

*County of Orange, OC Public Works**MA-080-17011887****BNBuilders, Inc. Construction Manager at Risk (CMAR) – Mile Square Regional Park Multi-Purpose Facility*****CONTRACT NO. MA-080-17011887****DESIGN PHASE SERVICES**

This Contract, made and entered into this by and between the County of Orange, hereinafter designated the "Owner" and BNBuilders, Inc. with a place of business at 9255 Towne Center Drive, Suite 800. San Diego, CA 92121, hereinafter designated the "Construction Manager at Risk" or "CMAR."

RECITALS

The Owner intends to construct Mile Square Regional Park Multi-Purpose Facility, as described in the Scope of Work attached, hereinafter referred to as the "Project."

To undertake the design of said Project the Owner has entered into a Contract with BNBuilders, Inc. or is using its own staff, hereinafter referred to as the "Design Professional."

The CMAR has represented to the Owner the ability to provide design phase services and to construct the Project.

Based on this representation, the Owner intends to enter into a Contract with the CMAR for the design phase services identified in this Contract. At the end of the design phase, at the Owner's discretion, the Owner may enter into a separate construction Contract with the CMAR for construction phase services.

CONTRACT

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

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. "Contract" means this written document signed by the Owner and CMAR covering the design phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Contract.
3. "Allowance" means an estimated dollar amount determined jointly by the Owner and the CMAR that is included in the Contract for the purpose of encumbering funds to cover the cost of items which have not been specified explicitly in the Contract. Allowance items may not be completely defined when the Contract is executed, but may be necessary to complete the project. Contract allowances are controlled by the Owner.
4. "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 Owner requirements.

5. “Amendment” means a written instrument issued after execution of the Contract Documents signed by the Owner and CMAR, 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.
6. “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.
7. “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.
8. “Construction Fee” means the CMAR’s administrative costs, home office overhead, and profit, whether at the CMAR’s principal or branch offices.
9. “Construction Manager at Risk (CMAR)” means the firm, corporation, or other approved legal entity with whom the Owner has entered into this Contract to provide services as detailed in this Contract.
10. “Contingency (CMAR’s)” means a fund to cover cost growth during the Project used at the discretion of the CMAR usually for costs that result from Project circumstances. The amount of the CMAR’s Contingency will be negotiated as a separate line item in each GMP package. Use and management of the CMAR’s Contingency during the construction phase is described in Section 2.7.
11. “Contingency (Owner’s)” means a fund to cover cost growth during the Project used at the discretion of the Owner usually for costs that result from Owner directed changes or unforeseen site conditions. The amount of the Owner’s Contingency will be set by the Owner and will be in addition to the project costs included in the CMAR’s GMP packages. Use and management of the Owner’s Contingency during the construction phase is described in Section 2.7.
12. “Contract Amount” means the cost for Design Phase Services for this Contract as identified in Article 4.
13. “Contract Documents” means the following items and documents in descending order of precedence executed by the Owner and the CMAR: (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 CMAR in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, building permit fees (if not paid for by Owner), materials testing, and related items. The Cost of the Work shall not include the CMAR’s Construction Fee, General Conditions Cost, or taxes.

15. “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.
16. “Day” means calendar day unless otherwise specifically noted in the Contract Documents.
17. “Design Phase (Services)” means the work products prepared by the CMAR in performing the Scope of Work, attached hereto and as described in this Contract.
18. “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.
19. “Plans” means documents which visually represent the scope, extent and character of the Work to be furnished and performed by the CMAR during the construction phase and which have been prepared or approved by the Design Professional and the Owner. Includes Drawings that have reached a sufficient stage of completion and released by the Design Professional solely for the purposes of review and/or use in performing constructability or bid ability reviews and in preparing cost estimates (e.g. conceptual design Drawings, preliminary design Drawings, detailed design Drawings at 30%, 60%, 90% or 100% or schematic, design development, construction documents). Shop Drawings are not Drawings as so defined.
20. “Float” means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.
21. “General Conditions means those costs defined as General Conditions in the Construction Contract and its General Conditions as attached hereto.
22. “Guaranteed Maximum Price (GMP)” means the sum of the maximum Cost of the Work including the CMAR’s Construction Fee, General Conditions Costs, sales tax, and CMAR Contingency.
23. “Guaranteed Maximum Price (GMP) Proposal” means the offer or proposal of the CMAR submitted on the prescribed form setting forth the GMP prices for the entire Work or portions of the Work to be performed during the construction phase. The GMP Proposal(s) are to be developed pursuant to Article 2 of this Contract.
24. “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.
25. “Notice to Proceed (NTP)” means a written notice given by Owner to the CMAR fixing the date on which the CMAR will start to perform the CMAR’s obligations under this Contract.
26. “Owner” means the County of Orange, with whom CMAR has entered into this Contract and for whom the services is to be provided pursuant to said Contract.
27. “Payment Request” means the form that is accepted by the Owner and used by the CMAR in requesting progress payments or final payment and which will include such supporting documentation as is required by the Contract Documents and or the Owner.

28. "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.
29. Project Engineer: shall mean design engineer, designer, civil engineering assistant, civil engineer, or senior civil engineer who is responsible charge of preparing the engineering plans, estimate, and specifications.
30. Project Manager: An OWNER appointed project manager to act as liaison between the OWNER and the contractor, and to carry out the administration of this contract. The OWNER's project manager shall coordinate the activities of the OWNER's staff assigned to work with the CMAR. The OWNER's Project Manager shall have the right to require the removal and replacement of the CMAR project manager and key personnel. The Project Manager shall notify the CMAR in writing of such action. The CMAR shall accomplish the removal within 14 calendar days after written notice by the Project Manager. The Project Manager shall review and approve the appointment of the replacement for the CMAR'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 OWNER so long as the Project Manger's actions do not affect the legal rights and obligations of OWNER.
31. "Project Team" means design phase services team consisting of the Design Professional, CMAR, Owner Project Administrator, and other stakeholders who are responsible for making decisions regarding the Project.
32. "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.
33. "Shop Drawings" means all drawings, diagrams, schedules and other data specifically prepared for the Work by the CMAR or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
34. "Site" means the land or premises on which the Project is located.
35. "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.
36. "Sub-consultant" means a person, firm or corporation having a Contract with the CMAR to furnish services required as its independent professional associate or consultant with respect to the Project.
37. "Subcontractor" means an individual or firm having a direct Contract with the CMAR or any other individual or firm having a Contract with the aforesaid Contractors at any tier, who undertakes to perform a part of the design phase services or construction phase Work at the site for which the CMAR is responsible. Subcontractors will be selected through the Subcontractor bid process described in paragraph 2.8 of this Contract.

38. “Substantial Completion” means when the Work, or an agreed upon portion of the Work, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes. This may include, but is not limited to: (i) approval by an appropriate Fire Marshall and local authorities (Certificate of Occupancy); (ii) Elevator Permit; (iii) all systems in place, functional, and displayed to the Owner or its Project Administrator; (iv) all materials and equipment installed; (v) all systems reviewed and accepted by the Owner; (vi) draft O&M manuals and record documents reviewed and accepted by the Owner; (vii) Owner operation and maintenance training complete; (viii) HVAC test and balance completed (Provide minimum 30 days prior to projected substantial completion); (ix) landscaping and site work; and (x) final cleaning. The conditions of Substantial Completion that apply or do not apply to a specific GMP will be listed in the Notice to Proceed Letter pursuant to the Construction Phase Contract.
39. “Supplier” means a manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct Contract with CMAR or with any Sub-Contractor to furnish materials or equipment to be incorporated in the construction phase Work by CMAR or any Sub-Contractor.
40. Updated schedule: A current schedule developed from the baseline or subsequent schedule through regular monthly review to incorporate as-built progress and any planned changes.
41. Value Engineering: Alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while still delivering a quality and functional Project that meets OWNER requirements.
42. “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 DESIGN PHASE SERVICES

2.1 GENERAL

- 2.1.1 The CMAR, to further the interests of the Owner, will perform the services required by, and in accordance with this Contract, to the satisfaction of the Owner 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 CMAR 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 Owner. The CMAR will provide these services as applicable from the Design Phase through the end of the project design and GMP process.
- 2.1.2 Program Evaluation: If requested, as a participating member of the Project Team, the CMAR will provide to the Owner and Design Professional a written evaluation of the Owner’s Project and Project Budget, each in terms of the other, with recommendations as to the appropriateness of each.

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- 2.1.3 Project Meetings: The CMAR 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 CMAR will provide design phase services, described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. The CMAR will promptly notify the Owner in writing whenever the CMAR determines that any Drawings or Specifications should be revised for the Project and/or cause changes in the scope of Work requiring an adjustment in the cost estimate, Project Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.
- 2.1.5 The CMAR, when requested by the Owner, will attend, make presentations and participate as may be appropriate in public agency and or community meetings, germane to the Project. The CMAR will provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or apropos in any such public agency meetings.

2.2 CONSTRUCTION MANAGEMENT PLAN

- 2.2.1 If requested by the Owner, the CMAR will prepare and/or maintain a Construction Management Plan (CMP), which may include the CMAR's professional opinions concerning: (a) Project milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project, (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (c) alternate strategies for fast-tracking and/or phasing the construction, (d) the number of separate subcontracts to be awarded to Subcontractors and Suppliers for the Project construction, (e) permitting strategy, (f) safety and training programs, (g) construction quality control, (h) a commissioning program, (i) the cost estimate and basis of the project, and (j) a matrix summarizing each Project Team member's responsibilities and roles.
- 2.2.2 The CMAR shall add detail to its previous version of the CMP as new information becomes available to keep it current throughout the design phase, so that the CMP is ready for implementation at the start of the construction phase. The update/revisions shall take into account (a) revisions in Drawings and Specifications; (b) the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the Owner, Design Professional or the CMAR, (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way, (d) the fast-tracking if any of the construction, or other chosen construction delivery methods, (e) the requisite number of separate bidding documents to be advertised for solicitation of subcontractors and materials suppliers, (f) the status of the procurement of long-lead time equipment (if any) and/or materials, and (g) funding issues identified by the Owner.

2.3 CONSTRUCTION SCHEDULE

- 2.3.1 The fundamental purpose of the "Construction Schedule" is to identify, coordinate and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team to utilize that Deliverable as a basis for managing and

monitoring all member's compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Construction Schedule requirements. The CMAR will, however, develop and maintain the "Construction Schedule" on behalf of and to be used by the Project Team based on input from the other Project Team members. The Construction Schedule will be consistent with the most recent revised/updated CMP. The Project Schedule will use the Critical Path Method (CPM) technique, unless required otherwise, in writing by the Owner. The CMAR will use scheduling software to develop the Construction Schedule that is acceptable to the Owner. The Construction Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Construction phasing as described below is required, the Construction Schedule will indicate milestone dates for the phases once determined.

- 2.3.2 The Construction Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.
- 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 schedule shall show milestones, including milestones for Owner-furnished information, and shall include activities for Owner-furnished equipment and furniture when those activities are interrelated with the CMAR activities.
- 2.3.3 The Construction Schedule shall consider the Owner's and the tenants' occupancy requirements showing portions of the Project having occupancy priority, and Contract Time, if applicable.
- 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 Owner, and is a resource available to the Owner 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 Owner owned, it is acknowledged that Owner-caused delays on the Project may be offset by Owner-caused time savings (i.e.,

critical path submittals returned in less time than allowed by the Contract, approval of substitution requests and credit changes which result in savings of time to the CMAR, etc.). In such an event, the CMAR shall not be entitled to receive a time extension or delay damages until all Owner-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

- 2.3.5 The Construction Schedule will be updated and maintained by the CMAR throughout the design phase such that it will not require major changes at the start of the construction phase to incorporate the CMAR's plan for the performance of the construction phase Work. The CMAR 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 CMAR 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 Owner and Design Professional approve, the CMAR 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 CMAR 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 CMAR 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 CMAR 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 CMAR to construct the Project. Before initiating construction operations, the CMAR may request additional investigations in their GMP Proposal to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents.
- 2.4.3 The CMAR will meet with the Project Team as required to review designs during their development. The CMAR will familiarize itself with the evolving documents through the various design phases. The CMAR 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 CMAR 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 CMAR will recommend cost effective alternatives.
- 2.4.4 The CMAR 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 CMAR 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.
- 2.4.4.2 Bidability Reviews: The CMAR 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.
- 2.4.4.3 The results of the reviews will be provided to the Owner in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications and other documents. If requested by the Owner, the CMAR will meet with the Owner and Design Professional to discuss any findings and review reports.
- 2.4.4.4 The CMAR's reviews will be from a Contractor's perspective, and though it will serve to reduce the number of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications will remain with the Design Professional and not the CMAR.
- 2.4.5 Notification of Variance or Deficiency: It is the CMAR's responsibility to assist the Design Professional in ascertaining that, in the CMAR's professional opinion, the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the CMAR recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it will promptly notify the Design Professional and Owner in writing, describing the apparent variance or deficiency. However, the Design Professional is ultimately responsible for the compliance with those laws, statutes, ordinances, building codes, rules and regulations.
- 2.4.6 Alternate Systems Evaluations: The Project Team will routinely identify and evaluate using value engineering principles any alternate systems, approaches, design changes that have the potential to reduce Project costs while still delivering a quality and functional product. If the Project Team agrees, the CMAR in cooperation with the Design Professional will perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. The Project Team will decide which alternatives will be

incorporated into the Project. The Design Professional will have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. The CMAR will include the cost of the alternatives into the cost estimate and any GMP Proposals.

2.5 COST ESTIMATES

2.5.1 Unless otherwise agreed by both parties, within 14 days after receipt of the documents for the various phases of design, the CMAR shall provide a detailed cost estimate and a written review of the documents. The Design Professional and CMAR shall reconcile any Contract's on the estimate to arrive at a GMP. If no consensus is reached, the Owner will make the final determination.

2.5.2 If any estimate submitted to the Owner exceeds previously accepted estimates or the Owner's Project budget, the CMAR shall make appropriate recommendations on methods and materials to the Owner and Design Professional that he believes will bring the project back into the Project budget.

2.5.3 In between these milestone estimates, the CMAR shall periodically provide a tracking report which identifies the upward or downward movements of costs due to value engineering or scope changes. It shall be the responsibility of the CMAR to keep the Owner and Design Professional informed as to the major trend changes in costs relative to the Owner's budget.

2.5.4 If requested by the Owner, the CMAR shall prepare a preliminary "cash flow" projection based upon historical records of similar type projects to assist the Owner in the financing process.

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

2.7 GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS

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

2.7.1.2 The Owner may request a GMP Proposal for all or any portion of the Project and at any time during the design phase. Any GMP Proposals submitted by the CMAR 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.

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- 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 The Construction Fee is a firm fixed lump sum.
- 2.7.2.4 CMAR's Contingency is an amount the CMAR shall use under the following conditions:
- (1) At its discretion, with DIRECTOR consent which will not be unreasonably withheld, for increases in the Cost of the Work which are not the OWNER's responsibility, or
 - (2) With written approval of the Owner for increases in General Condition Costs. CMAR's Contingency is assumed to be a direct project cost so will receive all markups at the time of GMP submission.
- 2.7.2.5 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 Owner's Contingency are funds to be used at the discretion of the Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen site conditions. Owner's Contingency will be added to the GMP amount provided by the CMAR, the sum of which will be the full Contract price for construction. Markups for Construction Fee and taxes will be applied by the CMAR at the time that Owner's Contingency is used. Any Owner Contingency not utilized shall revert to the Owner after Project completion.
- 2.7.4 GMPs are cumulative except for CMAR Contingency. The amount of CMAR Contingency for each GMP amendment will be negotiated separately and shall reflect the CMAR's risk from that point in the project forward.
- 2.7.5 The CMAR, in preparing any GMP Proposal will prepare its GMP in accordance with the Owner's request and will obtain from the Design Professional, three sets Construction Documents (including all addenda). The CMAR will mark the face of each document of each set upon which its proposed GMP is based. The CMAR will send one set of those documents to the Owner's Project Administrator, 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 CMAR remaining at the end of the project will revert to Owner.
- 2.7.8 GMP Proposal(s) Review and Approval

- 2.7.8.1 The CMAR will meet with the Owner and Design Professional to review the GMP Proposal(s) and the written statement of its basis. In the event the Owner or Design Professional discovers inconsistencies or inaccuracies in the information presented, the CMAR will make adjustments as necessary to the GMP Proposal, its basis or both.
- 2.7.8.2 The Owner upon receipt of any GMP proposal from the CMAR, may submit the GMP Plans and Specifications to an independent third party or to the Design Professional for review and verification. The third party or Design Professional will develop an independent estimate of the Cost of the Work and review the Construction Schedule for the associated scope of the GMP Proposals.
- 2.7.8.3 If the CMAR GMP Proposal is greater than the independent third party or Design Professional's estimate, the Owner may require the CMAR to reconfirm its GMP Proposal. The CMAR 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 Owner identifying, explaining and substantiating the differences. The CMAR may be requested to, or at its own discretion, submit a revised GMP Proposal for consideration by the Owner. At that time the Owner may do one of the following:
- (a) Accept the CMAR original or revised GMP Proposal, if within the Owner's budget, without comment.
 - (b) Accept the CMAR original or revised GMP Proposal that exceeds the Owner's budget, and indicate in writing to the CMAR that the Project Budget has been increased to fund the differences.
 - (c) Reject the CMAR's original or revised GMP Proposal because it exceeds the Owner's budget, the independent third party's or Design Professional's estimate, in which event, the Owner may terminate this Contract and/or elect to not enter into a separate Contract with the CMAR for the construction phase associated with the scope of Work reflected in the GMP Proposal.
 - (d) With the CMAR's Contract, wait to accept the GMP Proposal if the Owner believes adequate funding will be available in the future.
- 2.7.8.4 If during the review and negotiation of GMP Proposals design changes are required, the Owner will authorize and cause the Design Professional to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents will be furnished to the CMAR. The CMAR will promptly notify the Design Professional and Owner 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 CMAR. In any case, the CMAR is solely responsible for the performance of the selected Subcontractors/Suppliers.

- 2.8.1.1 The CMAR will prepare a Subcontractor/Supplier selection plan and submit the plan to the Owner for approval. This subcontractor selection plan shall identify those subcontractor trades anticipated to be selected by qualifications only per Section 2.8.2 and those subcontractor trades anticipated to be selected by qualifications and competitive bid in accordance with Section 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 Owner may approve the selection of a Subcontractor(s) or Supplier(s) based only on their qualifications when the CMAR 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 CMAR shall apply the approved subcontractor selection plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the Owner with its review and recommendation.
- 2.8.2.3 The CMAR must receive Owner approval of the selected Subcontractor(s)/Supplier(s).
- 2.8.2.4 The CMAR will negotiate costs for services/supplies from each Subcontractor/Supplier selected under this method.
- 2.8.3 Selection by qualifications and competitive bid - The CMAR shall apply the subcontractor selection plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the Owner with its process to prequalify prospective subcontractors and suppliers. All Work for major subcontractors and major suppliers shall then be competitively bid to the prequalified subcontractors unless a Subcontractor or Supplier was selected pursuant to paragraph 2.8.2 above. Competitive bids may occur prior to or after the GMP Proposal(s).
- 2.8.3.1 The CMAR 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 Owner and solicit bids for the various Work categories. The CMAR will identify the Small Business Enterprise Subcontractors and Suppliers and during the bidding process keep the Owner informed on the progress of meeting the desired SBE goal. If there are not three qualified Subcontractors/Suppliers available for a specific trade or there are extenuating circumstances warranting such, the CMAR may request approval by the Owner to submit less than three names. No change in the recommended Subcontractors/Suppliers will be allowed without prior written notice to the Owner.
- 2.8.3.2 If the Owner objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, the CMAR will nominate a substitute Subcontractor/Supplier that is acceptable to the Owner.

- 2.8.3.3 The CMAR will distribute Drawings and Specifications, and when appropriate, conduct a prebid conference with prospective Subcontractors and Suppliers with Owner's Project Administrator or their designee present.
- 2.8.3.4 If the CMAR desires to self-perform certain portions of the Work, it will request to be one of the approved Subcontractor bidders for those specific bid packages. The CMAR's bid will be evaluated in accordance with the process identified below. If events warrant and the Owner concurs that in order to insure compliance with the Project Schedule and/or cost, the CMAR may self-perform Work without bidding or re-bidding the Work.
- 2.8.3.5 The CMAR shall request the pre-qualified Subcontractors to provide a detailed bid for the services requested. The Subcontractor bid, provided on the Subcontractors' letterhead, shall contain sufficient information (i.e. unit costs/amounts) to allow an evaluation of the reasonableness of bid costs. The CMAR shall receive, open, record and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the CMAR, in addition to bid price, may consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be performed, and performance schedule to complete the Work. The final evaluation of Subcontractor/Supplier bids will be done with the Owner Project Administrator in attendance to observe and witness the process. The CMAR 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 CMAR will be required to prepare two different reports on the subcontracting process.
- 2.8.4.1 Within fifteen Days after each major subcontractor/Supplier bid opening process, the CMAR will prepare a report for the Owner'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 CMAR intends to self-perform, if any.
- 2.8.4.2 Upon completion of the Subcontractor/Supplier bidding process, the CMAR shall submit a summary report to the Owner of the entire Subcontractor/Supplier selection process. The report will indicate, by bid process, all Subcontractors/Suppliers contacted to determine interest, the Subcontractors/Suppliers solicited, the bids received and costs negotiated, and the recommended Subcontractors/ Suppliers for each category of Work.
- 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 Owner objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, the CMAR will nominate a substitute Subcontractor or Supplier, preferably if such option is still available, from those who submitted Subcontractor bids for the Work

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affected. Once such substitute Subcontractors and Suppliers are consented to by the Owner, the CMAR's proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.

- 2.8.7 Promptly after receipt of the Notice of Intent to Award, the Owner will conduct a pre-award conference with the CMAR and other Project Team members. At the pre-award conference, the CMAR will (a) review the nominated slate of Subcontractors and Suppliers and discuss any concerns with or objections that the Owner has to any nominated Subcontractor or Supplier; (b) discuss Owner concerns relating to any proposed self-performed Work; (c) review the CMAR's proposed Contract Price for the Work during the construction phase; (d) discuss the conditions, if any, under which the Owner will agree to leave any portion of the remaining CMAR Contingency within the Contract Price for the construction phase Work; (e) resolve possible time frames for the Date of Commencement of the Contract time for the construction phase Work; (f) schedule the pre-construction conference; and (g) discuss other matters of importance.

ARTICLE 3

- 3.1 Omitted

ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS

4.1 CONTRACT AMOUNT FOR DESIGN/PRE-CONSTRUCTION PHASE SERVICES

- 4.1.1 Based on the design/pre-construction phase services fee proposal submitted by the CMAR and accepted by the Owner (which by reference is made a part of this Contract); the Owner will pay the CMAR a fee not to exceed \$72,790 as follows:

For the basic services described in Article 2, the CMAR shall receive a fee based upon the CMAR's fee schedule attached hereto as Attachment B, not to exceed: \$ 47,540. Additional services and allowances, as described in subsection 4.3:

Total Contract Amount, not to exceed: \$ 72,790.

4.2 PAYMENTS

- 4.2.1 Requests for monthly payments by the CMAR for design phase services will be submitted on the Owner'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 Sub consultants' requests for payment, based on their respective fee schedules in Attachment B, plus similar narrative and listings of Deliverables associated with their Work. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of work completed during the preceding month. Services negotiated as a not-to-exceed fee will be paid in accordance with the work effort expended on that service during the preceding month.

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4.2.2 The fees for the CMAR and any Sub consultants will be based upon the hourly rate schedule included as Exhibit B attached.

4.2.3 The CMAR will pay all sums due Sub consultants for services and reimbursable expenses within 14 calendar days after the CMAR has received payment for those services from the Owner. In no event will the Owner pay more than 90 percent of the Contract Amount until final acceptance of all design phase services, and award of the final approved GMP for the entire Project by Owner, or Owner's election to not use CMAR for construction of the Project.

4.2.4 The CMAR agrees that no charges or claims for costs or damages of any type will be made by it for any delays or hindrances beyond the reasonable control of the Owner during the progress of any portion of the services 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 CMAR 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 Owner of any of its legal rights herein.

4.2.5 Omitted

4.2.6 Omitted

4.3 ADDITIONAL DESIGN PHASE SERVICES

4.3.1 **CMAR'S EXPENSE:** CMAR will be responsible for all costs related to photo copying, telephone communications and fax communications while on Owner 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 Owner Project Manager. CMAR may be entitled to reimbursement for the following, upon prior approval by Owner:

- 1) The actual costs of special equipment to be rented, leased or purchased by CMAR 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 Owner Project Manager.
- 2) Printing expenses paid to outside Contractors; to the extent such Contractors and reproduction rates have been approved by the Owner Project Manager.
- 3) Other actual costs and/or payments specifically approved and authorized in writing by the Owner Project Manager and actually incurred by CMAR in performance of this Contract.
- 4) Travel costs shall only be reimbursed if approved in advance in writing by Owner Project Manager and are subject to the following restrictions:

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- 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 CMAR's "Home Based" office location and OC Public Works location, as well as mileage within OC Public Works property will not be reimbursed.
- b. Cost of "Home Based" Xerox copies, faxes, and other supplies and materials associated with them will not be reimbursed.
- c. Cost of cellular phones, cell phone usage plans and usage minutes, and other mobile communication devices will not be reimbursed.

All reimbursable expenses must be itemized on CMAR invoice(s) and documented with receipts. Receipts for reimbursable expenses must be submitted with all CMAR invoices. Invoices for reimbursable expenses without back-up receipts will not be paid. CMAR is responsible for submitting reimbursable invoices in a format that is acceptable to the Owner. 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 - OWNER'S RESPONSIBILITIES

- 5.1 The Owner, at no cost to the CMAR, will furnish the following information:
 - 5.1.1 One copy of data the Owner determines pertinent to the Work. However, the CMAR 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 Owner employee or Owner's representative who will serve as the Project Administrator during the term of this Contract. The Project Administrator has the authority to administer this Contract and will monitor the CMAR's compliance with all terms and conditions stated herein. All requests for information from or decisions by the Owner on any aspect of the Work or Deliverables will be directed to the Project Administrator. Owner shall give CMAR written notification if the person designated as the Project Administrator changes.
- 5.2 The Owner 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 CMAR for its

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information. The CMAR will have no right, to limit or restrict any changes of such services that are otherwise mutually acceptable to the Owner and Design Professional.

- 5.2.2 Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by the CMAR except for those copies whose cost has been reimbursed by the Owner.
- 5.2.3 Omitted
- 5.2.4 Give prompt written notice to the CMAR when the Owner becomes aware of any default or defect in the Project or non-conformance with the Plans, Specifications and Estimates, or any of the services required hereunder. Upon notice of failure to perform, the Owner may provide written notice to CMAR that it intends to terminate the Contract unless the problem cited is cured, or commenced to be cured, within three days of CMAR's receipt of such notice.
- 5.2.5 Notify the CMAR of changes affecting the budget allocations or schedule.
- 5.3 The Owner's Project Administrator, will have authority to approve the Project Budget and Project Schedule and render decisions and furnish information the Project Administrator deems appropriate to the CMAR. This authority is only for the purpose of facilitating the design phase. This approval authority is not binding or a commitment upon the Owner for the purposes of Project construction.

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 Owner and are to be delivered to the Project Manager before the final payment is made to the CMAR. Nonetheless, in the event these Projects Documents are altered, modified or adapted without the written consent of the CMAR, which consent the CMAR will not unreasonably withhold, the Owner agrees to hold the CMAR harmless to the extent permitted by law, from the legal liability arising out of and or resulting from the Owner's alteration, modification or adaptation of the Project Documents.
- 6.1.2 Omitted
- 6.1.3 License to Owner for Reasonable Use: The CMAR hereby grants, and will require its Subconsultants to allow the Owner, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Project Documents, works or Deliverables developed or created for the Project and this Contract. This license will also include the making of derivative works. In the event that the derivative works require the Owner to alter or modify the Project Documents, then paragraph 6.1.1 applies.

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6.1.4 Documents to Bear Seal: When applicable and required by state law, the CMAR and its Subconsultants will sign and stamp by an applicable California professional all plans, works, and Deliverables prepared by them for this Contract.

6.2 AMENDMENT TO DESIGN WORK

6.2.1 CMAR shall make no changes in the work or perform any additional work without the OWNER's specific written approval.

If such changes cause an increase in the cost of doing work or in the time required and are issued as a result of some action or inaction on the part of OWNER, compensation shall be 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 OWNER 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. OWNER Initiated: OWNER may, at any time, upon written notice, direct any changes in the work within the general scope of the Contract. If OWNER shall determine that a change in the scope of services of the CMAR is desirable, a written order called an "Amendment" shall be issued by OWNER which shall set forth the nature of the change. When an Amendment has been issued, CMAR shall expeditiously proceed to implement the change set forth therein.

B. If CMAR believes that a change in the scope of services is necessary and desirable to further the interests of the Project under this Contract, CMAR shall make a request, in writing, to OWNER to issue an Amendment. Such requests for a Contract change shall include the proposed change in scope of work, as well as any proposed change in compensation, schedule, construction cost and time, associated with granting such an Amendment. Upon receipt of such request for a Contract scope change, OWNER may reject the request; approve the request; negotiate with CMAR regarding the change in the scope of services, cost and/or change in schedule. A written Amendment will be processed by OWNER and CMAR shall expeditiously proceed to implement such change.

6.3 ALTERATION IN CHARACTER OF WORK

6.3.1 Notwithstanding the forgoing, the Project Administrator may approve increases in 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 \$100,000, 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 CMAR may accordingly be adjusted by mutual Contract of the Contracting parties.

6.3.3 No claim for extra work done or materials furnished by the CMAR during this design phase will be allowed by the Owner except as provided herein, nor will the CMAR do any work or furnish any material(s) not covered by this Contract unless such work or

material is first authorized in writing. Work or material(s) furnished by the CMAR without such prior written authorization will be the CMAR's sole jeopardy, cost, and expense, and the CMAR hereby agrees that without prior written authorization no claim for compensation for such work or materials furnished will be made.

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 CMAR 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 CMAR or its subcontractors in connection with the CMAR's or its subcontractor's performance of this Contract is confidential and proprietary information belonging to the Owner.

6.4.1.2 Except as specifically provided in this Contract, the CMAR or its subcontractors shall not divulge data to any third party without prior written consent of the Owner. The CMAR or its subcontractors shall not use the data for any purposes except to perform the services required under this Contract. These prohibitions shall not apply to the following data provided the CMAR or its subcontractors have first given the required notice to the Owner:

6.4.1.2.1 Data which was known to the CMAR or its subcontractors prior to its performance under this Contract unless such data was acquired in connection with work performed for the Owner;

6.4.1.2.2 Data which was acquired by the CMAR or its subcontractors in its performance under this Contract and which was disclosed to the CMAR or its subcontractors by a third party, who to the best of the CMAR's or its subcontractor's knowledge and belief, had the legal right to make such disclosure and the CMAR or its subcontractors are not otherwise required to hold such data in confidence; or

6.4.1.2.3 Data which is required to be disclosed by virtue of law, regulation, or court order, to which the CMAR or its subcontractors are subject.

6.4.1.3 In the event the CMAR or its subcontractors are required or requested to disclose data to a third party, or any other information to which the CMAR or its subcontractors became privy as a result of any other Contract with the Owner, the CMAR shall first notify the Owner as set forth in this Section of the request or demand for the data. The CMAR or its subcontractors shall give the Owner sufficient facts so that the Owner can be given an opportunity to first give its consent or take such action that the Owner may deem appropriate to protect such data or other information from disclosure.

6.4.1.4 The CMAR, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the Owner, the CMAR or its subcontractors shall promptly deliver, as set forth in this Section, a copy of

all data to the Owner. All data shall continue to be subject to the confidentiality Contracts of this Contract.

6.4.1.5 The CMAR or its subcontractors assume all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the Owner if any of the provisions of this Section are violated by the CMAR, its employees, agents or subcontractors. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. CMAR agrees that the requirements of this Section shall be incorporated into all subcontracts entered into by CMAR. A violation of this Section may result in immediate termination of this Contract without notice.

6.4.2 Personal Identifying Information-Data Security. Personal identifying information, financial account information, or restricted Owner information, whether electronic form to hard copy, must be secured and protected at all times. At a minimum, CMAR must encrypt and/or password protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

6.4.2.1 When personal identifying information, financial account information, or restricted Owner information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.

6.4.2.2 In the event that data collected or obtained by CMAR or its subcontractors in connection with this Contract is believed to have been compromised, CMAR or its subcontractors shall immediately notify the Project Administrator. CMAR agrees to reimburse the Owner for any costs incurred by the Owner to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

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

6.4.2.4 The obligations of CMAR or its subcontractors under this Section 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 CMAR will submit to the Owner, an organization chart for the CMAR staff and Sub consultants and detailed resumes with pictures of key personnel listed in its response to the Owner's Request for Qualifications or subsequent fee proposals (or revisions thereto), that will be involved in performing the services prescribed in the Contract. Unless, otherwise informed, the Owner hereby acknowledges its acceptance of such personnel to perform such services under this Contract. In the event the CMAR desires to change such key personnel from performing such services under this Contract, the CMAR will submit the qualifications of the proposed substituted personnel to the Owner for prior approval. Key personnel will

include, but are not limited to, principal-in-charge, project manager, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.

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

6.6-6.7 Omitted

6.8 TERMINATION OF CONTRACT FOR CAUSE

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

6.8.2 CMAR 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 CMAR prior to termination, all work performed by CMAR pursuant to this Contract, which work has been reduced to plans or other documents, shall be made available to Owner.

6.9 NON-EMPLOYMENT OF OWNER PERSONNEL

6.9.1 CMAR agrees that it will neither negotiate, offer, or give employment to any full-time, regular employee of Owner in professional classifications of the same skills required for the performance of this Contract who is involved in this Project in a participatory status during the life of this Contract regardless of the assignments said employee may be given or the days or hours employee may work.

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

6.10 NON-DISCRIMINATION

6.10.1 In the performance of this Contract, CMAR 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.

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

6.11 EMPLOYEE ELIGIBILITY VERIFICATION

6.11.1 CMAR 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. CMAR 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. CMAR shall retain all such documentation for all covered employees for the period prescribed by the law.

6.11.2 CMAR shall indemnify, defend with counsel approved in writing by Owner, and hold harmless, the Owner, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against CMAR or the Owner 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, Owner 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 CMAR. Such termination shall be effected by delivery to the CMAR of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated.

6.12.2 CMAR 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 Owner.

6.12.3 Owner shall pay the CMAR for the Work completed prior to the effective date of the termination, and such payment shall be the CMAR's sole remedy under this Contract.

6.12.4 Under no circumstances will CMAR be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph.

6.12.5 CMAR 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 CMAR 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 CMAR shall be complete and shall be carefully checked prior to submission. CMAR understands that Owner's checking is discretionary, and CMAR shall not assume that Owner will discover errors and/or omissions. If Owner discovers any errors or omissions prior to approving CMAR's Projects/Services, the Projects/Services will be returned to CMAR for correction. Should Owner or others discover errors or omissions in the work submitted by CMAR after Owner's approval thereof, Owner's approval of CMAR's Projects/Services shall not be used as a defense by CMAR.

- 6.14.2 If CMAR subcontracts portions of the architectural or engineering design Projects/Services to be performed under the terms of this Contract, CMAR shall obtain evidence that such subcontractors have purchased Professional Liability Insurance to the same limits as described in Paragraph 6.15.4 and containing the same clauses as the insurance required of CMAR under the terms of this Contract. Evidence of subcontractor's insurance shall be submitted to Owner upon request.

6.15 INSURANCE

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

- 6.15.2 CMAR shall ensure that all subcontractors performing work on behalf of CMAR pursuant to this Agreement shall be covered under CMAR's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for CMAR. CMAR shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from CMAR under this Agreement. It is the obligation of CMAR to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by CMAR through the entirety of this Agreement for inspection by County representative(s) at any reasonable time.

- 6.15.3 All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of CMAR's current audited financial report. If CMAR's SIR is approved,

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CMAR, in addition to, and without limitation of, any other indemnity provision(s) in this Agreement, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from CMAR's, its agents, employee's or subcontractor's performance of this Agreement, CMAR shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) CMAR's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the CMAR's SIR provision shall be interpreted as though the CMAR was an insurer and the County was the insured.

6.15.4 If the CMAR fails to maintain insurance acceptable to the Owner for the full term of this contract, the Owner may terminate this Contract.

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

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

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

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

Required Coverage Forms

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

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

Required Endorsements

The Commercial General Liability and Environmental/Pollution Liability policies shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees and agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees and agents, or provide blanket coverage which shall state AS REQUIRED BY WRITTEN AGREEMENT.

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

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

If CMAR's Professional Liability policy is a claims-made policy, CMAR shall agree to maintain professional liability coverage for two (2) years following completion of Agreement.

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 CMAR 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 CMAR to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or

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decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

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

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

6.16 INDEMNIFICATION

CMAR agrees to, indemnify, defend with counsel approved in writing by Owner, and hold Owner, the County of Orange ("Owner"), their elected and appointed officials, officers, employees, agents and those special districts and agencies which Owner's Board of Supervisors acts as the governing Board ("Owner 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 CMAR. If judgment is entered against CMAR and Owner by a court of competent jurisdiction because of the concurrent active negligence of CMAR and Owner or Owner Indemnitees, CMAR and Owner 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 CMAR 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 Owner unless authorized by Owner 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 Owner, 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 CMAR shall be deemed to constitute doing business within Orange Owner from the time of solicitation of work, through the period when all Projects/Services under this Contract is completed, and continuing until the expiration of any applicable limitations period.

6.23 OMITTED

6.24 PUBLICATION

6.24.1 No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by CMAR and/or anyone acting under the supervision of CMAR to any person, partnership, company, corporation, or agency, without prior written approval by the Owner, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after Owner approval.

6.24.2 The CMAR agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. CMAR must first obtain review and approval of said media contact from the Owner through the Owner's Project Manager. Any requests for interviews or information received by the media should be referred directly to the Owner. CMAR's are not authorized to serve as a media spokespersons for Owner projects without first obtaining permission from the Owner Project Manager.

6.25 RECORDS AND AUDIT/INSPECTIONS

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

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- 6.25.2 Within ten (10) days of Owner's written request, CMAR shall allow Owner 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, time cards or other records relating to this Contract.
- 6.25.3 CMAR 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 CMAR cease to exist as a legal entity, records pertaining to this Contract shall be forwarded within a reasonable period of time not to exceed sixty (60) days to its successor in interest or surviving entity in a merger or acquisition, or, in the event of liquidation, to Owner.

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.

CMAR: BNBuilders, Inc.
 Attn: James Awford
 9255 Towne Center Drive, Suite 800
 San Diego, CA 92121
James.Awford@bnbbuilders.com
 Phone: 858-550-9433

Owner: County of Orange, OC Public Works
 Attn: Hualin Hsu-Wingard
 1143 E. Fruit St.
 Santa Ana, CA 92701
Hualin.Hsu-Wingard@ocpw.ocgov.com
 Phone: 714-647-3943

cc: OC Public Works Procurement Services
 Attn: Chris Loyola, DPA
 300 N. Flower St., Suite 838
 Santa Ana, CA 92703
Chris.Loyola@ocpw.ocgov.com

Phone: 714-667-4906

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.

6.30.2 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 Section D of this Contract, CMAR shall be considered an independent Contractor.
- 6.32.2 Neither CMAR its employees nor anyone working under CMAR shall qualify for workers' compensation or other fringe benefits of any kind through Owner.

6.33 BILLS AND LIENS

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

6.34 CHANGES

- 6.34.1 CMAR shall make no changes in the work or perform any additional work without the Owner'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 CMAR, by any means whatsoever including but not limited to acquisition by merger, without the express written consent of owner. Any attempt by CMAR to assign or sub-Contract the performance or any portion thereof of this Contract without the express written consent of Owner shall be invalid and shall constitute a breach of this Contract.

6.36 CHANGES IN OWNERSHIP

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

6.37 FORCE MAJEURE

- 1.37.1 CMAR 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 CMAR gives written notice of the cause of the delay to

Owner within thirty-six (36) hours of the start of the delay and CMAR avails himself of any available remedies.

6.38 COMPLIANCE WITH LAWS

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

6.38.2 CMAR acknowledges that Owner is relying on CMAR for such compliance, and pursuant to the requirements of the indemnification paragraph above, CMAR agrees that it shall defend, indemnify and hold Owner and Owner Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

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 CMAR 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 Owner may:

6.40.2 Afford the CMAR 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 CMAR for and during the period in which the CMAR is in breach; and

6.40.4 Offset those monies disallowed pursuant to the above, against any monies billed by the CMAR but yet unpaid by the Owner.

6.41 DEFAULT

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

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corresponding quantity of any such equipment or service and to deduct from any monies due or that may thereafter become due to the CMAR the difference between the price specified in this Contract and the actual cost to the Owner.

6.41.2 In the event the CMAR shall fail to make prompt delivery as specified of any equipment or service, the same conditions as to the rights of the Owner 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 CMAR, any loss or damage sustained by the Owner in procuring any equipment or service which the CMAR agreed to supply under this Contract shall be borne and paid for by the CMAR.

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 CMAR, the Owner may begin negotiations with a third-party CMAR to provide goods and/or Projects/Services as specified in this Contract.

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

6.42 CONFLICT OF INTEREST CONTRACTOR PERSONNEL

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

6.42.2 CMAR's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from: making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the Owner.

6.43 TITLE TO DATA

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

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

6.44 AVAILABILITY OF FUNDS

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

6.45 CONTINGENCY OF FUNDING

6.45.1 CMAR 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 Owner. If such funding and/or appropriations are not forthcoming, or otherwise limited, Owner 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 CMAR pursuant to Section 1725.5. Bids cannot be accepted from unregistered CMAR 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, CMAR 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:

CMAR and any subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by CMAR or any subcontractor(s) in connection with the work.

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.

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

6.49 WAGE RATES

- 6.49.1 CMAR 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. CMAR 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 Owner's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, CMAR and any subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.

6.50 PUBLIC RECORDS ACT

Pursuant to the California Public Records Act ("CPRA"), Government Code Sections 6250 et seq., all records provided by Contractor to Owner are subject to public disclosure upon request except as otherwise provided by law. Prior to their submission to Owner, 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, Owner will notify Contractor of such request. Unless Contractor obtains a protective order issued by a court restricting disclosure of the requested records, Owner may disclose the records if Owner determines that the Public Records Act requires disclosure. Contractor shall indemnify and defend Owner in any action to compel disclosure of such records.

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

BNBUILDERS, INC.
a California Corporation,

Date: 5/17/2017

By James Awford
Signature 32A2CBFAE784EA...

James Awford Principal
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: 5/17/2017

By James Awford
Signature 32A2CBFAE784EA...

James Awford Principal
Print Name & Title

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

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

Date: _____

By _____

Print Name _____

Title _____

APPROVED AS TO FORM

Office of the County Counsel

Orange County California
DocuSigned by:

By: Justin A Graham in A Graham
3B7688FE3BD64E0...

* Note: Pursuant to the requirements of the California Corporations Code Section 313, one of the following two methods must be used by a corporation when it enters into a contract:

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- 1) Two people must sign the document. One of them must be the Chairman of the Board, the President or any Vice-President. The other must be the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer.
- 2) One corporate officer may sign the document, providing that written evidence of the officer's authority to bind the corporation with only his or her signature must be provided. This evidence would ideally be a corporate resolution.

ATTACHMENT A SCOPE OF WORK

CMAR design/pre-construction and construction services are to include review the complete construction documents by County A-E, propose alternate systems evaluation, advise ways to gain efficiencies in project construction, advise procurement of long-lead items, protect County's sensitivity to quality, safety, and environmental factors, propose & design the Soil Improvement component of the project to meet specified criteria by Geotechnical Engineer, and then install the project per approved project construction documents & specifications currently is processing through County plan check.

SCOPE OF WORK

- 1.1 Design/preconstruction Phase Services. The CMAR agrees to provide all of the Preconstruction Phase Services described below on an ongoing basis in support of, and in conformance with, the time frames described in the Request for Proposal (RFP). Commencement of the Construction Phase shall not excuse the CMAR from completion of the Preconstruction Phase Services, if such services have not been fully performed at commencement of the Construction Phase. Preconstruction Phase Services shall include CMAR Services performed during the Preconstruction Phase.
 - 1.1.1 The CMAR shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies
 - 1.1.2 The CMAR shall provide services for designing and selecting qualified subcontractor to implement project soil improvement component to project geotechnical engineer's specifications.
 - 1.1.3 The CMAR shall work with the Owner, the Owner Representative, and the project A-E to analyze the design, participate in decisions regarding construction materials, methods, systems, phasing, and costs, and suggest modifications to achieve the goals of providing the Owner with the highest quality Project within the budget and schedule.

Constructability Review. CMAR shall check the documents for completeness and coordination and make recommendations to A-E and Owner.

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

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

Construction Phase Services

Upon execution of an Early Work Amendment or GMP Amendment, the CMAR shall provide Construction Phase Services as provided in the Contract Documents, including without limitation providing and paying for all materials, tools, equipment, labor and professional and non-professional services, and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work, as required by the Contract Documents.

- 1.2.2 Notwithstanding any other references to Construction Phase Services in this Contract, this Contract shall include Construction Phase Services only unless (i) the parties execute a GMP Amendment or (ii) the parties execute an Early Work Amendment, defined below.
- 1.2.3 The parties may execute one or more Early Work Amendments identifying specific Construction Phase Services that must be performed in advance of the GMP Amendment. CMAR shall be obligated to perform the Early Work only to the extent that the Cost of Work therefore, together with the CMAR Fee, does not exceed the Early Work Price; however if CMAR performs Early Work with a cost in excess of the Early Work Price, the CMAR shall pay such excess cost without reimbursement. If one or more Early Work Amendments are executed, the CMAR shall diligently continue to work toward development of a GMP Amendment acceptable to Owner, which shall incorporate the Early Work Amendments.
- 1.2.4 Prior to commencement of any Construction, and in any event not later than mutual execution of the GMP Amendment, CMAR shall provide to Owner a performance bond and a payment security bond as required by the General Conditions in amounts equal to the value of the Amendment(s). If an Early Work Amendment is executed, CMAR shall provide such bond in the amount of the Early Work Price under the Early Work Amendment. CMAR shall provide to Owner additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or GMP Amendment, in each case prior to execution of the Amendment and the supplying of any labor or materials for the prosecution of the Work covered by the Amendment, and in each case in a sufficient amount so that the total bonded sums equals or exceeds the total Early Work Price or the GMP, as the case may be. In the event of a Scope Change that increases the GMP, CMAR shall provide to Owner an additional or supplemental bond in the amount of such increase prior to performance of the additional Work.
- 1.3 Construction Management (CM) Services. Throughout the Preconstruction Phase and Construction Phase of the Project, the CMAR shall provide CM Services, generally consisting of coordinating and managing the building process as an independent contractor, in cooperation with the Owner, Client Representative, A-E and other designated Project consultants (the "Stakeholders"). CM Services shall include, but are not limited to:
 - 1.3.1 Providing all Preconstruction Phase Services described above;
 - 1.3.2 Developing and delivering schedules, preparing construction estimates, performing constructability review, analyzing alternative designs, studying labor conditions, coordinating and communicating these activities to the stakeholders during the Construction Phase.
 - 1.3.3 Continuously monitoring the Project Schedule and recommending adjustments to ensure completion of the Project in the most expeditious manner possible;

- 1.3.4 Working with the Owner, the Owner Representative, and the A-E to analyze the design, participate in decisions regarding construction materials, methods, systems, phasing, and costs, and suggest modifications to achieve the goals of providing the Owner with the highest quality Project within the budget, GMP and schedule ;
- 1.3.5 Providing Value Engineering ("VE") services ongoing throughout the Project. CMAR shall develop cost proposals, in the form of additions or deductions from the GMP, including detailed documentation to support such adjustments and shall submit such proposals to Owner for its approval. CMAR acknowledges that VE services are intended to improve the value received by Owner with respect to cost reduction or life cycle of the Project;
- 1.3.6 Holding and conducting predetermined scheduled meetings with the Owner, Client Representative and the A-E to coordinate, update and ensure progress of the Work; review and recommend solutions to issues occurred, explain and justify variations.
- 1.3.7 Submitting weekly/monthly written report(s) to the Owner. Each report shall include, but shall not be limited to, Project updates including; actual costs and progress for the reporting period as compared to the estimate of costs, explanations of significant variations, work completed, work in progress, changes in the work and other information as determined to be appropriate by the Owner. Written updates shall be provided to the Owner as deemed appropriate by the CMAR or as requested by the Owner.
- 1.3.8 Preparing Daily Reports in the format of the report as outlined in General Conditions.
- 1.3.9 Developing and implementing a system of cost control for the Work acceptable to Owner, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The CMAR shall identify variances between actual and estimated costs and report the variances to the Owner and A-E at regular intervals.
- 1.3.10 Cooperation with any and all consultants hired by Owner.
- 1.3.11 Cooperating and performing warranty and inspection Work for the Project through the expiration date of the applicable warranty period.
- 1.3.12 Assist the Owner with start-up of the Project. Such start-up may occur in phases due to phased occupancy.
- 1.3.13 Incorporating Owner HVAC and automated control system scheduled activities and inspections into the Project Schedule and coordinating Subcontractors required to participate in the schedule.
- 1.3.14 Performing all other obligations and providing all other services set forth in the Contract Documents and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work as required by the Contract.

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**ATTACHMENT B
COST/COMPENSATION**

- I.** CMAR shall provide on their Company letterhead a proposed Scope of Work based upon the RFP defined Scope of Work; required deliverables; Model Design Agreement; and identified project work plan in CMAR's proposal. Proposal shall include the following services and rates.

Provide a listing (attach additional sheets) of the CMAR personnel, the anticipated hours of involvement (for the duration of the services required under Design Phase Services (Pre-Construction), and the billable hourly pay rate for each person that will be involved in the CMAR's pre-construction services scope of work. See Section II - Scope of Work – Preconstruction Phase Services for the associated scope of work.

1) Compensation

Constructability review	\$3,180.
Value Engineering report	\$3,560.
Preliminary Construction Management Plan	\$10,970.
Major Subcontractor/Supplier selection (Sprung Structure & Soil Improvement Component)	\$5,920.
Final plan review (Constructability, VE and permit approval)	\$4,720.
Construction Schedule w/ cash flow projection	\$4,800.
Updated Construction Management Plan	\$5,950.
Cost Proposal	\$8,440.
Total Basic Services	\$47,540.

2) Special Services

CMAR may determine that the following services are required. If required, CMAR will provide the following special services and shall not exceed the compensation shown below.

Site survey and additional pot-holing	\$6,000.
Additional SWPPP coordination	\$3,000.
Other: Ground improvement design (Allowance)	\$15,000.
Total Special Services	\$24,000.

3) Reimbursable Items

Reimbursable items are non-salary items that are not included in the CMAR's Scope of Work but necessary for completion of the work and must be authorized in advance by the County Project Manager.

CMAR shall provide the following reimbursable items. Reimbursable Items shall be paid on actual costs supported by invoices.

Not to Exceed Cost

Reproduction of Documents	\$750.
Other: (CMAR to Specify, i.e. mileage, etc.)	\$0.00
Other:	\$500.
Total Reimbursables	\$1,250.

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BNBuilders, Inc. Construction Manager at Risk (CMAR) – Mile Square Regional Park Multi-Purpose FacilityTotal Services Not to Exceed (1- 3) \$72,790.**4) Design Phase Hourly Rates**

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

Hourly Rates Including Overhead Profit:

Principal In-Charge	\$160.
Project Manager	\$135.
Project Engineer	\$95.
Project Planner/Estimator	\$115.
Other Superintendent	\$115.

5) CMAR PRE-CONSTRUCTION SERVICES MEETING INTERVAL

The CMAR will be expected to attend and participate in ongoing regularly scheduled design progress review meetings with the Architect and the Owner for the duration of the design process. The duration and scope of these services shall be as listed in the Request for Proposals and in Article 2 – Design Phase Services (Pre-Construction) Contract. The design progress review meetings are anticipated to occur at the following approximate interval: **Every week.**

6) Staffing Plan/Key Personnel

Name	Classification / Designation	Years of Experience	Licenses/Certifications (include license number)
James Awford	Project Executive	25 Years	DBIA Professional
Brian Dague	Sr. Project Manager	16 Years	DBIA/LEED AP
Dan Filla	Superintendent	20 Years	OSHA 30-Hour / CPR First Aid / Certified Construction Quality Control / CEESWI
Desiree Muenier	Project Engineer	7 Years	

Construction Manager at Risk 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 Construction Manager at Risk's key personnel in any given category or classification shall be allowed only with prior written approval of the County's Project Manager. **Note: The written approval of substituted Construction Manager at Risk Key Personnel is for departmental use only and shall not be used for auditing purposes outside OC Public Works.**

Construction Manager at Risk may reserve the right to involve other Construction Manager at Risk personnel, as their services are required. The specific individuals will be assigned based on the need and timing of the service/classification required. Assignment of additional key personnel shall be

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subject to County Project Manager written approval. **Note: The written approval of additional Construction Manager at Risk 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 Construction Manager at Risk 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 Construction Manager at Risk personnel.

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

III. PAYMENT TERMS: Invoices are to be submitted in monthly arrears, after services have been completed, to the address specified below. Payment will be net thirty (30) days after receipt of an invoice in a format acceptable to the County, as applicable. Invoices shall be verified and approved by County and subject to routine processing requirements. The responsibility for providing an acceptable invoice to County for payment rests with CMAR. Incomplete or incorrect invoices are not acceptable and will be returned to the CMAR for correction.

Billing shall cover services and/or goods not previously invoiced. CMAR shall reimburse the County for any monies paid to the CMAR for goods or services not provided or when goods or services do not meet the CMAR requirements.

Payments made by County shall not preclude the right of County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.

IV. INVOICING INSTRUCTIONS: CMAR will provide an invoice on the CMAR's letterhead. Each invoice will have a unique number and will include the following information:

- A. Name and address
- B. Remittance address, if different from (A), above
- C. Name of County agency/department
- D. Delivery/service address
- E. Contract number
- F. Service Date
- G. Description of Services
- H. Total
- I. Taxpayer ID number

Invoices and support documentation are to be forwarded to:

OC Public Works/A & E Project Management
 Attn: Hualin Hsu-Wingard
 1143 E. Fruit St.
 Santa Ana, CA 92703

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CMAR has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the DPA.



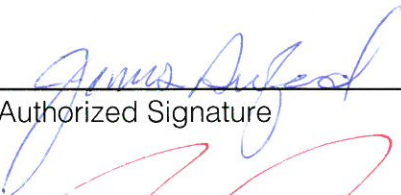
AUTHORIZING CAPACITY FOR SIGNING OFFICIAL DOCUMENTS

MEETING OF THE BOARD OF DIRECTORS OF BNBuilders, Inc.

A meeting of Board of Directors of BNBuilders, Inc. was held on January 27, 2015, during which a resolution was passed authorizing the following individual(s) to, by his/her/their signature(s), enter into any and all contracts on behalf of the corporation and, thereby, bind the corporation to such a contract:

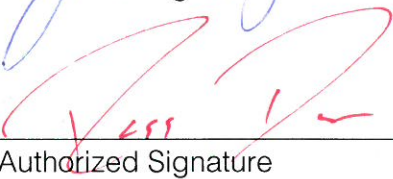
James Awford, Principal

Print Name & Title


Authorized Signature

Ross Brown, Project Executive

Print Name & Title


Authorized Signature

Certified by:


Jeffrey J. Nielsen
Vice President, Secretary and Treasurer

9255 Towne Centre Drive, Suite 800
San Diego, California 92121

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F: 858.550.9560
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