Contract No. 81655

COUNTY OF SACRAMENTO

AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES FOR CONSTRUCTION MANAGER AT RISK

THIS AGREEMENT is made and entered into on November 8, 2022, by and between the County of Sacramento, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and John F. Otto Inc., doing business as Otto Construction, a California corporation, hereinafter referred to as "OTTO". COUNTY and OTTO may be individually referred herein as "Party" and collectively referred to herein as "Parties."

RECITALS

WHEREAS, California Public Contract Code section 20146 authorizes COUNTY, with approval of its Board of Supervisors, to utilize construction manager-at-risk construction contracts for the erection, construction, alteration, repair or improvement of certain County-owned infrastructure projects in excess of one million dollars ($1,000,000); and

WHEREAS, It is the County's intent to use the construction manager at-risk project delivery method, and use the term CMAR to describe it; and

WHEREAS, COUNTY's Board of Supervisors has approved the use of a CMAR construction contract for construction of the Terminal A Restroom Rehabilitation at Sacramento International Airport ("Project"), which consists of demolition and reconstruction of 8 public restrooms in Terminal A; and

WHEREAS, COUNTY issued a competitive solicitation (most qualified method) seeking pre-construction and construction services for the Project and has determined that OTTO possesses the necessary experience, personnel, financial strength, and safety record to furnish said services at the price guaranteed by OTTO in its work product; and

WHEREAS, OTTO is capable of providing the services sought by COUNTY; and

WHEREAS, the parties desire to enter into this agreement to initiate Phase 1 pre-construction services, and reserve the right to further amend this Agreement pending additional negotiations prior to: County's acceptance of a Guaranteed Maximum Price (GMP), the initiation of Phase 2 construction services, and the execution of an Agreement as approved by the County's Board of Supervisors for Construction Services; and

WHEREAS, COUNTY desire to enter into this Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, PARTIES agree as follows:

1. SCOPE OF SERVICES

A. OTTO shall provide all labor, materials, services, transportation, appliances and mechanical and technical workmanship ("the Work") required by the contract documents and the Scope of Services described in **Exhibit A**, which is attached and incorporated herein. OTTO agrees to do additional work arising from changes ordered by the COUNTY pursuant to Section 6.

B. The Scope of Services shall be divided into two phases: Preconstruction Services Phase and Construction Services Phase.

1. Phase 1: Pre-Construction Services: the Preconstruction Services Phase shall include, but not be limited to, the preparation and coordination of construction document review, value engineering, scheduling, cost analysis, cost control and preparation of a Guaranteed Maximum Price (GMP).

2. Phase 2: Construction Services will only commence upon successful negotiations of a GMP. The Construction Services Phase shall include, but not be limited to, providing labor, materials and equipment for the construction of the project, providing required submittals for review by the County and issuing Requests for Information (RFI's) to the County to establish solutions to construction details.

3. With concurrence of the GMP by the County Board of Supervisor's the COUNTY will direct OTTO to perform the work under Phase 2, as agreed to in the GMP, in writing by the parties executing a second amendment to this Agreement or the issuance of a separate Construction Contract, followed by Notice to Proceed (NTP), within 60 days of the County Board hearing and authorization to execute a second amendment to this Agreement.

2. OTTOS REPRESENTATIONS

Without superseding, limiting, or restricting, any other representation or warranty set forth elsewhere in the Contract Documents, or implied by operation of law, OTTO makes the following representations to COUNTY:

a. OTTO accepts the relationship of trust and confidence with the COUNTY established by the Contract Documents. OTTO will cooperate with COUNTY.

b. OTTO has carefully examined the site of the Project, to the extent available, and the adjacent areas, has suitably investigated the nature and location of the Work and has satisfied itself as to the general and local conditions which will be applicable, including but not limited to: (a) conditions related to site access and to the transportation, disposal, handling and storage of materials;

(b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the site and existing site conditions including: size, utility capacities and connection options of external utilities; (e) the surface conditions of the ground and (f) the character and availability of the equipment and facilities which will be needed prior to and during the performance of Work.

c. OTTO has suitably reviewed documentation furnished by COUNTY in the information available to bidders.

d. As construction commences, all labor, services, materials, equipment and furnishings incorporated into or used in the Construction Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents) and free of liens, claims and security interests of third parties. If required by the COUNTY, OTTO will furnish satisfactory evidence as to the kind and quality of the materials, equipment and furnishings.

During construction, the Work will be of good quality, free of defects and will conform to the requirements of the Contract Documents. Work not conforming to the requirements of the Contract Documents, including substitutions in design or construction not specifically approved or authorized by the COUNTY in advance, may be considered defective.

All Project Construction Cost Estimates provided by OTTO for the Work, based on 95% complete (or greater percentage of completion), Drawing and Specification submittals, produced by the COUNTY's Design Professional, will be complete and accurate; will incorporate the cost for the means and methods required to complete the Work; and will incorporate the cost for all schedule constraints shown in the Contract Schedule necessary to complete the work within Contract Time.

3. PERFORMANCE AND PAYMENT BONDS DURING CONSTRUCTION PHASE

[This section is subject to further amendment, refer to recitals above] OTTO **shall, prior to the beginning of the Construction Services Phase** under this Agreement and any amendments thereto or issuance of a separate construction contract, provide to COUNTY: (i) a performance bond to secure performance of OTTO's obligations under this Agreement; and (ii) a payment bond, consistent with California Civil Code section 9550 et seq., to assure payment by OTTO to all persons furnishing services to it under this Agreement. These bonds shall be in a form satisfactory to COUNTY and shall be obtained from an admitted surety insurer authorized to do business in California. The bond amount for each shall be in a sum not less than one hundred percent (100%) of the cost to provide the services under this Agreement, as described in **Exhibit C**. The bonds shall be solely for the protection of COUNTY, conditioned upon the faithful performance by OTTO of the terms and conditions of this Agreement and its payment to all subcontractors, consultants, and other persons providing services to OTTO under this Agreement, and further upon the condition that if OTTO fails to comply with any such term or condition or fails to make any such payment, and such failure continues for a period of thirty (30) days after OTTO receives written notice thereof, there shall be recoverable jointly and severally from the principal and surety of the bonds any damage or loss suffered by COUNTY as a result, including, without limitation, the full amounts of any compensation, plus costs and reasonable attorneys' fees, up to the full amounts of the performance bond and the payment bond. The bonds shall each contain a provision that the surety thereon expressly waives the provisions of California Civil Code sections 2819 and 2845. The bonds shall be maintained throughout the term of this Agreement and annually renewable, but shall allow for the surety's non-renewal without penalty at the surety's option. The bonds shall be renewed annually by July 1st of each year.

4. CONTRACT DOCUMENTS

[This section is subject to further amendment, refer to recitals above] The following documents are by this reference incorporated in and made a part of this Agreement:

- The Standard Construction Specifications adopted by the Sacramento County Board of Supervisors on July 17, 2001, and revised thereafter on: March 2004, January 2008, January 2016, January 2017, and February 2017; and
- the construction drawings and specifications,
- all addenda;
- the Request for Qualifications;
- OTTO Cost Proposal.
- construction required bonds; and
- all supplemental agreements (change orders) covering alterations, amendments, or extensions.

Should any question arise concerning the intent or meaning of the above documents, the question shall be submitted to County for interpretation. The decision of County in this matter shall be final and shall be issued in writing.

Inconsistencies and conflicts in the above documents shall be resolved by giving precedence in the following order:

i. County-approved Modifications, beginning with the most recent (if any)
ii. FAA Grant Assurances and FAA Federal Contracting Requirements
iii. Agreement and Exhibits A through C;
iv. Supplementary Conditions (is any);
v. General Conditions;
vi. Remaining Division 0 documents (Documents beginning with "00");
vii. Division 1, Documents (Document beginning with "01");
viii. Division 2 through Division 49 documents (Technical Specifications);
ix. Figured dimensions;
x. Large-scale drawings;

xi. Small-scale drawings.

In case of conflict, the greater quantity and/or higher standard of workmanship shall apply unless the County expressly in writing (e.g., via a Change Order) accepts lesser quantity or lower quality of workmanship and the Contract Price is adjusted accordingly. The decision of the County in this matter shall be final.

5. TERM

[This section is subject to further amendment, refer to recitals above] The term of this Contract shall commence as of the date written above, when OTTO begins its Preconstruction Services as described herein and in Exhibit A, and expires upon Completion of the Project, as indicated ("Term").

A. Time for Completion of Preconstruction Services Phase (Phase 1): It is hereby understood and agreed that the Preconstruction Services Phase to be provided under this Agreement shall be completed within 120 consecutive calendar days ("Contract Time") from the date specified in the COUNTY's Notice to Proceed.

B. Time for Completion of Construction Services Phase (Phase 2): It is hereby understood and agreed that the Construction Services Phase to be provided under this Agreement shall be completed within 18 calendar months ("Contract Time") from the date specified in the COUNTY's Notice to Proceed (NTP) for Construction Services Phase.

C. Completion-Extension of Time: Should OTTO fail to complete the services required by this Agreement, and the work provided herein, within the time(s) fixed for Completion of Construction Services Phase stated above, due allowance being made for the contingencies provided for herein, OTTO shall become liable to the County for all loss and damage that the County may suffer on account thereof. County shall not be liable for delays resulting from OTTO's failure to coordinate its services or work with other contractors in a manner that will allow timely completion of OTTO's Work. OTTO shall be liable for delays to other contractors caused by OTTO's failure to coordinate its Work with the work of other contractors.

D. Term End Date in the Event of Non-Agreement to GMP/Phase 2: If the parties do not agree to either the GMP, or to initiate Phase 2 - Construction Services, the term will end after completion of Phase 1 - Pre-Construction Services, or terminate pursuant to Section 32 below.

E. COUNTY'S Director is authorized to amend this Agreement with OTTO to extend the term.

6. NOTICE

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, addressed as follows:

TO COUNTY:	TO OTTO:
Attn: Kathy Sutton Department of Airports 6900 Airport Blvd. Sacramento, CA 95837	Attn: Allison Otto, President Otto Construction 1717 Second Street Sacramento, CA 95811

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

7. COMPLIANCE WITH LAWS

OTTO shall perform the Construction Work in accordance with the following Applicable Code Requirements:

1. All laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over, OTTO as the Contractor, any Subcontractor, the Project, the Project site, the Construction Work, or the prosecution of the Construction Work.

2. All requirements of any insurance company issuing insurance required hereunder.

3. The Federal Occupational Safety and Health Act and all other Applicable Code Requirements relating to safety.

4. Applicable titles in the State of California Code of Regulations.

5. Applicable sections in the State of California Labor Code.

6. All Applicable Code Requirements relating to nondiscrimination, payment of prevailing wages, payroll records, apprentices, and workday.

7. FAA Contract Provisions attached hereto and incorporated herein as Exhibit E.

8. FAA Assurances:www.faa.gov/airports/aip/grant_assurances/media/assurances-airport-sponsors-2022-05.pdf (attached hereto and incorporated herein as Exhibit F)

9. Economic Sanctions: Pursuant to California State Executive Order N-6-22 (Order) imposing economic sanctions against Russia and declaring support of Ukraine,

County shall terminate any contract with any individual or entity that is in violation of the Order or that is subject to economic sanctions therein, and shall not enter a contract with any such individual or entity while the Order is in effect.

10. Contractor shall provide a written report to County within 60 days of the effective date of the contract or 60 days upon request regarding compliance with economic sanctions and steps taken in response to Russia's action in Ukraine, including but not limited to, desisting from making new investments in, or engaging in financial transactions with Russia or Russian entities, and directly providing support to Ukraine, while the Order is in effect. The County shall keep the report on file as evidence of compliance with the Order.

8. GOVERNING LAWS AND JURISDICTION

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

9. LICENSES, PERMITS AND CONTRACTUAL GOOD STANDING

A. OTTO shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Sacramento and all other appropriate governmental agencies, including any certification and credentials required by COUNTY. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by County.

B. OTTO certifies to COUNTY that all of its employees, sub-consultants or subcontractors have all necessary licenses, permits, certificates, and credentials required to perform the services assigned to or rendered by them, and that such licenses, permits, certificates and credentials shall be maintained throughout the term of this Agreement.

C. OTTO further certifies to COUNTY that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state or county government contracts. OTTO certifies that it shall not contract with a subcontractor at any tier that is so debarred or suspended.

10. PREVAILING WAGES

A. Pursuant to the provisions of California Labor Code sections 1720-1781, not less than the general prevailing rate of per diem wages, and not less than the general prevailing rate of per diem wages for holidays and overtime work, for each craft, classification or type of worker needed to execute the work contemplated under this Agreement shall be paid to all workers, laborers and mechanics employed in the execution of said work by OTTO, or by any subcontractor doing or contracting to do any part of said work. The appropriate determination of the Director of the California Department of Industrial Relations is filed with, and available for inspection at, the office of the Clerk of the Governing Board.

B. OTTO shall post, at each jobsite, a copy of such prevailing rate of per diem wages as determined by the Director for the California Department of Industrial Relations.

11. PERFORMANCE STANDARDS

A. OTTO shall perform its services under this Agreement in accordance with the professional standards applicable to those who specialize in providing such services for projects of the type, scope, and complexity of the Project (including its contracting mode and/or project delivery method).

B. OTTO's employees, sub-consultants, and subcontractors shall have sufficient skill and experience to perform the services assigned to them. Any employee, sub-consultant, or subcontractor who is determined by COUNTY to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee, sub-consultant, or subcontractor who fails or refuses to perform the services described in Exhibit A in a manner acceptable to COUNTY, shall be promptly removed from the Project by OTTO and shall not be reemployed to perform any of the service or work on the Project.

12. OWNERSHIP AND USE OF DOCUMENTS; CONFIDENTIALITY

A. All technical data, evaluations, plans, specifications, reports, studies, drawings, estimates, documents, and other work products, including all deliverables described in **Exhibit A**, developed by OTTO (collectively, "Project Documents") shall be the exclusive property of COUNTY and shall be delivered to COUNTY upon completion of the services required by this Agreement. OTTO may retain copies thereof for its files and internal use. Publication of the information directly derived from work performed or data obtained in connection with services rendered under this Agreement must first be approved in writing by County. County recognizes that all Project Documents are instruments of OTTO's services and are not designed for use other than what is intended by this Agreement.

B. All Project Documents either created by or provided to OTTO or the applicable sub-consultant or subcontractor in connection with the performance of this Agreement shall be held confidential by OTTO to the extent they are not subject to disclosure pursuant to the Public Records Act. Project Documents shall not, without the written consent of COUNTY, be used or reproduced by OTTO for any purposes other than the performance of the services described in **Exhibit A**. OTTO shall not disclose, cause or facilitate the disclosure of the Project

Documents to any person or entity not connected with the performance of services under this Agreement or the Project.

13. STATUS OF CMAR

A. It is understood and agreed that OTTO (including OTTO's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. OTTO's assigned personnel shall not be entitled to any benefits payable to employees of COUNTY. COUNTY is not required to make any deductions or withholdings from the compensation payable to OTTO under the provisions of this Agreement; and as an independent contractor, OTTO hereby indemnifies and holds COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

B. It is further understood and agreed by the parties hereto that OTTO in the performance of its obligation hereunder is subject to the control or direction of COUNTY as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by OTTO for accomplishing the results.

C. If, in the performance of this Agreement, any third persons are employed by OTTO, such person shall be entirely and exclusively under the direction, supervision, and control of OTTO. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by OTTO, and the COUNTY shall have no right or authority over such persons or the terms of such employment.

D. It is further understood and agreed that as an independent contractor and not an employee of COUNTY, neither OTTO nor OTTO's assigned personnel shall have any entitlement as a COUNTY employee, right to act on behalf of COUNTY in any capacity whatsoever as agent, nor to bind COUNTY to any obligation whatsoever. OTTO shall not be covered by worker's compensation; nor shall OTTO be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in-group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the COUNTY to employees of the COUNTY.

E. It is further understood and agreed that OTTO must issue W-2 and 941 Forms for income and employment tax purposes, for all of OTTO's assigned personnel under the terms and conditions of this Agreement.

WITHHOLDING FOR AN OUT OF STATE CONTRACTOR:

F. Notwithstanding subparagraphs (A) and (E), it is further understood and agreed that COUNTY shall withhold seven percent (7%) of all income paid to OTTO under this agreement for payment and reporting to the California Franchise Tax Board because OTTO does not qualify as (1) a corporation with its principal place of business in California, (2) a partnership with a permanent place of business in California, (3) a corporation qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

14. OTTO IDENTIFICATION

OTTO shall provide the COUNTY with the following information for the purpose of compliance with California Unemployment Insurance Code section 1088.8 and Sacramento County Code Chapter 2.160: OTTO's name, address, telephone number, social security number or federal tax identification number, and whether dependent health insurance coverage is available to OTTO.

15. BENEFITS WAIVER

If OTTO is unincorporated, OTTO acknowledges and agrees that OTTO is not entitled to receive the following benefits and/or compensation from COUNTY: medical, dental, vision and retirement benefits, life and disability insurance, sick leave, bereavement leave, jury duty leave, parental leave, or any other similar benefits or compensation otherwise provided to permanent civil service employees pursuant to the County Charter, the County Code, the Civil Service Rule, the Sacramento County Employees' Retirement System and/or any and all memoranda of understanding between COUNTY and its employee organizations. Should OTTO or any employee or agent of OTTO seek to obtain such benefits from COUNTY, OTTO agrees to indemnify and hold harmless COUNTY from any and all claims that may be made against COUNTY for such benefits.

16. RETIREMENT BENEFITS/STATUS

OTTO acknowledges and agrees that COUNTY has not made any representations regarding entitlement, eligibility for and/or right to receive ongoing Sacramento County Employee Retirement System (SCERS) retirement benefits during the term of this Agreement. By entering into this Agreement, OTTO assumes sole and exclusive responsibility for any consequences, impacts or action relating to such retirement benefits that is or will be occasioned as a result of the services provided by OTTO under this Agreement. OTTO waives any rights to proceed against COUNTY should SCERS modify or terminate retirement benefits based on OTTO's provision of services under this Agreement.

17. CONFLICT OF INTEREST

OTTO represents that it is familiar with California Government Code sections 1090 and 87100 et seq. and that it does not know of any facts that constitute a violation of those sections.

OTTO represents that it has completely disclosed to COUNTY all facts bearing upon any possible interests, direct or indirect, which OTTO believes any member of COUNTY, or other officer, agent or employee of COUNTY or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute ground for termination of this Agreement by COUNTY for cause. OTTO agrees to comply with all conflict of interest codes adopted by COUNTY and their reporting requirements.

OTTO covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, OTTO represents to and agrees with COUNTY that OTTO has no present, and will have no future, conflict of interest between providing COUNTY the services hereunder and any interest OTTO may presently have, or will have in the future, with respect to any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to COUNTY, as determined in the reasonable judgment of COUNTY. The provisions of this section shall remain fully effective indefinitely after completion or termination of the Services hereunder.

18. LOBBYING AND UNION ORGANIZATION ACTIVITIES

A. OTTO shall comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101-121 (31 U.S.C. § 1352) and any implementing regulations.

B. If services under this Agreement are funded with state funds granted to COUNTY, OTTO shall not utilize any such funds to assist, promote or deter union organization by employees performing work under this Agreement and shall comply with the provisions of Government Code Sections 16645 through 16649.

19. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES

A. OTTO agrees and assures COUNTY that OTTO and any subcontractors shall comply with all applicable federal, state, and local anti-discrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of COUNTY, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. OTTO shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of

COUNTY employees and agents, and recipients of services are free from such discrimination and harassment.

B. OTTO represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code § 12900 et seq.), and regulations and guidelines issued pursuant thereto.

C. OTTO agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable anti-discrimination laws and this provision.

D. OTTO shall include this nondiscrimination provision in all subcontracts related to this Agreement.

20. <u>INDEMNIFICATION APPLICABLE TO THE PRE-CONSTRUCTION SCOPE OF WORK</u>

To the fullest extent permitted by law, for work or services provided under this Agreement, OTTO shall indemnify, defend, and hold harmless COUNTY, its governing Board, officers, directors, officials, employees, and authorized volunteers and agents (collectively "Indemnified Parties"), from and against any and all claims, demands, actions, losses, liabilities, damages, and all expenses and costs incidental thereto (collectively "Claims"), including cost of defense, settlement, arbitration, expert fees, and reasonable attorneys' fees, resulting from injuries to or death of any person, including employees of either party hereto, and damage to or destruction of property, or loss of use or reduction in value thereof, including the property of either party hereto, and recovery of monetary losses incurred by COUNTY directly attributable to the performance of OTTO, to the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of OTTO, its employees, OTTO's sub-consultants or subcontractors at any tier, or any other party for which OTTO is legally liable under law.

The right to defense and indemnity under this section arises upon occurrence of an event giving rise to a claim and tendered in writing to OTTO. OTTO shall defend Indemnified Parties with counsel reasonably acceptable to COUNTY.

Notwithstanding the foregoing, the parties expressly agree that OTTO's defense obligation under this indemnity obligation shall require OTTO to defend the Indemnified Parties until any of the following occur: (1) the judgment has become final by a Court of Competent Jurisdiction, (2) other mutually agreeable dispute resolution or settlement process establishing the proportionate percentage of fault of the parties under law. In the event that fault is apportioned between COUNTY and OTTO, OTTO's final cost of defense shall not exceed its proportionate percentage of fault. To the extent that OTTO's cost of defense exceeds its proportionate percentage of fault, COUNTY shall reimburse OTTO. If requested by COUNTY, OTTO agrees to participate, at its own expense, in the defense of a Claim to provide testimony or to produce documents or other relevant information.

To the extent permitted by law, this indemnity obligation shall not be limited by the types and amounts of insurance or self-insurance maintained by OTTO or OTTO's sub-consultants or subcontractors at any tier.

Nothing in this indemnity obligation shall be construed to create any duty to, any standard of care with reference to, or any liability or obligation, contractual or otherwise, to any third party.

The provisions of this indemnity obligation shall survive the expiration or termination of the Agreement.

INDEMNIFICATION-APPLICABLE TO THE CONSTRUCTION SCOPE OF WORK – per 6-2.01 of the Standard County Construction Specifications
To the fullest extent permitted by law, OTTO shall indemnify, defend, and hold harmless County, its governing Board, officers, directors, officials, employees, and authorized volunteers and agents, (collectively "Indemnified Parties") from and against any and all claims, demands, actions, losses, liabilities, damages, and all expenses and costs incidental thereto (collectively "Claims") including cost of defense, settlement, arbitration, and reasonable attorneys' fees, resulting from injuries to or death of persons, including but not limited to employees of either Party hereto, and damage to or destruction of property or loss of use thereof, including but not limited to the property of either Party hereto, arising out of, pertaining to, or resulting from the acts or omissions of the OTTO, its officers, employees, or agents, or the acts or omissions of anyone else directly or indirectly acting on behalf of the OTTO, or for which the OTTO is legally liable under law regardless of whether caused in part by an Indemnified Party. OTTO shall not be liable for any Claims to the extent caused by the active_negligence of an Indemnified Party where such indemnification would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

The right to defense and indemnity under this Section arises upon occurrence of an event giving rise to a Claim and upon tender in writing to OTTO. OTTO shall defend Indemnified Parties with counsel reasonably acceptable to County. Notwithstanding the foregoing, County shall be entitled, on its own behalf, and at the expense of the OTTO, to assume control of its defense of the defense of any Indemnified Party in any legal action, with counsel reasonably selected by it. Should County elect to initially assume control of its defense, or the defense of any Indemnified Party, it does so without prejudice to its right to subsequently request that OTTO thereafter assume control of the defense and pay all attorneys' fees and costs incurred thereby.

No Limitation of Liability for Indemnification – per 6-2.02 of the Standard County Construction Specifications

This indemnity shall not be limited by the types and amounts of insurance or self-insurance maintained by OTTO or OTTO's Contractor's or Subcontractors.

Nothing in this Indemnity shall be construed to create any duty to, any standard of care with reference to, or any liability or obligation, contractual or otherwise, to any third party.

The provisions of this Indemnity shall survive the expiration or termination of the Agreement.

Responsibility for Fines for Violation of Environmental Regulations Added as 6-02.03 under Indemnification of the Standard County Construction Specifications

OTTO shall assume sole responsibility for and payment of any fines levied on either the County or OTTO by any local, state or federal authority (hereinafter Authority) for breaches of the Authority's environmental regulations. OTTO agrees to be solely liable for the payment of all fines regardless of whether the fines are a result of the sole or partial acts or omissions of the OTTO. In addition, OTTO understands and acknowledges that, during the course of construction, the environmental regulations implemented or imposed by the Authority on the County may change and OTTO specifically agrees to comply with any future environmental regulations implemented or imposed by the Authority on the County.

OTTO shall pay all fines levied by the Authority on OTTO or the County when levied or, if OTTO believes that a violation of the Authority's regulations did not occur, appeal the levy of the fine to the Authority. Until the fine is paid or withdrawn by the Authority, the County shall deduct the amount of the fine from the monthly partial payments owed to OTTO for work performed on the project and hold the payment(s) in reserve until the fine is paid or withdrawn by the Authority. After OTTO pays the fine or, the Authority withdraws the fine, the County will pay the withheld monies to the OTTO with the next monthly partial payment for work performed on the project.

21. LIMITATION OF COUNTY LIABILITY

Other than as provided in this Contract, County's financial obligations under this Contract shall be limited to the payment of the compensation provided in this Contract. Notwithstanding any other provision of this Contract, in no event, shall County be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Contract for the Services performed in connection with this Contract.

22. INSURANCE

Without limiting OTTO's indemnification, OTTO shall maintain in force at all times during the term of this Agreement and any extensions or modifications thereto, insurance as specified in the Standard County Construction Specifications (https://saccountyspecs.saccounty.net/Pages/2016.aspx), Special Provisions, and **Exhibit B** Insurance Requirements. It is the responsibility of OTTO to notify its insurance advisor or insurance carrier(s) regarding coverage, limits, forms and other insurance requirements specified in the Standard County Construction Specifications, Special Provisions, and Exhibit B Insurance Requirements. It is understood and agreed that COUNTY shall not pay any sum to OTTO under this Agreement unless and until COUNTY is satisfied that all insurance required by this Agreement is in force at the time services hereunder are rendered. Failure to maintain insurance as required in this agreement may be grounds for material breach of contract.

23. INFORMATION TECHNOLOGY ASSURANCES

OTTO shall take all reasonable precautions to ensure that any hardware, software, and/or embedded chip devices used by OTTO in the performance of services under this Agreement, other than those owned or provided by COUNTY, shall be free from viruses. Nothing in this provision shall be construed to limit any rights or remedies otherwise available to COUNTY under this Agreement.

24. COMPENSATION AND PAYMENT OF INVOICES LIMITATIONS

[This section is subject to further amendment, refer to recitals above]
Preconstruction Services Phase

A. Compensation under this Agreement shall be limited to the Maximum Total Payment Amount set forth in **Exhibit C**, or **Exhibit C** as modified by COUNTY in accordance with express provisions in this Agreement.

B. OTTO shall submit an invoice in accordance with the procedures prescribed by COUNTY on a monthly basis for services performed during the previous month. Invoices shall be submitted to COUNTY no later than the last day of the month following the invoice period, and COUNTY shall pay OTTO within thirty (30) days after receipt of an appropriate and correct invoice.

C. COUNTY operates on a July through June fiscal year. Invoices for services provided in any fiscal year must be submitted no later than July 31, one month after the end of the fiscal year. Invoices submitted after July 31 for the prior fiscal year shall not be honored by COUNTY unless OTTO has obtained prior written COUNTY approval to the contrary.

D. OTTO shall maintain for four years following termination of this agreement full and complete documentation of all services and expenditures associated with performing the services covered under this Agreement. Expense documentation shall include: time sheets or payroll records for each employee; receipts for supplies; applicable subcontract expenditures; applicable overhead and indirect expenditures.

E. In the event OTTO fails to comply with any provisions of this Agreement, COUNTY may withhold payment until such non-compliance has been corrected.

25. SUBCONTRACTS, ASSIGNMENT

[This section is subject to further amendment, refer to recitals above]

A. OTTO shall be responsible, at its expense, for employing or engaging all persons necessary to perform the services described herein and in **Exhibit A**. OTTO shall obtain prior written approval from COUNTY before subcontracting any of the services delivered under this Agreement. OTTO remains legally responsible for the performance of all contract terms including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. OTTO shall be held responsible by COUNTY for the performance of any subcontractor whether approved by COUNTY or not.

B. This Agreement is not assignable by OTTO in whole or in part, without the prior written consent of COUNTY.

26. AMENDMENT AND WAIVER

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder. No interpretation of any provision of this Agreement shall be binding upon COUNTY unless agreed in writing by DIRECTOR and counsel for COUNTY.

27. SUCCESSORS

This Agreement shall bind the successors of COUNTY and OTTO in the same manner as if they were expressly named.

28. TIME

Time is of the essence of this Agreement.

29. INTERPRETATION

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

30. DIRECTOR

[This section is subject to further amendment, refer to recitals above]
As used in this Agreement, "Director" shall mean the Director of General Services, or their designee.

31. DISPUTES

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. Pending resolution of any such dispute, OTTO shall continue without delay to carry out all its responsibilities under this Agreement unless the Agreement is otherwise terminated in accordance with the Termination provisions herein. COUNTY shall not be required to make payments for any services that are the subject of this dispute resolution process until such dispute has been mutually resolved by the parties. If the dispute cannot be resolved within 15 calendar days of initiating such negotiations or such other time period as may be mutually agreed to by the parties in writing, either party may pursue its available legal and equitable remedies, pursuant to the laws of the State of California. Nothing in this Agreement or provision shall constitute a waiver of any of the government claim filing requirements set forth in Title 1, Division 3.6, of the California Government Code or as otherwise set forth in local, state and federal law.

32. TERMINATION

[This section is subject to further amendment, refer to recitals above] COUNTY may terminate the Phase 1 Work for convenience any time upon 5 days written notice. In the event of such termination of the Phase 1 Work for convenience, the COUNTY shall pay OTTO the reasonable value of OTTO Work up to the effective date of termination, not to exceed the Contract Sum for Phase 1 ("Preconstruction Phase").

A. COUNTY may terminate this Agreement without cause upon 60 days written notice to the other party. Notice shall be deemed served on the date of mailing. If notice of termination for cause is given by COUNTY to OTTO and it is later determined that OTTO was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to this paragraph (A).

B. COUNTY may terminate this Agreement for cause immediately upon giving written notice to OTTO should OTTO materially fail to perform any of the covenants contained in this Agreement in the time and/or manner specified. In the event of such termination, COUNTY may proceed with the work in any manner deemed proper by COUNTY. If notice of termination for cause is given by COUNTY to OTTO and it is later determined that OTTO was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph (A) above.

C. COUNTY may terminate or amend this Agreement immediately upon giving written notice to OTTO, 1) if advised that funds are not available from external sources for this Agreement or any portion thereof, including if distribution of such funds to the County is suspended or delayed; 2) if funds for the services and/or programs provided pursuant to this Agreement are not appropriated by the State; 3) if funds in COUNTY's yearly proposed and/or final budget are not appropriated by COUNTY for this Agreement or any portion thereof; or 4) if funds that were previously appropriated for this Agreement are reduced, eliminated, and/or re-allocated by COUNTY as a result of mid-year budget reductions.

D. If this Agreement is terminated by COUNTY under paragraph (A) or (C) above:

1. OTTO shall cease rendering services pursuant to this Agreement as of the termination date.

2. OTTO shall deliver to COUNTY copies of all writings prepared pursuant to this Agreement, including but not limited to all Project Documents. The term "writings" shall be construed to mean and include: handwriting, typewriting, drawings, blueprints, printing, electronic media, photostating, photographing, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

3. OTTO shall not incur any expenses under this Agreement after notice of termination and shall cancel any outstanding expenses obligations to a third party that OTTO can legally cancel.

E. If this Agreement is terminated under paragraphs (A) or (C), above, OTTO shall be paid for authorized and approved services performed prior to the termination date in accordance with the provisions of the Compensation and Payment of Invoices Limitations provision of this Agreement.

33. REPORTS

OTTO shall, without additional compensation, therefore, make fiscal, program evaluation, progress, and such other reports as may be reasonably required by DIRECTOR concerning OTTO's activities as they affect the contract duties and purposes herein. COUNTY shall explain procedures for reporting the required information.

34. AUDITS AND RECORDS

Upon COUNTY'S request, COUNTY or its designee shall have the right at reasonable times and intervals to audit, at OTTO's premises, OTTO's financial and program records as COUNTY deems necessary to determine OTTO's compliance with legal and contractual requirements and the correctness of claims submitted by OTTO. OTTO shall maintain such records for a period of four years following termination of the Agreement, and shall make them available for copying upon COUNTY'S request at COUNTY'S expense. COUNTY shall have the right to withhold any payment under this Agreement until OTTO has provided access to OTTO financial and program records related to this Agreement.

35. PRIOR AGREEMENTS

This Agreement constitutes the entire contract between COUNTY and OTTO regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between COUNTY and OTTO regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

36. SEVERABILITY

If any term or condition of this Agreement or the application thereof to any person(s) or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

37. FORCE MAJEURE

Neither OTTO nor COUNTY shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

38. SURVIVAL OF TERMS

All services performed and deliverables provided pursuant to this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

39. AUTHORITY TO EXECUTE

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the parties to this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized.

40. <u>DUPLICATE COUNTERPARTS</u>

This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

Signatures scanned and transmitted electronically shall be deemed original signatures for purposes of this Agreement, with such scanned signatures having the same legal effect as original signatures. This Agreement may be executed through the use of an electronic signature and will be binding on each party as if it were physically executed.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

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

DocuSigned by:
Jeffrey A. Gasaway
AB8BF9B8213F4B0...

By: ____________________
Jeffrey A. Gasaway, Director
Department of General Services

"COUNTY"

Date: 11/10/2022

John F. Otto, Inc. doing business as Otto Construction, a California corporation

DocuSigned by:
Allison Otto
755274B1427C478...

By: ____________________
Allison Otto
President

"OTTO"

Date: 11/10/2022

Agreement approved by
Board of Supervisors:

Agenda Date: November 8, 2022

Item Number: 12

THIS AGREEMENT FORMAT HAS BEEN APPROVED BY COUNTY COUNSEL

DocuSigned by:
Diane E. McElhern
1A7AED1B21C040E...

By: ____________________ Date: 11/10/2022
Diane E. McElhern
Deputy County Counsel

DocuSigned by:
Jonathan Martinez
C6FBCC18F342436...

Prepared by: ____________________
Jonathan Martinez, Sr. Contract Services Officer
DGS, Contract and Purchasing Services

DocuSigned by:
Kathy Sutton
9226765B0C014FD...

____
Kathy Sutton, Administrative Services Officer III
Department of Airports

EXHIBIT A to Agreement
for Construction Services for
Construction Manager at Risk (CMAR)

SCOPE OF SERVICES [This Exhibit is subject to further amendment, refer to recitals above]
Terminal A Restroom Rehabilitation project

1. SERVICE LOCATION(S):

Facility Name(s):	Terminal A
Street Address:	6850 Airport Boulevard
City and Zip Code:	Sacramento, CA 95837

2. PRECONSTRUCTION SERVICES PHASE

A. Preconstruction Phase Proposal. The preconstruction phase proposal will be negotiated between OTTO and COUNTY prior to issuance of Agreement. The preconstruction phase proposal shall identify the personnel to be assigned, their title or position, and billable staff rates proposed in the CMAR RFQ proposal, and the duration of their assignments as negotiated. If additional staff not included in the specified rates that are part of the CMAR RFQ proposal are required, the rates must be independently verified and the salary rates must be approved by the COUNTY. Resumes and job descriptions shall be provided for any additional staff proposed in the preconstruction phase proposal and not identified in the CMAR RFQ proposal. The preconstruction phase proposal shall include the performance of all General and Preconstruction Services required for the preconstruction phase of the Program, including design review services through 100% Construction Documents for the Project. Upon the Owner's issuance of a Notice to Proceed for the preconstruction phase of the Program or any part thereof, the Owner agrees to compensate OTTO for the General Conditions Costs, upon satisfactory performance of the services, up to the maximum amount identified in the Preconstruction Services Guaranteed Maximum Price (GMP) Addendum.

B. The Preconstruction Phase Scope of Services to be provided by this Agreement are those services identified in COUNTY'S Request for Qualifications (RFQ) dated 4.29.2022 and OTTO Preconstruction Proposal dated 8.16.2022 and 8.19.2022. Both the RFQ and the Proposal are hereby incorporated into this Agreement as Attachment 1 and 2, respectively, and made a part of this Agreement. OTTO agrees to perform all services stated in the Agreement for the compensation described herein.

The COUNTY'S Director or designee, may negotiate with OTTO and approve reasonable modifications in tasks, work products, schedules, milestones, and staff assignments so long as such modifications are within the general scope of services provided under this Agreement, do not exceed the Maximum Total Payment Amount, and are determined to be in the best interest of COUNTY.

C. Preconstruction Services for this project begin at the Construction Document stage of design. The services required for the Preconstruction Phase of this Agreement will consist of the following:

1. Preparation of Detailed Cost Estimate based on current set of Project Documents.
2. Constructability Review of current set of Project Documents.
3. Scheduling – Prepare Detailed Project Schedule from beginning of Preconstruction through Closeout of construction services.
4. Logistics Plan for Construction Phase.
5. One Value Engineering/Material Substitution Session based on current set of Project Documents.
6. Evaluation of Long-Lead Items that may require ordering prior to GMP Finalization.
7. Conduct Subcontractor Prequalification Process with Owner Approval.
8. Prepare Guaranteed Maximum Price (GMP) for construction services with submission to COUNTY including the following actions by OTTO:

    a. Prepare Estimate
    b. Conduct Pre-Bid Conference with Subcontractors
    c. Conduct Subcontractor Solicitation
    d. Conduct Bid Opening
    e. Prepare Bid Tabulation including all corrections to subcontractor calculations

D. The GMP submitted to the COUNTY must include the following sections:

1. Copy of Advertisement to Solicit Bids and List of Prequalified Bidders, as applicable.
2. Project Description.

3. Schedule of Values (GMP Summary) in a format acceptable to COUNTY, including subtotals for the following elements:

   a. the Direct Cost of Work (DCOW), including names of recommended subcontractors and including allowances on a separate line
   b. the General Conditions estimate
   c. the maximum Fee as a percentage of all costs in items 1 and 2.
   d. the CMAR Contingency, if necessary
   e. the Owner's Contingency, in an amount that has been established by the COUNTY in its sole discretion
   f. the Guaranteed Maximum Price for the Project, which shall be the total sum of items (1) through (5)
4. Detailed Estimate of the Direct Cost of Work, in a format acceptable to the COUNTY.
5. General Conditions Estimate, listing all staff positions, rates as submitted in the proposal, names of individuals (per proposal) and durations.
6. List of Alternates and Unit Prices, if applicable.
7. List of Allowances.
8. Value Engineering Recommendations.
9. Assumptions and Clarifications.
10. Project Schedule.
11. List of Contract Documents.
12. A Bid Tabulation for each Trade Contractor being recommended for award.
13. Subcontractor Licensing Information.
14. Additional Information requested by COUNTY.

E. GMP Negotiations and Approval. The GMP proposal shall form the basis of negotiations between OTTO and the COUNTY for the Project. The County shall have no obligation to accept any GMP, regardless of that proposal's relationship to the COUNTY's budget or the most current estimate or for any other reason. After each negotiation session, unless agreement is reached, the COUNTY shall determine if further negotiations are warranted. If the negotiations reveal any inconsistencies or inaccuracies in the information presented in the GMP Proposal, OTTO will adjust the GMP proposal as necessary. Once negotiations progress to the point that the COUNTY considers the proposed GMP to be complete and acceptable, OTTO may be required to assist with a presentation of the GMP as requested by the COUNTY. Each approved GMP proposal will be executed as a formal Addendum to this Agreement. No Addendum will be binding until the COUNTY delivers a fully executed Addendum to OTTO. If the COUNTY determines that the negotiations are not successful, the COUNTY shall notify OTTO and take possession and ownership of all documents produced for the design and preconstruction phase, pay OTTO for any remaining undisputed compensation for preconstruction services and proceed as follows:

1. Reject the GMP proposal and direct the design team and OTTO to investigate (then may not want to take away documents as stated above, redesign, develop for COUNTY approval value engineering possibilities, and other cost savings to resubmit a new, lesser, GMP Proposal. This may at the COUNTY's option, include reduction in scope; or,
2. Reject the GMP proposal and select a new CMAR for the project, bid the work to a General Contractor or otherwise complete with other forces or take such action, if any, that the COUNTY may determine is in its best interest. In this event, OTTO shall not perform, nor be compensated for, any services for the Project other than the Preconstruction Phase services already completed for the Project, except as authorized by the COUNTY, and OTTO shall be compensated for all required Work and services completed to the satisfaction of the COUNTY through the date of COUNTY's notice. OTTO shall immediately turn over to the COUNTY all drawings, plans, specifications, and other project related documentation.

Guaranteed Maximum Price (GMP). Once a GMP is approved by the COUNTY, any mistakes in estimating costs or work in the GMP shall not serve as the basis for a claim by OTTO or upward adjustment of the GMP. Once approved by the COUNTY, the GMP will not be increased for any additional CMAR costs. The GMP shall be construed at any given point in time to include any firm fixed adjustments (upward or downward) thereto made in accordance with the relevant provisions of the Contract Documents. The GMP is not subject to price escalation or de-escalation and is not subject to any increase, except for scope changes in the Work. The GMP shall include all taxes that are or foreseeably will be required for completion of the Work. OTTO shall not be entitled, under any circumstances, to any increased costs of doing business, including, but not limited to, increased costs of materials, trucking, and fuel. The actual price paid by the COUNTY for the Project identified in the GMP Agreement shall be the lesser of (A) the maximum Guaranteed Maximum Price or (B) the sum of the actual incurred Direct Cost of Work, including Allowances approved and incurred, (ii) the approved General Conditions Costs incurred, and (iii) the Fee.

F. CMAR and Owner Contingencies:

1. Each GMP may include an agreed upon sum as the CMAR's Contingency and an amount established for the Owner's Contingency, each of which shall be identified as a separate line item in the GMP's Schedule of Values.
2. The CMAR's Contingency shall be utilized to compensate for the increased costs incurred by OTTO due to Unforeseen Conditions relating to construction of that Project which resulted in an unavoidable increase in costs. If OTTO fails to include all the required scope of work in the GMP or estimate, CMAR Contingency may be used to purchase the omitted scope, until the CMAR Contingency balance reaches zero or until the balance equals the anticipated subcontractor modifications, as determined by the Owner. All requests to use the CMAR's Contingency shall be submitted in the form of a Change Request. Charges to the CMAR's Contingency shall not become due and payable until the Change Request is approved by the Owner. If the CMAR's Contingency reaches zero, any cost overruns or charges that could have been charged to the CMAR's Contingency shall be the sole responsibility of OTTO.
3. If bids are received below the applicable line items in the GMP, the surplus will be added to the CMAR's Contingency for that Project. If subcontractor bids exceed the applicable line items in a GMP, the deficiency will be charged to the CMAR's Contingency for that Project, however such events shall not be a cause to increase the GMP.
4. Once all subcontracts anticipated by a GMP have been awarded the Owner may require OTTO to reduce the CMAR's Contingency to an amount as agreed to by the parties to reflect the CMAR's risk from that point in the Project forward.
5. Upon 50% completion as defined in the Pay Application status or completion of certain milestone dates or completion of other stages as set forth in a GMP, the COUNTY may, in its sole discretion, require OTTO to execute a Contract Modification to reduce the remaining unused CMAR's Contingency to an amount that reflects the remaining risk on the Project as determined by the COUNTY in its sole discretion.
6. The Owner's Contingency shall be an amount, determined by the COUNTY, which will be available to compensate OTTO for the increased costs incurred by OTTO due to a Contract Modification or to other increased costs which the COUNTY determines, in its sole discretion, is its responsibility. The COUNTY may increase,

decrease, or eliminate the Owner's Contingency at any time by the unilateral issuance of a Contract Modification.

7. When OTTO proposes to use either Contingency, OTTO shall prepare a Change Request Form, identifying the amount sought to be charged to either Contingency, the reasons why the amount should be charged to that Contingency and demonstrating to the satisfaction of the COUNTY that the costs to be incurred are necessary for the Work. At all times, OTTO shall avoid and mitigate Contingency costs whenever possible. Before payment or as part of an audit, the COUNTY shall have authority to verify the actual costs incurred. No costs may be charged to either Contingency until the COUNTY approves the contingency request.
8. The COUNTY retains the right to increase the GMP in lieu of charging any cost to the Owner's Contingency. Any unused Contingency, whether Owner Contingency or the CMAR Contingency, shall be reconciled to a zero balance via a GMP Contract Modification upon Final Completion. OTTO shall have no entitlement to the balance of either Contingency.

G. Allowances. Allowances will only be used in situations where the payment to a third-party service provider, such as a utility company, is unknown at that time due to an incomplete scope of work, or a portion of the Work is not well-defined, or there are known factors that could significantly increase the cost to perform a specific portion of the Work. In such a case, upon mutual agreement between the COUNTY and OTTO, an Allowance may be included in a GMP to account for the maximum possible additional costs that may arise. Items covered by an Allowance shall be supplied for such amounts and by such persons or entities as the COUNTY may direct (when applicable). Allowance costs may be invoiced without additional approval by the COUNTY, only when a subcontract award or modification is not required (such as power, water, sewer). All other Allowance expenses must be approved by the COUNTY before payment will be made. Unless otherwise provided in the Contract Documents or in writing by the Owner:

1. Materials and equipment under an Allowance shall be selected by the COUNTY.
2. Allowances shall cover the cost of labor, materials, supplies, and equipment delivered at the site and all required taxes, less applicable trade discounts.
3. No Allowance amount is due and payable unless the payment application includes appropriate substantiating cost data that

reflects the actual costs or other amount approved by the COUNTY. The Allowance amount may not be exceeded without a prior Contract Modification approved by the COUNTY.

4. Upon completion of the Project, OTTO shall have no entitlement to any remaining Allowance amount and the remaining Allowance amounts, if any, shall be reduced to zero by transferring the entire balance to the Owner's Contingency.

H. General Conditions Costs Defined. General Conditions Costs are limited to the following reimbursable expenses only:

1. OTTO Staff at the proposed rates in the proposed RFQ proposal submitted to determine award that are identified by name, title or position and duration in a Preconstruction Services Addendum, GMP Addendum, or Contract Modification. If additional staff not included in proposal are required, the rates must be independently verified and the salary rates must be approved by the COUNTY. Once rates have been approved, annual salary adjustments no greater than 3% will be allowed upon the anniversary date of the Contract date. No other increases will be made. No payment will be made for individuals whose rate has not been approved.
2. Costs of construction requirements that are approved by the COUNTY; all costs shall be reasonable and necessarily incurred for the Project, as determined by the COUNTY in its sole discretion.; construction requirements may include the purchase or rental of jobsite trailers, furniture, fixtures, office equipment, fencing, hoisting, temporary work, temporary toilets, temporary storage, trash removal and dumpsters, site access items and services, project signage and jobsite security items and services. See Exhibit D for a more detailed lists of General Conditions Costs and Unallowable Costs.

I. Direct Cost of the Work. Upon the COUNTY's issuance of a Notice to Proceed for a Project or portion thereof, the COUNTY agrees to pay OTTO for the following items which constitute the Direct Cost of the Work, all of which are subject to audit and the COUNTY's determination of reasonableness:

1. Payments due to or made by OTTO to Subcontractors retained by OTTO in accordance with this Agreement to perform any portion of the Work. Subcontractors' invoices shall be provided to the COUNTY as actual cost documentation, along with proof of payment, upon Owner's request.

2. Actual costs of premiums (or rates otherwise approved in writing by the Owner) for accepted insurance policies.
3. Cost of all materials required to complete the Work that are incorporated into the Project, plus a reasonable amount allowed for waste, as determined in the COUNTY's sole discretion and plus applicable sales taxes. Insurance and storage of materials is reimbursable only if approved in advance by the COUNTY. Invoices, prorated to these allowed quantities, shall be provided to the COUNTY as actual cost documentation, along with proof of payment, upon COUNTY's request.
4. Payment for equipment costs will differentiate between four types of equipment: (1) contractor-owned equipment; (2) leased equipment; (3) rented equipment; and (4) purchased equipment. Purchased equipment will remain the property of OTTO and the COUNTY at the end of the Project will receive an equitable credit from OTTO. If the equipment is owned by OTTO or Subcontractor (any tier) the equipment rental rates shall not be more than fifty percent (50%) of the properly adjusted rates indicated in the most recent Rental Rate Blue Book by Dataquest, Inc., ("Blue Book), applicable to the date the work activity was approved for the period of actual use of such equipment. Maximum rates for equipment not listed in the Blue Book shall be established by capacity comparisons to other listed equipment. No overtime charges shall be made for equipment operating longer than 8 hours per day and only daily or prorated weekly or monthly rates per day shall be allowed depending on the actual rental period. The equipment daily rates shall be based on 1/30th of the monthly rates, and hourly rates (not to exceed a total of 8 hours per day) shall be based on 1/240th of the monthly rate. Operating costs, if not included in the Blue Book rates, shall be no greater than 15% of the hourly rental rate for actual operating hours. For leased equipment, OTTO shall provide copies of the leasing agreement for each item of equipment required for the work. Leasing agreements shall be used to establish leased rates. For rented equipment, OTTO shall provide copies of the actual invoices paid to a third party for each item of equipment required for the work. Operating expenses for leased and rented equipment are assumed to be included in the rental rates and no additional claim can be made for such costs. No payment will be made for spare parts, repairs, or repair down time.

All rates and costs shall be reasonable and necessarily incurred for the Project, as determined by the COUNTY in its sole discretion.

5. Costs incurred for materials, supplies, equipment, and temporary facilities used, but not consumed, in the performance of the Work, including costs of transportation, installation, dismantling and removal. OTTO shall maintain a detailed log of all such materials, supplies, equipment, and temporary facilities that are purchased under this provision that exceed $500 and, as a condition of Substantial Completion for the Project, compensate the COUNTY for an agreed upon salvage value (as a deduct from the CMAR's Contingency, if possible) and remove the property before Final Completion. All costs shall be reasonable and necessarily incurred for the Project, as determined by the COUNTY in its sole discretion.
6. Costs incurred due to an emergency affecting the safety of persons and property to the extent they are reasonable and fully documented and supported to the satisfaction of the COUNTY.
7. Costs for Jobsite utilities, temporary water and power costs, costs incurred for stormwater management and implementation of approved safety plans.
8. Costs necessarily incurred in the performance of the Work if and to the extent approved in advance in writing by the COUNTY.
9. Specifically identified Direct Costs of the Work items (whether as actual costs or negotiated amounts) when identified in an approved GMP Schedule of Values.
10. Costs of all permits and costs necessarily incurred in connection with obtaining any permit, test, or inspection, including any required overtime.
11. OTTO performance and payment bond costs at the percentage rate specified in OTTO's Fee & Overhead Price Proposal dated 8.16.2022 and 8.19.2022. The bond rate may be converted to a lump sum for each GMP, based upon the GMP value. If the bond rate is billed as a lump sum, the final GMP Amendment will reconcile the lump sum bond cost using the percentage rate for the final GMP value.

J. Excluded Cost Items. See **Exhibit D** Cost Matrix for a more complete list. The COUNTY will not pay for any expenses or costs of any kind that are not specifically and expressly described in this Agreement. Excluded items include, but are not limited to:

1. Any salaries and other compensation for OTTO's personnel, other than the billable labor rate as proposed in the CMAR RFQ proposal

or approved by the COUNTY during negotiations of the preconstruction phase services or construction phase services.

2. Overtime of salaried personnel.
3. Any expenses related to the OTTO's principal and branch offices.
4. Any capital expenses, such as the interest on capital employed for the Work.
5. Any costs due to the fault or negligence of OTTO, its subcontractors, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the costs for the correction of damaged, defective, or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied and repairing damage or replacing property not forming part of the Work.
6. Late payment penalties or fees, if incurred due to the fault or negligence of OTTO or its subcontractor.
7. Payment and performance bond costs for an Addendum for Preconstruction Services and payment and performance bond costs that exceed the rate set forth in the Fee and Overhead Price Proposal.
8. Any labor burden costs that would cause the burden rate set forth in Article 7 to be exceeded; for example, none of the following labor burden items are separately reimbursable: payroll taxes, medical, vision and dental insurance, workers' compensation insurance, pension, stock and retirement plans, any adjustments to the base compensation, bonus or incentive pay, paid holidays, sick pay and vacation pay, and any other expenses for employee benefits, however described.
9. Any cost that is not necessary for the Work (such as items where Owner pre-approval was not obtained) or would cause a GMP, as adjusted by GMP Amendments, if any, to be exceeded.
10. All claims for compensation or damages that are rendered non-compensable, including expenses for mediation and dispute resolution, and
11. Any cost reasonably inferred by the Owner as included within a category listed in **Exhibit D**.

K. CMAR FEE. OTTO's Fee shall be the fixed percentage that was identified on Line 1 of OTTO's Fee & Overhead Price Proposal dated 8.16.2022 and 8.19.2022 and included with the CMAR RFQ proposal. The Fee is payable on the sum of the approved General Conditions costs plus the allowable Direct Costs of the Work, upon satisfactory performance of the Work identified in a properly submitted Application for Payment. OTTO agrees that the Fee is full compensation for all OTTO's general and administrative (G&A) costs, OTTO's profit, all home office, branch office and project office overhead, all expenses for items that are used by OTTO's staff, all non-reimbursable expenses and all costs not expressly identified in the Agreement, such as all overhead, travel, relocation, and lodging expenses. A non-exhaustive list of cost categories that are not reimbursable is included in **Exhibit D**. The Fee will be fixed for the duration of the Program.

L. The COUNTY'S Director, or designee may negotiate with OTTO and approve reasonable modifications in tasks, work products, schedules, milestones, and staff assignments so long as such modifications are within the general scope of services provided under this Agreement, do not exceed the Maximum Total Payment Amount, and are determined to be in the best interest of COUNTY.

3. <u>CONSTRUCTION SERVICES PHASE</u>

A. The construction scope of services to be provided by this Agreement are those services identified in OTTO's proposal to construct the proposed project for a compensation not exceeding the GMP and constructed in accordance with the mutually agreed upon construction project plans and specifications and the construction schedule proposed by the OTTO and accepted by the COUNTY. Both the GMP and the construction schedule shall be produced at the conclusion of the preconstruction services phase.

B. The COUNTY'S Director or designee, may negotiate with OTTO and approve reasonable modifications in tasks, work products, schedules, milestones, and staff assignments so long as such modifications are within the general scope of services provided under this Agreement, do not exceed the GMP, and are determined to be in the best interest of COUNTY.

C. OTTO may only proceed with the construction scope of services when authorization is granted from the COUNTY upon approving the GMP, mutually agreed upon construction plans and construction schedule. Both the approved GMP and the approved project schedule proposed by OTTO are made a part of this Agreement. OTTO agrees to perform all services stated in this Agreement for the compensation described herein.

D. Self-Performance of the Work. Upon written authorization of the COUNTY, OTTO, OTTO's construction management team related entities, such as parent corporations, affiliates, subsidiaries, or other entities with common ownership or management, may use their own forces to perform a portion of the Direct Cost of Work. There is no guarantee that any self-performed work will be allowed. Related entities, such as parent companies, affiliates, subsidiaries, or other entities having common ownership or management with that of OTTO, or a subcontractor are prohibited from submitting competing bids or proposals and shall be disqualified for doing so. When authorized in advance to submit a competitive bid, OTTO (or other entity described above) must submit its bid to the OAR, at least forty-eight hours prior to the public bid opening date and time. Self-performed work will be paid in accordance with the OTTO's submitted bid, as long as two other higher competitive bids have been received. If two other higher competitive bids have not been received, payment will be made in accordance with OTTO's lump sum bid if the bid is within 10% of an Owner's independent cost estimate. By submitting a bid, OTTO acknowledges and declares that the Contract Documents are sufficient to enable OTTO to complete the Work as shown in the Contract Documents or, if not specifically shown, to perform the activities which may be reasonably inferred as necessary for completion of the Work in accordance with the requisite time frame, applicable laws, statutes, building codes, regulations, or as otherwise required by the Contract Documents.

E. OTTO shall provide the services in an expeditious manner and in accordance with the schedule developed by COUNTY and OTTO. OTTO shall meet and generally adhere to all schedules and deadlines set forth in the Proposal, which may be amended from time to time by mutual agreement of the parties.

4. RESPONSIBILITIES OF COUNTY AND CMAR FOR SCOPE

A. COUNTY, or its authorized representatives, shall review all documents submitted by OTTO and render decisions pertaining thereto as promptly as is reasonable under the circumstances at the time in order to avoid unreasonable delay of the progress of OTTO. COUNTY shall furnish information and services as required by this Agreement and shall render approvals and decisions as expeditiously as is reasonably necessary under the circumstances at the time for the orderly progress of OTTO's services and of the project.

B. OTTO shall be solely responsible for the quality and accuracy of its work and the work of its subcontractors or sub-consultants performed in connection with this Agreement. Any review, approval, or concurrence therewith by the COUNTY shall not be deemed to constitute acceptance or waiver by the COUNTY of any error or omission as to such work. OTTO shall coordinate the activities of any subcontractor or sub-consultant and is responsible to ensure that all plans, drawings, and specifications are coordinated and interface with the other applicable plans, drawings, and specifications to produce a unified, workable, and acceptable whole functional product.

5. AUTHORITY OF CMAR PERFORMING SCOPE OF WORK

OTTO is retained to provide and perform the scope of services covered by this Agreement. OTTO, including OTTO's assigned personnel, shall have no authority to represent COUNTY or COUNTY staff at any meetings of public or private agencies unless an appropriate COUNTY official provides prior written authorization for such representation which outlines the purpose, scope and duration of such representation. OTTO shall possess no authority or right to act on behalf of COUNTY in any capacity whatsoever as agent, nor to bind COUNTY to any obligations whatsoever. COUNTY is responsible for making all policy and governmental decisions related to the work covered by this Agreement.

6. PROJECT PERSONNEL

In the performance of the services hereunder, OTTO shall provide the personnel as set forth in the Proposal. Any change in such personnel or reassignment in their project responsibilities must be agreed to in writing by the Director or his authorized representative before any such change may be made. Key contacts for this project shall be as follows:

COUNTY:	NAME:	Kathy Sutton
	PHONE:	(916) 874-0771
	E-MAIL:	suttonk@saccounty.gov
OTTO:	NAME:	Allison Otto
	PHONE:	(916) 441-6870
	E-MAIL:	aotto@ottoconstruction.com

EXHIBIT B to Construction Manager at Risk (OTTO) Agreement
PRE-CONSTRUCTION PHASE

COUNTY OF SACRAMENTO
INSURANCE REQUIREMENTS

Without limiting OTTO's indemnification, OTTO shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by OTTO, its agents, representatives, employees, or subcontractors. COUNTY shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If in the opinion of COUNTY Risk Manager, insurance provisions in these requirements do not provide adequate protection for COUNTY and for members of the public, COUNTY may require OTTO to obtain insurance sufficient in coverage, form and amount to provide adequate protection. COUNTY'S requirements shall be reasonable but shall be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

VERIFICATION OF COVERAGE

OTTO shall furnish COUNTY with certificates evidencing coverage required below. Copies of required endorsements must be attached to the certificates provided. COUNTY Risk Manager may approve self-insurance programs in lieu of required policies of insurance if, in the opinion of the Risk Manager, the interests of COUNTY and general public are adequately protected. All certificates, evidences of self-insurance, and additional insured endorsements are to be received and approved by COUNTY before performance commences. COUNTY reserves the right to require that OTTO provide complete, certified copies of any policy of insurance including endorsements offered in compliance with these specifications.

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

GENERAL LIABILITY: Insurance Services Office's Commercial General Liability occurrence coverage form CG 0001. Including, but not limited to Premises/Operations, Products/Completed Operations, Contractual, and Personal & Advertising Injury, without additional exclusions or limitations, unless approved by COUNTY Risk Manager.

AUTOMOBILE LIABILITY: Insurance Services Office's Commercial Automobile Liability coverage form CA 0001. Commercial Automobile Liability: auto coverage symbol "1" (any auto) for corporate/business owned vehicles. If there are no owned or leased vehicles, symbols 8 and 9 for non-owned and hired autos shall apply. Personal Lines automobile insurance shall apply if vehicles are individually owned.

WORKERS' COMPENSATION: Statutory requirements of the State of California and Employer's Liability Insurance.

PROFESSIONAL LIABILITY or Errors and Omissions Liability insurance appropriate to OTTO's profession.

UMBRELLA or Excess Liability policies are acceptable where the need for higher liability limits is noted in the Minimum Limits of Insurance and shall provide liability coverages that at least follow form over the underlying insurance requirements where necessary for Commercial General Liability, Commercial Automobile Liability, Employers' Liability, and any other liability coverage (other than Professional Liability) designated under the Minimum Scope of Insurance.

MINIMUM LIMITS OF INSURANCE

CONTRACTOR shall maintain limits no less than:

General Liability shall be on an Occurrence basis (as opposed to Claims Made basis). Minimum limits and structure shall be:

General Aggregate:	$10,000,000
Products Comp/Op Aggregate:	$10,000,000
Personal & Adv. Injury:	$10,000,000
Each Occurrence:	$10,000,000
Fire Damage:	$ 100,000

Building Trades OTTO's and OTTO's engaged in other projects of construction shall have their general liability Aggregate Limit of Insurance endorsed to apply separately to each job site or project, as provided for by Insurance Services Office form CG-2503 Amendment-Aggregate Limits of Insurance (Per Project).

Automobile Liability:
Commercial Automobile Liability for Corporate/business owned vehicles including non-owned and hired, $5,000,000 Combined Single Limit for airside driving, $1,000,000 for landside driving.
Personal Lines Automobile Liability for Individually owned vehicles, $250,000 per person, $500,000 each accident, $100,000 property damage.

Workers' Compensation: Statutory.

Employer's Liability: $1,000,000 per accident for bodily injury or disease.

Professional Liability or Errors and Omissions Liability: $3,000,000 per claim and aggregate.

DEDUCTIBLES AND SELF-INSURED RETENTION

Any deductible or self-insured retention that apply to any insurance required by this Agreement must be declared and approved by COUNTY.

CLAIMS MADE PROFESSIONAL LIABILITY INSURANCE

If professional liability coverage is written on a Claims Made form:

a. The "Retro Date" must be shown and must be on or before the date of the Agreement or the beginning of Agreement performance by OTTO.

b. Insurance must be maintained and evidence of insurance must be provided for at least one (1) year after completion of the Agreement.

c. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "Retro Date" prior to the contract effective date, OTTO must purchase "extended reporting" coverage for a minimum of one (1) year after completion of the Agreement.

OTHER INSURANCE PROVISIONS

The insurance policies required in this Agreement are to contain, or be endorsed to contain, as applicable, the following provisions:

All Policies:

a. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-: VII. COUNTY Risk Manager may waive or alter this requirement or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the Risk Manager, the interests of COUNTY and the general public are adequately protected.

b. MAINTENANCE OF INSURANCE COVERAGE: OTTO shall maintain all insurance coverages and limits in place at all times and provide COUNTY with evidence of each policy's renewal within ten (10) days after its anniversary date.

OTTO is required by this Agreement to immediately notify COUNTY if they receive a communication from their insurance carrier or agent that any required insurance is to be canceled, non-renewed, reduced in scope or limits or otherwise materially changed. OTTO shall provide evidence that such cancelled or non-renewed or otherwise materially changed insurance has been replaced or its cancellation notice withdrawn without any interruption in coverage, scope or limits. Failure to maintain required insurance in force shall be considered a material breach of the Agreement.

COMMERCIAL GENERAL LIABILITY AND/OR COMMERCIAL AUTOMOBILE LIABILITY:

a. ADDITIONAL INSURED STATUS: COUNTY, its officers, directors, officials, employees, and volunteers are to be endorsed as additional insureds as respects: liability arising out of activities performed by or on behalf of OTTO; products and completed operations of OTTO; premises owned, occupied or used by OTTO; or automobiles owned, leased, hired or borrowed by OTTO. The coverage shall contain no endorsed limitations on the scope of protection afforded to COUNTY, its officers, directors, officials, employees, or volunteers.

b. CIVIL CODE PROVISION: Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

c. PRIMARY INSURANCE: For any claims related to this agreement, OTTO's insurance coverage shall be endorsed to be primary insurance as respects to the COUNTY, its officers, officials, employees and authorized volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, directors, officials, employees, or volunteers shall be excess of OTTO's insurance and shall not contribute with it.

d. SEVERABILITY OF INTEREST: OTTO's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. SUBCONTRACTORS: OTTO shall be responsible for the acts and omissions of all its subcontractors and additional insured endorsements as provided by OTTO's subcontractor.

PROFESSIONAL LIABILITY:

PROFESSIONAL LIABILITY PROVISION: Any professional liability or errors and omissions policy required hereunder shall apply to any claims, losses, liabilities, or damages, demands and actions arising out of or resulting from professional services provided under this Agreement.

WORKERS' COMPENSATION:

WORKERS' COMPENSATION WAIVER OF SUBROGATION: The workers' compensation policy required hereunder shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against COUNTY, its officers, directors, officials, employees, agents or authorized volunteers, which might arise by reason of payment under such policy in connection with performance under this Agreement by OTTO. Should OTTO be self-insured for workers' compensation, OTTO hereby agrees to waive its right of subrogation against COUNTY, its officers, directors, officials, employees, agents or authorized volunteers.

NOTIFICATION OF CLAIM

If any claim for damages is filed with OTTO or if any lawsuit is instituted against OTTO, that arise out of or are in any way connected with OTTO's performance under this Agreement and that in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect COUNTY, OTTO shall give prompt and timely notice thereof to COUNTY. Notice shall be prompt and timely if given within thirty (30) days following the date of receipt of a claim or ten (10) days following the date of service of process of a lawsuit.

Special Provisions to the Standard County Construction Specifications and Construction Manager at Risk Contract: Insurance Requirements Applicable to Construction Phase

1. Builder's Risk Insurance

OTTO shall procure, maintain, and keep in force at all times during the Construction Services Phase of the Contract and until the date of transfer of the insurable interest to and acceptance by the County, at the OTTO's sole expense, Builder's Risk insurance with limits of liability equal to one hundred percent (100%) of the contract value of the Work, which shall include the cost of materials and the cost of labor to install materials.

For physical loss or damaged due to land movement and flood, the limits of liability may be stated with sub-limits or with a separate policy covering the perils of land movement and flood (sometimes referred to as a Difference-In-Conditions policy). However, the limits shall not be less than one hundred percent (100%) of the contract value of the Work (or a specific sublimit for flood and EQ), which shall include the cost of materials and the cost of labor to install materials.

The maximum deductible for land movement and flood allowable under the Builder's Risk policy shall be five percent (5%) of replacement value at the time of loss, per occurrence and in the aggregate – if commercially available – or, five percent (5) of the contract value of the Work, per occurrence and in the aggregate. The maximum deductible for all other perils allowable under the policy shall be ten thousand dollars ($10,000) unless approved by the County.

The required Builders Risk insurance shall be a separate line item in the GMP.

2. General Liability Insurance

Section 3-9.01, "General Liability" of the Standard Construction Specifications is amended to read as follows:

Each Occurrence or Claim	$10 Million Dollars ($10,000,000
Products and Completed Operations Aggregate	$10 Million Dollars ($10,000,000)
Personal and Advertising Injury	$10 Million Dollars ($10,000,000)
General Aggregate	$10 Million Dollars ($10,000,000)
Fire Damage	One Hundred Thousand Dollars ($100,000)

3. Environmental Liability Insurance

3-9.08, "Environmental Liability Insurance" of the Standard Construction Specification is amended to read as follows:

Each Occurrence or Claim	$1 Million Dollars ($1,000,000)
General Aggregate	$1 Million Dollars ($1,000,000)

The OTTO or its environmental sub-contractor shall name the County of Sacramento as an additional insured on the OTTO's Pollution Liability insurance policy. The OTTO's Pollution Liability insurance policy shall not contain any cross liability limitations as regards the County of Sacramento as an additional insured. The OTTO or its environmental sub-contractor's Automobile Liability insurance shall be endorsed to include pollution liability coverage with a combined single limit for bodily injury and property damage of not less than One Million Dollars ($1,000,000), if applicable

4. Automobile Liability Insurance

3-9.02, "Automobile Liability" of the Standard Construction Specifications is amended to read as follows:

The limits of liability shall not be less than:

Corporate/business owned or commercially insured vehicles, including non-owned and hired, $5,000,000 Combined Single Limit for all airside driving.

5. Professional Liability or Errors and Omissions Liability insurance appropriate to OTTO's profession.

Each Occurrence or Claim	$3 Million Dollars ($3,000,000)
General Aggregate	$3 Million Dollars ($3,000,000)

EXHIBIT C to Agreement for
Construction Services for
Construction Manager at Risk
[This Exhibit is subject to further amendment, refer to recitals above]
COMPENSATION

The COUNTY will issue a construction contract and a Notice to Proceed (NTP) before each phase (preconstruction or construction) begins; however, Total Compensation for both phases is guaranteed neither by the issuance of an NTP for the preconstruction phase, nor by the issuance of an NTP for the construction phase.

1. MAXIMUM PAYMENT TO OTTO DURING PRECONSTRUCTION SERVICES PHASE

The Total Guaranteed Maximum Price (GMP) for the Preconstruction Service Phase is calculated in the table below:

Compensation Summary	
Description	**Preconstruction Compensation Breakdown**
General Conditions	
CMAR Staff – Billable Rates per RFQ Proposal in table below	$109,923.55
Materials , Equipment, & Subcontractors	$14,120.00
Bonds & Insurance	$0.00
Subtotal General Conditions	$124,043.55
Maximum Fee of Line 2 (4% per RFQ Proposal form Line C, Appendix F)	$4,961.74
Total GMP Contract Price for Preconstruction Phase	$129,005.29

"Contract Price" is OTTO's total budget for the Project and the OTTO cannot exceed this amount at any time during the Term, including during and when OTTO bids the Project to the Subcontractors.

BILLABLE STAFF RATES FOR PRECONSTRUCTION PHASE

Position	Name	Billable Hourly Rate
Preconstruction Manager	Kevin Halhill	106.54
Senior Estimator	Kevin Halhill	106.54
MEP Estimate	Kevin Halhill	106.54
Scheduler	Joe Ussery	117.19
Administrative Assistant	TBD	69.25
Project Manager	Gavin McAleese	106.54
Superintendent	Joe Ussery	117.19

Salaried Staff cannot bill for more than 40 hours/week. Billable hourly rate labor burden costs an no additional labor burdens can be separately reimbursable including, but not limited to payroll taxes, medical, vision or dental insurance, workers' compensation insurance, pension, stock and retirement plans, any adjustments to the base compensation, bonus or incentive pay, paid holidays, sick pay and vacation pay, and any other expenses for employee benefits however described.

2. **GUARANTEED MAXIMUM PRICE TO CONSTRUCTION MANAGER/GENERAL CONTRACTOR (OTTO) DURING CONSTRUCTION SERVICES PHASE**

The Total Guaranteed Maximum Price under this Agreement for the Construction Services Phase is calculated in the table below:

Compensation Summary	
Description	**Construction Compensation Breakdown**
General Conditions	
CMAR Staff – Billable Rates per RFQ Proposal	$
Materials, Equipment, & Subcontracts	$
Bonds & Insurance	$
Subtotal General Conditions	$
Direct Cost of Work	$
Subtotal Direct Cost of Work + General Conditions	$
Allowances	$
Contractor Contingency	$
Owner Contingency	$
Subtotal with Allowances & Contingencies	$
Maximum Fee 4% (per RFQ Proposal)	$

Total Guaranteed Maximum Price Contract Price for Construction Phase	$

"Contract Price" is OTTO's total budget for the Project and the OTTO cannot exceed this amount at any time during the Term, including during and when the OTTO bids the Project to the Subcontractors.

BILLABLE STAFF RATES FOR CONSTRUCTION PHASE

Position	Name	Billable Hourly Rate
Project Manager	Gavin McAleese	106.54
Superintendent	Joe Ussery	117.19
Assistant Superintendent	TBD	101.21
Project Engineer	TBD	79.90
Scheduler	Joe Ussery	117.19
Accountant	TBD	69.25
Safety Manager	Dennis Bell	101.21
Administrative Assistant	TBD	69.25

Salaried Staff cannot bill for more than 40 hours/week. Billable hourly rate labor burden costs an no additional labor burdens can be separately reimbursable including, but not limited to payroll taxes, medical, vision or dental insurance, workers' compensation insurance, pension, stock and retirement plans, any adjustments to the base compensation, bonus or incentive pay, paid holidays, sick pay and vacation pay, and any other expenses for employee benefits however described.

3. LIQUIDATED DAMAGES

Time is of the essence for all services to be provided under this Agreement. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that COUNTY will sustain in the event of and by reason of OTTO's delay; therefore, OTTO agrees that it shall pay to COUNTY the sum of $5,440 per day as liquidated damages for each and every day's delay beyond the time herein prescribed in finishing the Work, as indicated herein and in the Contract Documents. It is hereby understood and agreed that this amount is not a penalty.

In the event any portion of the liquidated damages is not paid to COUNTY, COUNTY may deduct that amount from any money due or that may become due OTTO under this Agreement. COUNTY'S right to assess liquidated damages is as indicated herein and in the General Conditions.

The time during which this Agreement is delayed for cause as hereinafter specified may extend the time of completion for a reasonable time as COUNTY may grant. This provision does not exclude the recovery of damages for delay by either party under other provisions in the Contract Documents.

Each portion of the Liquidated Damages shall be calculated cumulatively. For example, if OTTO is late in completing two milestones and the entire Project, OTTO will forfeit three separate Liquidated Damages amounts.

COUNTY may deduct Liquidated Damages from any money due or that may become due OTTO under this Agreement. OTTO's forfeiture of Liquidated Damages to County, and County's right to retain Liquidated Damages, are as indicated in Government Code section 53069.85 and as indicated herein and in the General Conditions.

Liquidated Damages are automatically and without notice of any kind forfeited by OTTO upon the accrual of each day of delay. Neither County's failure or delay in deducting Liquidated Damages from payments otherwise due OTTO, nor County's failure or delay in notifying OTTO of the forfeiture of Liquidated Damages, shall be deemed a waiver of County's right to Liquidated Damages.

OTTO and Surety shall be liable for and pay to County the entire amount of Liquidated Damages including any portion that exceeds the amount of the GMP then held, retained or controlled by County.

Liquidated Damages shall be in addition, and not in lieu of, County's right to charge OTTO for the County's cost of completing or correcting items of the Work.

County may extend the Contract Time if Work is delayed for causes outside the OTTO's control, as further described in the General Conditions. This provision does not exclude the recovery of damages for delay by either party under other provisions in the Contract Documents.

4. ITEMIZED TASKS AND SUBTASKS FOR PRECONSTRUCTION SERVICES PHASE

If OTTO's Proposal contains a schedule of tasks or subtasks with identified levels of effort such as estimated hours and/or estimated costs, or identifiable work products, milestones, or other events, then compensation for these individual tasks or activities shall not exceed the identified estimate or other limiting factors without the written approval of COUNTY'S Project Manager. OTTO shall promptly notify COUNTY'S Project Manager in writing of any tasks, subtasks, work products, or milestones that need to be reevaluated and indicate the reason and/or justification for such reevaluation. COUNTY'S Project Manager is authorized to negotiate adjustments of individual tasks so long as the work is within the general scope of the project and the total compensation does not exceed the Maximum Total Payment Amount under this Agreement listed above.

5. WORK NOT IN SCOPE OF SERVICES

OTTO shall immediately notify the COUNTY'S Project Manager in writing of any work that the COUNTY requests to be performed that OTTO believes is outside of the original scope of work covered by this Agreement. If it is determined that said request is outside of the scope of work, such work shall not be performed unless and until the Director approves such request in writing and authorizes the use of any contingency funds for such work, or an amendment providing for an adjustment in OTTO compensation is approved and executed by both parties.

6. NOTIFICATION OF 75% EXPENDITURE OF COMPENSATION DURING PRECONSTRUCTION SERVICES PHASE

OTTO shall notify COUNTY'S Project Manager in writing upon expenditure of seventy-five percent (75%) of the authorized Agreement amount. Such notice shall identify the percentage of funds expended, the percentage of work completed, an explanation of any variation between these two (2) percentages, and an assessment of the cost of the remaining work to be performed.

7. SUBMISSION OF INVOICES

OTTO shall address and submit all invoices associated with this Agreement via e-mail to: hofmannq@saccounty.net

OTTO shall include the following information on all invoices:

1. Contract Number: 81655
2. Project Name: Terminal A Restroom Rehabilitation
3. Date of Invoice Submission
4. Time Period Invoice Covers
5. Services Provided and Respective Compensation Requested
6. Any other information deemed necessary by OTTO and/or COUNTY.

8. PAYMENTS

In accordance with paragraph 6. Notice of this Agreement, COUNTY shall address and submit payments to OTTO at address in the Notice provision of this Agreement. OTTO may change the address to which subsequent payments shall be sent by giving written notice designating a change of address to COUNTY, which shall be effective upon receipt.

Exhibit D
COST MATRIX

[This Exhibit is subject to further amendment, refer to recitals above]

Description of Work Item	Direct Cost of Work	General Conditions		Insurance & Bonds	Unallowable Costs
		Project Staff Costs	Hourly GC Labor, Material, Equipment, Services, & Subcontractors		
Direct Cost of Work (DCOW)					
Subcontractor Packages	XX				
CMAR Self-Perform Work	XX				
CMAR General Requirements	XX				
Project Administration					
Corporate Executives					XX
Home Office Executives/Department Supervisors					XX
Jobsite Office Staff (assigned to project - when working on project)					
Project Manager		XX			
Superintendent		XX			
Assistant Superintendent		XX			
Project Engineer		XX			
Scheduler		XX			
Accountant		XX			
Safety Manager		XX			
Other On-Site Staff Approved by County		XX			
Separately reimbursable labor burden costs (Billable Labor Rates for Salary Staff are only Staff Labor Cost Allowed)					XX
Travel, Relocation & Employment Expenses					
Out of Town Living Expenses					XX
Personnel Relocation					XX
Drug Testing (CMAR Staff)			XX		
Drug Testing (Workforce)	XX				
Business Meals					XX

Field Office and Storage					
Office Trailers			XX		
Set-Up & Build between trailers			XX		
Trailer Compound			XX		
Storage Trailers			XX		
Off-Site Storage			XX		
Demobilization			XX		
Job Equipment & Supplies					
Cell Phones			XX		
Office telephones - voice			XX		
Office telephones - fax			XX		
Office telephone equipment			XX		
Telefax Machine			XX		
Copiers			XX		
Computer equipment & Installation			XX		
Office furnishings			XX		
Office supplies			XX		
Postage & express mail			XX		
Document reproduction			XX		
Job Equipment & Supplies					
Pick Up Truck - CMAR			XX		
Fuel, oil & maintenance - CMAR			XX		
Survey/layout equipment	XX				
Survey/layout personnel	XX				
General construction equipment - owned & rental	XX				
Hoisting equipment	XX				
Man lifts and material lifts	XX				
Temporary Requirements					
Installation of temporary utilities	XX				
Roads, parking & maintenance	XX				
Transportation from remote parking areas	XX				
Barriers and barricades	XX				
Weather protection	XX				
Temporary fences and repairs	XX				
Temporary utility consumption	XX				
Dust control	XX				
Flagger / Traffic Control	XX				
Trash Chutes and Hoppers	XX				
Dumpsters	XX				

Misc. Requirements					
Permits and Fees			XX		
Job photos			XX		
Closeout documents			XX		
Construction related signs			XX		
Project signs			XX		
Clean trailers & trash service			XX		
Security			XX		
Safety and First Aid Supplies			XX		
Safety rails & maintenance	XX				
Misc. sidewalk barricades	XX				
Misc. traffic barricades	XX				
Misc. protection	XX				
Misc. roof protection	XX				
Clean up - periodic	XX				
Final Cleaning	XX				
Small tools	XX				
Construction labor provided by CMAR (not for Direct Cost of Work)			XX		
Bonds & Insurance - TBD					
Insurance - General Liability				XX	
Insurance – Workman's Comp				XX	
Insurance - Automobile Liability				XX	
Insurance - Professional Liability				XX	
Insurance - GL Umbrella or Excess Liability				XX	
Insurance - Pollution Control				XX	
Builders Risk				XX	
CM Performance & Payment Bond				XX	
Subcontractor Bonds (Subguard)				XX	
Overhead & Profit					
Home Office Expense					XX
Home Office Rent					XX
Home Office Telephone/Fax Cost					XX
Home Office Copy Expenses					XX
Home Office Supplies					XX
Office Management					XX
Office Administrative Staff					XX
Office Insurance Staff					XX
Office Accounting Staff					XX
IT service and IT support staff					XX
Cost of IT licenses					XX
Travel costs					XX

Meals & entertainment costs					XX
Reimbursable mileage					XX
Safety Awards & Meals					XX

Note: CMAR FEE Calculated on All Allowable Costs.

FAA CONSTRUCTION CONTRACT PROVISIONS

1. ACCESS TO RECORDS AND REPORTS

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

2. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables

Goals for minority participation for each trade: 16.1%

Goals for female participation in each trade: 6.9%

These goals are applicable to all of the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a) and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the

regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.
3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is Sacramento County.

3. BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the Contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.
Owner will provide Contractor written notice that describes the nature of the breach and corrective actions the Contractor must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner's notice will identify a specific date by which the Contractor must correct the breach. Owner may proceed with termination of the contract if the Contractor fails to correct the breach by the deadline indicated in the Owner's notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

4. BUY AMERICAN PREFERENCE

Bidders must complete and submit the Certificate Of Buy American Compliance For Manufactured Products included with the bid proposal. The County will reject as nonresponsive any bid proposal that does not include a completed, signed and dated Certificate Of Buy American Compliance For Manufactured Products.

The Contractor must meet the Buy American Preference requirements of 49 USC § 50101 for all AIP funded projects that require steel or manufactured goods. The Buy America requirements flow down from the

Contractor to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are also in compliance.

5. **GENERAL CIVIL RIGHTS PROVISIONS**
The contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractor and subtier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

6. **TITLE VI SOLICITATION NOTICE**
The County, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

7. **TITLE VI CLAUSES FOR COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS**
During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:
   a. Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
   b. Non-discrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

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

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

e. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

1. Withholding payments to the contractor under the contract until the contractor complies; and/or
2. Cancelling, terminating, or suspending a contract, in whole or in part.

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

8. TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

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

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by

discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

9. CLEAN AIR AND WATER POLLUTION CONTROL

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

Contractor must include this requirement in all subcontracts that exceeds $150,000.

10. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration (FAA) or the Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

4. Subcontractors.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

11. COPELAND “ANTI-KICKBACK” ACT

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

12. DAVIS-BACON REQUIREMENTS

1. Minimum Wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the

Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program: Provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding.

The Federal Aviation Administration or the sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the Contractor, Sponsor, Applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and Basic Records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and that show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. the last four digits of the employee’s social security number). The required weekly payroll information may be submitted in any form desired. Optional

Form WH–347 is available for this purpose from the Wage and Hour Division Web site at www.dol.gov/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or Owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) The payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information is correct and complete;

(2) Each laborer and mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;

(3) Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the sponsor, the Federal Aviation Administration, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, Sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.

If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act Requirements.

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

6. Subcontracts.
The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.
7. Contract Termination: Debarment.
A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
8. Compliance with Davis-Bacon and Related Act Requirements.
All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.
9. Disputes Concerning Labor Standards.
Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
10. Certification of Eligibility.
(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

13. CERTIFICATION OF BIDDER REGARDING DEBARMENT

Bidders must complete and submit the Certification Of Bidder Regarding Debarment Or Suspension included with the bid proposal. The County will reject as nonresponsive any bid proposal that does not include a completed, signed and dated Certification Of Bidder Regarding Debarment Or Suspension.

14. DISADVANTAGED BUSINESS ENTERPRISE

The requirements of 49 CFR part 26 apply to this contract. It is the policy of the County to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. The Owner encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

15. DISTRACTED DRIVING

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

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

16. ENERGY CONSERVATION REQUIREMENTS

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201et seq).

17. EQUAL EMPLOYEMENT OPPORTUNITY (EEO)

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

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

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
(3) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

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

set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the Contractor during the training period and the Contractor shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or female sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions, including specific review of these items, with onsite supervisory personnel such superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the

Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Contractor actively participates in the group, makes

every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally), the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR part 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least

include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

18. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

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

The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

19. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

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

20. TRADE RESTRICTION CERTIFICATION

Bidders must complete and submit the Trade Restriction Certification included with the bid proposal. The County will reject as nonresponsive any bid proposal that does not include a completed, signed and dated Trade Restriction Certification.

21. CERTIFICATION REGARDING LOBBYING

Bidders must complete and submit the Certification Regarding Lobbying included with the bid proposal. The County will reject as nonresponsive any bid proposal that does not include a completed, signed and dated Certification Regarding Lobbying.

22. PROHIBITION OF SEGREGATED FACILITIES

(a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.

(b) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Employment Opportunity clause of this contract.

23. PROCUREMENT OF RECOVERED MATERIALS

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

1) The contract requires procurement of $10,000 or more of a designated item during the fiscal year; or

2) The contractor has procured $10,000 or more of a designated item using Federal funding during the previous fiscal year.
The list of EPA-designated items is available at www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products.
Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:
a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
b) Fails to meet reasonable contract performance requirements; or
c) Is only available at an unreasonable price.

24. RIGHTS TO INVENTIONS

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within 37 CFR §401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental, or research work.

25. SEISMIC SAFETY

The Contractor agrees to ensure that all work performed under this contract, including work performed by subcontractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety.

26. TAX DELINQUENCY AND FELONY CONVICTION

Bidders must complete and submit the Certification Of Bidder Regarding Tax Delinquency And Felony Convictions included with the bid proposal. The County will reject as nonresponsive any bid proposal that does not include a completed, signed and dated Certification Of Bidder Regarding Tax Delinquency And Felony Convictions.

27. TERMINATION OF CONTRACT

TERMINATION FOR CONVENIENCE (CONSTRUCTION & EQUIPMENT CONTRACTS)

The Owner may terminate this contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of Owner. Upon receipt of a written notice of termination, except as explicitly directed by the Owner, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

1. Contractor must immediately discontinue work as specified in the written notice.
2. Terminate all subcontracts to the extent they relate to the work terminated under the notice.
3. Discontinue orders for materials and services except as directed by the written notice.
4. Deliver to the Owner all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work, and as directed in the written notice.
5. Complete performance of the work not terminated by the notice.
6. Take action as directed by the Owner to protect and preserve property and work related to this contract that Owner will take possession.

Owner agrees to pay Contractor for:

1) completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
2) documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;
3) reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
4) reasonable and substantiated expenses to the Contractor directly attributable to Owner’s termination action.

Owner will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the Owner’s termination action.

The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this contract.

TERMINATION FOR DEFAULT (CONSTRUCTION)

Section 80-09 of FAA Advisory Circular 150/5370-10 establishes conditions, rights, and remedies associated with Owner termination of this contract due to default of the Contractor.

The Owner may, by written notice of default to the Contractor, terminate all or part of this Contract if the Contractor:

1. Fails to commence the Work under the Contract within the time specified in the Notice- to-Proceed;
2. Fails to make adequate progress as to endanger performance of this Contract in accordance with its terms;
3. Fails to make delivery of the equipment within the time specified in the Contract, including any Owner approved extensions;
4. Fails to comply with material provisions of the Contract;
5. Submits certifications made under the Contract and as part of their proposal that include false or fraudulent statements; or
6. Becomes insolvent or declares bankruptcy.

If one or more of the stated events occur, the Owner will give notice in writing to the Contractor and Surety of its intent to terminate the contract for cause. At the Owner’s discretion, the notice may allow the Contractor and Surety an opportunity to cure the breach or default.

If within [10] days of the receipt of notice, the Contractor or Surety fails to remedy the breach or default to the satisfaction of the Owner, the Owner has authority to acquire equipment by other procurement action. The Contractor will be liable to the Owner for any excess costs the Owner incurs for acquiring such similar equipment.

Payment for completed equipment delivered to and accepted by the Owner shall be at the Contract price. The Owner may withhold from amounts otherwise due the Contractor for such completed equipment, such sum as the Owner determines to be necessary to protect the Owner against loss because of Contractor default.

Owner will not terminate the Contractor’s right to proceed with the Work under this clause if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such acceptable causes include: acts of God, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, and severe weather events that substantially exceed normal conditions for the location.

If, after termination of the Contractor’s right to proceed, the Owner determines that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the Owner issued the termination for the convenience the Owner.

The rights and remedies of the Owner in this clause are in addition to any other rights and remedies provided by law or under this contract.

28. VETERAN'S PREFERENCE

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

29. ASSURANCES REQUIRED BY THE FAA

The Contractor shall, at all times during the term of the Contract, comply with the provisions of the "Airport Sponsor Assurances" (Assurances) and any subsequent revisions, updates or amendments hereto. A copy of the current Assurances is attached with the sample agreement in Appendix A of these Special Provisions, attached hereto and incorporated herein by this reference. The provisions of the Assurances may change during the term of the Contract, and those changes will be incorporated into the Contract without the necessity of a formal amendment. County is not responsible for notifying Contractor of any changes to the Assurances. Contractor is required to contact the FAA for any updates or revisions. The Assurances document is available on the FAA's website. Please see www.faa.gov/airports/aip/grant_assurances/media/assurances-airport-sponsors-2022-05.pdf

FAA
Airports

ASSURANCES
AIRPORT SPONSORS

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this Grant Agreement.

B. Duration and Applicability.

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

   The terms, conditions and assurances of this Grant Agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

   The preceding paragraph (1) also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. **Airport Planning Undertaken by a Sponsor.**

   Unless otherwise specified in this Grant Agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 23, 25, 30, 32, 33, 34, and 37 in Section C apply to planning projects. The terms, conditions, and assurances of this Grant Agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport.

C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

1. General Federal Requirements

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Grant including but not limited to the following:

FEDERAL LEGISLATION

a. 49 U.S.C. subtitle VII, as amended.

b. Davis-Bacon Act, as amended — 40 U.S.C. §§ 3141-3144, 3146, and 3147, et seq.[1]

c. Federal Fair Labor Standards Act – 29 U.S.C. § 201, et seq.

d. Hatch Act – 5 U.S.C. § 1501, et seq.[2]

e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601, et seq.[1, 2]

f. National Historic Preservation Act of 1966 – Section 106 – 54 U.S.C. § 306108.[1]

g. Archeological and Historic Preservation Act of 1974 – 54 U.S.C. § 312501, et seq.[1]

h. Native Americans Grave Repatriation Act – 25 U.S.C. § 3001, et seq.

i. Clean Air Act, P.L. 90-148, as amended – 42 U.S.C. § 7401, et seq.

j. Coastal Zone Management Act, P.L. 92-583, as amended – 16 U.S.C. § 1451, et seq.

k. Flood Disaster Protection Act of 1973 – Section 102(a) - 42 U.S.C. § 4012a.[1]

l. 49 U.S.C. § 303, (formerly known as Section 4(f)).

m. Rehabilitation Act of 1973 – 29 U.S.C. § 794.

n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin).

o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.) (prohibits discrimination on the basis of disability).

p. Age Discrimination Act of 1975 – 42 U.S.C. § 6101, et seq.

q. American Indian Religious Freedom Act, P.L. 95-341, as amended.

r. Architectural Barriers Act of 1968, as amended – 42 U.S.C. § 4151, et seq.[1]

s. Powerplant and Industrial Fuel Use Act of 1978 – Section 403 – 42 U.S.C. § 8373.[1]

t. Contract Work Hours and Safety Standards Act – 40 U.S.C. § 3701, et seq.[1]

u. Copeland Anti-kickback Act – 18 U.S.C. § 874.[1]

v. National Environmental Policy Act of 1969 – 42 U.S.C. § 4321, et seq.[1]

w. Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. § 1271, et seq.

x. Single Audit Act of 1984 – 31 U.S.C. § 7501, et seq.[2]

y. Drug-Free Workplace Act of 1988 – 41 U.S.C. §§ 8101 through 8105.

z. The Federal Funding Accountability and Transparency Act of 2006, as amended (P.L. 109-282, as amended by section 6202 of P.L. 110-252).

aa. Civil Rights Restoration Act of 1987, P.L. 100-259.

bb. Build America, Buy America Act, P.L. 117-58, Title IX.

EXECUTIVE ORDERS

a. Executive Order 11246 – Equal Employment Opportunity[1]

b. Executive Order 11990 – Protection of Wetlands

c. Executive Order 11998 – Flood Plain Management

d. Executive Order 12372 – Intergovernmental Review of Federal Programs

e. Executive Order 12699 – Seismic Safety of Federal and Federally Assisted New Building Construction[1]

f. Executive Order 12898 – Environmental Justice

g. Executive Order 13166 – Improving Access to Services for Persons with Limited English Proficiency

h. Executive Order 13985 – Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government

i. Executive Order 13988 – Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation

j. Executive Order 14005 – Ensuring the Future is Made in all of America by All of America’s Workers

k. Executive Order 14008 – Tackling the Climate Crisis at Home and Abroad

FEDERAL REGULATIONS

a. 2 CFR Part 180 – OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).

b. 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [4, 5]

c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment.

d. 14 CFR Part 13 – Investigative and Enforcement Procedures.

e. 14 CFR Part 16 – Rules of Practice for Federally-Assisted Airport Enforcement Proceedings.

f. 14 CFR Part 150 – Airport Noise Compatibility Planning.

g. 28 CFR Part 35 – Nondiscrimination on the Basis of Disability in State and Local Government Services.

h. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for the Enforcement of Title VI of the Civil Rights Act of 1964.

i. 29 CFR Part 1 – Procedures for Predetermination of Wage Rates.[1]

j. 29 CFR Part 3 – Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States.[1]

k. 29 CFR Part 5 – Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act).[1]

l. 41 CFR Part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally-assisted contracting requirements).[1]

m. 49 CFR Part 20 – New Restrictions on Lobbying.

n. 49 CFR Part 21 – Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964.

o. 49 CFR Part 23 – Participation by Disadvantage Business Enterprise in Airport Concessions.

p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs.[1, 2]

q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

r. 49 CFR Part 27 – Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance.[1]

s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation.

t. 49 CFR Part 30 – Denial of Public Works Contracts to Suppliers of Goods and Services of Countries That Deny Procurement Market Access to U.S. Contractors.

u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).

v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).

w. 49 CFR Part 38 – Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles.

x. 49 CFR Part 41 – Seismic Safety.

FOOTNOTES TO ASSURANCE (C)(1)

[1] These laws do not apply to airport planning sponsors.
[2] These laws do not apply to private sponsors.
[3] 2 CFR Part 200 contains requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation shall

apply where applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

[4] Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.

[5] Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

SPECIFIC ASSURANCES

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this Grant Agreement.

2. Responsibility and Authority of the Sponsor.

a. Public Agency Sponsor:

It has legal authority to apply for this Grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this Grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this Grant Agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Sponsor Fund Availability.

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this Grant Agreement which it will own or control.

4. Good Title.

a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. Preserving Rights and Powers.

a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Grant Agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

b. Subject to the FAA Act of 2018, Public Law 115-254, Section 163, it will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this Grant Agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this Grant Agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this Grant Agreement.

c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.

d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.

e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.

f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with Title 49, United States Code, the regulations and the terms, conditions and assurances in this Grant Agreement and shall ensure that such arrangement also requires compliance therewith.

g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

6. Consistency with Local Plans.

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

7. Consideration of Local Interest.

It has given fair consideration to the interest of communities in or near where the project may be located.

8. Consultation with Users.

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. Public Hearings.

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. Metropolitan Planning Organization.

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

11. Pavement Preventive Maintenance-Management.

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. Terminal Development Prerequisites.

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under 49 U.S.C. § 44706, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. Accounting System, Audit, and Record Keeping Requirements.

a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this Grant, the total cost of the project in connection with which this Grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.

b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this Grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this Grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. Minimum Wage Rates.

It shall include, in all contracts in excess of $2,000 for work on any projects funded under this Grant Agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor under 40 U.S.C. §§ 3141-3144, 3146, and 3147, Public Building, Property, and Works), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. Veteran's Preference.

It shall include in all contracts for work on any project funded under this Grant Agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in 49 U.S.C. § 47112. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. Conformity to Plans and Specifications.

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this Grant Agreement, and, upon approval of the Secretary, shall be incorporated into this Grant Agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this Grant Agreement.

17. Construction Inspection and Approval.

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. Planning Projects.

In carrying out planning projects:

a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.

b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.

c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.

d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.

e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.

f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.

g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.

h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. Operation and Maintenance.

a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state, and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for:

   1. Operating the airport's aeronautical facilities whenever required;

   2. Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and

   3. Promptly notifying pilots of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or

facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation.

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use.

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. Economic Nondiscrimination.

a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to:

   1. Furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and

   2. Charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.

d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.

e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.

f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance, repair, and fueling) that it may choose to perform.

g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.

h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. Exclusive Rights.

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and

b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. Fee and Rental Structure.

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a Grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:

   1. If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.
   2. If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor’s acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
   3. Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at 49 U.S.C. § 47102), if the FAA determines the airport sponsor meets the requirements set forth in Section 813 of Public Law 112-95.

b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.

c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of 49 U.S.C. § 47107.

26. Reports and Inspections.

It will:

a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;

b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;

c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this Grant Agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and

d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:

   1. all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and

   2. all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. Use by Government Aircraft.

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that:

a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or

b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. Land for Federal Facilities.

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. Airport Layout Plan.

a. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, it will keep up to date at all times an airport layout plan of the airport showing:

1. boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
2. the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;
3. the location of all existing and proposed non-aviation areas and of all existing improvements thereon; and
4. all proposed and existing access points used to taxi aircraft across the airport's property boundary.

Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

b. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, if a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary:

1. eliminate such adverse effect in a manner approved by the Secretary; or
2. bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

30. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, color, and national origin (including limited English proficiency) in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4); creed and sex (including sexual orientation and gender identity) per 49 U.S.C. § 47123 and related requirements; age per the Age Discrimination Act of 1975 and related requirements; or disability per the Americans with Disabilities Act of 1990 and related requirements, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any program and activity conducted with, or benefiting from, funds received from this Grant.

a. Using the definitions of activity, facility, and program as found and defined in 49 CFR §§ 21.23(b) and 21.23(e), the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by or pursuant to these assurances.

b. Applicability

   1. Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.

   2. Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter, or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.

   3. Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

   The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

   1. So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or

   2. So long as the sponsor retains ownership or possession of the property.

d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this Grant Agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

   "The (**[Selection Criteria: Sponsor Name]**), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, [select businesses, or disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award."

e. Required Contract Provisions.

   1. It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the Department of Transportation (DOT), and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.

2. It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
3. It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
4. It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
   a. For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
   b. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.

g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

31. Disposal of Land.

a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order:

   1. Reinvestment in an approved noise compatibility project;
   2. Reinvestment in an approved project that is eligible for grant funding under 49 U.S.C. § 47117(e);
   3. Reinvestment in an approved airport development project that is eligible for grant funding under 49 U.S.C. §§ 47114, 47115, or 47117;
   4. Transfer to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport; or
   5. Payment to the Secretary for deposit in the Airport and Airway Trust Fund.

   If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.

b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order:

   1. Reinvestment in an approved noise compatibility project;
   2. Reinvestment in an approved project that is eligible for grant funding under 49 U.S.C. § 47117(e);
   3. Reinvestment in an approved airport development project that is eligible for grant funding under 49 U.S.C. §§ 47114, 47115, or 47117;
   4. Transfer to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport; or
   5. Payment to the Secretary for deposit in the Airport and Airway Trust Fund.

c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.

d. Disposition of such land under (a), (b), or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. Engineering and Design Services.

If any phase of such project has received Federal funds under Chapter 471 subchapter 1 of Title 49 U.S.C., it will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services in the same manner as a contract for architectural and engineering services is negotiated under Chapter 11 of Title 40 U S.C., or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. Foreign Market Restrictions.

It will not allow funds provided under this Grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. Policies, Standards, and Specifications.

It will carry out any project funded under an Airport Improvement Program Grant in accordance with policies, standards, and specifications approved by the Secretary including, but not limited to, current FAA Advisory Circulars (https://www.faa.gov/airports/aip/media/aip-pfc-checklist.pdf) for AIP projects as of [Selection Criteria: Project Application Date].

35. Relocation and Real Property Acquisition.

a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.

b. It will provide a relocation assistance program offering the services described in Subpart C of 49 CFR Part 24 and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.

c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. Access By Intercity Buses.

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

37. Disadvantaged Business Enterprises.

The sponsor shall not discriminate on the basis of race, color, national origin, or sex, in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. §§ 3801-3809, 3812).

38. Hangar Construction.

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. Competitive Access.

a. If the airport owner or operator of a medium or large hub airport (as defined in 49 U.S.C. § 47102) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that:

1. Describes the requests;
2. Provides an explanation as to why the requests could not be accommodated; and
3. Provides a time frame within which, if any, the airport will be able to accommodate the requests.

b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

November 4, 2022

To: Kathy Sutton
Sacramento County Department of Airports (SCDA)
P&D ASO III

RE: Sacramento International Airport
Terminal A Restroom Rehabilitation
Request for Preconstruction Services Fee Proposal (Revision #2)

Kathy,

Per our discussion this morning, we are pleased to submit our revised Preconstruction Services Fee Proposal for the Restroom Rehabilitation project at Terminal A per your Request. Please review the following list of Clarifications, Inclusions and Exclusions when considering this Proposal.

Clarifications:

- This proposal is based on the attached Exhibit 1 – Fee Schedule, which gives a complete breakdown of proposed staffing hours and reimbursable items.
- We have also attached the unedited Exhibit 2 – Preconstruction Schedule that was submitted with the previous proposal on August 19, 2022. This document is a visual representation of the timelines for all Preconstruction Services based on the dates provided in the RFQ and input received from SCDA in our Proposal review meeting. As discussed today, this schedule will be updated to match the current timelines upon execution of the Preconstruction Contract.
- Per the Appendix F: CMAR Fee Proposal Form, paragraph (c), we acknowledge that a 4% CMAR Service Fee Percentage will be added to the Direct Cost of Work Plus General Conditions amount in the future Construction Agreement.

Inclusions:

1. Preparation of Detailed Cost Estimate based on the current set of Project Documents.
2. Constructability Review of current set of Project Documents.
3. Scheduling - Prepare Detailed Project Schedule from beginning of preconstruction through Closeout of construction services.
4. Logistics and Phasing Plan for Bidding and Finalized Plan for Construction Phase.
5. Value Engineering/Material Substitution Session(s) based on current set of Project Documents. (We see this as a continuous process and will offer VE throughout the Preconstruction Phase.)
6. Evaluation of Long-Lead Items that may require ordering prior to GMP Finalization.
7. Conduct Subcontractor Prequalification Process with Owner Approval.
8. Prepare Guaranteed Maximum Price (GMP) for construction services with submission to COUNTY including the following actions by CMAR:
    - Prepare Estimate.
    - Conduct Pre-Bid Conference with Subcontractors.
    - Conduct Subcontractor Solicitation.
    - Conduct Bid Opening.
    - Prepare Bid tabulation including all corrections to subcontractor calculations.

9. We anticipate attending regularly scheduled OAC meetings for Program Review, Design updates and coordination, budgeting and estimate reviews, value engineering, and other Preconstruction activities. These meetings can be weekly or bi-weekly at the discretion of SCDA.

Exclusions:
1. Construction Costs.
2. Design & Engineering.
3. All Permit Fees.
4. Coordination with Authorities Having Jurisdiction to obtain Permits.

TOTAL: $124,043.55

We have incorporated comments from the Proposal Review Meeting and will begin working immediately after your direction of a tentative agreement. We acknowledge that we will begin working on the GMP "at risk" while the Preconstruction Proposal is reviewed and fully executed over the next several weeks.

We are confident that our team will be able to accommodate the needs of the Sacramento County Department of Airports to achieve the highest success for the project.

We are very excited about the opportunity to work with SCDA on this project.

Sincerely,

Allison Otto
President
Otto Construction
aotto@ottoconstruction.com
cell: (916) 213-1335

Exhibit 1: Preconstruction Services Fee Proposal Backup (Hours and Reimbursables)

Tasks	Kevin	Gavin	Joe	TBD - Estimator	TBD - Admin. Asst.
Preparation of Detailed Cost Estimate based on the current set of Project Documents.	80	40	8	40	
Constructability Review of current set of Project Documents.	24	40	40		
Scheduling - Prepare Detailed Project Schedule from beginning of preconstruction through Closeout of construction Services	4	40	40		
Logistics and Phasing Plan for Construction Phase.	4	16	40		
One Value Engineering/Material Substitution Session based on current set of Project Documents.	24	24	8	24	
Evaluation of Long-Lead Items that may require ordering prior to GMP Finalization.	16	16	16	16	
Conduct Subcontractor Prequalification Process with Owner Approval.	16	16	8	16	
Prepare Guaranteed Maximum Price (GMP) for construction services with Submission to COUNTY including the following actions by CMAR:	see below	see below	see below	see below	see below
Prepare Estimate	80	40	8	80	
Conduct Pre-Bid Conference with Subcontractors	8	8	8	8	
Conduct Subcontractor Solicitation	8	8	8	8	
Conduct Bid Opening	2	2	2	2	
Prepare Bid tabulation including all corrections to subcontractor calculations	40	40	40	40	
Total Hours by Person	**306**	**290**	**226**	**234**	**0**

Exhibit 1: Preconstruction Services Fee Proposal Backup
(Hours and Reimbursables)

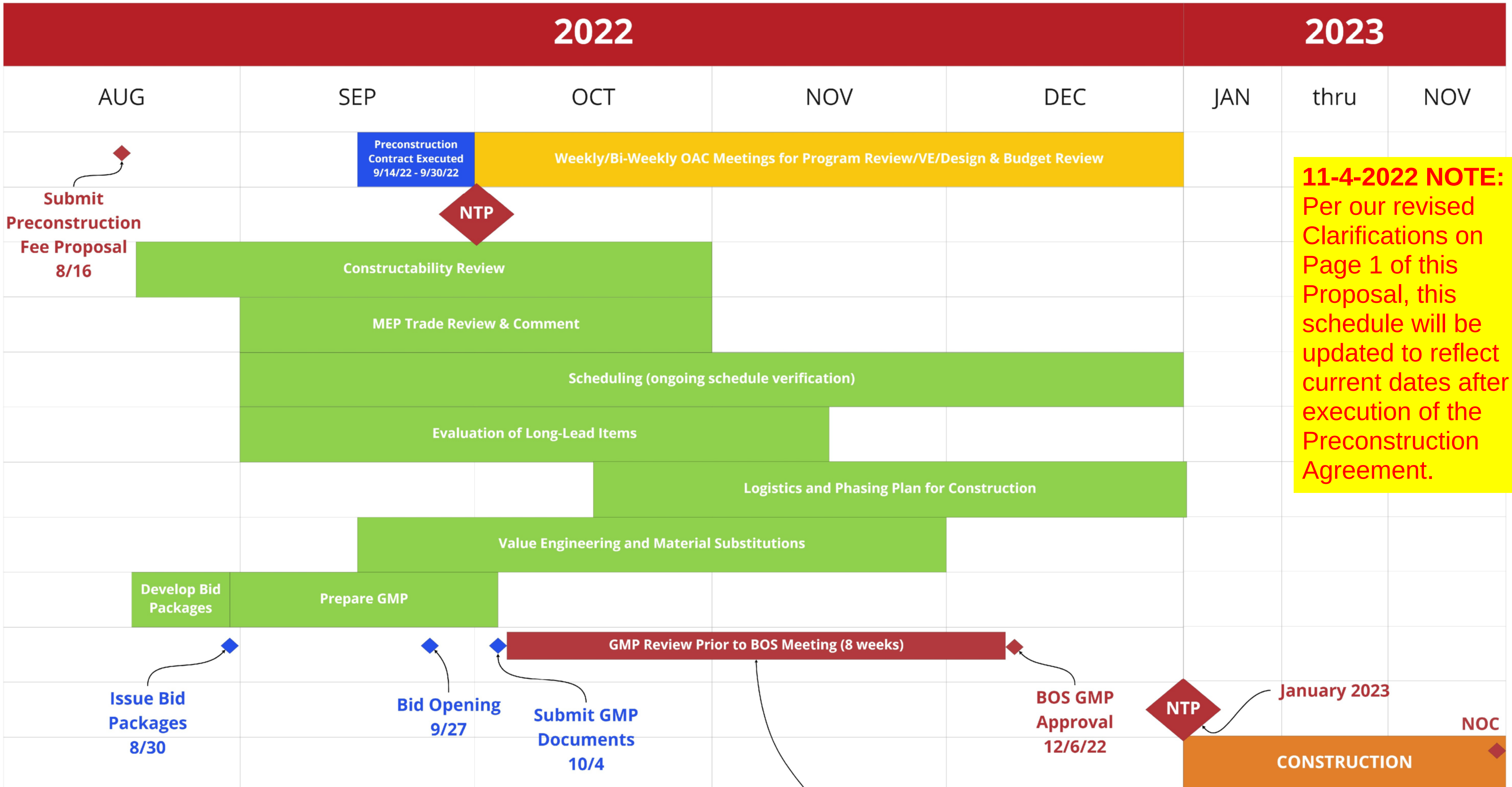
Proposed Staffing Hours				
Contractor's Position	**Name**	***Hours**	**With Burden & fee x raw**	**Total**
CMR Preconstruction Manager	Kevin Halfhill	306	$ 106.54	$ 32,599.93
CMR Senior Estimator	Kevin Halfhill	incl'd	$ 106.54	$ -
CMR ... MEP Estimator	Kevin Halfhill	incl'd	$ 106.54	$ -
Estimator	TBD	234	$ 85.23	$ 19,943.49
Scheduler	Joe Ussery	incl'd	$ 117.19	$ -
Administrative Assistant Est. Coordinator	TBD	0	$ 69.25	$ -
Project Manager	Gavin McAleese	290	$ 106.54	$ 30,895.36
Superintendent	Joe Ussery	226	$ 117.19	$ 26,484.78
Total Preconstruction Staff Cost				**$ 109,923.55**

Reimbursables	**Total**
Printing and Reprographics	$ 1,500.00
Bid Advertisements	$ 800.00
Vehicles and Fuel	$ 8,400.00
Computers and Phones	$ 3,420.00
Total Preconstruction Reimbursables Cost	**$ 14,120.00**

Total Preconstruction Services Fee	**$ 124,043.55**

8/19/2022 (revision #1)

Sacramento International Airport Terminal A Restroom Rehabilitation
Exhibit 2 - Preconstruction Schedule



11-4-2022 NOTE: Per our revised Clarifications on Page 1 of this Proposal, this schedule will be updated to reflect current dates after execution of the Preconstruction Agreement.

KEY OF TERMS
NTP - Notice to Proceed
GMP - Guaranteed Max Price
NOC - Notice of Completion
OAC - Owner/Architect/Contractor Meeting

KEY Entities
SCDA - Sacramento County Department of Airports
BOS - Board of Supervisors

Notes
Confirmed eight week duration for GMP Submission materials to be included in the BOS Meeting Agenda.