has failed to make payments properly to subcontractors and suppliers; (vii) CMARE has damaged County's property or the work by or property of County's separate contractors; (viii) CMARE has repeatedly failed to carry out the work in accordance with the Contract Documents; or (ix) there is reasonable evidence that CMARE will

not complete the work within the Contract Time and that the unpaid balance of the Contract Price would not be adequate to cover the Liquidated Damages for the anticipated delay.

- 9.1.5 Progress Payments: Within 30 days of receiving an undisputed, properly completed application for payment, or as provided by Public Contract Code (PCC) Section 20104.50, and pursuant to California PCC Section 9203, County shall pay to CMARE a sum equal to 95% of the value of the work completed since the commencement of the work, less all previous payments, plus a like percentage of the value of material delivered on the ground or stored subject to, or under the control of, the local agency, and unused. County shall hold 5% of the value of the work completed as Retention until the Retention Payment is made pursuant to Public Contract Code Section 7107. CMARE may be entitled to interest pursuant to Public Contract Code Section 20104.50 if County fails to timely make any progress payment. No progress payment by County shall be considered to be County's acceptance of any part of the work.
- 9.1.6 Retention Payment: Payment of the Retention amount will be made in accordance with Public Contract Code Section 7107. If the Retention Payment is made before CMARE has complied with all of its obligations under the Contract, then payment of Retention shall not be interpreted as Final Payment, and shall not relieve CMARE of its obligations under the Final Payment provisions.
- 9.1.7 Final Payment: The Final Payment, if unencumbered, or any part thereof unencumbered, shall be made no later than 60 days after CMARE completes the work and submits an application for Final Payment in proper form and suitable for payment. CMARE's work will not be complete until CMARE has delivered: (i) As-Built Plans suitable for use in preparing a reproducible set of record drawings for the Project; (ii) all operations and maintenance manuals; (iii) manufacturers', suppliers', and installers' warranties, guarantees, instruction sheets, and parts lists; and (iv) any other documents or information required by the Contract Documents as a condition to completion of the work.

CMARE's application for Final Payment shall include:

- a) CMARE's affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Project have been paid or otherwise satisfied by CMARE; and
- b) Conditional waivers and releases on Final Payment in the form prescribed by Civil Code Section 8136 from CMARE, its Subcontractors of any tier, and its suppliers who will receive funds from the Final Payment, listing with specificity any and all claims under or arising out of the Contract or the Project that remain unsettled.

9.2 SUBSTITUTED SECURITY

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

9.3 WAIVER OF CLAIMS

Unless a shorter time is specified elsewhere in the Contract, on or before making its application for Final Payment, CMARE shall submit to County in writing all claims for compensation under or arising out of this Contract. CMARE's acceptance of County's payment in response to CMARE's application for Final Payment shall constitute a waiver of all claims against County under or arising

out of this Contract except those previously made in writing and identified by CMARE as unsettled at the time of CMARE's application for Final Payment.

10 LABOR CODE REQUIREMENTS

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

10.1 WAGE RATES

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

10.2 WAGE RATE PENALTY

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

10.3 WORK HOUR PENALTY

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

10.4 REGISTRATION OF CONTRACTORS

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

10.5 PAYROLL RECORDS

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

The requirements of Labor Code Section 1776 provide in part:

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.

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.

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.

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.

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.

10.6 APPRENTICES

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

11 NONDISCRIMINATION

In the performance of the Contract, CMARE shall neither engage in nor permit its Subcontractors to engage in discrimination against any employee or applicant for employment on any basis listed in California Government Code Section 12940, including but not limited to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, as those bases are currently defined in Government Code Sections 12926 and 12926.1, or as they may be modified. This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including apprenticeship; and any other action or inaction pertaining to employment matters.

11.1 CIVIL RIGHTS AND NONDISCRIMINATION

- A. 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, creed, sex, 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.

- B. Nondiscrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 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. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

- C. 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:

1. **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.
2. **Non-Discrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, creed, sex, 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 including amendments thereto.
3. **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.
4. **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 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.
5. **Sanctions for Noncompliance:** In the event of a Contractor’s noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract

sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- i. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - ii. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **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 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.

Upon request by the County, CMARE will provide a copy of each subcontract to demonstrate the above language has been inserted.

D. 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 nondiscrimination statutes and authorities; including but not limited to:

1. 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);
2. 49 CFR part 21 (Nondiscrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964) including amendments thereto;
3. 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);
4. 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);
5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
7. The Civil Rights Restoration Act of 1987 (PL 100-209) (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);
8. 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;

9. 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).

Contractor 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, Contractor will provide a copy of each subcontract to demonstrate that the above language has been inserted.

- E. Civil Rights Training:** Upon request by the County, Contractor is required to disseminate and provide training materials and other information related to Title VI Civil Rights to its staff as specified by the County.

12 WARRANTY / GUARANTEES

12.1 WARRANTY

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

12.2 ONE-YEAR CORRECTION PERIOD

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

12.3 MANUFACTURERS' AND INSTALLERS' WARRANTIES

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

12.4 SURVIVAL

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

13 PERFORMANCE

13.1 OBLIGATION TO REVIEW DOCUMENTS

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

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

13.2 OTHER CONTRACTS

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

13.3 PROTECTION

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

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

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

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

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

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

- 13.3.5 If CMARE fails or refuses to comply promptly, County may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop work order shall be made the subject of claim for extension of time or additional compensation to CMARE. CMARE will be responsible for ensuring that CMARE's Subcontractors and suppliers comply with the provisions of this Section.
- 13.3.6 In an emergency affecting the safety of persons, the work, or of adjoining property, CMARE without special instruction or authorization from County, is hereby permitted to act at CMARE's discretion to prevent such threatened loss or injury. CMARE shall so act if directed by County. Any claim for additional compensation by CMARE on account of emergency work shall be determined as set forth in the "Changes" Section of these General Conditions.
- 13.3.7 CMARE shall comply with County's Safety and Loss Prevention Policy and Procedure #306 ("Contractor Safety Responsibilities") and submit a copy of its Injury and Illness Prevention Program (IIPP), Jobsite Safety Inspection Checklist, and Contractor Safety-Activity Checklist to the designated County Procurement staff as part of the solicitation and/or contract process. CMARE will notify County Project Manager of any revisions to the Safety-Activity Checklist and will provide a new Safety-Activity Checklist upon County request. The IIPP shall comply with California Code of Regulations, Title 8, Section 1509 or 3203 (whichever applies). CMARE shall submit other safety programs that pertain to the type of job that will be performed on site. County reserves the right to conduct inspections and audits as necessary for the purpose of evaluating any aspect of safety performance under this Contract.
- 13.3.8 CMARE is required to provide a Safety Data Sheet (SDS) compliant with California Code of Regulations, Title 8, Section 5194, for each hazardous substance that is provided, used or created as part of the goods or services provided by CMARE to County. The SDS for each substance must be sent to either the County Project Manager, as specified in the "Notices" provision of this Contract, or to the place of shipment or provision of goods/services.

13.4 FENCES AND BARRICADES

- A. Furnish, erect and maintain all fences and barricades required by local ordinances, or public safety and necessity until completion of the project.
 1. Barricades to protect pedestrians from building construction shall be constructed of exterior grade lightweight extruded aluminum framed modular barricade enclosure with Class A fire rated FRP paneling with panel surfaces that are graphic ready, or equivalent. The CMARE shall maintain barricades free from graffiti.
- B. No signs, other than those specified, shall be erected without the written approval of the County.
- C. Remove construction fences, barricades, and other related temporary construction upon completion of work, or sooner if authorized or required to maintain Project progress.
- D. Alternate means of fencing and barricades to protect pedestrians maybe proposed by CMARE for approval by County.

13.5 PROJECT SIGN & NOTICE

- A. No signs or advertisements will be permitted on the Project site, except with the express permission of County's Project Manager.
- B. At every door and barricade separating the project work and staging areas from areas not included in the project work area, the CMARE shall provide, install and continuously maintain a construction warning sign. The 11 inch by 17 inch construction warning sign shall be

approved by County's Project Manager and shall be plastic laminated on heavy cardstock and shall be securely affixed at eye level to the door or barricade.

13.6 QUALITY OF MATERIALS AND WORKMANSHIP

- 13.6.1 CMARE shall perform all work required by the Contract Documents in a skillful, good, and workmanlike manner and in strict conformance with the Contract Documents. All materials and equipment furnished by CMARE shall be new and of good quality, unless otherwise required by the Contract Documents. See Section 01400, Quality Requirements for additional requirements.
- 13.6.2 CMARE shall supervise and direct the work using its best skill and attention. All labor shall be performed by individuals specially skilled in the kind of work required. CMARE shall at all times enforce strict discipline and good order among its employees and those of its Subcontractors of any tier. CMARE shall not employ for the Project any unfit person or anyone not skilled in the assigned task or otherwise unfit. CMARE shall immediately remove from the Project any person that County determines, in its sole discretion, is unfit or behaving in an unsatisfactory or unacceptable manner. Persons so removed shall not thereafter be reassigned to any portion of the Project without County's written approval, which may be granted or withheld in County's sole discretion.
- 13.6.3 CMARE shall, without charge, replace any material or correct any work found by County not to conform to the requirements of the Contract Documents, unless County consents to accept such material or work along with a commensurate reduction in the Contract Price. CMARE shall promptly segregate and remove rejected material from the work site.
- 13.6.4 If CMARE does not promptly replace rejected material or correct rejected work, or immediately remove persons who are unfit or behaving unacceptably, County may: (1) by contract or otherwise replace such material or correct such work and charge the cost thereof to CMARE, including but not limited to by deducting the cost from amounts due or to become due to CMARE; or (2) terminate CMARE's right to proceed in accordance with the "Termination For Cause" Section of the General Conditions.
- 13.6.5 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).

13.7 SURVEYING

- 13.7.1 CMARE has full responsibility for layout and establishment of lines and grades for execution of the work. All temporary monuments shall be substantially established and shall be protected and maintained in place by the CMARE for the duration of the work.
- 13.7.2 If any discrepancy exists between the lines and grads actually at the site and the existing lines and grades depicted on the drawings, the CMARE shall notify the County Project Manager at once, and before commencing work.
- 13.7.3 The engineering survey work need not be performed by a State licenses surveyor or civil engineer, however it shall be performed in a professional manner in accordance with the requirements, standards, and practices exercised by licensed individuals.
- 13.7.4 The surveyor shall check line, level, and plumb of every major element of the construction, and shall keep a logbook recording all relevant data. The logbook shall be available for review by County Representatives of the A-E at any time during construction, and it shall be submitted to the County along with the "as-Built" drawings, upon completion of the Project. All deviations from line/grade requirements of the Contract Documents which are accepted (not corrected) by the CMARE shall be recorded in the logbook and also shall be noted on the "as-Built" drawings.

13.8 UTILITIES

- 13.8.1 Location: County will provide CMARE with copies of documents which describe the location of known utility substructures or will indicate in the Plans or Specifications those substructures (except for service connections) that may affect the work. The removal, relocation, abandonment, or installation of utilities shall be in accordance with the applicable provisions of the Contract Documents. Where underground main distribution conduits such as water, gas, sewer, electric power, telephone, or cable television are shown on the Plans, CMARE shall assume that every property parcel or facility adjoining the Project will have a service connection for each type of utility. CMARE shall determine the location and depth of all utilities, including service connections, which have been marked by the respective entity and which may affect or be affected by its operations. Unless otherwise specified in the Contract Documents, costs associated with complying with the requirements of this Section shall not entitle CMARE to additional compensation under the “Changes” Section of the General Conditions. Pursuant to Government Code Sections 4216 et seq., CMARE shall contact the appropriate regional notification center(s) and shall obtain an inquiry identification number at least 2 working days, but not more than 14 calendar days, prior to commencing any excavation.
- 13.8.2 Protection: CMARE shall not interrupt the service function or disturb the support of any utility without authorization from the utility owner or direction from the County. Valves, switches, vaults, and meters shall be maintained readily accessible for emergency shutoff. Where protection is required to ensure support of utilities located as shown on the Plans or in the Specifications, CMARE shall furnish and place the necessary protection at its expense unless otherwise provided in the Contract Documents. Permanent improvements installed in proximity to any utilities shall be constructed in a manner that will not impair the physical integrity, use, or ongoing maintenance of those utilities. Upon learning of the existence and location of any utility omitted from or represented incorrectly in the Plans or Specifications, CMARE shall immediately notify County in writing. Support or protection of the omitted or incorrectly identified utility authorized by County will be paid for as provided in the “Changes” Section of these General Conditions. CMARE shall immediately notify County and the utility owner if any utility is disturbed or damaged. CMARE shall bear the costs of repair or replacement of any utility damaged if located in accordance with the “Location” Section, above.
- 13.8.3 Removal: Unless otherwise specified in the Contract Documents, CMARE shall remove all interfering portions of utilities represented in the Plans or Specifications as “abandoned” or “to be abandoned in place.” Before starting removal operations, CMARE shall ascertain from County whether the abandonment is complete, and the costs involved in the removal and disposal shall be included in the Bid for the items of work necessitating such removals.
- 13.8.4 Relocation: When feasible, the owners responsible for utilities within the area affected by the work will complete their necessary installations, relocations, repairs, or replacements before commencement of the work by CMARE. When the Plans or Specifications indicate that a utility installation is to be relocated, altered, or constructed by others, County will conduct all negotiations with the utility owner. Utilities that are relocated in order to avoid interference shall be protected in their position and the cost of such protection shall be included in the Bid for the items of work necessitating such relocation. After award of the Contract, portions of utilities not accurately described in the Plans and Specifications that are found to interfere with the work will be relocated, altered, or reconstructed by the utility owners. Alternatively, County may order changes in the work to avoid interference as provided by the “Changes” Section of these General Conditions. When the Contract Documents provide for CMARE to alter, relocate, or reconstruct a utility, all costs for such work shall be included in the Bid for the items of work necessitating such alteration, relocation, or reconstruction. Temporary or permanent relocation or alteration of utilities requested by CMARE for its convenience shall be its responsibility and CMARE shall make all arrangements and bear all costs.

- 13.8.5 Relocation of Service Connections: The utility owner will relocate service connections as necessary within the limits of the work or within temporary construction or slope easements. When directed by County, CMARE shall arrange for the relocation of service connections as necessary between the meter and property line, or between a meter and the limits of temporary construction or slope easements. Unless, otherwise specified in the Contract Documents, payment for the relocation of such service connections shall be in accordance with the “Changes” Section of these General Conditions and will include the restoration of all existing improvements which may be affected thereby. CMARE may agree with the owner of any utility to disconnect and reconnect interfering service connections, and County will not be involved in any such Contract.

Notice: CMARE shall notify County of its schedule insofar as it affects the protection, removal, or relocation of utilities.

- 13.8.6 Cooperation: When necessary, CMARE shall so conduct its operations as to permit access to the work site and provide time for utility work to be accomplished during the progress of the work.
- 13.8.7 Utility Facilities on Project Site: If CMARE discovers unidentified utilities, CMARE shall immediately notify County and the utility owner in writing. Pursuant to Government Code Section 4215, CMARE shall be compensated for the costs of locating and repairing damage not due to failure of CMARE to exercise reasonable care, and of removing or relocating main or trunk line utilities located on the site and not identified in the Contract Documents with reasonable accuracy. Such compensation shall also cover the cost of CMARE's equipment necessarily idled during such work. CMARE shall not be assessed Liquidated Damages for delay in completion of the work if such delay was caused by the failure of County or utility owner to provide for removal or relocation of such utilities. This provision shall not be deemed to require compensation or excuse of Liquidated Damages when the presence of existing service laterals or appurtenances can be inferred from the presence of visible facilities such as buildings, meters, and junction boxes on or adjacent to the construction site.
- 13.8.8 Increase of Contract Time: CMARE shall not be entitled to additional time or compensation for delays attributable to utility relocations or alterations if such utility relocations or alterations are correctly located, noted, and completed. CMARE may be entitled to an extension of the Contract Time for unforeseen delays attributable to unreasonably protracted interference by utilities in performing work correctly represented in the Plans or Specifications. County will assume responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities within the area affected by the work if such utilities are not identified in the Contract Documents. CMARE will not be assessed Liquidated Damages for any delay caused by failure of County to provide for the timely removal, relocation, or protection of such existing facilities.

13.9 SPACE AT SITE

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

13.10 OPERATING HOURS AND SITE ACCESS

Unless otherwise specified in the Contract Documents, normal construction hours for construction are from 11:00 P.M. to 5:00 A.M. Work performed outside normal construction hours will require County's written approval. All work to be coordinated around airport operations, regardless of approved working hours.

13.11 TRAFFIC CONTROL

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

The TCP shall display and address, at a minimum:

- a) Protection of existing improvements;
 - b) Maintaining access by County operations;
 - c) Methods to eliminate interference with existing facility operations and traffic in and out of the facility and operations area;
 - d) Proposed haul routes for delivery of materials;
 - e) Maximum speeds for each class of vehicle on each type of terrain, but in no event to exceed 15 mph on shared access roads and any crossing areas;
 - f) Access to work areas; and
 - g) CMARE's and Subcontractors' staging and material storage areas, including fuel storage procedures.
 - h) All motor-driven equipment using fuel shall have spark arresters.
- 13.11.2 Reckless driving shall not be tolerated, and all vehicles shall be operated at a safe speed at all times. If County determines that CMARE has violated the Traffic Control Plan or otherwise operated in an unsafe manner, County may suspend or prohibit the equipment operator(s) from any further work at the site. Repeated or severe incidents demonstrating the failure of CMARE to operate its vehicles safely shall constitute a material breach of this Contract and County may terminate CMARE's right to proceed with the work pursuant to the "Termination for Cause" Section of the General Conditions.

13.12 TEMPORARY OFFICE BUILDING AND TELEPHONE

CMARE shall provide a temporary office building and telephone, if required for the Project. CMARE may provide a temporary office for his own convenience at his sole expense. The temporary office, if desired by CMARE, shall be subject to approval of the County. Any temporary building may be Class A and be provided by the CMARE in accordance with SSPWC Section 8 - Facilities for Agency Personnel. The trailer shall be located as shown in the Plans and/or as directed by County or CMARE shall submit a location plan showing the arrangement of field offices, storage sheds, equipment storage, and staging areas for County and A-E review/approval.

13.13 PERMANENT SYSTEMS USED AS TEMPORARY FACILITIES

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

- (1) Obtains County's approval in writing.
- (2) Assumes full responsibility for the system used.
- (3) Pays all costs for operation, maintenance, cleaning and restoration of the system.
- (4) Operates the system with the consent and supervision of the subcontractor responsible for the system's installation and ultimate performance.

13.14 TEMPORARY UTILITIES

CMARE shall provide the necessary temporary utilities for construction use and bear the responsibility for their proper operation. If any utilities are in place and in use by the County at the Project site, such utilities -- excluding telephone -- may be utilized by the CMARE at no cost, to the extent the utilities are available without impact to the County's operations. If County supplied

utilities are utilized by the CMARE, the CMARE shall exercise conservation of energy and utility resources to the satisfaction of the County, or such provision of utilities by the County will be terminated at County's discretion.

13.15 SANITARY UNIT

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

13.16 WATER

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

13.17 FIRE PROTECTION

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

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

13.18 STORAGE AND WORKING SPACE

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

13.19 TRANSPORTATION AND HANDLING OF PRODUCTS

CMARE shall:

Transport and handle products in accordance with manufacturer's instructions and applicable regulations;

Promptly inspect shipments to assure that products comply with requirements, quantities are correct, and products are undamaged; and

Provide equipment and personnel to handle products by methods to prevent damage.

13.20 STORAGE AND PROTECTION OF PRODUCTS

CMARE shall:

1. Store and protect products in accordance with manufacturer's instructions and applicable regulations, with seals and labels intact and legible;
2. Store sensitive products in weather-tight, climate-controlled enclosures;
3. Store hazardous materials in accordance with applicable regulations, including but not limited to those related to containment and protection of the materials and surrounding environment;

4. Store fabricated products on sloped supports above ground if such products are stored outdoors;
5. Cover products subject to deterioration with impervious sheet covering with ventilation to avoid condensation;
6. Provide equipment and personnel to store products by methods to prevent damage;
7. Arrange storage of products to permit access for inspections; and
8. Periodically inspect to ensure products are undamaged and are maintained under specified conditions.

13.21 REMOVAL OF TEMPORARY FACILITIES

CMARE shall remove temporary toilets, storage sheds, and other facilities of a temporary nature from the Project site as soon as County determines progress of the work permits. CMARE shall recondition and restore portions of the site occupied by temporary facilities to a condition acceptable to County.

13.22 REGULATORY COMPLIANCE REQUIREMENTS

13.22.1 Permits

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

- 13.22.2 Contractor Compliance with Applicable Law and Regulations: CMARE shall comply with all Federal, State, County, and local codes, ordinances, regulations, and standards applicable to the Project. CMARE shall comply with all current regulatory criteria and standards. CMARE shall not

be entitled to any additional compensation for work necessary to comply with legal or regulatory requirements effective at the time of bid opening.

13.22.3 Archaeological/Paleontological Resources

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

- a) The Contract Documents may require CMARE to retain an A/P. In such event, the following conditions apply:
 - i. A/P shall be acceptable to County. A County Certified Archaeologist and Paleontologist can be found at [Certified Archaeologists - County of Orange Certified Paleontologists - County of Orange](#). Regardless of whether A/P is selected from County’s list, A/P shall meet all minimum qualifications listed in the “Qualifications for Certification of Archaeological and Paleontological Professionals” document provided at that website.
 - i. CMARE shall submit the qualifications and references of A/P to County for verification at least 10 working days prior to any excavation or grading work. A/P shall be approved in writing by County at least 5 working days prior to the start of any excavation or grading work.
 - ii. Unless otherwise agreed to in writing by County, A/P shall not be an employee of CMARE, any subcontractor currently under contract by CMARE (for any job), or any supplier to any project awarded or contracted to CMARE.
 - iii. CMARE shall be compensated for all A/P expenses including all labor, materials, tools, equipment, and incidentals necessary for accomplishing the work in accordance with the Item(s) identified for A/P services in the Bid Schedule or, if not listed there, in accordance with the “Changes” Section of the General Conditions.
 - iv. A/P shall report exclusively to County. County may terminate the services of A/P at any time and at County’s sole discretion, with no justification necessary to CMARE, and CMARE shall replace A/P with another individual or firm meeting the requirements of this Section. Under no circumstances will A/P’s termination entitle CMARE to any additional time or payment under the “Changes” Section of these General Conditions.
 - v. All other provisions of this Section apply whether A/P is retained by County or by CMARE, and CMARE shall ensure that A/P complies with the provisions of these Contract Documents pertaining to A/P services.
- b) CMARE shall cooperate with all A/P personnel. If A/P directs CMARE to suspend or stop work in a particular area, CMARE shall abide by such request immediately and not resume work until directed by County.
- c) The A/P shall:
 - i. Conduct a literature and records search for recorded sites and previous surveys;
 - ii. Conduct a field survey unless the entire work site has been previously surveyed and the survey documentation is acceptable to County;
 - iii. Attend the pre-construction meeting to conduct or schedule separate pre-construction cultural and paleontological resources sensitivity training, and attend additional meetings or provide training as determined necessary by County. In the event of the discovery of specimens or artifacts, attend construction meetings until otherwise directed by County;

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

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

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

13.22.4 Surface Water Protection

- a) Work is subject to the requirements of the National Pollutant Discharge Elimination System (“NPDES”) storm water regulations. NPDES regulations require the implementation of a Stormwater Pollution Prevention Plan (“SWPPP”) The nature and location of the work require compliance with the SWPPP, County has prepared a SWPPP for this project. CMARE is responsible for obtaining copies of the site-specific SWPPP from County. Copies of the SWPPP and related documents may be found at: http://www.waterboards.ca.gov/water_issues/programs/stormwater/industrial.shtml.
- b) Additionally, in a letter dated August 31, 2011, the Santa Ana Regional Water Quality Control Board issued a Water Quality Standards Certification pursuant to the federal Clean Water Act (“CWA”) (also known as the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.), Section 401. The Certification requires that discharge from the Project will comply with CWA Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards). The discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges that Have Received Water Quality Certification."

13.22.5 SWPPP Implementation & Compliance

- a) CMARE is responsible for implementing and complying with the SWPPP, as applicable to the nature and location of the work. CMARE's implementation and compliance activities shall include but not be limited to: installation and maintenance of BMPs (interim and final); preparation and implementation of Rain Event Action Plans (REAPS); rainfall and storm water turbidity and pH monitoring, sampling and analysis as required by the SWPPP. CMARE shall designate an independent Qualified SWPPP Practitioner (QSP), who will be

responsible for monitoring CMARE's compliance with SWPPP requirements on the Project at all times.

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

13.23 HAZARDOUS OR CONTAMINATED MATERIALS

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

deducted directly from amounts otherwise due CMARE. If County performs such decontamination, CMARE shall sign any Manifests for that material as the generator.

- 13.23.9 CMARE shall train its employees, as required by OSHA and California Code of Regulations Title 8, in the proper handling, storage, transportation and disposal of hazardous materials. CMARE shall train its employees to follow the Emergency/Contingency Plan and know immediate response procedures should a release occur.
- 13.23.10 CMARE shall keep appropriate emergency response equipment and materials available in the working area at all times.
- 13.23.11 Maintenance Facilities and Work Area: CMARE shall maintain its equipment in an area designated by County for such purposes. Certain maintenance areas have been designated at the County facility for the purpose of maintaining County equipment. CMARE may utilize a County maintenance area only with the express permission of the County. County may designate a different maintenance area for CMARE's use at any time, and CMARE will not be entitled to a Change Order as the result of such relocation.
- 13.23.12 CMARE's maintenance activities shall conform to the provisions of the "Regulatory Compliance Requirements" Section of the General Conditions. CMARE shall keep the facility clean, maintain clean equipment, and dispose of any contaminated materials in accordance with the "Hazardous or Contaminated Materials" Section, above. CMARE shall store all maintenance materials in accordance with the "Storage and Protection of Products" Section.
- 13.23.13 CMARE shall be responsible for any damage it causes to the designated area and for restoring the area to its original condition when CMARE ceases using the area. CMARE shall repair any damage and perform such restoration. If CMARE fails to perform such repair or restoration in a timely manner, County may perform that work and CMARE shall reimburse County for repair or restoration costs plus a 5% administrative fee.

13.24 FUGITIVE DUST EMISSION CONTROL

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

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

CMARE shall not be entitled to any time extensions or compensation for any cost due to any such action as a result of Contractor's failure to comply with the provisions of the accepted Fugitive Dust Emission Control Plan. CMARE shall be responsible for ensuring that all Subcontractor(s) comply with the provisions of this Section. CMARE shall be liable for any action or fine imposed by the SCAQMD on those incidents of noncompliance that are within the CMARE's area of responsibility.

13.25 BIOLOGICAL AND HABITAT PROTECTION

County will inform CMARE of any biological resources that would or could be impacted by the Project, and specify any required mitigation measures or procedures to protect those resources

during construction. CMARE shall be responsible for complying with these protection measures, and for ensuring that all Subcontractors also comply. County has the authority to perform inspections of CMARE's work area at any time to ensure that these measures or procedures are being followed.

13.26 RED IMPORTED FIRE ANT INTERIOR QUARANTINE OF ORANGE COUNTY

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

13.27 COMPLIANCE WITH "PERFORMANCE" SECTION

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

14 CHANGES

14.1 COST REDUCTION INCENTIVE

14.1.1 As authorized by Public Contract Code Section 7101, CMARE may submit to County written proposals for modifying the Plans, Special Provisions, or other requirements of the Contract Documents for the sole purpose of reducing the total cost of construction. The cost reduction proposal shall not impair in any manner the essential functions or characteristics of the Project, including, but not limited to, service life, economy of operation, ease of maintenance, desired appearance, or design and safety standards.

14.1.2 Cost reduction proposals shall contain the following information:

- a) Descriptions of both the work called for by the Contract Documents and the proposed changes.
- b) Itemization of the Contract Document requirements that must be changed if the proposal is adopted.
- c) Detailed estimate of the cost of performing the work under the existing Contract Documents and under the proposed change.
- d) Prediction of the effects the proposed change would, if adopted, have on other costs to County, such as County-furnished property costs, cost of future construction, and costs of maintenance and operation.
- e) Statement of the time by which a Change Order adopting the proposal must be issued in order to obtain the maximum cost reduction.

14.1.3 The provisions of this "COST REDUCTION INCENTIVE" Section shall not be construed to require County to consider any cost reduction proposal that may be submitted hereunder; County

will not be liable to CMARE for failure to accept or act upon any cost reduction proposal submitted pursuant to this Section; and County will not be liable to CMARE for any delays to the work attributable to any such proposal. If a cost reduction proposal is similar to a change in the Plans or Special Provisions, that change is under consideration by County for the Project at the time said proposal is submitted, or if such a proposal is based upon or similar to Standard Specifications, Reference Specifications, or Standard Plans adopted by County after the advertisement for the Project, County will not accept such proposal and reserves the right to make such changes without compensation to CMARE under the provisions of this Section.

- 14.1.4 CMARE shall continue to perform the work in accordance with the requirements of the Contract Documents until an executed Change Order incorporating the cost reduction proposal has been issued.

If an executed Change Order has not been issued by the date upon which CMARE's cost reduction proposal specifies that a decision should be made, such cost reduction proposal shall be deemed rejected.

- 14.1.5 County shall be the sole judge of the acceptability of a cost reduction proposal and of the estimated net savings in construction costs from the adoption of all or any part of such proposal. County may accept documentation that varies from the requirements in subsection (b), above, if in its sole and absolute discretion, County determines that the alternate documentation is sufficient to allow County to evaluate the cost reduction proposal. In determining the estimated net savings, County reserves the right to disregard the Bid Schedule or Schedule of Values if, in the sole judgment of County, such schedules do not represent a fair measure of the value of work to be performed or to be deleted. The decision of County as to the acceptance or rejection of such proposals, and as to the estimated net savings in construction costs, shall not be subject to the "DISPUTES" Section of these General Conditions.
- 14.1.6 County reserves the right to require CMARE to pay County's costs of investigating a cost reduction proposal submitted by CMARE as a condition of considering such proposal. Where such a condition is imposed, CMARE shall indicate CMARE's acceptance thereof in writing, and such acceptance shall constitute full County for County to deduct amounts thereby payable to County from any monies due or that may become due to CMARE under the Contract Documents.
- 14.1.7 If CMARE's cost reduction proposal is accepted in whole or in part, such acceptance will be by a Change Order, which shall specifically state that it is executed pursuant to this Section. Such Change Order shall incorporate the changes in the Plans and Special Provisions that are necessary to permit the cost reduction proposal or such part of it as has been accepted to be put into effect, and shall include any conditions upon which County's approval is based if the approval of County is conditional. The Change Order shall also set forth the net savings in the cost of performing the work attributable to the cost reduction proposal effectuated by the Change Order.
- 14.1.8 Acceptance of the cost reduction proposal and performance of the work thereunder shall not extend the time for completion of the Project unless such extension is specifically provided for in the Change Order authorizing the use of the cost reduction proposal.
- 14.1.9 The amount specified to be paid to CMARE in the Change Order that effectuates a cost reduction proposal shall constitute full compensation to CM for the cost reduction proposal and for the performance of the work thereunder pursuant to the Change Order.
- 14.1.10 County expressly reserves the right to adopt a cost reduction proposal for general use on contracts let or administered by County when it determines that said proposal is suitable for application to other contracts. When an accepted cost reduction proposal is adopted for general use, only the

CMARE who first submitted such proposal will be eligible for compensation pursuant to this Section, and in that case, only as to those contracts awarded to CMARE prior to submission of the accepted cost reduction proposal and as to which such cost reduction proposal is also submitted and accepted. Cost reduction proposals identical or similar to previously submitted proposals will be eligible for consideration and compensation under the provisions of this Section if the identical or similar previously submitted proposals were not adopted for general application to other contracts let or administered by County. Cost reduction proposals accepted by County shall become the intellectual property of County. Subject to the provisions contained herein, the State or any other public entity shall have the right to use any accepted cost reduction proposal without obligation or compensation of any kind to CMARE.

14.2 CHANGE ORDERS

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

- 14.2.1 County's Change Order Requests: County shall issue a written request ("Change Order Request") which shall set forth in reasonable detail the nature of the change and the type of quote requested (lump sum or time-and-materials with a not-to-exceed amount) and whether such change involves additions, deletions, or other revisions to the Contract Documents. Within 7 days of receiving County's Change Order Request, CMARE shall present to County a detailed proposal for change in Contract Price and/or a change in the Contract Time from that set forth in the Contract. If such change causes an increase or decrease in CMARE's cost or the time required for performance of the work, an equitable adjustment shall be made and the Contract Price and/or Contract Time modified in writing accordingly by a Change Order.
- 14.2.2 CMARE's Request for Change: If CMARE believes that a change in the Contract Documents, including any change in Contract Price or Contract Time, is appropriate, it shall submit, within 7 days of the event giving rise to the proposed change, a written request ("Request for Change") to County to issue a Change Order. Timely notice to County is essential to County's identification, prioritization, and response to claimed changes, including any claimed delays, and CMARE's failure to give County timely notice of such claims shall be presumed to be prejudicial to County. CMARE's failure to submit a notice to County within 7 days after the date CMARE first recognized or should have recognized in the exercise of ordinary care, any event giving rise to any proposed change shall constitute a waiver by CMARE of any request for or entitlement to an increase in the Contract Price or Contract Time.

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

with notice through a Request for Change in accordance with this Section. In the event of a claim or litigation arising from any disagreement involving CMARE's Request for Change, CMARE's compensation (if any) shall be limited to an amount calculated in accordance with the "Time-and-Materials Change Orders" Section below.

14.2.3 Lump Sum Change Orders: For a lump sum change, CMARE's quote shall be itemized and supported with sufficient substantiating data (including but not limited to detailed subcontractor estimates, supplier quote sheets, prices, invoices, and rate sheets) to permit evaluation with respect to the following costs:

- a) Labor (show hourly rate multiplied by estimated hours);
- b) Payroll taxes on labor;
- c) Materials, supplies, and equipment (include unit costs and estimated quantities);
- d) Machinery and equipment rental (include rental rates and estimated durations);
- e) Sales, use, or similar taxes related to the work;
- f) Other Items: County may authorize other items that may be required for the changed work. Such items include labor, services, material, and equipment that are different in their nature from those required for the work and that are of a type not ordinarily available from CMARE or any of its subcontractors;
- g) Reasonable overhead and profit associated with the change, not to exceed 15% on above items if CMARE uses its own forces to perform changed work. If CMARE's subcontractor's forces perform changed work, then the subcontractor shall be entitled to a maximum of 15% on above items and CMARE shall be entitled to a maximum of 6% on above items for its overhead and profit on the changed work. County will pay only one overhead and profit markup of 6% for CMARE and one markup of 15% for the subcontractor in connection with changed work, regardless of the actual number of intervening subcontractors involved in the changed work; and
- h) Premiums for all bonds and insurance (the maximum amount for this shall be 2% of above items and CMARE shall provide documentation demonstrating it will actually incur an increase in insurance costs directly attributable to the change, if demonstrated, we can pay more).

County may reject CMARE's lump sum proposal, may negotiate with CMARE a revision of the requested change and associated lump sum proposal, or may approve the CMARE's lump sum proposal and incorporate it into a Change Order.

14.2.4 Time-and-Materials Change Orders: For a time-and-materials change, County shall determine the adjustment to the Contract Price on the basis of actual costs as follows:

- a) Cost of materials and supplies (show actual unit cost multiplied by actual quantity). The cost of materials shall be at invoice price or the lowest current price at which such materials are locally available and delivered to the job site in the quantities involved, plus freight and delivery. County reserves the right to approve materials and sources of supply or to supply materials to CMARE if necessary for the progress of the work. No markup for overhead and profit shall be applied to any material provided by County.
- b) Tool and equipment rental. County will not pay for the use of tools that individually have a replacement value of \$200 or less. Regardless of ownership, the equipment rental rates shall be based upon the edition of equipment rental rates published by the Caltrans Division of Construction, or locally available rate or other reference acceptable to County current as of the date the changed work is performed. The rental rates paid shall include the cost of fuel, oil lubrication, supplies, small tools, necessary attachments, repairs and maintenance

of any kind, depreciation, storage, insurance, and all incidents. Necessary loading and transportation costs for equipment used on the changed work shall be included. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to County than holding it at the work site, it shall be returned, unless CMARE elects to keep it at the work site at no expense to County. All equipment shall be acceptable to County, in good working condition, and suitable for the purpose for which it is to be used. Manufacturers' ratings and approved modifications shall be used to classify equipment and it shall be powered by a unit of at least the minimum rating recommended by the manufacturer. The reported rental time for equipment already at the work site shall be the duration of its use on the changed work, commencing at the time it is first put into actual operation on the changed work, plus the time required to move it from its previous site and back or to a closer site. CMARE shall submit invoices for tool and equipment rental costs. If CMARE does not submit invoices, County may establish the rental costs at the lowest price which was current at the time the changed work was performed.

- c) Cost of labor (show actual total hourly rate multiplied by actual hours spent on changed work). The costs of labor shall not exceed the wages prevailing for each craft or type of workers performing the changed work at the time the changed work is done. The costs of labor shall include the actual basic hourly rate, plus employer's actual regular payments for health and welfare, pension, vacation or holiday, training, and other direct costs resulting from federal, State or local laws, as well as assessments or benefits required by lawful collective bargaining agreements and shall be supported by payroll records. The costs of labor shall not include any amount for bonuses or extraordinary vacation or holidays. The use of a labor classification that would increase the changed work cost will not be permitted unless CMARE establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental. The labor cost for foremen shall be proportional to all of their assigned work and only that applicable to changed work shall be paid. Non-direct labor costs including superintendence shall be considered part of the markup for overhead and profit below.
- d) Sales taxes on materials (percentage of item a), above).
- e) Payroll tax on labor (percentage of item c), above).
- f) Insurance (workers' compensation and liability insurance).
- g) Other Items. County may authorize other items that may be required for the changed work. Such items include labor, services, material, and equipment that are different in their nature from those required for the work and that are of a type not ordinarily available from CMARE or any of its subcontractors. CMARE shall submit invoices covering all such items in detail.

Overhead and profit. CMARE shall receive a maximum 10% for overhead and profit on above items if CMARE uses its own forces to perform changed work. If CMARE's subcontractor's forces perform changed work, then the subcontractor shall be entitled to a maximum of 6% on above items for its overhead and profit and CMARE shall be entitled to a maximum of 10% on above items for its overhead and profit on the changed work. County will pay only one (1) overhead and profit markup of 6% for CMARE and one markup of 10% for the subcontractor in connection with changed work, regardless of the actual number of intervening subcontractors involved in the changed work. County will not pay any overhead or profit for omitted work.

- h) Premiums for all bonds and insurance (the maximum amount for this shall be 2% of above items and CMARE shall provide documentation demonstrating it will actually incur an increase in insurance costs directly attributable to the change).

County may reject CMARE's proposal, may negotiate with CMARE a revision of the requested change and associated proposal, or may approve the CMARE's proposal and incorporate it into a Change Order.

CMARE shall keep and present, in such form as County may prescribe, an itemized accounting of the costs or savings attributable to the changed work, together with appropriate supporting data. The accounting shall include a daily job record in quadruplicate containing a detailed description of the labor (workers, classifications, and hours worked); quantities of materials used; equipment used (identifying the equipment and the hours of use); and any other services and expenditures in such detail as County may require. Upon being signed and agreed to by County and CMARE at the end of each day's performance, the daily job record will become the basis for payment for the changed work. But such Contract shall not preclude the County from thereafter conducting an audit and adjusting the basis for payment. Failure by CMARE to submit the daily report by the close of the next working day may constitute a waiver of any rights for that day. Upon request by County, CMARE shall permit County to inspect CMARE's original estimate for the Project, subcontract agreements, or purchase orders relating to the change. Upon completion of the changed work ordered to be performed on a time and materials basis, County will then issue a unilateral Change Order adjusting the Contract Price according to the actual costs incurred and, if appropriate, adjusting the Contract Time.

- 14.2.5 Unilateral Change Orders: If County and CMARE cannot reach an agreement on a proposed change, County may issue a Unilateral Change Order directing work on a time-and-materials basis as set forth above.
- 14.2.6 No Extension of Contract Time without Critical Path Delay: CMARE shall not be entitled to an extension of the Contract Time unless CMARE demonstrates a delay to the Critical Path shown on the most recent Accepted Construction Schedule.
- 14.2.7 No Additional Compensation for Early Completion: Nothing contained in the Contract Documents creates any contractual right, express or implied, on the part of CMARE to early completion of the Project. Under no circumstances shall County owe additional compensation to CMARE for CMARE's inability to achieve completion of the Project before the expiration of the Contract Time, whether or not such inability is caused by the acts or omissions of County or any other party for which County is responsible, regardless of any approval by County of the Accepted Construction Schedule.

Credits: Regardless of whether the equitable adjustment associated with changed work is recorded through a lump sum or time-and-materials Change Order: (1) if the net value of a change to the work results in a credit from CMARE, then the credit given shall include costs as well as overhead and profit; or (2) if the net value of a change to the work results in additional costs, then overhead and profit will only be applied to the amount by which the added costs of the change exceed the credited amount. When a change proposed by County results in the deletion of work and the County and CMARE are unable to agree upon the cost, overhead, and profit thereof, the County's estimate of the cost, overhead, and profit shall be deducted from the Contract Price by a Change Order unless within 15 days of receiving the County's estimate CMARE presents proof that the County's estimate is in error.

- 14.2.8 Overhead and Profit: CMARE shall receive a maximum ___% for overhead and profit on above items if CMARE uses its own forces to perform changed work. If CMARE's subcontractor's forces perform changed work, then the subcontractor shall be entitled to a maximum of ___% on above items for its overhead and profit and CMARE shall be entitled to a maximum of ___% on above items for its overhead and profit on the changed work. County will pay only one overhead and profit markup of ___% for CMARE and one markup of ___% for the subcontractor in connection with changed work, regardless of the actual number of intervening subcontractors involved in the changed work. County will not pay any overhead or profit for omitted work.

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

- 14.2.9 Compensation for Delay: CMARE shall be compensated for its substantiated actual, direct expenses, together with the markup for overhead and profit described in "Overhead and Profit" above, resulting from delay for which County is responsible. Under no circumstances shall County compensate CMARE for extended home office overhead or profit based on an "Eichleay formula" or any other proportionate allocation of CMARE's overhead expenses or profit, all of which shall be deemed to have already been included in the above-described markup.
- 14.2.10 Unit Price Changes: If a change is ordered in an item of work covered by a Contract Unit Price, and such change does not involve substantial change in character of the work from that shown on the Plans or Special Provisions, then an adjustment in payment will be made. This adjustment will be based upon the increase or decrease in quantity and the Contract Unit Price. If the actual quantity of an item of work covered by a Contract Unit Price and constructed in conformance with the Plans and Special Provisions varies from the Bid quantity by 25% or less, payment will be made at the Contract Unit Price. If the actual quantity of the item of work varies from the Bid quantity by more than 25%, then payment will be made as described in Subsection (a) "Increases of More than 25%," or Subsection (b) "Decreases of More than 25%," below, as appropriate. If a change is ordered in an item of work covered by a Contract Unit Price, and such change involves a substantial change in the character of the work from that shown on the Plans or Special Provisions, an adjustment in payment will be made as described in Subsection (c) "Substantial Change in Character of the Work," below.
- 14.2.11 Increases of More than 25%: Should the actual quantity of an item of work covered by a Contract Unit Price and constructed in conformance with the Plans and Special Provisions exceed the Bid quantity by more than 25%, then payment for the quantity in excess of 125% of the Bid quantity will be made on the basis of an adjustment in the Contract Unit Price mutually agreed to by the CMARE and County or, at the option of County, on the basis of Time and Materials Change Orders, described above. However, in no event will payment be more than would be paid for the actual quantity at the Contract Unit Price.
- 14.2.12 Decreases of More than 25%: Should the actual quantity of an item of work covered by a Contract Unit Price, and constructed in conformance with the Plans and Special Provisions, be less than 75% of the Bid quantity, then an adjustment in payment will not be made unless CMARE requests an adjustment in writing and adequately demonstrates that the reduction in quantity has increased CMARE's per-unit cost of performing the work item. If CMARE so requests, payment will be made on the basis of an adjustment in the Contract Unit Price mutually agreed to by CMARE and County, or at the option of County, on the basis of Time and Materials Change Orders, described above. However, in no case will payment be less than would be made for the actual quantity at the Contract Unit Price nor more than would be paid for 75% of the Bid quantity at the Contract Unit Price.
- 14.2.13 Substantial Change in Character of Work: If a change in an item of work covered by a Contract Unit Price involves a substantial change in the character of work from that shown on the Plans or Special Provisions, then an adjustment to the payment for the Work may be made by mutual agreement of CMARE and County as an adjustment to the Contract Unit Price, as a Lump Sum Change Order, or at County's option as a Time and Materials Change Order, as described above.

15 DELAYS DUE TO WEATHER AND FORCE MAJEURE

15.1 DELAYS DUE TO WEATHER AND FORCE MAJEURE:

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

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

16 CONDITIONS AFFECTING THE WORK

16.1 CONDITIONS AFFECTING THE WORK

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

at the site; the conditions of the ground; the character of equipment and facilities needed prior to and during the performance of the work; and all matters that can in any way affect the work or the cost thereof under this Contract.

CMARE further acknowledges satisfaction as to character, quality, and quantity of surface and subsurface materials to be encountered from CMARE's inspection of the site and from reviewing any available records of exploratory work furnished by County or included in the Contract Documents. Failure by CMARE to become acquainted with the physical conditions of the site and all the available information will not relieve CMARE from responsibility for properly estimating the difficulty or cost of successfully performing the work.

CMARE warrants that as a result of examination and investigation of all the above-described data, CMARE can perform the work in a good and workmanlike manner and to the satisfaction of County. County assumes no responsibility for any representations made by any of its officers or agents during or prior to the execution of the Contract unless: (1) such representations are expressly stated in the Contract Documents; and (2) the Contract Documents expressly provides that the responsibility therefore is assumed by County.

16.1.3 Information on Site Conditions

16.1.4 General: Any information obtained by the County regarding site conditions, subsurface information, groundwater elevations, existing construction of site facilities as applicable, and similar data will be available for inspection upon request. Such information is offered as supplementary information only and not part of the Contract Documents. County assumes no responsibility for the completeness or interpretation of such information.

16.1.5 Topographic Maps: Topographic maps were used in the Project design, if applicable. Bidders may inspect such maps upon request to the County or may obtain copies upon payment of the cost to reproduce the copies.

16.1.6 Subsurface Investigation: When test holes, if any, have been excavated to indicate subsurface materials at particular locations, County assumes no responsibility whatsoever in respect to the sufficiency or accuracy of borings made, or of the log of test borings, or of other investigations, or of the interpretations made thereof, and there is no warranty or guarantee, either express or implied, that the conditions indicated by such investigations are representative of those existing throughout such area, or any part thereof, or that unforeseen developments may not occur. A log of test borings, if any, showing a record of the data obtained on subsurface conditions may be examined upon request. CMARE may make arrangements with County for permission to conduct such additional subsurface investigation as may be necessary to verify existing conditions. CMARE shall examine the site and may make arrangements with County to conduct CMARE's own subsurface investigation.

16.1.7 Changed Conditions: CMARE shall promptly, but in no event more than 7 days after the condition is first observed, notify County in writing of the following site conditions ("Changed Conditions") and shall leave such conditions undisturbed until otherwise directed by County:

16.1.8 Subsurface or latent physical conditions at the site differing materially from those represented in the Contract Documents;

16.1.9 Unknown physical conditions at the site differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract; and

16.1.10 Material differing from that represented in the Contract Documents which CMARE believes may be hazardous waste pursuant to Health & Safety Code Section 25117.

16.1.11 Upon written notice of Changed Conditions from CMARE, County shall promptly investigate such conditions. If County finds that such conditions do materially differ and cause an increase or decrease in the cost of or the time for performance of the work, County may, at its discretion: (a)

terminate all or part of the Contract in accordance with "Termination For Convenience Of County" Section of these General Conditions; (b) issue a written change to the Contract in accordance with the "Changes" Section of these General Conditions; or (c) make any other appropriate arrangements to address the Changed Conditions. Any claim by CMARE for adjustment hereunder shall not be allowed unless CMARE has given proper notice.

In the event that a dispute arises between the Parties as to whether the conditions constitute Changed Conditions or affect the price or time for performance of any part of the work: (i) CMARE shall submit a written notice of potential claim to County; (ii) CMARE shall then proceed with all work to be performed under the Contract; and (iii) CMARE shall not be excused from any scheduled completion date provided for by the Contract. CMARE shall retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes between the Parties.

17.0 EXECUTION OF CHANGED WORK

CMARE shall promptly proceed with the work described in a Change Order. Nothing provided in this "Changes" Section shall excuse the CMARE from proceeding with the execution of the work as changed.

18.0 DIRECTOR

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

19.0 MINOR CHANGES IN THE WORK

County shall have County's PM to order minor changes in the work not involving an adjustment in the Contract Price or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be affected by written order and shall be binding on CMARE. CMARE shall carry out such written orders promptly.

20.0 TERMINATION

20.1 TERMINATION FOR CONVENIENCE OF COUNTY

Notwithstanding any other provision of the Contract, County may at any time and without cause terminate the Contract, in whole or in part, upon not less than 30 days written notice to the CMARE. Such termination shall be affected by delivery of a Notice of Termination to CMARE specifying the effective date of the termination, whether the Contract shall be terminated in whole or in part, and, if applicable, the portion of work to be terminated. CMARE shall immediately stop work in accordance with the Notice of Termination and comply with any other direction as may be specified in the Notice of Termination or as provided subsequently by County. County shall pay CMARE for the work completed and accepted by County prior to the effective date of the termination, and such payment shall be CMARE's sole remedy. 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 in whole or in part under this provision. CMARE shall insert in all subcontracts that the Subcontractors shall stop work on the date of and, if applicable, the portion of work to be terminated in a Notice of Termination and shall require Subcontractors to insert the same condition in any lower tier subcontracts.

20.2 TERMINATION FOR CAUSE

If CMARE fails to carry out the requirements of the Contract, including but not limited to by: failing to commence the work within the time specified; failing to prosecute the work with such diligence as will ensure its completion within the Contract Time; failing to complete the work

within the Contract Time; failing to execute the work in the manner specified in the Contract Documents; persistently, willfully, or knowingly failing to comply with applicable laws and regulations; becoming insolvent; assigning or subcontracting any part of the work without County's consent; or if in the opinion of the Board of Supervisors CMARE is not complying in good faith with the Contract; then County may, by written notice to CMARE, terminate for cause CMARE's right to proceed with the work or such part of the work as to which there has been delay, breach, or other default.

- 20.2.1 Upon receipt of written notice from County of a termination for cause, CMARE shall cease operations as directed by County in the notice and take all actions necessary, or as County directs, for the protection and preservation of the work.
- 20.2.2 After issuing a notice of termination for cause, County may take over the work and prosecute the same to completion by whatever means County deems reasonable, by contract or otherwise, and may take possession of and utilize in completing the work such materials, equipment, supplies, Contract Documents, and other information in whatever form as may be on the site for the work and necessary therefor.
- 20.2.3 If County terminates for cause CMARE's right to proceed with the work, or CMARE otherwise fails to prosecute the work to completion, then the resulting damage will include but not be limited to Liquidated Damages for such reasonable period of time as may be required for completion of the work together with any costs incurred by County to complete the work in excess of the unpaid Contract Price. CMARE shall not be entitled to receive any further payment under the Contract until the work is complete. If County's cost of completing the work, Liquidated Damages, and other damages exceed the unpaid balance of the Contract Price, then CMARE and CMARE's sureties shall pay the difference to County within thirty days of County's demand therefor.
- 20.2.4 Whether or not County issues a written notice of termination for cause, CMARE and CMARE's sureties shall be liable for any damage to County resulting from CMARE's refusal or failure to complete the work within the specified time or from CMARE's other breach or default with respect to the performance of the work.
- 20.2.5 CMARE's right to proceed shall not be terminated for cause nor will CMARE be charged with resulting damage if the delay in the completion of the work arises from causes beyond the control and without the fault or negligence of CMARE, including but not limited to those circumstances described in the "Weather Days And Force Majeure" Section of the General Conditions, acts of County, or acts of another contractor in the performance of a contract with County.
- 20.2.6 The rights and remedies of County provided in this Section are in addition to any other rights and remedies provided by law or under this Contract.

21 DISPUTES AND CLAIMS

21.1 DISPUTES AND CLAIMS

- 21.1.1 Continuing Performance during Dispute Resolution: In the event of a claim or dispute between CMARE and County as to performance of the work, a demand for an extension of time, the interpretation of the Contract Documents, or payment or nonpayment for work performed, CMARE and County shall attempt to resolve the claim or dispute. Pending resolution of the claim or dispute, CMARE shall continue the work diligently to completion as directed by County. If the claim or

dispute is not resolved, CMARE agrees that it will neither rescind this Contract nor stop the progress of the work.

- 21.1.2 Claims for \$375,000 or less: In the event of a claim of \$375,000 or less, the Parties shall resolve the claim pursuant to Public Contract Code Section 20104, et seq., summarized herein. A claim is defined as CMARE's demand for: (i) a time extension; (ii) payment of money or damages arising from work done by, or on behalf of, CMARE pursuant to the Contract and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to; or (iii) an amount the payment of which is disputed by County.
- a) Pursuant to Public Contract Code Section 20104.2, all claims must be in writing, must be accompanied by documents necessary to substantiate the claims, and must be filed on or before the date of final payment. The County's time to respond in writing and/or request additional documentation shall be as set forth in Public Contract Code Section 20104.2.
 - b) If CMARE disputes County's written response or County fails to respond, CMARE may demand an informal conference. If the claim remains in dispute following the conference, CMARE may file a claim under Government Code Sections 900, et seq. The time limit for filing such claim may be tolled as provided in Public Contract Code Section 20104.2(e).
 - c) The foregoing provisions do not apply to tort claims and do not affect the time periods for filing tort claims.
 - d) In the event a civil action is filed stemming from a claim subject to Public Contract Code Sections 20104, et seq., the Court shall submit the matter to nonbinding mediation unless waived by mutual stipulation. If after mediation the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Code of Civil Procedure Section 1141.11, and the arbitration shall proceed pursuant to the terms set forth in Public Contract Code Section 20104.4(b).
 - e) Attorney's fees arising from a trial de novo shall be awarded as provided by Public Contract Code Section 20104.4(b) (3).
- 21.1.3 Claims in Excess of \$375,000: The dispute resolution procedure set forth in Public Contract Code Sections 20104, et seq., shall not apply to resolution of claims in excess of \$375,000, which claims shall be resolved by a court of competent jurisdiction in Orange County, California, after the Project has been completed and not before.
- 21.1.4 Time for Submitting Claims in Excess of \$375,000 and Waiver of Untimely Claims: CMARE shall submit any claim for additional compensation in excess of \$375,000 to County in writing, with documents necessary to substantiate the claim, stating the alleged facts giving rise to and the alleged basis for the claim, and when the facts giving rise to the claim became known to CMARE. Any such claim that CMARE fails to submit to County within 30 days after CMARE discovers the facts giving rise to the claim shall be deemed waived. In no event shall a claim for additional compensation in excess of \$375,000 be asserted after CMARE submits an application for final payment or after there has been a cessation of the work.
- a) Compliance with the requirements of this Section 21 is a condition precedent to CMARE's right to seek or recover any additional compensation, time extension, damages, costs, or other relief arising out of or relating to the Contract.

- b) Failure to comply strictly with any notice, documentation, timing, or procedural requirement of this Section 21 shall constitute a complete waiver and release of the claim.
- c) Multiple claims arising from the same operative facts, event, occurrence, delay, disruption, impact, change, directive, or course of conduct shall be aggregated and treated as a single claim for purposes of determining the applicable dispute resolution procedure and monetary threshold.
- d) County's actual knowledge of the facts underlying a claim, participation in discussions, review of documentation, issuance of directives, attendance at meetings, negotiations, or attempts to resolve a dispute shall not waive any requirement of this Section 21 unless expressly waived in a writing signed by County.

22 OCCUPANCY

22.1 PARTIAL OCCUPANCY

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

23. ACCEPTANCE

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

24. MISCELLANEOUS PROVISIONS

24.1 ASSIGNMENT

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

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

24.2 ORAL MODIFICATION

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

24.3 NO WAIVER BY COUNTY

No failure on the part of County to exercise any right or remedy under the Contract Documents shall operate as a waiver of any other right or remedy that County may have. A waiver by County of any breach or failure to perform under the Contract Documents shall not constitute a waiver of any subsequent breach or failure. The failure of County to enforce a requirement of the Contract Documents in one or more instances shall not preclude County from subsequently enforcing such requirement(s).

24.4 RECORDS, AUDITS, AND INSPECTION RIGHTS

CMARE shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract. CMARE's accounting and control system shall be in accordance with generally accepted accounting practices of the construction industry. CMARE shall preserve all of its books and records relating to this Contract, including but not limited to its job cost records, payables/receivables records, accounting books, bids, cancelled checks, receipts, subcontracts, purchase orders, journals, vouchers, payrolls, correspondence, drawings, daily logs, photographs, and memoranda, for a period of 4 years after final payment. Should CMARE cease to exist as a legal entity, CMARE shall forward its records pertaining to this Contract to the surviving entity in a merger or acquisition, or, in the event of liquidation, to County.

County, the California State Auditor, and their contracted representatives, shall have the right to examine and audit CMARE's accounting procedures and internal controls of CMARE's financial systems and to inspect and copy any books and records relating to this Contract. Such an examination, audit, and/or inspection may be requested at any time during the Project. CMARE shall cooperate fully with County and the California State Auditor in the conduct of such examinations, audits, and inspections, shall grant full access at all reasonable times to its offices, the Project site, and its books and records relating to the Contract, and shall allow County to interview CMARE's employees who might reasonably have information related to CMARE's books and records, provided that County has given CMARE at least one working day's advance notice of County's or the California State Auditor's intent to examine, audit, inspect, and interview employees. All examinations, audits, inspections, and interviews shall be conducted during normal business hours. CMARE shall include in all its subcontracts a provision giving County and the

California State Auditor the same rights to examine and audit the Subcontractor's accounting procedures and internal controls of its financial systems, inspect the Subcontractor's books and records relating to the Project, and interview Subcontractor's employees as CMARE has given the County and the California State Auditor in this Section.

24.5 PUBLIC RECORDS ACT

Pursuant to the California Public Records Act ("CPRA"), Government Code Sections 7920.000 et seq., all records provided by CMARE to County are subject to public disclosure upon request except as otherwise provided by law. Prior to their submission to County, CMARE 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 CMARE of such request. Unless CMARE 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. CMARE shall indemnify and defend County in any action to compel disclosure of such records.

24.6 PATENT INFRINGEMENT

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

24.7 ASSIGNMENT OF ANTITRUST ACTIONS

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

24.8 COUNTY'S PROPERTY ON SITE

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

24.8 WRITTEN NOTICE

Any notice required under the Contract Documents to be given to County by CMARE shall be in writing and delivered to the County via U.S. mail, addressed as follows:

County of Orange/John Wayne Airport
Attn: TBD
Re: Project name
Address: TBD

Notice via electronic mail is insufficient.

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END OF GENERAL CONDITIONS

**ATTACHMENT B
 CONSTRUCTION PHASE SERVICES
 STAFFING PLAN**

I. KEY PERSONNEL*

Name	Classification/Designation	Years of Experience	License/Certifications (include license number)

*This shall include the Key Personnel information for both the CMARE and the Subcontractors

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 John Wayne Airport.***

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 John Wayne Airport.*** 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.

II. SUBCONTRACTORS(S) (IF APPLICABLE)

Listed below are subcontractor(s) anticipated by CMARE to perform services specified in Attachment A, Scope of Work. 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.

Corporate Name & Corporate Address	Local Office Address*	Contact Name & Telephone Number	Project Function (Division of Work/Trade)	Contractor License Number	DIR Registration Number	DBE If Yes, enter DBE Certification Number	Gross Receipts Category (Table 1 below)	Age of Firm (Years)	DVBE If Yes, enter DVBE Certification Number	SBA If Yes, enter DUNS Certification Number

1. TABLE 1 - ANNUAL GROSS RECEIPTS CATEGORIES

Annual Gross Receipt (Most recent fiscal year)	Gross Receipts Category
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

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

****DO NOT SUBMIT WITH YOUR PROPOSAL. TO BE SUBMITTED AT TIME OF INTERVIEW BY
 SHORTLISTED RESPONDENTS****

A. FEE SCHEDULE:

1. Pre-Construction Services Fee: \$ _____
2. Pre-Construction Contingency (CMARE): \$ _____
3. **Total Pre-Construction Services Contract Price for the Project:** \$ _____
4. Construction Services Profit Margin: _____ %
5. Construction General Administration & Overhead Fee: _____ %
6. **Total Construction Fee* for the Project:** _____ %

*Refer to Model Pre-Construction Contract – Article 1, Definition of “Construction Fee”

B. CLASSIFICATION RATES:

CMARE	
Classification Titles	Hourly Rate

SUBCONTRACTOR(S)	
Classification Titles	Hourly Rate

(Use additional sheets if necessary)

ATTACHMENT D

John Wayne Airport, Orange County Construction and Demolition (C&D) Debris Diversion Program

John Wayne Airport's (JWA's) C&D Debris Diversion Program requires that construction and demolition projects strive to divert 90% of nonhazardous materials from landfills and in no case divert less than 65% of nonhazardous materials from landfills. This packet will explain the policies and procedures required to implement this program and is based on Orange County Waste and Recycling's C&D program.

There are four options available to comply with this program. The options are summarized below and explained in (Sections A, B, and C).

1. Complete a construction waste management plan identifying expected waste types, tonnage and the recycling or waste facilities proposed for use.
2. Use an approved waste management facility. The County of Orange maintains a list of approved waste management facilities that meet industry standards relating to the proper recycling and diversion of materials. Using one of these facilities ensures compliance with this program. The list is attached to this packet at the end and can also be accessed at <https://www.oclandfills.com/CD> by clicking on the link for Approved Facilities.
3. Generate a minimal amount of waste for new construction (less than 2 lbs/ft²) to meet the requirement of the waste stream reduction alternative.
4. Create your own plan in accordance with CALGreen Standards.

This packet contains the following sections to assist with this program:

- Program instructions are provided in Section A.
- A C&D Debris Diversion Program Work Plan Template is provided in Section B.
- A C&D Debris Diversion Program – ANNUAL/FINAL Compliance Report Template is provided in Section C,
- A list of approved County of Orange waste management facilities is provided at the end.

Section A – John Wayne Airport C&D Debris Diversion Program Instructions

Prior to construction initiation, complete, and sign the “John Wayne Airport Construction and Demolition Diversion Compliance Work Plan” (Section B of this packet) and described below. Submit the work plan to the Project Manager.

1. Select Compliance Option and Develop Work Plan:

Develop a work plan that identifies which of the four methods below will be employed to meet the 90% diversion goal (65% minimum). Provide the work plan to the Project Manager for approval by JWA Environmental prior to project initiation.

- **Option 1 – Construction Waste Management Plan**

Develop a work plan that identifies tonnage, type of material, diversion method, and hauler/facility that will be used.

- **Option 2 – Use an approved Waste Management Facility**

Develop a work plan that identifies the County of Orange approved facility to which waste will be taken. Approved facilities can be found on Page 5. These facilities will divert as much C&D waste as possible.

- **Option 3 – Waste Stream Reduction Alternative (Cannot be used for demolition projects)**

Develop a work plan that identifies that the construction waste will not exceed 2 lbs/ ft².

- **Option 4 – Create your own plan in accordance with CALGreen Standards**

Develop a work plan in accordance with the California Green Building Code standards that strives for a 90% waste diversion goal, with a minimum of 65%.

2. Implement Diversion Workplan During Project

During the project, track waste and diversion tonnage and provide an annual report if the project extends past July 31 of each year.

- Save documentation (bills, tickets etc.) for all waste (diverted and landfilled).
- In January of each year, provide the “Construction and Demolition Debris Diversion Program – Annual Compliance Report” from the previous year as well as copies of documentation, including disposal/recycling receipts to the project manager.

3. Provide Final Project Documentation

- Submit “Construction and Demolition Debris Diversion Program – Final Compliance Report” (Section C of this packet) and copies of documentation, including disposal/recycling receipts to the Project Manager.
- JWA Environmental will review the Final Compliance Report and receipts for compliance and reply within 3 business days.
- If contractor is deemed in compliance, no further action is required. If applicant is deemed to be noncompliant, payment may be withheld.

Section B – John Wayne Airport C&D Debris Diversion Program - Work Plan

Please complete work plan Option 1, 2, 3, or 4 for estimated construction and demolition debris produced as a result of the proposed project and submit to the Project Manager.

Project
Name:

Project
#

Contractor:	
Project Description	
Total Project Valuation: \$	Total Project Square Footage:
Estimated Total Debris Tonnage:	Estimated Completion Date:

☐ Option 1: Complete the construction waste management compliance plan – complete in full				
Please indicate estimated tonnage, type of material, diversion method, and hauler/facility that will be used				
Material Type	Estimated Tonnage Diverted	Diversion Method - Recycle, Reuse, Salvage, Compost	Estimated Tonnage Disposed – Landfilled	Proposed Site, Hauler, Facility, or Recycler
Asphalt/Concrete				
Brick/Masonry/Tile				
Cardboard				
Wood				
Metals				
Landscape Debris				
Soil/Rock				
Carpet, Padding/Foam				
Other:				
Other:				
☐ Option 2: Use a County-approved facility – Please list all facilities you plan to use				
**Final reporting must include proof (tonnage receipts, bill, letter from facility)				
☐ Option 3: Project is expected to meet the Waste Stream Alternative				
Provide the estimated non-residential new construction with a combined disposal weight no more than 2 lbs/ft ²				lbs/ft ²
☐ Option 4: Create your own plan in accordance with CALGreen Standards				

Provide Plan. This option should strive for a 90% waste diversion goal, with a minimum of 65%.

THIS PAGE TO BE SUBMITTED TO THE PROJECT MANAGER for JWA Environmental

Section C - John Wayne Airport C & D Debris Diversion Program

ANNUAL / FINAL Compliance Report

**** Submittal of this form is required January 30th of each year and at Project Completion****

Please complete this form in its entirety, attach weight slips or other records of measurement from recycling companies that show actual tonnage of diverted materials, and submit to the Project Manager.

Project

Name: _____

Project # _____

☐ Option 1: Complete the construction waste management compliance plan – complete in full				
Please indicate tonnage, type of material, diversion method, and hauler/facility that was used				
Material Type	Actual Tonnage Diverted	Diversion Method - Recycle, Reuse, Salvage, Compost	Actual Tonnage Disposed – Landfilled	Site, Hauler, Facility, or Recycler
Asphalt/Concrete				
Brick/Masonry/Tile				
Cardboard				
Wood				
Metals				
Landscape Debris				
Soil/Rock				
Carpet, Padding/Foam				
Other:				
Other:				
A. Total Actual Tonnage Diverted				
B. Total Actual Tonnage Disposed				
C. Total Tonnage Generated for Project (A+B)				
D. Percent Diverted (A divided by C, then multiply by 100)				

☐ Option 2: Use an approved facility – Name Facilities	
Include proof (tonnage receipts, bill, letter from facility	
☐ Option 3: Project is expected to meet the Waste Stream Alternative	
Provide the final non-residential new construction with a combined disposal weight no more than 2 lbs/ft ²	lbs/ft ²
☐ Option 4: Create your own plan in accordance with CALGreen Standards	

This option should strive for a 90% waste diversion goal, with a minimum of 65%.	
--	--

Print Name: _____

Signature: _____ Date: _____

**THIS PAGE TO BE SUBMITTED TO THE PROJECT MANAGER for JWA
Environmental**

Attachment C

CALM Procedures

The CALM (Coordination and Logistics Management) Team's goal is to *minimize construction-related impacts to passenger service and tenants while maintaining a positive guest experience*. Starting at the Planning stage, CALM utilizes a Program Master Schedule and GIS database to capture project dates and locations for all projects undertaken at John Wayne Airport. The CALM Team conducts time and space management and tracks all projects including CIP (Airside, Landside and Terminals), Tenant, Commercial and Revenue Management, Maintenance, Information Technology, and Operations. The CALM team will review projects through the design phase prior to construction to ensure program phasing will limit impacts to operations and customer service.

The Project submittals will include the following:

- a) Proposed Project Schedule
- b) Project Phasing Plan
- c) Site Logistics Plan
- d) USR (Utility Shutdown Requests) /LSR (Location Shutdown Requests)

Each project is tracked from its inception through construction completion, to insure efficient sequencing of multiple projects competing for the same time and space resources. A "Notice to Proceed" for the project will not be granted until the Applicant's submittals have been approved.

For questions regarding the CALM Program please contact:

Don Chinery at dchinery@ocair.com (310.614.1905)

CALM submittal requirements

Below is an outline of the required CALM Submittals:

1. The Applicant must submit the following information:

- a. Project Schedule
- b. Physical location/Map
- c. Scope of the project.

With this information, the CALM Team will be able to identify any conflicts, or impacts with time and space coordination.

2. Due to the large number of construction projects taking place, appropriate project sequencing is of critical importance to JWA. The contractor shall notify the JWA Project Sponsor of any cost/schedule changes that differ from previous submitted documents. Failure to notify the JWA Project Sponsor of any schedule change, may adversely affect the contractors ability to commence/complete the project.
3. The Contractor must notify the JWA Project Sponsor, who in turn, will notify CALM when they plan to submit their Logistical Work Plan. Please be mindful that each submittal review, and/or resubmit may take a minimum of seven working days per review.
4. Prior to the Applicant receiving a Notice to Proceed (NTP), the Applicant shall have an approved Logistical Work Plan consisting of, but not limited to the following:
 - a. Updated Construction Schedule

- b. Site Logistics Plan
- c. Temporary Barricade Plan
- d. Temporary Construction Signage Plan
- e. Project Phasing Document
- f. Haul Routes
- g. Construction Stock piles/Laydown Areas

To facilitate the submittal process of the required documents, the Site Logistics & Project Phasing Checklist is required to be completed and submitted with the Logistical Work Plan. Please incorporate the checklist directly on site logistics work plan.

5. After NTP, and during all phases of construction, the Contractor shall not deviate from the approved Logistical Work Plan. The Contractor must resubmit any changes to the Logistical Plan to the JWA Project Sponsor for final approval.

Project Phasing Plan

1. The Applicant shall submit a Project Phasing Document, defining each specific work area (Phase) into which the overall project is divided. A Project Phasing Document is required for any project with one or more phases of work. A Project Phasing Document and a fully documented Logistical Work Plan Checklist shall be approved by JWA prior to issuance of a Notice to Proceed. The document shall be developed in accordance with the following criteria.
 - a) Written description of the work to be accomplished within each phase.
 - b) Breakdown the physical elements of the project to accurately reflect the progression of work, sequenced in accordance with the project schedule.
 - c) Include dates for proposed work, daily work hours, and Emergency 24 hour contact information for each phase.
 - d) The document shall be flexible in its ability to describe real-time updates and shall be updated as required to ensure stakeholders are fully informed of revisions as they occur.
 - e) The document shall be consistent with the overall Project Schedule.
2. The description of each Phase shall address the following as a minimum.
 - a) Location of barricades, partitions, covered walkways, stairs, scaffolding, work platforms, etc. which are designed to separate construction activities from ongoing operational areas and mitigate disruptions to passenger and other stakeholder traffic flows.
 - b) Identify security provisions
 - c) Identify emergency personnel provisions

- d) Emergency evacuation routes
- e) Identify egress analysis and Occupancy Load calculations for each phase of the construction
- f) Identify the means for public and worker health and safety protection
- g) Identify any relocation and definition of temporary facilities required to maintain ongoing operations
- h) State the means for maintenance of fire/life safety systems
- i) State applicable construction restrictions during special events and holidays
- j) Identify locations for material stockpiling and staging
- k) Identify Locations and related work zones for worker/material handling equipment
- l) Identify the plan for rubbish removal, including location of trash bins
- m) Identify modification and maintenance of existing systems during construction
- n) Identify temporary signage/way-finding needs and depict on drawings.
- o) Identify Stakeholder relocations
- p) Show routing of temporary utilities, lines, and points of tie-in
- q) Identify temporary facilities
- r) Identify means for dust/dirt/debris mitigation
- s) Identify means for construction noise mitigation

Site Logistics Plan

As part of the Logistics Work Plan, the Applicant shall submit a proposed Site Logistics Plan. A Site Logistics Plan and a fully documented Logistical Work Plan Checklist, shall be approved by JWA prior to issuance of a Notice to Proceed. At a minimum, the plan shall address the following information:

- a) Identify point of entrance locations and traffic routes for movement of the contractor's equipment, materials and workers to the work
- b) Incorporate Escort provisions including conformance with LAWA and TSA regulations regarding allowable number and handling of un-badged personnel
- c) Define alterations to existing facilities/infrastructure
- d) Locate on plans, construction zone accommodation of vehicular and aircraft traffic including signage, traffic stripping, flagging, temporary closures, barricades, and detours
- e) Locate on plans, provisions and plans for worker parking
- f) Locate on plans, the staging/laydown areas for construction equipment, trash/debris receptacles, and material storage and protection
- g) Locate on plans, temporary facilities including trailers, and dumpsters.
- h) Identify locations and related work zones for worker/material handling equipment such as cranes, and lifts
- i) Provide emergency vehicle access provisions
- j) Provide emergency evacuation routes
- k) Provisions for protection of private and public properties, including leased properties on site, if applicable
- l) Identify security provisions
- m) Locate on plans, fencing and enclosure provisions
- n) Identify location of off-site, project-related facilities
- o) Identify on-site parking provisions if applicable.
- p) Emergency contacts posted on plan
- q) Define work shifts and corresponding working hours
- r) Show routing of temporary utility lines and points of tie-ins
- s) Show provisions for reclamation of areas disturbed by the contractor
- t) Provide plans and actions taken to comply with environmental requirements and permits
- u) Identify the means for dust/dirt/debris mitigation
- v) Identify the means for construction noise mitigation
- w) Incorporate coordination and accommodation of stakeholders impacted by the work
- x) Incorporate coordination with other contractors impacted by or impacting the work

CALM Shutdown Coordination Center

JWA established the CALM Shutdown Control Center (SCC) to coordinate all Utility Shutdown Requests (USR) and Location Shutdown Requests (LSR).

1. Utility Shutdown (USR) is any disruption or disconnection of a utility (including abandonment) of any system, subsystem, or branch for any length of time. This includes electrical, water, natural gas, fuel, fire alarm, security/ACAMS, sewer, communications, HVAC, and sprinkler. A utility shutdown is defined as a singular event; one turn off/one turn on. Utility Shutdowns cover the following:
 - a. Electrical
 - b. Water
 - c. Natural Gas
 - d. Fuel
 - e. Fire Alarm
 - f. Security/ACAMS
 - g. Sewer
 - h. Communications/ IT
 - i. HVAC
 - j. Sprinklers
2. Location Shutdown (LSR) is the closure of an area preventing normal activity for a set period of time. This includes all landside, airside, and terminal areas and is generally associated with the disruption of normal vehicle, pedestrian, and aircraft use or flow. Area shutdown is defined as a singular event; one shutdown of operation / one restoration of operation. Area Shutdowns include:
 - a. Landside traffic closures
 - b. Airside traffic closures (vehicle or aircraft)
 - c. Terminal Area road closures
 - d. Restrictions to Public Access (i.e. walkways, public access doors)
 - e. Elevator/Escalator
 - f. Restroom Closures
 - g. Gate Closures

The Contractor is responsible to submit a new request 30 days in advance of proposed start date. This will identify any impacts to Airport Operations including Utility Shutdowns and Location Shutdowns. This will allow the Project Sponsor the time needed to review and coordinate the requests with the Primary Stakeholders. Incomplete documentation will delay the approval process of the USR/LSR and potentially impact the requested date(s). An email notification will be sent by the CALM SCC to indicate final approval.

LSR Review

- Identify Impacts (Facilities, Stakeholders, Operations)
- Gather Facts (Time, Duration, Purpose, Contacts)
- Determine Area
- Develop Mitigation Plan
- Review Contractor Work Plan

LSR Submittal Process

The completed LSRs are submitted by the JWA Project Sponsor to the Shutdown Control Center for processing and tracking. Once a submittal is received, it is distributed to the LSR Approval Team to review any additional coordination and logistical needs. The requests are tracked through the CALM Shutdown Control Center tracking system.

- To guarantee LSR approval for on-time implementation, projects expected to have a large impact to stakeholders and other projects should plan on submitting a draft package which includes the LSR and a traffic control plan to the LSR Approval Team at least 30 days prior to expected implementation date. Some projects have been introduced at least 1-2 months in advance to allow for coordination and planning.
- LSRs are approved prior to project implementation and a complete LSR package should be submitted at least 30 days prior to the expected start date. In addition, a *site walk* is typically completed 2 weeks prior to give a better understanding to Airport Operations, CALM and the Project Management team of all field conditions.

CALM / LSR Requirements

A separate LSR is required for each area to be impacted.

- Complete the application in its entirety and attach any Completed/Approved Required documentation. Incomplete applications may be delayed for processing.
- This package shall describe all details related to the submitted Phasing Plan, Logistical Work Plan, and logistical checklist and will be updated as needed to ensure stakeholders are informed of revisions.

The Contractor shall submit an overall Phasing Plan with a baseline schedule.

- Within the task specific phasing plan, the contractor shall identify specific tasks, which will function as a sub phase to the overall Phasing Plan and schedule.
- If a Task Specific Phase has separate logistical needs, the contractor will be required to complete a Logistical Work Plan for each of those Task Specific Phases.
- The Logistical Work Plan shall include the following: Scope and description of work, a Communications Plan, identification of coordination plans with all contractor construction activities in the area, and identification of all permits.

LSR Revisions

An LSR Revision shall be submitted when an existing LSR changes in scope of work or dates are extended. For example – work will now be added to the project in a different location. Date extension requests shall be sent to the CALM SCC at least one week prior to LSR expiration date.

LSR Updates

An LSR Update shall be disseminated when an existing LSR has additional work, but the scope of work does not change and neither do the dates. Contractor shall submit addendums to the LSR to the SCC for any changes that affect the work area or airport operations. The SCC shall be notified when work is completed.



County of Orange
John Wayne Airport
Charlene Reynolds, Airport Director
400 W. Civic Center Drive, Santa Ana, CA 92701
(855) 886-5400

Monday, August 31, 2026

NOTICE OF SOLICITATION RESULTS

RFP No. 280-3010603-GK

Construction Manager-at-Risk (CMAR) for Facilities Security Improvements

To: All Respondents

The County of Orange is pleased to inform you of the Solicitation Results.

Respondent	Results
Swinerton Builders	2671
PCL Construction Services, Inc.	2665
AJK Communications	2397

The results are subject to approval by the Board of Supervisors and are tentatively scheduled to be heard at the October 13, 2026 meeting at 9:30am. The meeting will be held in the Board Hearing Room, 1st floor, County Administration North, 400 W. Civic Center Dr., Santa Ana, California 92701. Your attendance is not required at this time.

Should you have any questions regarding this notice, please contact Gilbert Kim at gkim@ocair.com.

We appreciate your participation in our solicitation process and invite you to participate in future opportunities.

Sincerely,

Gilbert Kim, Deputy Procurement Agent

Procurement Contract Specialist

County of Orange, John Wayne Airport

gkim@ocair.com

(949) 252-5277

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basis for the Emergency Withdrawal. The holder of the security program may submit a Petition for Reconsideration under the procedures in paragraphs (b)(4) through (b)(5) of this section; however, this petition will not stay the effective date of the Emergency Withdrawal.

(c) *Service of documents for withdrawal of approval of security program proceedings.* Service may be accomplished by personal delivery, certified mail, or express courier. Documents served on the holder of a security program will be served at its official place of business as designated in its application for approval or its security program. Documents served on TSA must be served to the address noted in the Notice of Withdrawal of Approval or Withdrawal of Approval, whichever is applicable.

(1) *Certificate of service.* An individual may attach a certificate of service to a document tendered for filing. A certificate of service must consist of a statement, dated and signed by the person filing the document, that the document was personally delivered, served by certified mail on a specific date, or served by express courier on a specific date.

(2) *Date of service.* The date of service is—

- (i) The date of personal delivery;
- (ii) If served by certified mail, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark; or
- (iii) If served by express courier, the service date shown on the certificate of service, or by other evidence if there is no certificate of service.

(d) *Extension of time.* TSA may grant an extension of time to the limits set forth in this section for good cause shown. A security program holder must submit a request for an extension of time in writing, and TSA must receive it at least two days before the due date in order to be considered. TSA may grant itself an extension of time for good cause.

§ 1540.303 [Reserved]

PART 1542—AIRPORT SECURITY

Subpart A—General

- Sec.
- 1542.1 Applicability of this part.
- 1542.3 Airport security coordinator.
- 1542.5 [Reserved]

Subpart B—Airport Security Program

- 1542.101 General requirements.
- 1542.103 Content.
- 1542.105 Approval and amendments.
- 1542.103 Changed conditions affecting security.
- 1542.109 Alternate means of compliance.
- 1542.111 Exclusive area agreements.
- 1542.113 Airport tenant security programs.

Subpart C—Operations

- 1542.201 Security of the secured area.
- 1542.203 Security of the air operations area (AOA).
- 1542.205 Security of the security identification display area (SIDA).
- 1542.207 Access control systems.
- 1542.209 Fingerprint-based criminal history records checks (CHRC).
- 1542.211 Identification systems.
- 1542.213 Training.
- 1542.215 Law enforcement support.
- 1542.217 Law enforcement personnel.
- 1542.219 Supplementing law enforcement personnel.
- 1542.221 Records of law enforcement response.

Subpart D—Contingency Measures

- 1542.301 Contingency plan.
- 1542.303 Security Directives and Information Circulars.
- 1542.305 Public advisories.
- 1542.307 Incident management.

AUTHORITY: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44913–44914, 44916–44917, 44935–44936, 44942, 46105.

SOURCE: 67 FR 8355, Feb. 22, 2002, unless otherwise noted.

Subpart A—General

§ 1542.1 Applicability of this part.

This part describes aviation security rules governing:

- (a) The operation of airports regularly serving aircraft operations required to be under a security program under part 1544 of this chapter, as described in this part.

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(b) The operation of airport regularly serving foreign air carrier operations required to be under a security program under part 1546 of this chapter, as described in this part.

(c) Each airport operator that receives a Security Directive or Information Circular and each person who receives information from a Security Directive or Information Circular issued by the Designated official for Civil Aviation Security.

(d) Each airport operator that does not have a security program under this part that serves an aircraft operator operating under a security program under part 1544 of this chapter, or a foreign air carrier operating under a security program under part 1546 of this chapter. Such airport operators must comply with § 1542.5(e).

[67 FR 8355, Feb. 22, 2002, as amended at 71 FR 30509, May 26, 2006]

§ 1542.3 Airport security coordinator.

(a) Each airport operator must designate one or more Airport Security Coordinator(s) (ASC) in its security program.

(b) The airport operator must ensure that one or more ASCs:

(1) Serve as the airport operator's primary and immediate contact for security-related activities and communications with TSA. Any individual designated as an ASC may perform other duties in addition to those described in this paragraph (b).

(2) Is available to TSA on a 24-hour basis.

(3) Review with sufficient frequency all security-related functions to ensure that all are effective and in compliance with this part, its security program, and applicable Security Directives.

(4) Immediately initiate corrective action for any instance of non-compliance with this part, its security program, and applicable Security Directives.

(5) Review and control the results of employment history, verification, and criminal history records checks required under § 1542.209.

(6) Serve as the contact to receive notification from individuals applying for unescorted access of their intent to seek correction of their criminal history record with the FBI.

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(c) After July 17, 2003, no airport operator may use, nor may it designate any person as, an ASC unless that individual has completed subject matter training, as specified in its security program, to prepare the individual to assume the duties of the position. The airport operator must maintain ASC training documentation until at least 180 days after the withdrawal of an individual's designation as an ASC.

(d) An individual's satisfactory completion of initial ASC training required under paragraph (c) of this section satisfies that requirement for all future ASC designations for that individual, except for site specific information, unless there has been a two or more year break in service as an active and designated ASC.

§ 1542.5 [Reserved]**Subpart B—Airport Security Program****§ 1542.101 General requirements.**

(a) No person may operate an airport subject to § 1542.103 unless it adopts and carries out a security program that—

(1) Provides for the safety and security of persons and property on an aircraft operating in air transportation or intrastate air transportation against an act of criminal violence, aircraft piracy, and the introduction of an unauthorized weapon, explosive, or incendiary onto an aircraft;

(2) Is in writing and is signed by the airport operator;

(3) Includes the applicable items listed in § 1542.103;

(4) Includes an index organized in the same subject area sequence as § 1542.103; and

(5) Has been approved by TSA.

(b) Each airport operator subject to § 1542.103 must maintain one current and complete copy of its security program and provide a copy to TSA upon request.

(c) Each airport operator subject to § 1542.103 must—

(1) Restrict the distribution, disclosure, and availability of sensitive security information (SSI), as defined in part 1520 of this chapter, to persons with a need to know; and

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(2) Refer all requests for SSI by other persons to TSA.

[67 FR 8355, Feb. 22, 2002, as amended at 71 FR 30509, May 26, 2006]

§ 1542.103 Content.

(a) *Complete program.* Except as otherwise approved by TSA, each airport operator regularly serving operations of an aircraft operator or foreign air carrier described in § 1544.101(a)(1) or § 1546.101(a) of this chapter, must include in its security program the following:

(1) The name, means of contact, duties, and training requirements of the ASC required under § 1542.3.

(2) [Reserved]

(3) A description of the secured areas, including—

(i) A description and map detailing boundaries and pertinent features;

(ii) Each activity or entity on, or adjacent to, a secured area that affects security;

(iii) Measures used to perform the access control functions required under § 1542.201(b)(1);

(iv) Procedures to control movement within the secured area, including identification media required under § 1542.201(b)(3); and

(v) A description of the notification signs required under § 1542.201(b)(6).

(4) A description of the AOA, including—

(i) A description and map detailing boundaries, and pertinent features;

(ii) Each activity or entity on, or adjacent to, an AOA that affects security;

(iii) Measures used to perform the access control functions required under § 1542.203(b)(1);

(iv) Measures to control movement within the AOA, including identification media as appropriate; and

(v) A description of the notification signs required under § 1542.203(b)(4).

(5) A description of the SIDA's, including—

(i) A description and map detailing boundaries and pertinent features; and

(ii) Each activity or entity on, or adjacent to, a SIDA.

(6) A description of the sterile areas, including—

(i) A diagram with dimensions detailing boundaries and pertinent features;

(ii) Access controls to be used when the passenger-screening checkpoint is non-operational and the entity responsible for that access control; and

(iii) Measures used to control access as specified in § 1542.207.

(7) Procedures used to comply with § 1542.209 regarding fingerprint-based criminal history records checks.

(8) A description of the personnel identification systems as described in § 1542.211.

(9) Escort procedures in accordance with § 1542.211(e).

(10) Challenge procedures in accordance with § 1542.211(d).

(11) Training programs required under §§ 1542.213 and 1542.217(c)(2), if applicable.

(12) A description of law enforcement support used to comply with § 1542.215(a).

(13) A system for maintaining the records described in § 1542.221.

(14) The procedures and a description of facilities and equipment used to support TSA inspection of individuals and property, and aircraft operator or foreign air carrier screening functions of parts 1544 and 1546 of this chapter.

(15) A contingency plan required under § 1542.301.

(16) Procedures for the distribution, storage, and disposal of security programs, Security Directives, Information Circulars, implementing instructions, and, as appropriate, classified information.

(17) Procedures for posting of public advisories as specified in § 1542.305.

(18) Incident management procedures used to comply with § 1542.307.

(19) Alternate security procedures, if any, that the airport operator intends to use in the event of natural disasters, and other emergency or unusual conditions.

(20) Each exclusive area agreement as specified in § 1542.111.

(21) Each airport tenant security program as specified in § 1542.113.

(b) *Supporting program.* Except as otherwise approved by TSA, each airport regularly serving operations of an aircraft operator or foreign air carrier described in § 1544.101(a)(2) or (f), or § 1546.101(b) or (c) of this chapter, must include in its security program a description of the following:

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(1) Name, means of contact, duties, and training requirements of the ASC, as required under § 1542.3.

(2) A description of the law enforcement support used to comply with § 1542.215(a).

(3) Training program for law enforcement personnel required under § 1542.217(c)(2), if applicable.

(4) A system for maintaining the records described in § 1542.221.

(5) The contingency plan required under § 1542.301.

(6) Procedures for the distribution, storage, and disposal of security programs, Security Directives, Information Circulars, implementing instructions, and, as appropriate, classified information.

(7) Procedures for public advisories as specified in § 1542.305.

(8) Incident management procedures used to comply with § 1542.307.

(c) *Partial program.* Except as otherwise approved by TSA, each airport regularly serving operations of an aircraft operator or foreign air carrier described in § 1544.101(b) or § 1546.101(d) of this chapter, must include in its security program a description of the following:

(1) Name, means of contact, duties, and training requirements of the ASC as required under § 1542.3.

(2) A description of the law enforcement support used to comply with § 1542.215(b).

(3) Training program for law enforcement personnel required under § 1542.217(c)(2), if applicable.

(4) A system for maintaining the records described in § 1542.221.

(5) Procedures for the distribution, storage, and disposal of security programs, Security Directives, Information Circulars, implementing instructions, and, as appropriate, classified information.

(6) Procedures for public advisories as specified in § 1542.305.

(7) Incident management procedures used to comply with § 1542.307.

(d) *Use of appendices.* The airport operator may comply with paragraphs (a), (b), and (c) of this section by including in its security program, as an appendix, any document that contains the information required by paragraphs (a), (b), and (c) of this section. The ap-

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pendix must be referenced in the corresponding section(s) of the security program.

§ 1542.105 Approval and amendments.

(a) *Initial approval of security program.* Unless otherwise authorized by the designated official, each airport operator required to have a security program under this part must submit its initial proposed security program to the designated official for approval at least 90 days before the date any aircraft operator or foreign air carrier required to have a security program under part 1544 or part 1546 of this chapter is expected to begin operations. Such requests will be processed as follows:

(1) The designated official, within 30 days after receiving the proposed security program, will either approve the program or give the airport operator written notice to modify the program to comply with the applicable requirements of this part.

(2) The airport operator may either submit a modified security program to the designated official for approval, or petition the Administrator to reconsider the notice to modify within 30 days of receiving a notice to modify. A petition for reconsideration must be filed with the designated official.

(3) The designated official, upon receipt of a petition for reconsideration, either amends or withdraws the notice, or transmits the petition, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the designated official to withdraw or amend the notice to modify, or by affirming the notice to modify.

(b) *Amendment requested by an airport operator.* Except as provided in § 1542.103(c), an airport operator may submit a request to the designated official to amend its security program, as follows:

(1) The request for an amendment must be filed with the designated official at least 45 days before the date it proposes for the amendment to become effective, unless a shorter period is allowed by the designated official.

(2) Within 30 days after receiving a proposed amendment, the designated

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official, in writing, either approves or denies the request to amend.

(3) An amendment to a security program may be approved if the designated official determines that safety and the public interest will allow it, and the proposed amendment provides the level of security required under this part.

(4) Within 30 days after receiving a denial, the airport operator may petition the Administrator to reconsider the denial.

(5) Upon receipt of a petition for reconsideration, the designated official either approves the request to amend or transmits the petition within 30 days of receipt, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the designated official to approve the amendment or affirming the denial.

(c) *Amendment by TSA.* If safety and the public interest require an amendment, the designated official may amend a security program as follows:

(1) The designated official sends to the airport operator a notice, in writing, of the proposed amendment, fixing a period of not less than 30 days within which the airport operator may submit written information, views, and arguments on the amendment.

(2) After considering all relevant material, the designated official notifies the airport operator of any amendment adopted or rescinds the notice. If the amendment is adopted, it becomes effective not less than 30 days after the airport operator receives the notice of amendment, unless the airport operator petitions the Administrator to reconsider no later than 15 days before the effective date of the amendment. The airport operator must send the petition for reconsideration to the designated official. A timely petition for reconsideration stays the effective date of the amendment.

(3) Upon receipt of a petition for reconsideration, the designated official either amends or withdraws the notice, or transmits the petition, together with any pertinent information to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either di-

recting the designated official to withdraw or amend the amendment, or by affirming the amendment.

(d) *Emergency amendments.* Notwithstanding paragraph (c) of this section, if the designated official finds that there is an emergency requiring immediate action with respect to safety and security in air transportation or in air commerce that makes procedures in this section contrary to the public interest, the designated official may issue an amendment, effective without stay on the date the airport operator receives the notice of it. In such a case, the designated official must incorporate in the notice a brief statement of the reasons and findings for the amendment to be adopted. The airport operator may file a petition for reconsideration under paragraph (c) of this section; however, this does not stay the effective date of the emergency amendment.

§ 1542.107 Changed conditions affecting security.

(a) After approval of the security program, each airport operator must notify TSA when changes have occurred to the—

(1) Measures, training, area descriptions, or staffing, described in the security program;

(2) Operations of an aircraft operator or foreign air carrier that would require modifications to the security program as required under § 1542.103; or

(3) Layout or physical structure of any area under the control of the airport operator, airport tenant, aircraft operator, or foreign air carrier used to support the screening process, access, presence, or movement control functions required under part 1542, 1544, or 1546 of this chapter.

(b) Each airport operator must notify TSA no more than 6 hours after the discovery of any changed condition described in paragraph (a) of this section, or within the time specified in its security program, of the discovery of any changed condition described in paragraph (a) of this section. The airport operator must inform TSA of each interim measure being taken to maintain adequate security until an appropriate amendment to the security program is

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approved. Each interim measure must be acceptable to TSA.

(c) For changed conditions expected to be less than 60 days duration, each airport operator must forward the information required in paragraph (b) of this section in writing to TSA within 72 hours of the original notification of the change condition(s). TSA will notify the airport operator of the disposition of the notification in writing. If approved by TSA, this written notification becomes a part of the airport security program for the duration of the changed condition(s).

(d) For changed conditions expected to be 60 days or more duration, each airport operator must forward the information required in paragraph (b) of this section in the form of a proposed amendment to the airport operator's security program, as required under § 1542.105. The request for an amendment must be made within 30 days of the discovery of the changed condition(s). TSA will respond to the request in accordance with § 1542.105.

§ 1542.109 Alternate means of compliance.

If in TSA's judgment, the overall safety and security of the airport, and aircraft operator or foreign air carrier operations are not diminished, TSA may approve a security program that provides for the use of alternate measures. Such a program may be considered only for an operator of an airport at which service by aircraft operators or foreign air carriers under part 1544 or 1546 of this chapter is determined by TSA to be seasonal or infrequent.

§ 1542.111 Exclusive area agreements.

(a) TSA may approve an amendment to an airport security program under which an aircraft operator or foreign air carrier that has a security program under part 1544 or 1546 of this chapter assumes responsibility for specified security measures for all or portions of the secured area, AOA, or SIDA, including access points, as provided in § 1542.201, § 1542.203, or § 1542.205. The assumption of responsibility must be exclusive to one aircraft operator or foreign air carrier, and shared responsibility among aircraft operators or for-

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foreign air carriers is not permitted for an exclusive area.

(b) An exclusive area agreement must be in writing, signed by the airport operator and aircraft operator or foreign air carrier, and maintained in the airport security program. This agreement must contain the following:

(1) A description, a map, and, where appropriate, a diagram of the boundaries and pertinent features of each area, including individual access points, over which the aircraft operator or foreign air carrier will exercise exclusive security responsibility.

(2) A description of the measures used by the aircraft operator or foreign air carrier to comply with § 1542.201, § 1542.203, or § 1542.205, as appropriate.

(3) Procedures by which the aircraft operator or foreign air carrier will immediately notify the airport operator and provide for alternative security measures when there are changed conditions as described in § 1542.103(a).

(c) Any exclusive area agreements in effect on November 14, 2001, must meet the requirements of this section and § 1544.227 no later than November 14, 2002.

§ 1542.113 Airport tenant security programs.

(a) TSA may approve an airport tenant security program as follows:

(1) The tenant must assume responsibility for specified security measures of the secured area, AOA, or SIDA as provided in §§ 1542.201, 1542.203, and 1542.205.

(2) The tenant may not assume responsibility for law enforcement support under § 1542.215.

(3) The tenant must assume the responsibility within the tenant's leased areas or areas designated for the tenant's exclusive use. A tenant may not assume responsibility under a tenant security program for the airport passenger terminal.

(4) Responsibility must be exclusive to one tenant, and shared responsibility among tenants is not permitted.

(5) TSA must find that the tenant is able and willing to carry out the airport tenant security program.

(b) An airport tenant security program must be in writing, signed by the

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airport operator and the airport tenant, and maintained in the airport security program. The airport tenant security program must include the following:

(1) A description and a map of the boundaries and pertinent features of each area over which the airport tenant will exercise security responsibilities.

(2) A description of the measures the airport tenant has assumed.

(3) Measures by which the airport operator will monitor and audit the tenant's compliance with the security program.

(4) Monetary and other penalties to which the tenant may be subject if it fails to carry out the airport tenant security program.

(5) Circumstances under which the airport operator will terminate the airport tenant security program for cause.

(6) A provision acknowledging that the tenant is subject to inspection by TSA in accordance with § 1542.5.

(7) A provision acknowledging that individuals who carry out the tenant security program are contracted to or acting for the airport operator and are required to protect sensitive information in accordance with part 1520 of this chapter, and may be subject to civil penalties for failing to protect sensitive security information.

(8) Procedures by which the tenant will immediately notify the airport operator of and provide for alternative security measures for changed conditions as described in § 1542.103(a).

(c) If TSA has approved an airport tenant security program, the airport operator may not be found to be in violation of a requirement of this part in any case in which the airport operator demonstrates that:

(1) The tenant or an employee, permittee, or invitee of the tenant, is responsible for such violation; and

(2) The airport operator has complied with all measures in its security program to ensure the tenant has complied with the airport tenant security program.

(d) TSA may amend or terminate an airport tenant security program in accordance with § 1542.105.

Subpart C—Operations

§ 1542.201 Security of the secured area.

(a) Each airport operator required to have a security program under § 1542.103(a) must establish at least one secured area.

(b) Each airport operator required to establish a secured area must prevent and detect the unauthorized entry, presence, and movement of individuals and ground vehicles into and within the secured area by doing the following:

(1) Establish and carry out measures for controlling entry to secured areas of the airport in accordance with § 1542.207.

(2) Provide for detection of, and response to, each unauthorized presence or movement in, or attempted entry to, the secured area by an individual whose access is not authorized in accordance with its security program.

(3) Establish and carry out a personnel identification system described under § 1542.211.

(4) Subject each individual to employment history verification as described in § 1542.209 before authorizing unescorted access to a secured area.

(5) Train each individual before granting unescorted access to the secured area, as required in § 1542.213(b).

(6) Post signs at secured area access points and on the perimeter that provide warning of the prohibition against unauthorized entry. Signs must be posted by each airport operator in accordance with its security program not later than November 14, 2003.

§ 1542.203 Security of the air operations area (AOA).

(a) Each airport operator required to have a security program under § 1542.103(a) must establish an AOA, unless the entire area is designated as a secured area.

(b) Each airport operator required to establish an AOA must prevent and detect the unauthorized entry, presence, and movement of individuals and ground vehicles into or within the AOA by doing the following:

(1) Establish and carry out measures for controlling entry to the AOA of the airport in accordance with § 1542.207.

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(2) Provide for detection of, and response to, each unauthorized presence or movement in, or attempted entry to, the AOA by an individual whose access is not authorized in accordance with its security program.

(3) Provide security information as described in §1542.213(c) to each individual with unescorted access to the AOA.

(4) Post signs on AOA access points and perimeters that provide warning of the prohibition against unauthorized entry to the AOA. Signs must be posted by each airport operator in accordance with its security program not later than November 14, 2003.

(5) If approved by TSA, the airport operator may designate all or portions of its AOA as a SIDA, or may use another personnel identification system, as part of its means of meeting the requirements of this section. If it uses another personnel identification system, the media must be clearly distinguishable from those used in the secured area and SIDA.

§ 1542.205 Security of the security identification display area (SIDA).

(a) Each airport operator required to have a complete program under §1542.103(a) must establish at least one SIDA, as follows:

(1) Each secured area must be a SIDA.

(2) Each part of the air operations area that is regularly used to load cargo on, or unload cargo from, an aircraft that is operated under a full program or a full all-cargo program as provided in §1544.101(a) or (h) of this chapter, or a foreign air carrier under a security program as provided in §1546.101(a), (b), or (e), must be a SIDA.

(3) Each area on an airport where cargo is present after an aircraft operator operating under a full program or a full all-cargo program under §1544.101(a) or (h) of this chapter, or a foreign air carrier operating under a security program under §1546.101(a), (b), or (e) of this chapter, or an indirect air carrier, accepts it must be a SIDA. This includes areas such as: Cargo facilities; loading and unloading vehicle docks; and areas where an aircraft operator, foreign air carrier, or indirect air carrier sorts, stores, stages, con-

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solidates, processes, screens, or transfers cargo.

(4) Other areas of the airport may be SIDs.

(b) Each airport operator required to establish a SIDA must establish and carry out measures to prevent the unauthorized presence and movement of individuals in the SIDA and must do the following:

(1) Establish and carry out a personnel identification system described under §1542.211.

(2) Subject each individual to a criminal history records check as described in §1542.209 before authorizing unescorted access to the SIDA.

(3) Train each individual before granting unescorted access to the SIDA, as required in §1542.213(b).

(c) An airport operator that is not required to have a complete program under §1542.103(a) is not required to establish a SIDA under this section.

[67 FR 8355, Feb. 22, 2002, as amended at 71 FR 30509, May 26, 2006]

§ 1542.207 Access control systems.

(a) *Secured area.* Except as provided in paragraph (b) of this section, the measures for controlling entry to the secured area required under §1542.201(b)(1) must—

(1) Ensure that only those individuals authorized to have unescorted access to the secured area are able to gain entry;

(2) Ensure that an individual is immediately denied entry to a secured area when that person's access authority for that area is withdrawn; and

(3) Provide a means to differentiate between individuals authorized to have access to an entire secured area and individuals authorized access to only a particular portion of a secured area.

(b) *Alternative systems.* TSA may approve an amendment to a security program that provides alternative measures that provide an overall level of security equal to that which would be provided by the measures described in paragraph (a) of this section.

(c) *Air operations area.* The measures for controlling entry to the AOA required under §1542.203(b)(1) must incorporate accountability procedures to maintain their integrity.

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(d) *Secondary access media.* An airport operator may issue a second access medium to an individual who has unescorted access to secured areas or the AOA, but is temporarily not in possession of the original access medium, if the airport operator follows measures and procedures in the security program that—

(1) Verifies the authorization of the individual to have unescorted access to secured areas or AOAs;

(2) Restricts the time period of entry with the second access medium;

(3) Retrieves the second access medium when expired;

(4) Deactivates or invalidates the original access medium until the individual returns the second access medium; and

(5) Provides that any second access media that is also used as identification media meet the criteria of § 1542.211(b).

§ 1542.209 Fingerprint-based criminal history records checks (CHRC).

(a) *Scope.* The following persons are within the scope of this section—

(1) Each airport operator and airport user.

(2) Each individual currently having unescorted access to a SIDA, and each individual with authority to authorize others to have unescorted access to a SIDA (referred to as unescorted access authority).

(3) Each individual seeking unescorted access authority.

(4) Each airport user and aircraft operator making a certification to an airport operator pursuant to paragraph (n) of this section, or 14 CFR 108.31(n) in effect prior to November 14, 2001 (see 14 CFR Parts 60 to 139 revised as of January 1, 2001). An airport user, for the purposes of this section only, is any person other than an aircraft operator subject to § 1544.229 of this chapter making a certification under this section.

(b) *Individuals seeking unescorted access authority.* Except as provided in paragraph (m) of this section, each airport operator must ensure that no individual is granted unescorted access authority unless the individual has undergone a fingerprint-based CHRC that does not disclose that he or she has a

disqualifying criminal offense, as described in paragraph (d) of this section.

(c) *Individuals who have not had a CHRC.* (1) Except as provided in paragraph (m) of this section, each airport operator must ensure that after December 6, 2002, no individual retains unescorted access authority, unless the airport operator has obtained and submitted a fingerprint under this part.

(2) When a CHRC discloses a disqualifying criminal offense for which the conviction or finding of not guilty by reason of insanity was on or after December 6, 1991, the airport operator must immediately suspend that individual's authority.

(d) *Disqualifying criminal offenses.* An individual has a disqualifying criminal offense if the individual has been convicted, or found not guilty of by reason of insanity, of any of the disqualifying crimes listed in this paragraph (d) in any jurisdiction during the 10 years before the date of the individual's application for unescorted access authority, or while the individual has unescorted access authority. The disqualifying criminal offenses are as follows—

(1) Forgery of certificates, false marking of aircraft, and other aircraft registration violation; 49 U.S.C. 46306.

(2) Interference with air navigation; 49 U.S.C. 46308.

(3) Improper transportation of a hazardous material; 49 U.S.C. 46312.

(4) Aircraft piracy; 49 U.S.C. 46502.

(5) Interference with flight crew members or flight attendants; 49 U.S.C. 46504.

(6) Commission of certain crimes aboard aircraft in flight; 49 U.S.C. 46506.

(7) Carrying a weapon or explosive aboard aircraft; 49 U.S.C. 46505.

(8) Conveying false information and threats; 49 U.S.C. 46507.

(9) Aircraft piracy outside the special aircraft jurisdiction of the United States; 49 U.S.C. 46502(b).

(10) Lighting violations involving transporting controlled substances; 49 U.S.C. 46315.

(11) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements; 49 U.S.C. 46314.

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(12) Destruction of an aircraft or aircraft facility; 18 U.S.C. 32.

(13) Murder.

(14) Assault with intent to murder.

(15) Espionage.

(16) Sedition.

(17) Kidnapping or hostage taking.

(18) Treason.

(19) Rape or aggravated sexual abuse.

(20) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon.

(21) Extortion.

(22) Armed or felony unarmed robbery.

(23) Distribution of, or intent to distribute, a controlled substance.

(24) Felony arson.

(25) Felony involving a threat.

(26) Felony involving—

(i) Willful destruction of property;

(ii) Importation or manufacture of a controlled substance;

(iii) Burglary;

(iv) Theft;

(v) Dishonesty, fraud, or misrepresentation;

(vi) Possession or distribution of stolen property;

(vii) Aggravated assault;

(viii) Bribery; or

(ix) Illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than 1 year.

(27) Violence at international airports; 18 U.S.C. 37.

(28) Conspiracy or attempt to commit any of the criminal acts listed in this paragraph (d).

(e) *Fingerprint application and processing.* (1) At the time of fingerprinting, the airport operator must provide the individual to be fingerprinted a fingerprint application that includes only the following—

(i) The disqualifying criminal offenses described in paragraph (d) of this section.

(ii) A statement that the individual signing the application does not have a disqualifying criminal offense.

(iii) A statement informing the individual that Federal regulations under 49 CFR 1542.209 (1) impose a continuing obligation to disclose to the airport operator within 24 hours if he or she is convicted of any disqualifying criminal offense that occurs while he or she has

unescorted access authority. After February 17, 2002, the airport operator may use statements that have already been printed referring to 14 CFR 107.209 until stocks of such statements are used up.

(iv) A statement reading, “The information I have provided on this application is true, complete, and correct to the best of my knowledge and belief and is provided in good faith. I understand that a knowing and willful false statement on this application can be punished by fine or imprisonment or both. (See section 1001 of Title 18 United States Code.)”

(v) A line for the printed name of the individual.

(vi) A line for the individual’s signature and date of signature.

(2) Each individual must complete and sign the application prior to submitting his or her fingerprints.

(3) The airport operator must verify the identity of the individual through two forms of identification prior to fingerprinting, and ensure that the printed name on the fingerprint application is legible. At least one of the two forms of identification must have been issued by a government authority, and at least one must include a photo.

(4) The airport operator must advise the individual that:

(i) A copy of the criminal record received from the FBI will be provided to the individual, if requested by the individual in writing; and

(ii) The ASC is the individual’s point of contact if he or she has questions about the results of the CHRC.

(5) The airport operator must collect, control, and process one set of legible and classifiable fingerprints under direct observation of the airport operator or a law enforcement officer.

(6) Fingerprints may be obtained and processed electronically, or recorded on fingerprint cards approved by the FBI and distributed by TSA for that purpose.

(7) The fingerprint submission must be forwarded to TSA in the manner specified by TSA.

(f) *Fingerprinting fees.* Airport operators must pay for all fingerprints in a form and manner approved by TSA. The payment must be made at the designated rate (available from the local

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TSA security office) for each set of fingerprints submitted. Information about payment options is available though the designated TSA headquarters point of contact. Individual personal checks are not acceptable.

(g) *Determination of arrest status.* (1) When a CHRC on an individual seeking unescorted access authority discloses an arrest for any disqualifying criminal offense listed in paragraph (d) of this section without indicating a disposition, the airport operator must determine, after investigation, that the arrest did not result in a disqualifying offense before granting that authority. If there is no disposition, or if the disposition did not result in a conviction or in a finding of not guilty by reason of insanity of one of the offenses listed in paragraph (d) of this section, the individual is not disqualified under this section.

(2) When a CHRC on an individual with unescorted access authority discloses an arrest for any disqualifying criminal offense without indicating a disposition, the airport operator must suspend the individual's unescorted access authority not later than 45 days after obtaining the CHRC unless the airport operator determines, after investigation, that the arrest did not result in a disqualifying criminal offense. If there is no disposition, or if the disposition did not result in a conviction or in a finding of not guilty by reason of insanity of one of the offenses listed in paragraph (d) of this section, the individual is not disqualified under this section.

(3) The airport operator may only make the determinations required in paragraphs (g)(1) and (g)(2) of this section for individuals for whom it is issuing, or has issued, unescorted access authority, and who are not covered by a certification from an aircraft operator under paragraph (n) of this section. The airport operator may not make determinations for individuals described in § 1544.229 of this chapter.

(h) *Correction of FBI records and notification of disqualification.* (1) Before making a final decision to deny unescorted access authority to an individual described in paragraph (b) of this section, the airport operator must advise him or her that the FBI criminal

record discloses information that would disqualify him or her from receiving or retaining unescorted access authority and provide the individual with a copy of the FBI record if he or she requests it.

(2) The airport operator must notify an individual that a final decision has been made to grant or deny unescorted access authority.

(3) Immediately following the suspension of unescorted access authority of an individual, the airport operator must advise him or her that the FBI criminal record discloses information that disqualifies him or her from retaining unescorted access authority and provide the individual with a copy of the FBI record if he or she requests it.

(i) *Corrective action by the individual.* The individual may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in his or her record, subject to the following conditions—

(1) For an individual seeking unescorted access authority on or after December 6, 2001, the following applies:

(i) Within 30 days after being advised that the criminal record received from the FBI discloses a disqualifying criminal offense, the individual must notify the airport operator in writing of his or her intent to correct any information he or she believes to be inaccurate. The airport operator must obtain a copy, or accept a copy from the individual, of the revised FBI record, or a certified true copy of the information from the appropriate court, prior to granting unescorted access authority.

(ii) If no notification, as described in paragraph (h)(1) of this section, is received within 30 days, the airport operator may make a final determination to deny unescorted access authority.

(2) For an individual with unescorted access authority before December 6, 2001, the following applies: Within 30 days after being advised of suspension because the criminal record received from the FBI discloses a disqualifying criminal offense, the individual must notify the airport operator in writing

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of his or her intent to correct any information he or she believes to be inaccurate. The airport operator must obtain a copy, or accept a copy from the individual, of the revised FBI record, or a certified true copy of the information from the appropriate court, prior to reinstating unescorted access authority.

(j) *Limits on dissemination of results.* Criminal record information provided by the FBI may be used only to carry out this section and §1544.229 of this chapter. No person may disseminate the results of a CHRC to anyone other than:

(1) The individual to whom the record pertains, or that individual's authorized representative.

(2) Officials of other airport operators who are determining whether to grant unescorted access to the individual under this part.

(3) Aircraft operators who are determining whether to grant unescorted access to the individual or authorize the individual to perform screening functions under part 1544 of this chapter.

(4) Others designated by TSA.

(k) *Recordkeeping.* The airport operator must maintain the following information associated with an individual's current identification (ID) media in electronic or paper form, as authorized by TSA:

(1) *Fingerprint application.* Except when the airport operator has received a certification under paragraph (n) of this section, the airport operator must physically maintain, control, and, as appropriate, destroy the fingerprint application and the criminal record. Only direct airport operator employees may carry out the responsibility for maintaining, controlling, and destroying criminal records.

(2) *Certifications.* The airport operator must maintain the certifications provided under paragraph (n) of this section.

(3) *Protection of records.* The records required by this section must be maintained in a manner that is acceptable to TSA and in a manner that protects the confidentiality of the individual.

(4) *Duration.* The records identified in this section with regard to an individual must be maintained until 180 days after the termination of the indi-

vidual's unescorted access authority. When files are no longer maintained, the criminal record must be destroyed.

(1) *Continuing responsibilities.* (1) Each individual with unescorted access authority on December 6, 2001, who had a disqualifying criminal offense in paragraph (d) of this section on or after December 6, 1991, must, by January 7, 2002, report the conviction to the airport operator and surrender the SIDA access medium to the issuer.

(2) Each individual with unescorted access authority who has a disqualifying criminal offense must report the offense to the airport operator and surrender the SIDA access medium to the issuer within 24 hours of the conviction or the finding of not guilty by reason of insanity.

(3) If information becomes available to the airport operator or the airport user indicating that an individual with unescorted access authority has a disqualifying criminal offense, the airport operator must determine the status of the conviction. If a disqualifying offense is confirmed the airport operator must immediately revoke any unescorted access authority.

(m) *Exceptions.* Notwithstanding the requirements of this section, an airport operator must authorize the following individuals to have unescorted access authority:

(1) An employee of the Federal, state, or local government (including a law enforcement officer) who, as a condition of employment, has been subjected to an employment investigation that includes a criminal records check.

(2) Notwithstanding the requirements of this section, an airport operator may authorize the following individuals to have unescorted access authority:

(i) An individual who has been continuously employed in a position requiring unescorted access authority by another airport operator, airport user, or aircraft operator, or contractor to such an entity, provided the grant for his or her unescorted access authority was based upon a fingerprint-based CHRC through TSA or FAA.

(ii) An individual who has been continuously employed by an aircraft operator or aircraft operator contractor, in a position with authority to perform

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screening functions, provided the grant for his or her authority to perform screening functions was based upon a fingerprint-based CHRC through TSA or FAA.

(n) *Certifications by aircraft operators.* An airport operator is in compliance with its obligation under paragraph (b) or (c) of this section when the airport operator accepts, for each individual seeking unescorted access authority, certification from an aircraft operator subject to part 1544 of this chapter indicating it has complied with § 1544.229 of this chapter for the aircraft operator's employees and contractors seeking unescorted access authority. If the airport operator accepts a certification from the aircraft operator, the airport operator may not require the aircraft operator to provide a copy of the CHRC.

(o) *Airport operator responsibility.* The airport operator must—

(1) Designate the ASC, in the security program, or a direct employee if the ASC is not a direct employee, to be responsible for maintaining, controlling, and destroying the criminal record files when their maintenance is no longer required by paragraph (k) of this section.

(2) Designate the ASC, in the security program, to serve as the contact to receive notification from individuals applying for unescorted access authority of their intent to seek correction of their FBI criminal record.

(3) Audit the employment history investigations performed by the airport operator in accordance with this section and 14 CFR 107.31 in effect prior to November 14, 2001 (see 14 CFR Parts 60 through 139 revised as of January 1, 2001), and those investigations conducted by the airport users who provided certification to the airport operator. The audit program must be set forth in the airport security program.

(p) *Airport user responsibility.* (1) The airport user must report to the airport operator information, as it becomes available, that indicates an individual with unescorted access authority may have a disqualifying criminal offense.

(2) The airport user must maintain and control, in compliance with paragraph (k) of this section, the employment history investigation files for in-

vestigations conducted before December 6, 2001, unless the airport operator decides to maintain and control the employment history investigation file.

(3) The airport user must provide the airport operator with either the name or title of the individual acting as custodian of the files described in this paragraph (p), the address of the location where the files are maintained, and the phone number of that location. The airport user must provide the airport operator and TSA with access to these files.

[67 FR 8355, Feb. 22, 2002, as amended at 90 FR 3719, Jan. 15, 2025]

§ 1542.211 Identification systems.

(a) *Personnel identification system.* The personnel identification system under §§ 1542.201(b)(3) and 1542.205(b)(1) must include the following:

(1) Personnel identification media that—

(i) Convey a full-face image, full name, employer, and identification number of the individual to whom the identification medium is issued;

(ii) Indicate clearly the scope of the individual's access and movement privileges;

(iii) Indicate clearly an expiration date; and

(iv) Are of sufficient size and appearance as to be readily observable for challenge purposes.

(2) Procedures to ensure that each individual in the secured area or SIDA continuously displays the identification medium issued to that individual on the outermost garment above waist level, or is under escort.

(3) Procedures to ensure accountability through the following:

(i) Retrieving expired identification media and media of persons who no longer have unescorted access authority.

(ii) Reporting lost or stolen identification media.

(iii) Securing unissued identification media stock and supplies.

(iv) Auditing the system at a minimum of once a year or sooner, as necessary, to ensure the integrity and accountability of all identification media.

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(v) As specified in the security program, revalidate the identification system or reissue identification media if a portion of all issued, unexpired identification media are lost, stolen, or otherwise unaccounted for, including identification media that are combined with access media.

(vi) Ensure that only one identification medium is issued to an individual at a time, except for personnel who are employed with more than one company and require additional identification media to carry out employment duties. A replacement identification medium may only be issued if an individual declares in writing that the medium has been lost, stolen, or destroyed.

(b) *Temporary identification media.* Each airport operator may issue personnel identification media in accordance with its security program to persons whose duties are expected to be temporary. The temporary identification media system must include procedures and methods to—

(1) Retrieve temporary identification media;

(2) Authorize the use of a temporary media for a limited time only;

(3) Ensure that temporary media are distinct from other identification media and clearly display an expiration date; and

(4) Ensure that any identification media also being used as an access media meet the criteria of § 1542.207(d).

(c) *Airport-approved identification media.* TSA may approve an amendment to the airport security program that provides for the use of identification media meeting the criteria of this section that are issued by entities other than the airport operator, as described in the security program.

(d) *Challenge program.* Each airport operator must establish and carry out a challenge program that requires each individual who has authorized unescorted access to secured areas and SIDA's to ascertain the authority of any individual who is not displaying an identification medium authorizing the individual to be present in the area. The challenge program must include procedures to challenge individuals not displaying airport approved identification media. The procedure must—

(1) Apply uniformly in secured areas, SIDA's, and exclusive areas;

(2) Describe how to challenge an individual directly or report any individual not visibly displaying an authorized identification medium, including procedures to notify the appropriate authority; and

(3) Describe support of challenge procedures, including law enforcement and any other responses to reports of individuals not displaying authorized identification media.

(e) *Escorting.* Each airport operator must establish and implement procedures for escorting individuals who do not have unescorted access authority to a secured area or SIDA that—

(1) Ensure that only individuals with unescorted access authority are permitted to escort;

(2) Ensure that the escorted individuals are continuously accompanied or monitored while within the secured area or SIDA in a manner sufficient to identify whether the escorted individual is engaged in activities other than those for which escorted access was granted, and to take action in accordance with the airport security program;

(3) Identify what action is to be taken by the escort, or other authorized individual, should individuals under escort engage in activities other than those for which access was granted;

(4) Prescribe law enforcement support for escort procedures; and

(5) Ensure that individuals escorted into a sterile area without being screened under § 1544.201 of this chapter remain under escort until they exit the sterile area, or submit to screening pursuant to § 1544.201 or § 1546.201 of this chapter.

(f) *Effective date.* The identification systems described in this section must be implemented by each airport operator not later than November 14, 2003.

§ 1542.213 Training.

(a) Each airport operator must ensure that individuals performing security-related functions for the airport operator are briefed on the provisions of this part, Security Directives, and Information Circulars, and the security

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program, to the extent that such individuals need to know in order to perform their duties.

(b) An airport operator may not authorize any individual unescorted access to the secured area or SIDA, except as provided in §1542.5, unless that individual has successfully completed training in accordance with TSA-approved curriculum specified in the security program. This curriculum must detail the methods of instruction, provide attendees with an opportunity to ask questions, and include at least the following topics—

(1) The unescorted access authority of the individual to enter and be present in various areas of the airport;

(2) Control, use, and display of airport-approved access and identification media;

(3) Escort and challenge procedures and the law enforcement support for these procedures;

(4) Security responsibilities as specified in §1540.105;

(5) Restrictions on divulging sensitive security information as described in part 1520 of this chapter; and

(6) Any other topics specified in the security program.

(c) An airport operator may not authorize any individual unescorted access to the AOA, except as provided in §1542.5, unless that individual has been provided information in accordance with the security program, including—

(1) The unescorted access authority of the individual to enter and be present in various areas of the airport;

(2) Control, use, and display of airport-approved access and identification media, if appropriate;

(3) Escort and challenge procedures and the law enforcement support for these procedures, where applicable;

(4) Security responsibilities as specified in §1540.105;

(5) Restrictions on divulging sensitive security information as described in part 1520 of this chapter; and

(6) Any other topics specified in the security program.

(d) Each airport operator must maintain a record of all training and information given to each individual under paragraphs (b) and (c) of this section for 180 days after the termination of

that person's unescorted access authority.

(e) As to persons with unescorted access to the SIDA on November 14, 2001, training on responsibility under §1540.105 can be provided by making relevant security information available.

(f) Training described in paragraph (c) of this section must be implemented by each airport operator not later than November 14, 2002.

§ 1542.215 Law enforcement support.

(a) In accordance with §1542.217, each airport operator required to have a security program under §1542.103(a) or (b) must provide:

(1) Law enforcement personnel in the number and manner adequate to support its security program.

(2) Uniformed law enforcement personnel in the number and manner adequate to support each system for screening persons and accessible property required under part 1544 or 1546 of this chapter, except to the extent that TSA provides Federal law enforcement support for the system.

(b) Each airport required to have a security program under §1542.103(c) must ensure that:

(1) Law enforcement personnel are available and committed to respond to an incident in support of a civil aviation security program when requested by an aircraft operator or foreign air carrier that has a security program under part 1544 or 1546 of this chapter.

(2) The procedures by which to request law enforcement support are provided to each aircraft operator or foreign air carrier that has a security program under part 1544 or 1546 of this chapter.

§ 1542.217 Law enforcement personnel.

(a) Each airport operator must ensure that law enforcement personnel used to meet the requirements of §1542.215, meet the following qualifications while on duty at the airport—

(1) Have arrest authority described in paragraph (b) of this section;

(2) Are identifiable by appropriate indicia of authority;

(3) Are armed with a firearm and authorized to use it; and

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(4) Have completed a training program that meets the requirements of paragraphs (c) and (d) of this section.

(b) Each airport operator must ensure that each individual used to meet the requirements of § 1542.215 have the authority to arrest, with or without a warrant, while on duty at the airport for the following violations of the criminal laws of the State and local jurisdictions in which the airport is located—

(1) A crime committed in the presence of the individual; and

(2) A felony, when the individual has reason to believe that the suspect has committed it.

(c) The training program required by paragraph (a)(4) of this section must—

(1) Meet the training standard for law enforcement officers prescribed by either the State or local jurisdiction in which the airport is located for law enforcement officers performing comparable functions.

(2) Specify and require training standards for private law enforcement personnel acceptable to TSA, if the State and local jurisdictions in which the airport is located do not prescribe training standards for private law enforcement personnel that meets the standards in paragraph (a) of this section.

(3) Include training in—

(i) The use of firearms;

(ii) The courteous and efficient treatment of persons subject to inspection, detention, search, arrest, and other aviation security activities;

(iii) The responsibilities of law enforcement personnel under the security program; and

(iv) Any other subject TSA determines is necessary.

(d) Each airport operator must document the training program required by paragraph (a)(4) of this section and maintain documentation of training at a location specified in the security program until 180 days after the departure or removal of each person providing law enforcement support at the airport.

§ 1542.219 Supplementing law enforcement personnel.

(a) When TSA decides, after being notified by an airport operator as pre-

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scribed in this section, that not enough qualified State, local, and private law enforcement personnel are available to carry out the requirements of § 1542.215, TSA may authorize the airport operator to use, on a reimbursable basis, personnel employed by TSA, or by another department, agency, or instrumentality of the Government with the consent of the head of the department, agency, or instrumentality to supplement State, local, and private law enforcement personnel.

(b) Each request for the use of Federal personnel must be submitted to TSA and include the following information:

(1) The number of passengers enplaned at the airport during the preceding calendar year and the current calendar year as of the date of the request.

(2) The anticipated risk of criminal violence, sabotage, aircraft piracy, and other unlawful interference to civil aviation operations.

(3) A copy of that portion of the security program which describes the law enforcement support necessary to comply with § 1542.215.

(4) The availability of law enforcement personnel who meet the requirements of § 1542.217, including a description of the airport operator's efforts to obtain law enforcement support from State, local, and private agencies and the responses of those agencies.

(5) The airport operator's estimate of the number of Federal personnel needed to supplement available law enforcement personnel and the period of time for which they are needed.

(6) A statement acknowledging responsibility for providing reimbursement for the cost of providing Federal personnel.

(7) Any other information TSA considers necessary.

(c) In response to a request submitted in accordance with this section, TSA may authorize, on a reimbursable basis, the use of personnel employed by a Federal agency, with the consent of the head of that agency.

§ 1542.221 Records of law enforcement response.

(a) Each airport operator must ensure that—

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(1) A record is made of each law enforcement action taken in furtherance of this part; and

(2) The record is maintained for a minimum of 180 days.

(b) Data developed in response to paragraph (a) of this section must include at least the following, except as authorized by TSA:

(1) The number and type of weapons, explosives, or incendiaries discovered during any passenger-screening process, and the method of detection of each.

(2) The number of acts and attempted acts of aircraft piracy.

(3) The number of bomb threats received, real and simulated bombs found, and actual detonations on the airport.

(4) The number of arrests, including—

(i) Name, address, and the immediate disposition of each individual arrested;

(ii) Type of weapon, explosive, or incendiary confiscated, as appropriate; and

(iii) Identification of the aircraft operators or foreign air carriers on which the individual arrested was, or was scheduled to be, a passenger or which screened that individual, as appropriate.

Subpart D—Contingency Measures

§ 1542.301 Contingency plan.

(a) Each airport operator required to have a security program under § 1542.103(a) and (b) must adopt a contingency plan and must:

(1) Implement its contingency plan when directed by TSA.

(2) Conduct reviews and exercises of its contingency plan as specified in the security program with all persons having responsibilities under the plan.

(3) Ensure that all parties involved know their responsibilities and that all information contained in the plan is current.

(b) TSA may approve alternative implementation measures, reviews, and exercises to the contingency plan which will provide an overall level of security equal to the contingency plan under paragraph (a) of this section.

§ 1542.303 Security Directives and Information Circulars.

(a) TSA may issue an Information Circular to notify airport operators of security concerns. When TSA determines that additional security measures are necessary to respond to a threat assessment or to a specific threat against civil aviation, TSA issues a Security Directive setting forth mandatory measures.

(b) Each airport operator must comply with each Security Directive issued to the airport operator within the time prescribed in the Security Directive.

(c) Each airport operator that receives a Security Directive must—

(1) Within the time prescribed in the Security Directive, verbally acknowledge receipt of the Security Directive to TSA.

(2) Within the time prescribed in the Security Directive, specify the method by which the measures in the Security Directive have been implemented (or will be implemented, if the Security Directive is not yet effective).

(d) In the event that the airport operator is unable to implement the measures in the Security Directive, the airport operator must submit proposed alternative measures and the basis for submitting the alternative measures to TSA for approval. The airport operator must submit the proposed alternative measures within the time prescribed in the Security Directive. The airport operator must implement any alternative measures approved by TSA.

(e) Each airport operator that receives a Security Directive may comment on the Security Directive by submitting data, views, or arguments in writing to TSA. TSA may amend the Security Directive based on comments received. Submission of a comment does not delay the effective date of the Security Directive.

(f) Each airport operator that receives a Security Directive or an Information Circular and each person who receives information from a Security Directive or an Information Circular must:

(1) Restrict the availability of the Security Directive or Information Circular, and information contained in either document, to those persons with an operational need-to-know.

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(2) Refuse to release the Security Directive or Information Circular, and information contained in either document, to persons other than those who have an operational need to know without the prior written consent of TSA.

§ 1542.305 Public advisories.

When advised by TSA, each airport operator must prominently display and maintain in public areas information concerning foreign airports that, in the judgment of the Secretary of Transportation, do not maintain and administer effective security measures. This information must be posted in the manner specified in the security program and for such a period of time determined by the Secretary of Transportation.

§ 1542.307 Incident management.

(a) Each airport operator must establish procedures to evaluate bomb threats, threats of sabotage, aircraft piracy, and other unlawful interference to civil aviation operations.

(b) Immediately upon direct or referred receipt of a threat of any of the incidents described in paragraph (a) of this section, each airport operator must—

(1) Evaluate the threat in accordance with its security program;

(2) Initiate appropriate action as specified in the Airport Emergency Plan under 14 CFR 139.325; and

(3) Immediately notify TSA of acts, or suspected acts, of unlawful interference to civil aviation operations, including specific bomb threats to aircraft and airport facilities.

(c) Airport operators required to have a security program under § 1542.103(c) but not subject to 14 CFR part 139, must develop emergency response procedures to incidents of threats identified in paragraph (a) of this section.

(d) To ensure that all parties know their responsibilities and that all procedures are current, at least once every 12 calendar months each airport operator must review the procedures required in paragraphs (a) and (b) of this section with all persons having responsibilities for such procedures.

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Subpart D—Threat and Threat Response

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