

MODEL CONTRACT MA-080-TBD
PRE-CONSTRUCTION SERVICES
FOR
SANTA ANA RIVER (E01) AVIO TIDE GATES REPLACEMENT

This Contract made and entered into this by and between the Orange County Flood Control District, a body corporate and politic, hereinafter referred to as “County,” and **CONTRACTOR NAME** with a place of business at **ADDRESS**, hereinafter designated the “Construction Manager” or “CMARE,” with County and CMARE sometimes individually referred to as “Party” or collectively referred to as “Parties”.

CONTRACT

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

ARTICLE 1 – TERMS AND DEFINITIONS

1. “Addenda” means written or graphic instruments issued prior to the submittal of the GMP (hereinafter defined) Proposal(s), which clarify, correct or change the GMP Proposal(s) requirements.
2. “Allowance” means an estimated dollar amount determined jointly by the County and the CMARE that is included in the Contract for the purpose of encumbering funds to cover the cost of items which have not been specified explicitly in the Contract. Allowance items may not be completely defined when the Contract is executed but may be necessary to complete the project. Contract allowances are controlled by the County.
3. “Alternate Systems Evaluations” means alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while still delivering a quality and functional Project that meets County requirements.
4. “Amendment” means a written instrument issued after execution of the Contract Documents signed by the County and CMARE, stating their Contract upon all of the following: the addition, deletion or revision in the scope of services or Deliverables; the amount of the adjustment to the Contract Amount; the extent of the adjustment to the Contract Time; or modifications of other Contract terms.
5. “Construction Contract Time(s)” means the number of days or the dates related to the construction phase that as stated in Construction Documents applies to achievement of Substantial Completion of the Work.
6. “Construction Documents” means plans, specifications and estimates prepared by the Design Professional after correcting for permit review requirements, provided pursuant to 2.7.5 and utilized for the Guaranteed Maximum Price Proposal.
7. “Construction Fee” means the CMARE’s General Administrative & Overhead Fee (administrative costs, home office overhead and additional indirect costs) and Project, whether at the CMARE’s principal or branch offices. 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. “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. “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 design 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 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. “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. “County’s Pre-Construction 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 Pre-Construction Contingency is described in Article 4.

20. "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.
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 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 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 Engineer, exercising the degree of care, skill and judgment a professional construction manager performing similar services in Orange County, California would exercise at such time, under similar conditions. The CMARE will, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practice. The services being provided under this Contract will not alter any real property owned by the County. The CMARE will provide these services as applicable from the 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 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.
- 1.1.5 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.
- 1.1.6 The Parties understand the Orange County Flood Control District relies on County of Orange staff to carry out its duties pursuant to the Orange County Flood Control District Act, Water Code App. §§ 36-1 et seq., and County of Orange staff may request CMARE to perform services under this Contract on behalf of Orange County Flood Control District.

2.2 PROJECT MANAGEMENT PLAN

- 2.2.1 If requested by the County, the CMARE will prepare and/or maintain a Project Management Plan (CMP), which may include the CMARE’s professional opinions concerning: (a) Project milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project, (b) investigations, if any, to be

undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (c) alternate strategies for fast-tracking and/or phasing the construction, (d) the number of separate subcontracts to be awarded to Subcontractors and Suppliers for the Project construction, (e) permitting strategy, (f) safety and training programs, (g) construction quality control, (h) a commissioning program, (i) the cost estimate and basis of the project, (j) a matrix summarizing each Project Team member's responsibilities and roles, (k) a utility relocation strategy, (l) construction staffing requirements, right of way, temporary construction easement (TCE), right of entry, encroachment permit strategies and requirements, and (m) reduction to environmental resources and environmental regulatory permit acquisition strategies.

- 2.2.2 The CMARE shall add detail to its previous version of the CMP as new information becomes available to keep it current throughout the design phase, so that the CMP is ready for implementation at the start of the construction phase. The update/revisions shall take into account (a) revisions in Drawings and Specifications; (b) the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the County, Design Professional or the CMARE, (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way, (d) the fast-tracking if any of the construction, or other chosen construction delivery methods, (e) the requisite number of separate bidding documents to be advertised for solicitation of subcontractors and materials suppliers, (f) the status of the procurement of long-lead time equipment (if any) and/or materials, and (g) funding issues identified by the County.

2.3 PROJECT SCHEDULE

- 2.3.1 The fundamental purpose of the "Project Schedule" is to identify, coordinate and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team to utilize that Deliverable as a basis for managing and monitoring all member's compliance with the schedule requirements of the Project. The CMARE is responsible for developing, maintaining and monitoring compliance with the "Project Schedule: on behalf of and to be used by the Project Team based on input from the other Project Team members. The Project Schedule will be consistent with the most recent revised/updated PMP. The Project Schedule will use the Critical Path Method (CPM) technique, unless required otherwise, in writing by the County. The CMARE will use scheduling software to develop the Construction Schedule that is acceptable to the County. The Construction Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Construction phasing as described below is required, the Construction Schedule will indicate milestone dates for the phases once determined.
- 2.3.2 The Construction Schedule shall include a CPM diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.
- 2.3.2.1 The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CMP diagram shall be presented in a time scaled graphical format for the Project as a whole.
- 2.3.2.2 The CPM diagram schedule shall indicate all relationships between activities.

- 2.3.2.3 The activities making up the schedule shall be sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.
- 2.3.2.4 The CPM diagram schedule shall be based upon activities, which would coincide with the schedule of values.
- 2.3.2.5 The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.
- 2.3.2.6 The Construction Schedule shall show milestones, including milestones for County-furnished information, and shall include activities for County-furnished equipment when those activities are interrelated with the CMARE activities.
- 2.3.3 The Construction Schedule shall consider the County's and the tenants' occupancy requirements showing portions of the Project having occupancy priority, and Contract Time, if applicable.
- 2.3.4 Float time shall be as prescribed below:
 - 2.3.4.1 The total Float within the overall schedule, is for the exclusive use of the County, and is a resource available to the County as needed to meet Contract milestones and the Project completion date.
 - 2.3.4.2 Omitted
 - 2.3.4.3 Since Float time within the schedule is solely County owned, it is acknowledged that County-caused delays on the Project may be offset by County-caused time savings (i.e., Critical Path submittals returned in less time than allowed by the Contract, approval of substitution requests and credit changes which result in savings of time to the CMARE, etc.). In such an event, the CMARE shall not be entitled to receive a time extension or delay damages until all County-caused time savings are exceeded, and the Substantial Completion date is also exceeded.
- 2.3.5 The Construction Schedule will be updated and maintained by the CMARE throughout the design phase such that it will not require major changes at the start of the construction phase to incorporate the CMARE's plan for the performance of the construction phase Work. The CMARE will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but no less often than at the monthly Project Team meetings. The CMARE will include with such submittals a narrative describing its analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.
- 2.3.6 Construction Phasing: If phased construction is deemed appropriate and the County and Design Professional approve, the CMARE will review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. The CMARE will take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.

2.4 DESIGN DOCUMENT REVIEWS

- 2.4.1 The CMARE will evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact the cost estimate, GMP Proposals and/or the Construction Schedule.
- 2.4.2 The CMARE will recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for the CMARE to construct the Project. CMARE shall make best efforts to anticipate and account for any design problems that may arise. Before initiating construction operations, the CMARE should request additional investigations as needed 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 bidability reviews of the Construction Documents as necessary to satisfy the needs of the Project Team. The reviews will attempt to identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, and coordination of Work for Subcontractors and Suppliers.
 - 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 Bidability 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 design 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 Contingency is an amount the CMARE shall use under the following conditions:

- (1) At its discretion, with Project Manager written consent which will not be unreasonably withheld, 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.
- (3) CMARE's Contingency not utilized shall be shared 50/50 by County and CMARE at the end of the Project.

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 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.

- 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 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 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 design 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 SERVICES

- 4.1.1 Based on the pre-construction 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 \$ _____

CMARE's Pre-Construction Contingency: \$ _____

County's Pre-Construction Contingency: \$ _____

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 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 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 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.

4.2.5 Omitted

4.2.6 Omitted

4.3 ADDITIONAL PRE-CONSTRUCTION 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 OC Public Works location, as well as mileage within OC Public Works 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 Administrator 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 Omitted
 - 5.2.4 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.
 - 5.2.5 Notify the CMARE of changes affecting the budget allocations or schedule.
- 5.3 The County's Project Manager will have authority to approve the Project Budget and Project Schedule and render decisions and furnish information the Project Manager deems appropriate to the CMARE. This authority is only for the purpose of facilitating the design phase. This approval authority is not binding or a commitment upon the County for the purposes of Project construction.

ARTICLE 6 – CONTRACT CONDITIONS

6.1 PROJECT DOCUMENTS AND COPYRIGHTS

- 6.1.1 County ownership of Project Documents: All work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file, and other related documents which are prepared specifically in the performance of this Contract (collectively referred to as Project Documents) are to be and remain the property of the County and are to be delivered to the County's Project Manager before the final payment is made to the CMARE. Nonetheless, in the event these Projects Documents are altered, modified or adapted without the written consent of the CMARE, which consent the CMARE will not unreasonably withhold, the County agrees to hold the CMARE harmless to the extent permitted by law, from the legal liability arising out of and or resulting from the County's alteration, modification or adaptation of the Project Documents.
- 6.1.2 Omitted
- 6.1.3 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.
- 6.1.4 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 DESIGN 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 design 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).

6.6-6.7 Omitted

6.8 TERMINATION OF CONTRACT FOR CAUSE

- 6.8.1 If CMARE breaches any of the covenants or conditions of this Contract, including an event of default, County shall have the right to terminate this Contract upon ten (10) days written notice prior to the effective day of termination.
- 6.8.2 CMARE shall have the opportunity to cure the alleged breach prior to termination.
- 6.8.3 In the event the alleged breach is not cured by CMARE prior to termination, all work performed by CMARE pursuant to this Contract, which work has been reduced to plans or other documents, shall be made available to County.

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. A-E 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.

- 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 CMARE. CMARE 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.

- 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, CEO/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	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including converge for owned or scheduled, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per accident or disease
Professional Liability	\$4,000,000 per claims made or per 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 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 at least as broad.

Required Endorsements

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

An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the County of Orange, Orange County Flood Control District, and their respective elected and appointed officials, officers, employees, and agents as Additional Insureds, or provide blanket coverage which shall state As Required by Written Contract.

A primary non-contributory endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that CMARE's insurance is primary, and any insurance or self-insurance maintained by the County shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, Orange County Flood Control District, and their elected and appointed officials, officers, employees, and agents, or provide blanket coverage which shall state As Required by Written Contract.

If the CMARE's Professional is/are a claims-made policy, CMARE shall agree to the following:

The retroactive date must be shown and must be before the date of the Contract or the beginning of the Contract services.

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.

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, CMARE must purchase an extended reporting period for a minimum of three (3) years after expiration of earlier termination of the Contract.

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.

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.

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

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

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.

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.

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 Contract may be in breach without further notice to CMARE, and County shall be entitled to all legal remedies.

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

6.16 INDEMNIFICATION

CMARE agrees to, indemnify, defend with counsel approved in writing by County, and hold the County of Orange, Orange County Flood Control District, their elected and appointed officials, officers, employees, agents and those special districts and agencies which County of Orange'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 of Orange, Orange County Flood Control District, 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 RESERVED

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, OC Public Works
 Name: TBD
 Address:
 City:
 Attn:
 Phone:
 E-mail:

cc: OC Public Works Procurement Services
 Attn: Thanh Vu, 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

- 6.37.1 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

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

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

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 CAMPAIGN CONTRIBUTION DISCLOSURE FORM

CMARE agrees to comply with Government Code Section 84308. CMARE further agrees to disclose to the 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.

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.)

**ORANGE COUNTY FLOOD CONTROL
DISTRICT**, a body corporate and politic

Date: _____

By _____

Print
Name _____

Title _____

APPROVED AS TO FORM

Office of the County Counsel
Orange County, California

By: _____
Deputy

Date: _____

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

1. Project Location

Santa Ana River Marsh Tide Gates, located along the easterly bank of the Santa Ana River in Huntington Beach, CA. The south gate is approximately 0.5 mile upstream of the river mouth; the north gate is roughly 1 mile further upstream. The site is accessed via County-maintained levee roads and paved bike/pedestrian paths.

2. Project Background

The two existing "Avio-style" mechanical level control tide gates regulate tidal exchange to maintain marsh water levels and provide flood control protection. Inspections have found corrosion, failing coatings, and damaged trash racks. Replacement of the tide gates are needed to maintain safe, reliable operation and extend service life. The project is currently in the preliminary design phase.

3. Project Description

The project is currently in the preliminary design phase, and no design plans have been developed at this time. The preliminary scope includes in-kind replacement of the existing gates with stainless steel tide gates.

Additional work may involve repair or replacement of culverts, trash racks, fencing, site structures, gate components, and potential dredging within the marsh and/or Santa Ana River to remove sediment. Construction is expected to require temporary water diversion, dewatering, and environmental protection measures to maintain flood control and meet regulatory requirements.

The CMARE is expected to provide input during design development as the scope and construction approach are further refined.

4. Schedule Considerations

Scheduling will need to consider potential constraints, many of which are still being identified during this preliminary design phase. This may include avoiding storm season (typically November–April), sequencing around rain events, high tides, and accommodating environmental work windows such as bird nesting season (March–August). Adequate time should also be allocated for long-lead items like custom gate fabrication. Construction phasing is expected to maintain operability of at least one gate at all times. The CMARE will support development of a preliminary schedule and phasing plan, which will be refined as additional constraints are confirmed throughout the design and permitting process.

5. Traffic Considerations

Construction staging will utilize existing levee roads and adjacent bike/pedestrian paths. Temporary closures or detours may be required during heavy equipment operations, material deliveries, or other construction activities. The CMARE will identify access constraints and recommend suitable site access routes, staging areas, and traffic control measures. If necessary, the CMARE will prepare traffic control plans for potential closures of trails, levee roads, or nearby roadways, in coordination with the County and applicable agencies.

6. Status of Regulatory Permits

The project will require coordination with multiple regulatory agencies, and no permit applications have been obtained at this time. Anticipated permits and approvals may include:

- USACE Section 10 or 408 Authorization
- RWQCB Section 401 Water Quality Certification or WDR
- California Coastal Commission Coastal Development Permit or exemption
- California Department of Fish and Wildlife Streambed Alteration Agreement (if applicable)
- Coordination with the City of Newport Beach and U.S. Fish and Wildlife Service

The CMARE will assist with understanding permit conditions and planning for compliance throughout the project.

7. Compliance with the California Environmental Quality Act (CEQA)

The County of Orange is the lead agency under CEQA. The project is anticipated to qualify for either a Categorical Exemption or a Mitigated Negative Declaration, as it involves the in-kind replacement of existing infrastructure with no expansion of use. The CMARE may assist in identifying construction methods, sequencing, or other strategies that support CEQA compliance and help minimize environmental impacts.

8. Water Quality

Construction will occur within and adjacent to the Santa Ana River and marsh environment. A Storm Water Pollution Prevention Plan or Erosion Sediment Chemical Control Plan will be implemented to protect water quality. Key concerns include sediment control, debris containment, dewatering discharge, and spill prevention. The CMARE may also be responsible for preparing a detailed water diversion and dewatering plan and will provide input on feasible and effective methods to achieve compliance with water quality requirements and permit conditions.

9. Status of Utility Investigation

Utility investigations are being conducted within the project area. Additional research and coordination will be performed during the pre-construction phase. The CMARE will assist in confirming utility locations, identifying potential conflicts, and recommending appropriate avoidance or protection measures as needed.

10. Status of Right-of-Way

The Avio tide gates are located within County-owned and maintained right-of-way, while the adjacent marsh is owned and managed by the U.S. Army Corps of Engineers. No additional right-of-way acquisitions are anticipated; construction activities may impact adjacent Corps property. As such, access coordination, staging areas, and temporary use of surrounding lands will require careful planning and coordination during the pre-construction phase. Any potential impacts to local jurisdictions (e.g., Caltrans) or private property will also require early coordination to minimize conflicts and secure necessary approvals.

11. Permits

The CMARE may support the development of permit compliance strategies, assist in preparing implementation plans to meet permit conditions, and coordinate with the project team to ensure environmental and regulatory obligations are incorporated into construction planning. If construction activities impact adjacent roadways, trails, or public access areas, the CMARE may also be responsible for obtaining local encroachment permits in coordination with the County and applicable agencies (e.g., Caltrans, Orange County Community Resources, City of Newport Beach, City of Costa Mesa, Banning Ranch, etc.)

12. Geotechnical

Geotechnical recommendations are currently being developed as part of the ongoing design process. While the existing concrete culverts and foundations appear to be in generally stable condition, there is a possibility that localized structural repairs or major modifications will be required to accommodate the new gate installations. The CMARE will assist with constructability reviews related to these geotechnical recommendations and may provide input on feasible repair methods as design progresses.

13. Pre-Construction Services

The CMAR will provide collaborative support throughout the design development phase. Services may include, but are not limited to:

1. Constructability reviews to identify potential challenges and improve buildability
2. Value engineering to evaluate cost-effective alternatives and improvements
3. Cost estimating and budgeting support at key design milestones
4. Procurement planning, including identification of long-lead items (e.g., custom-fabricated gates)
5. Development of construction phasing and scheduling recommendations
6. Environmental compliance planning to support CEQA and permit conditions
7. Dewatering and water diversion strategy development
8. Traffic control and site access planning
9. Risk identification, contingency planning, and mitigation strategies
10. Preparation of project schedules, work plans, and key submittals
11. Development of a comprehensive Project Management Plan
12. Participation in coordination meetings with County staff, regulatory agencies, stakeholders, and the design team

These services will inform the development of a future GMP and help ensure smooth transition to construction.

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

- Feb 2026 – Plans, Specs & Estimate 35%
- March 2026 –
 - Coastal Hazards Analysis
 - Structural Analysis for proposed gates
 - H&H Analysis for Construction Sequencing/Marsh impacts
- August 2026 - Board Award CMARE – Pre-Construction Services
- August 2026 - Plans, Specs & Estimate 65%

- October 2026 – Anticipated Construction GMP Negotiations
- October 2026 - Plans, Specs & Estimate 100%
- August-October 2027 - Acquire Agency Approvals/Regulatory Permits
- Summer/Fall 2027 - Construction (Contingent on Permits/Environmental Constraints)

ATTACHMENT B
PRE-CONSTRUCTION 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 Subconsultants.

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

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

II. SUBCONSULTANTS

COMPANY NAME & ADDRESS	CONTACT NAME & TELEPHONE NUMBER	PROJECT FUNCTION

ATTACHMENT C
PRE-CONSTRUCTION SERVICES
FEE SCHEDULE

A. FEE SCHEDULE:

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

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

B. CLASSIFICATION RATES:

CMARE	
Classification Titles	Hourly Rate

SUBCONSULTANT(S)	
Classification Titles	Hourly Rate