

CONTRACT OCLS-RFQ-MAIN-23-002
Construction Manager At Risk (CMAR)
FOR THE ORANGE COUNTY LIBRARY DISTRICT
MAIN LIBRARY FIRST FLOOR RENOVATION PROJECT

THIS CONTRACT made and entered into this _____ day of _____ 2024 (“Contract”), by and between the:

Orange County Library District
101 East Central Blvd
Orlando, Florida 32801

a special independent taxing district of the State of Florida, hereinafter referred to as “Library” or “Owner” and:

>
>
>
FEDERAL I. D. # _____

hereinafter referred to as the “Construction Manager at Risk” or the “CMAR”.

RECITALS

WHEREAS, the Library desires to retain the CMAR, which is a Florida-licensed construction firm, to provide preconstruction and construction services to remodel the Main Library’s First Floor Renovation Project (“Services”). The scope of Services that shall be performed by CMAR are described in **Exhibit “A”**, Scope of Services, which is attached to this Contract, and incorporated by reference herein. The Services include the Work (defined below).

WHEREAS, the Library desires to engage CMAR in connection with the Services required, upon the terms and conditions hereinafter set forth, and CMAR is desirous of performing such Services upon said terms and conditions;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, it is agreed by and between the parties hereto as follows:

I. SCOPE OF Services

A. PERFORMANCE of SERVICES. The CMAR shall diligently and in a timely manner perform the Services for the Library in accordance with the terms of this Contract. The term “Work” means the construction work required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment, and work provided or to be provided by the CMAR to fulfill the CMAR’s obligations.

II. PAYMENT

A. PRECONSTRUCTION FEE: The Library agrees to pay CMAR a preconstruction Services

fee of \$ [REDACTED] for the Services performed before execution of the GMP Amendment (“Preconstruction Fee”). The Preconstruction Fee is a lump sum and shall be paid monthly in proration to the percentage of Preconstruction Services completed in the prior 30 days. This Preconstruction Fee includes all reimbursable costs to be incurred by CMAR during the preconstruction phase. The Preconstruction Fee is a lump sum and shall not be adjusted regardless of the duration of the design phase and preconstruction phase of the Project and any delays or extensions of same.

- B. CONSTRUCTION FEE:** CMAR’s Fee for the construction phase of the Services shall be a fixed fee equal to [REDACTED] % of the Cost of the Work (“CM Fee”), but subject to adjustment for Change Orders and Construction Change Directive Work. However, if the actual Cost of the Work plus the CM Fee exceeds the GMP, then the CM Fee shall be reduced appropriately so that the total of the actual Cost of the Work plus the CM Fee does not exceed the GMP.
- C. CHANGE ORDER FEES:** For Change Orders or Construction Change Directive Work, the amount for fee added or deducted shall be **ten percent (10%)** (“Change Order Fee”) of the Cost of the Work that is added or deducted, respectively. Such Change Order Fee includes all profit, overhead, insurance, and bond costs of the CMAR. No general conditions costs shall be added, except that if the change includes an increase in the Contract Time, then actual extended daily general conditions costs will be added. For Change Order Work or Construction Change Directives, the amount of a Subcontractor’s overhead and profit for increases or decreases in the cost of its portion of the Work shall be **ten percent (10%)** (“Sub’s Change Order Fee”) of the Cost of the Work that is added or deducted, respectively. Such Sub’s Change Order Fee includes all profit, overhead, general conditions costs, bond, and insurance costs of the Subcontractor.
- D. COST OF THE WORK:** The “Cost of the Work” is defined in **Exhibit “D”**, attached hereto.
- E. PAYMENTS:** The Library shall pay the CMAR the Contract Amount in current funds for the CMAR’s performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Amount is the Cost of the Work as defined above plus the CMAR’s Fee. The Library shall pay the CMAR in accordance with the Florida Local Government Prompt Payment Act, Chapter 218, Florida Statutes.

Progress payments during the construction phase of the Project shall be due and payable monthly in proportion to the percentage of Work approved and accepted, in writing, by the Library. All invoices shall be prepared in the format prescribed by the LIBRARY. When an invoice includes charges from a sub-contractor, the sub-contractor’s invoice/backup shall accompany the CMAR’S invoice. A separate Pay Item Breakdown sheet for the CMAR and each sub-contractor shall accompany each invoice. The CMAR’S Pay Item Breakdown sheet shall include, in aggregate, the CMAR’S and sub-contractor’s pay items. All requests for payment must be accompanied by a narrative description of the scope of Services performed by the CMAR and sub-contractors during the period covered by the invoice. The narrative shall also describe the Services anticipated to be performed during the next billing period.

- F. CHANGES WITHIN SCOPE; ALLOWANCE OF ADDITIONAL COMPENSATION:** If instructed to do so in writing by the Library, the CMAR shall change or revise Services and if such Services are not required as a result of error, omission or negligence of the CMAR, the CMAR may be entitled to additional compensation. In all disputes arising over

the right to additional compensation, the Library shall determine whether substantial acceptable Services have been completed and should result in additional compensation to the CMAR. The CMAR's proposals for additional compensation shall be based on the hourly rate schedule set forth in **Exhibit "B"**. A written change order to the Contract shall be executed by both parties to reflect the change in Services and cost of same, prior to commencement of performance of any additional work or Services.

G. TRAVEL AND PER DIEM: Travel and per diem charges shall not exceed the limits as set forth in Section 112.061 Florida Statute.

H. FEE LIMITATION CLAUSE: The CMAR shall utilize the same hourly rates as set forth in **Exhibit "B"** in any GMP and claim negotiations. The number of hours required to complete the Project shall be negotiated at such time as the Library initiates fee negotiations for the Project.

I. Schedule of Values – The CMAR shall submit a schedule of values for the Work including quantities and unit prices totaling the total Contract Amount no later than twenty (20) days after acceptance of the GMP and prior to constructing Work on the Project. The schedule of values shall be in a form satisfactory to the Library.

The schedule of values shall subdivide the Work into sufficient detail to serve as the basis for progress payments during construction. Upon acceptance of the schedule of values by the Library's Project Manager, it may be incorporated into the form of application for payment prescribed by the Library.

The CMAR shall not imbalance its schedule of values nor artificially inflate any element thereof. The violation of this provision by the CMAR shall constitute a material breach of Contract.

J. Progress Schedule – The CMAR's Progress Schedule shall utilize the Critical Path Method ("CPM"). The CMAR's Progress Schedule CPM shall be prepared using software approved by the Library; the software shall be specifically intended for the preparation of construction schedules incorporating a critical path. The software used by the CMAR must be approved in advance by the Library. The CMAR shall submit a Progress Schedule CPM (both in hard printed copy and electronic format) no later than twenty (20) days after receipt of the Notice to Proceed, and prior to commencing construction of the Work on the Project. The Progress Schedule CPM will be attached to this Contract as **Exhibit "E"**. The Progress Schedule CPM shall clearly identify all controlling items of Work and activities defined as the critical path, which if delayed or prolonged, will delay the time of completion of the Contract. The critical path shall include a minimum 10% float time as part of the Contract Time for unforeseen conditions. CMAR shall provide additional float time above the required minimum 10% based on his/her experience, understanding of the scope, and inspection of the site.

K. Updated Progress Payment Schedules CPM – The CMAR shall submit an Updated Progress Payment Schedule CPM to the Library's Project Manager concurrent with each Application for Progress Payment. The Updated Progress Payment Schedule CPM shall focus on the period from the last Updated Progress Payment Schedule CPM to the current Updated Progress Payment Schedule CPM submitted with the Application for Progress Payment. Activities that have either started or finished shall be reported as they actually occurred and designated as complete, if actually completed. For activities in progress that are forecasted to complete longer than planned, the remaining durations

shall be revised, not the original durations. All out of sequence activities are to be reviewed and their relationships either verified or changed. The Updated Progress Payment Schedule CPM will always display the initial “ base line “ Progress Schedule CPM and denote any variances from the base line.

The CMAR’s failure to submit an Updated Progress Payment Schedule CPM and Progress Payment Narrative Report with an Application for Progress Payment shall be sufficient reason for rejection of the Progress Payment request.

If the Library’s Project Manager rejects the Updated Progress Payment Schedule CPM or the Progress Payment Narrative Report, the entire Progress Payment request shall be rejected and must be resubmitted with the corrected Updated Progress Payment Schedule CPM and Progress Payment Narrative Report.

- L. Progress Payment Narrative Report** – Each Updated Progress Payment Schedule CPM shall be accompanied by a written Narrative Report. The Narrative Report shall describe the physical progress during the reporting period, plans for continuing the Services during the forthcoming reporting period, actions planned to correct any delays, and a detailed explanation of potential delays or problems and their estimated impact on performance, milestone completion dates, the forecasted completion date, the forecasted substantial completion date and any effects on the Cost of the Work. In addition, alternatives for possible schedule recovery to mitigate any potential delays shall be discussed.

The CMAR’s Progress Payment Narrative Report shall include a detailed list of all outstanding Contract Claims with a detailed description of each Contract Claim.

The Narrative Report shall follow the outline set forth below:

CMAR’s Narrative Report Outline:

- (1) CMAR’s dated transmittal letter.
- (2) Services and Work completed during the report period.
- (3) Description of the current critical path.
- (4) Description of problem areas.
- (5) Current and anticipated delays:
 - a. Cause of the delay
 - b. Corrective action and schedule adjustments to correct the delay.
- (6) Impact of the delay on other activities, milestones, completion dates and effects on cost of the Work.

Changes in construction sequences.
- (7) Pending items and status thereof:
 - a. Permits.
 - b. Change orders.
 - c. Time extensions.

- (8) A list of all outstanding Contract Claims and a detailed description of each Contract Claim.
- (9) Contract completion date status:
 - a. Ahead of schedule and number of days.
 - b. Behind schedule and number of days.

M. Schedule and Report Format – The CMAR shall submit the Progress Schedule CPM (aka base line schedule), Updated Progress Payment Schedules CPM, and the Progress Payment Narrative Report to the Library’s Project Manager on both electronic and printed formats.

N. Library’s Project Manager Review – The Library’s Project Manager shall review the CMAR’s Progress Schedule CPM, Updated Progress Payment Schedules CPM, and Progress Payment Narrative Reports.

The Library’s Project Manager may accept or reject Updated Progress Payment Schedule CPMs or Narrative Reports. Rejected Updated Progress Payment Schedule CPMs and Narrative Reports shall be corrected and re-submitted to the Library’s Project Manager.

O. Final Schedule Update – The CMAR within fifteen (15) days after Substantial Completion shall submit a final update of the schedule with actual start and actual finish dates for all activities and controlling items of Work identified as the critical path. The Final Schedule Update shall be accompanied by a certification signed by the CMAR stating, “To the best of my knowledge, the enclosed final update of the project schedule reflects the actual start and completion dates of the activities and controlling items of Work on the critical path.”

P. Application For Progress Payment – Applications for payments shall be processed in accordance with Florida Statute 218.735, Part VII, “Local Government Prompt Payment Act”.

The Library’s Project Manager shall provide written notice to the CMAR identifying the name, address, phone number and email address of the agent or employee the CMAR is required to submit payment requests or invoices to. This notice will be provided no later than ten (10) days after issuance of the Notice to Proceed.

Not more often than once a month, on a date established at the Project Pre-Construction Conference, the CMAR may submit to the Library’s Project Manager for review the Library’s standard application for payment form filled out and signed by the CMAR covering the Services completed as of the date of the Application and supported by such data as the Library’s Project Manager may reasonably require. Also, if payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the application for payment shall also be accompanied by such supporting data, satisfactory to the Library’s Project Manager, as to establish the Library’s title to the material and equipment and protect its interest therein, including applicable insurance, partial Consent of Surety, and detailed inventory listing of stored material. Each such request shall include the submittal by the CMAR of (1) a detailed, itemized inventory listing the material stored at the site for which payment is requested, (2) documentation to indicate and substantiate the cost or value attributed to the items included in the stored material inventory list, and (3) the Library’s "Responsibility And Liability For Materials And Equipment Not Included In

The Services" form executed by the CMAR. Failure to provide proper supporting documentation may subject the Progress Payment application to rejection. All progress payments will be subject to the retainage percentage specified in the Contract Documents that will be issued in the final payment after acceptance by the Library of the Services.

Based upon Applications for Payment submitted to the Library's Project Manager by the CMAR and Certificates for Payment issued by the Library's Project Manager the Library shall make progress payments on account of the Contract Amount to the CMAR as provided in the Contract Documents as follows:

Ninety five percent (95%) of the portion of the Contract Amount properly allocable to labor, materials and equipment incorporated in the Work and ninety five percent (95%) of the portion of the Contract Amount properly allocable to materials and equipment suitably stored at the site or at some other location agreed upon in writing, for the period covered by the application for payment, less the aggregate of previous payments made by the Owner.

Upon Final completion of the entire Work, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract Amount, less such amounts as the Owner shall determine for all incomplete Work and unsettled claims as provided in the Contract Documents.

The CMAR may, at the discretion of the Library's Project Manager, be required to have applications for Progress Payments accompanied by Consent of Surety to Partial Payment. The Library's Project Manager may require applications for Progress Payments to be accompanied by legally effective partial releases or waivers of liens executed by all Subcontractors that performed Work and suppliers of material or equipment for the CMAR for Work, Services or supplies which were included in the previous Application for Progress Payment. The CMAR shall include the following certification on each Application for Progress Payments and the Application for Final Payment:

"The undersigned CMAR certifies that the Services and Work covered by this application for payment have been done, or completed in accordance with the Contract documents, that all amounts have been paid by CMAR for work, supplies, material or equipment for which previous Certificates for Payment were issued and that the current payment shown herein is now due".

- Q. CMAR's Warranty Of Title** - The CMAR warrants and guarantees that title to all work, materials and equipment covered by an application for payment, whether incorporated in the Project or not, will have passed to the Library prior to the making of the application for payment, free and clear of all liens, claims, security interests and encumbrances; and that no work, materials or equipment covered by an application for payment will have been acquired by the CMAR or by any other person performing the work at the site or furnishing materials and equipment for the Project subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the CMAR or such other person.
- R. Approval of Payments** - The Library's Project Manager will, within twenty (20) business days after receipt of each application for payment, either indicate his approval of payment or return the Application to the CMAR indicating in writing the reason for refusing to approve payment. In the latter case, the CMAR may make the necessary corrections and

re-submit the Application. The Library will pay the CMAR the amount approved within the time frame set forth in the Local Government Prompt Payment Act.

In the event the CMAR and the Library's Project Manager do not achieve mutual agreement on the basis or amount of the payment, and should the CMAR be unwilling to make the necessary corrections or modifications, and re-submit the Application, then the Library, to avoid delay in paying the CMAR the amount the Library has determined the CMAR is entitled to receive, shall approve and process the Application by making such adjustments thereto as the Library deems appropriate so that the CMAR receives, without delay, payment of the amount the Library has determined to have been earned and owing to the CMAR.

In the event a dispute arises involving payments or invoices that have been rejected by the Library's Project Manager and resubmitted by the CMAR and that cannot be resolved in accordance with F.S. 218.735 (3) the Orange Library Payment/Invoice Disputes Resolution Process Procedures shall be used to resolve the dispute. The procedures can be obtained by contacting the Library's Chief Financial Officer at 407-835-7314.

The Library's Project Manager's approval of any payment requested in an application for payment shall constitute a representation by him/her to the Library, based on the Library's Project Manager's on-site observations of the Services in progress and on his/her review of the application for payment and the supporting data, that the Work has progressed to the point indicated; that, to the best of his/her knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in his/her approval); and that the CMAR is entitled to payment of the amount approved.

However, by approving any such payment, the Library's Project Manager shall not thereby be deemed to have represented that he/she made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, that he/she has reviewed the means, methods, techniques, sequences and procedures of construction nor that he/she has made any examination to ascertain how or for what purpose the CMAR has used the moneys paid or to be paid to him/her on account of the Contract Amount.

The Library's Project Manager's approval of final payment shall constitute an additional representation by him/her to the Library that the conditions precedent to the CMAR's belief being entitled to final payment as set forth in this Article have been fulfilled.

The Library's Project Manager may refuse to approve the whole or any part of any payment if in his/her opinion he/she is unable to make such representations to the Library. He/she may then refuse to approve any such payment because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously approved, to such extent as may be necessary in his/her opinion to protect the Library from loss because:

- A. The Work is defective;
- B. Claims have been filed or there is reasonable evidence indicating the probable filing thereof;
- C. The Contract Amount has been reduced because of Change Order(s);

- D. The Library has been required to correct defective Work or complete the Work in accordance with Article 16; or
- E. Of unsatisfactory prosecution of the Services, including failure to clean up as required by Article 9.

S. Substantial Completion - Prior to final payment, the CMAR shall certify in writing to the Library's Project Manager that the entire Work is Substantially Complete and request that the Library's Project Manager issue a certificate of Substantial Completion.

Within a reasonable time thereafter, the Library's Project Manager, Design Team and CMAR will make an inspection of the Work to determine the status of completion. If the Library's Project Manager does not consider the Work Substantially Complete, the CMAR will be notified in writing giving the reasons therefore. If the Library's Project Manager considers the Work Substantially complete, a tentative certificate of Substantial Completion will be issued. This Certificate shall fix the date of Substantial Completion and the responsibilities between the Library and the CMAR for maintenance, heat and utilities.

There shall be attached to the Certificate a single punch list of items to be completed or corrected by the CMAR. The punch list must specify a date, not to exceed five (5) days after the punch list has been developed and reviewed, in which the delivery of the punch list to the CMAR must be made. Items not included on the punch list cannot be used as a basis to withhold final payment for retainage. In addition, the final contract completion date shall be at least thirty (30) days after the delivery of the punch list to the CMAR. Punch lists not provided to the CMAR by the date agreed upon for delivery will cause the contract time for completion to be extended by the number of days the local government exceeded the delivery date.

Damages may only be assessed against the CMAR in the event the CMAR fails to complete the Project within the contract period as was extended by the guidelines set forth in this provision.

The final undisputed retainage payment must be made within twenty (20) business days after receipt of a proper payment request. This would be less any amount withheld in accordance with the contract provisions for incomplete or uncorrected work unless otherwise provided for by written notice to the CMAR specifying the failure of the CMAR to meet contract requirements in the development of the punch list.

The Library shall have the right to exclude the CMAR from the Project after achievement of Substantial Completion, but the Library will allow the CMAR reasonable access to complete items on the punch list.

T. Partial Utilization - Prior to Substantial Completion, the Library's Project Manager may request the CMAR to permit the use of a specified part of the Work which it believes it may use without significant interference with construction of other parts of the Work. If the CMAR agrees, he/she will certify to the Library's Project Manager that said part of the Work is Substantially Complete and request the Library's Project Manager issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time thereafter, the Library's Project Manager and CMAR will make an inspection of that part of the Work to determine its status of completion.

If the Library and the Library's Project Manager consider that part of the Work to be Substantially Complete, the Library's Project Manager will deliver to the CMAR a certificate to that effect, fixing the date of Substantial Completion as to that part of the Work, attaching thereto a punch list of items to be completed or corrected before final payment and fixing the responsibility between the Library and CMAR for maintenance, heat and utilities as to that part of the Work.

The Library shall have the right to exclude the CMAR from any part of the Work which is so certified to be Substantially Complete but the Library will allow the CMAR reasonable access to complete or correct items on the punch list.

- U. **Final Inspection** - Upon written notice from the CMAR that the Work is complete, including the "punch" listed deficiencies, the Library's Project Manager will make a final inspection with the CMAR and will notify the CMAR in writing of any particulars in which this inspection reveals that the Work is defective. The CMAR shall immediately make such corrections as are necessary to remedy such defects and to complete all the required work.
- V. **Final Inspection For Payment** - After the CMAR has completed any such corrections to the satisfaction of the Library's Project Manager and delivered all maintenance and operating instructions, schedules, guarantees, bonds, Certificates of Inspection and other documents as required by the Contract Documents, he/she may make application for final payment following the procedure for progress payments.

For projects that the CMAR was required to furnish a payment and performance bond, the final application for payment shall be accompanied by legally effective final release or waiver of lien from the CMAR and the consent of Surety to final payment. The Final Release of Lien, Form E-12, must be utilized in all Final Pay Applications.

- W. **Post Construction Warranty Inspection.** The CMAR Team, along with its Sub-contractors, within ten (10) months after issuance of a Certificate of Substantial Completion and before expiration of the contractual one year warranty and/or guarantee period, in the company of the Library's A/E Design Team Representative and the Owner's Representative, shall conduct an on-site inspection of the Project to determine the condition of all items of equipment, materials or building systems which are under warranty or guarantee coverage pursuant to the requirements of the Construction Contract. The Library's A/E Design Team, along with its Sub-consultants, shall provide the Owner with a written report listing all items covered by warranty or guarantee coverage that are observed or otherwise found to be defective, inoperable, or not performing their intended function in a satisfactory manner. The report shall include recommendations for resolving all the items so noted in the warranty inspection report.
- X. **Approval Of Final Payment** - If, on the basis of its observations and review of the Work during construction, its final inspection and its review of the final application for payment (all as required by the Contract Documents), the Library's Project Manager is satisfied that the Work has been completed and the CMAR has fulfilled all of his obligations under the Contract Documents, it will, within twenty (20) business days after receipt of the final application for payment, indicate in writing its approval of payment. Otherwise, it will return the Application to the CMAR, indicating in writing its reason for refusing to approve final payment, in which case the CMAR will make the necessary corrections and re-submit the Application.

The Library will, in accordance with the Local Government Prompt Payment Act, pay the CMAR the amount approved by the Library and issue a Certificate of Final Completion. If after Substantial Completion of the Work, Final Completion is materially delayed through no fault of the CMAR, and the Library's Project Manager so confirms, the Library shall, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the CMAR to the Library's Project Manager prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

- Y. CMAR's Continuing Obligation** - The CMAR's obligation to perform the Work and complete the Work in accordance with the Contract Documents shall be absolute. Neither approval of any progress or final payment by the Library, the issuance of Certificate of Completion, any payment by the Library to the CMAR under the Contract Documents, any use or occupancy of the Work or any part thereof by the Library, any act of acceptance by the Library, any failure to do so, nor any correction of defective Work by the Library shall constitute an acceptance of Work not in accordance with the Contract Documents.
- Z. Waiver Of Claims** - The making and acceptance of final payment shall constitute:
- A. A waiver of all claims by the Library against the CMAR other than those arising from unsettled liens, from defective Work appearing after final payment or from failure to comply with the requirements of the Contract Documents, or from the terms of any special guarantees specified therein, and,
 - B. A waiver of all claims by the CMAR against the Library other than those previously made in writing and still unsettled.

III. GMP PROPOSAL

- A. When the final construction drawings are 90% complete, the CMAR shall prepare a Guaranteed Maximum Price (GMP) proposal for the Library's and Architect's review, and the Library's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the CMAR's estimate of the Cost of the Work, the CMAR's contingency, and the CMAR's Fee.
- B. To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. The costs for such further development, including the Cost of the Work for same, shall be included in the GMP. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.
- C. The CMAR shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the CMAR in the preparation of the Guaranteed Maximum Price proposal, including assumptions;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the CMAR's contingency; general conditions costs individually itemized, and the CMAR's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;
- .5 A date by which the Owner must accept the Guaranteed Maximum Price; and
- .6 Copies of all bids, take-off quantities, quotes, and prices.

Additionally, copies of executed subcontracts and supplier contracts shall be provided by CMAR to Owner within 3 days of the subcontractor's or supplier's signature.

- D. In preparing the CMAR's Guaranteed Maximum Price proposal, the CMAR shall include a sum agreed to by the Parties for contingency for the CMAR's use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order, with all unspent contingency sums accruing to the benefit of the Library and CMAR as set forth in **Exhibit "A"**. Examples of acceptable use of contingency include: scope gaps, omitted items, trade contractors which fail to sign acceptable subcontracts, and unforeseen field conditions for which a change order is not authorized hereunder. Contingency funds shall not be used for expenses related to correcting defective work, legal expenses, or subcontractor defaults. At Final Completion, the GMP shall be reduced by Change Order by the amount of the unspent contingency sum and split between Library and CMAR as set forth in **Exhibit "A"**. Expenditure of contingency funds by the CMAR shall be done only with written approval of the Owner.
- E. The CMAR shall meet with the Library and Architect to review the Guaranteed Maximum Price proposal. In the event that the Library or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the CMAR, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.
- F. If the Owner notifies the CMAR that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the CMAR. Following acceptance of a Guaranteed Maximum Price, the Owner and CMAR shall execute the Guaranteed Maximum Price Amendment amending this Contract, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.
- G. The Owner may, at its sole discretion and based upon its sole judgment, upon receipt of the CMAR's GMP Proposal, do any of the following singularly or in any combination: (i) indicate its acceptance of the GMP proposal; (ii) reject the GMP proposal; (iii) negotiate the price and terms of the GMP Proposal; (iv) terminate the Project; (v) terminate this Contract for convenience pursuant to this Contract, and/or (vi) seek bids, proposals, or qualifications from other contractors and construction managers and proceed to award the Work to and construct the Project using such other entities. If the Owner rejects the

CMAR's GMP proposal, Owner shall have no further obligations pursuant to this Contract; except that Owner shall pay for preconstruction Services properly performed and delivered by the CMAR to Owner through the date of the termination notice and in accordance with the terms of this Contract.

IV. RESPONSIBILITY OF THE CMAR

- A.** The CMAR shall be responsible for the professional quality, technical accuracy, and the coordination of all Work, and other Services furnished by the CMAR under this Contract. The CMAR shall, without additional compensation, correct or revise any errors or deficiencies in its Work and Services.
- B.** The Senior Project Manager and Project Manager shall be two different individuals, both of the individuals shall be currently employed by the Prime Contractor. The Senior Project Manager OR the Project Manager shall be a Professional Licensed General Contractor (GC), Certified Construction Manager (CCM), or a Project Management Professional (PMP, PgMP, PfMP) prior to the due date of proposals submitted for this RFQ. A copy of the General Contractor's License, and / or a CCM, PMP, PgMP, or PfMP Certificate is required to be submitted with the executed Contract. Other Key Personnel must be clearly identified on the organizational chart submitted with the Contract.
- C.** Substitution of the Project Manager, Senior Project Manager or Other Key Personnel: The CMAR shall not substitute any key personnel without the prior written approval of the Library's Project Manager. Any such requests shall be supported by comprehensive documentation outlining the reason(s) for the proposed substitution to include the specific qualifications of the proposed substitute. Approval of the request shall be at the discretion of the Library. Further, the Library, in lieu of approving a substitution, may initiate other actions under the contract, including termination.
- D.** Neither the Library's review, approval or acceptance of, nor payment for, the Services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the CMAR shall be and remain liable to the Library in accordance with applicable law for all damages suffered directly or indirectly by the Library caused by the CMAR's negligent performance of any of the Services furnished under this Contract. The rights and remedies of the Library provided for under this Contract are in addition to any other rights and remedies provided by law.
- E.** If the CMAR is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
- F.** The Library may require in writing that the CMAR remove from this project any of the CMAR'S or sub-contractor(s) personnel or supplier that the Library determines to be incompetent, careless or otherwise objectionable. No claims for an increase in Contract Amount or Contract Time based on the Library's use of this provision will be valid. CMAR, their sub-contractor(s) and suppliers shall indemnify and hold the Library harmless from and against any claim by CMAR's or sub-contractor(s) personnel on account of the use of this provision.

The failure of the Library's Project Manager to make objections to any Subcontractor or Supplier on the list shall not constitute a waiver of any right of the Library to reject defective Work, material or equipment; or work, material or equipment not in conformance with the requirements of the Contract Documents. Should the CMAR desire to add, change or delete a Subcontractor or Supplier previously listed, the CMAR shall submit written justification for said change to the Library's Project Manager for approval prior to the new Subcontractor or Supplier performing any Work on the Project.

- G.** The Library will provide the CMAR and their sub-contractor(s) a copy of the Library's Rules of Conduct, which will apply to the CMAR and their sub-contractor(s) personnel while on the Library's own or leased property.
- H.** CMAR shall coordinate its Services with the services performed by the Library's other contractor and sub-contractor firm(s) engaged by the Library for this Project.
- I.** **Supervision and Superintendence** - The CMAR shall supervise and direct the work efficiently and with his/her best skill and attention. He/she shall be solely responsible for the means, methods, techniques, sequences and procedure of construction, unless otherwise specified. The CMAR shall be responsible to see that the finished Work complies accurately with the Contract Documents. The CMAR shall keep on the site at all times during its progress a competent, resident superintendent who shall not be replaced without prior written notice to the Library's Project Manager. The superintendent shall be the CMAR's representative at the site and shall have authority to act on behalf of the CMAR. All communications given to the superintendent shall be as binding as if given to the CMAR.

The Library's Project Manager may require in writing that the CMAR remove from the Project any of CMAR's personnel that the Library's Project Manager determines to be incompetent, careless or otherwise objectionable.

No claims for an increase in Contract Amount or Contract Time based on the Library's Project Manager's use of this provision will be valid. The CMAR shall indemnify and hold the Library harmless from and against any claim by CMAR's personnel on account of the use of this provision.

The CMAR shall not self-perform work without explicit written approval of the Library.

- J.** **Labor, Materials and Equipment** - The CMAR shall provide competent, suitable, qualified personnel to lay out the Work and perform the Services as required by the Contract Documents. He/she shall at all times maintain good discipline and order at the site. The CMAR shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work.

All materials and equipment shall be new except as otherwise provided in the Contract Documents. If required by the Library's Project Manager, the CMAR shall furnish satisfactory evidence as to the kind and quality of materials and equipment furnished.

All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable

manufacturer, fabricator or processors except as otherwise provided in the Contract Documents.

- K. Substitute Material or Equipment** - If it is indicated in the Specifications that the CMAR may furnish or use a substitute that is equal to any material or equipment specified, and if the CMAR wishes to furnish or use a proposed substitute, he/she shall make written application to the Library's Project Manager for acceptance of such a substitute, certifying in writing that the proposed substitute will perform adequately the duties imposed by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing in an efficient and economic manner as that specified. The application will include sufficient information to allow the Library's Project Manager to evaluate the substitutions.

The application will state the extent, if any, to which the review, acceptance, furnishing and installation of the proposed substitute will prejudice CMAR's completion of the Work within the Contract Time(s). If the cost of the review of the substitution is greater than that of the originally specified item, the CMAR will reimburse the Library for all costs. Library may require CMAR to furnish at CMAR's expense a special performance guarantee or other Surety with respect to any substitute.

The benefit of lower cost items shall be shared between the Library and CMAR as specified in the Instructions to FRIMs. No substitute shall be ordered or installed without the written acceptance of the Library's Project Manager who shall be the sole judge of acceptability.

- L. Concerning Subcontractors** - The CMAR shall not employ any Subcontractor, other person or organization (whether initially or as a substitute) against whom the Library or the Library's Project Manager may have reasonable objections, nor will the CMAR be required to employ any Subcontractor against whom he/she has reasonable objection.

The CMAR shall not make any substitution for any Subcontractor who has been accepted by the Library's Project Manager, unless the Library and the Library's Project Manager determine that there is good cause for doing so.

The CMAR shall be fully responsible for all acts and omissions of his/her Subcontractors and of persons directly or indirectly employed by them and of persons for whose acts any of them may be liable to the same extent that they are employed by him/her. Nothing contained in the Contract Documents shall create, nor be interpreted to create, privity or any other contractual relationship whatsoever between the Library and any Subcontractor or any person except the CMAR, or any obligation on the part of the Library to pay or to see to the payment of any monies due any Subcontractor, except as may otherwise be required by law. The Library may furnish to any Subcontractor, to the extent practicable, evidence of amounts paid to the CMAR on account of specific Work done. The divisions and sections of the Specifications and the identifications of any Drawings shall not control the CMAR in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade.

The CMAR agrees to bind specifically every Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the Library.

All Work performed for the CMAR by Subcontractors shall be pursuant to an appropriate agreement between the CMAR and the Subcontractor which shall contain provisions that

waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by insurance held by the Library as trustee. The CMAR shall pay each Subcontractor a share of any insurance monies received by the CMAR under this insurance.

- M. Patent Fees And Royalties** - The CMAR shall pay all license fees and royalties and assume all costs incident to the use of any invention, design, process or device which is the subject of patent rights or copyrights held by others.
- N. Utilities** - The CMAR shall pay all public utility charges except as provided for in the Contract Documents.
- O. Laws and Regulations** - The CMAR shall give all notices and comply with all laws, ordinances, rules and regulations applicable to the work. If the CMAR observes that the Specifications or Drawings are at variance therewith, he/she will give the Library's Project Manager prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate Change Order. If the CMAR performs any Services knowing it to be contrary to such laws, ordinances, rules and regulations and without such notice to the Library's Project Manager, he/she will bear all costs arising therefrom; however, it shall not be his/her primary responsibility to make certain that the Drawings and Specifications are in accordance with such laws, ordinances, rules and regulations.
- P. Use Of Premises** - The CMAR shall confine his equipment, the storage of materials and equipment, and the operations of his workers to the areas permitted by law, ordinances, permits or the requirements of the Contract Documents and shall not unreasonably encumber the premises with materials or equipment.

The CMAR shall confine the operation of workmen and equipment, and the storage of materials and equipment to the Library's property or to other non-Library property or in public right-of-way areas indicated on the Contract Drawings as including work to be done pursuant to the Contract documents. In the event the CMAR desires to have access to the project site, or perform work or operations pertaining to the Contract on, over or from non-Library property adjacent to the project site, the CMAR shall obtain written authorization to do so from the respective adjacent property owner(s) prior to using such property. Such written authorization shall include a provision whereby the property owner agrees to hold the Library harmless, and to defend the Library, in the event of any liability, loss, injury, or claim incurred as a result of the CMARs work or operations involving the use of the adjacent non-Library property.

The Library shall be provided with a notarized, certified copy of such written authorization(s) before the CMAR commences work or operations or use of such property in connection with work or operations pursuant to this Contract.

- Q. Cleaning Up** - The CMAR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work; at the completion of the Work he/she shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by the Library. The CMAR shall restore to their original condition those portions of the Site not designated for alteration by the Contract Documents. If at any time during construction of this project, the CMAR fails to clean up on a daily basis, the Library may do so. All costs associated with the Library's cleanup activities on behalf of the CMAR shall be deducted from amounts due to the CMAR.

V. LIBRARY'S RIGHTS AND RESPONSIBILITIES

The Library shall:

- A.** Furnish the CMAR with existing data, plans, profiles, and other information necessary or useful in connection with the planning of the program that is available in the Library's files, all of which shall be and remain the property of the Library and shall be returned to the Library upon completion of the Work to be performed by the CMAR.
- B.** Make Library personnel available on a time-permitting basis, where required and necessary to assist the CMAR. The availability and necessity of said personnel to assist the CMAR shall be determined solely within the discretion of the Library.

VI. LIBRARY'S 'DESIGNATED' REPRESENTATIVE

It is understood and agreed that the Library designates the Library's Construction Manager, or designated representative (AKA Library's Project Manager), to represent the Library in all technical matters pertaining to and arising from the work and performance of this Contract. The Library's Construction Manager and/or designated representative, shall have the following responsibilities:

- A.** Examination of all reports, sketches, drawings, estimates, Proposals, and other documents presented by the CMAR and rendering, in writing, decisions indicating the Library's approval or disapproval within a reasonable time so as not to materially delay the work of the CMAR.
- B.** Transmission of instructions, receipt of information, and interpretation and definition of Library policies and decisions with respect to design, materials and other matters pertinent to the work covered by this Contract. Prompt written notice by the Library to the CMAR whenever the Library observes, or otherwise becomes aware of, any defects or changes necessary in the Project.

VII. TERMINATION OF CONTRACT

A. TERMINATION FOR DEFAULT:

The Library may, by written notice to the CMAR, terminate Contract for default in whole or in part (task authorizations, if applicable) if the CMAR fails to:

1. provide materials, Work, or Services that comply with the specifications herein or fails to meet the Library's performance standards,
2. deliver the supplies or to perform the Services within the time specified in Contract or any extension,
3. make progress so as to endanger performance of this Contract, or

4. perform any of the other provisions of this Contract.

Prior to termination for default, the Library will provide written notice to the CMAR through the Library's Chief Financial Officer, affording CMAR the opportunity to cure the deficiencies or to submit a specific plan to resolve the deficiencies within ten (10) calendar days (or the period specified in the notice) after receipt of the notice. Failure to adequately cure the deficiency shall result in termination action. Such termination may also result in suspension or debarment of the CMAR. The CMAR shall be liable for any damage to the Library resulting from the CMAR's default of the Contract. This liability includes any increased costs incurred by the Library in completing contract performance.

In the event of termination by the Library for any cause, the CMAR will have, in no event, any claim against the Library for lost profits or compensation for lost opportunities. After a receipt of a Termination Notice and except as otherwise directed by the Library the CMAR shall:

- Stop all Work and Services on the date and to the extent specified.
- Terminate and settle all orders and sub-contracts relating to the performance of the terminated Work and Services
- Transfer all Work and Services in process, completed Work and Services, and other materials related to the terminated Work and Services as directed by the Library.
- Continue and complete all parts of that Work and Services that have not been terminated.

If the CMAR'S failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the CMAR, the Contract shall not be terminated for default. Examples of such causes include (1) acts of God or the public enemy, (2) acts of a government in its sovereign capacity, (3) fires, (4) floods, (5) epidemics, (6) strikes and (7) unusually severe weather.

B. TERMINATION FOR CONVENIENCE:

The Library, by written notice, may terminate this Contract, in whole or in part, when it is in the Library's interest for convenience. If this Contract is terminated for convenience, the Library shall be liable only for materials or Work properly performed and delivered and accepted at the job site, which payment shall be CMAR's sole remedy for termination. The Library's Notice of Termination for convenience shall provide the CMAR seven (7) days prior notice before it becomes effective.

C. PAYMENT IN EVENT OF TERMINATION:

If this Contract is terminated for any reason before performance is completed, the CMAR's sole and exclusive remedy is payment for Services performed, and CMAR shall be only paid for the Services satisfactorily performed. Payment is to be on the basis of substantiated costs, not to exceed an amount that is the same percentage of the Contract price as the amount of Services satisfactorily completed is a percentage of the total Services called for in this Contract. Any additional costs incurred by the Library as a result of such termination shall

be deducted from the amount due the CMAR, in the event the Contract termination is for cause as described herein.

VIII. TERMINATION NOTICE

The Library's Chief Financial Officer, shall issue any and all notices involving termination of this Contract.

IX. INDEMNITY/INSURANCE AND SAFETY REQUIREMENTS

The Library shall be named as additional insured on all policies. The CMAR agrees to maintain on a primary basis and at its sole expense, at all times throughout the duration of this Contract the following types of insurance coverage with limits and on forms (including endorsements) as described herein. These requirements, as well as the Library's review or acceptance of insurance maintained by the selected CMAR is not intended to and shall not in any manner limit or qualify the liabilities assumed by CMAR under this Contract. The selected CMAR is required to maintain any coverage required by federal and state workers' compensation or financial responsibility laws including but not limited to Chapter 324 and 440, Florida Statutes, as may be amended from time to time.

The CMAR shall require and ensure that each of its sub-contractors providing Work hereunder (if any) procures and maintains until the completion of their respective Work, insurance of the types and to the limits specified herein.

Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of A- Class VIII or better. (Note: State licenses can be checked via www.floir.com/companysearch/ and A.M. Best Ratings are available at www.ambest.com)

➤ **Required Liability Coverage:**

- Commercial General Liability - The CMAR shall maintain coverage issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, with a limit of liability of not less than **\$1,000,000 (one million dollars) per occurrence**, \$2,000,000 general aggregate and \$2,000,000 aggregate for products completed operating hazard. CMAR shall also maintain umbrella coverage of \$3,000,000 each occurrence/combined. The CMAR further agrees coverage shall not contain any endorsement(s) excluding or limiting Product/Completed Operations, Contractual Liability, or Separation of Insureds. The General Aggregate limit shall either apply separately to this Contract or shall be at least twice the required occurrence limit.

➤ **Required Liability Endorsements:**

- Additional Insured- CG 20 26 or CG 20 10/CG 20 37 or their equivalents.
Note: CG 20 10 must be accompanied by CG 20 37 to include products/completed operations
- Waiver of Transfer of Rights of Recovery- CG 24 04 or its equivalent.
Note: If blanket endorsements are being submitted please include the entire endorsement and the applicable policy number.

➤ **Required Automotive Coverage:**

- Business Automobile Liability - The CMAR shall maintain coverage for all owned; non-owned and hired vehicles issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, with limits of not less than **\$500,000 (five hundred thousand dollars) per accident**. In the event the CMAR does not own automobiles the CMAR shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Required Automotive Endorsements: None

➤ **Required Workers' Compensation Coverage:**

- Workers' Compensation - The CMAR shall maintain coverage for its employees with statutory workers' compensation limits, and no less than **\$100,000 each incident** of bodily injury or disease for Employers' Liability. Elective exemptions as defined in Florida Statute 440 will be considered on a case-by-case basis. Any CMAR using an employee leasing company shall complete the Leased Employee Affidavit. Note: The use of employee leasing companies is not permitted under RFQ OCLS-MAIN-23-002 and this resulting Contract.

➤ **Required Workers' Compensation Endorsements:**

- Waiver of Subrogation- WC 00 03 13 or its equivalent

➤ **Required Fidelity Liability Coverage:**

- Fidelity / Employee Dishonesty - with a limit of not less than or equal to the Contract Amount per occurrence/claim

When a self-insured retention or deductible exceeds \$50,000 the Library reserves the right to request a copy of the CMAR's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis the CMAR agrees to maintain a retroactive date prior to or equal to the effective date of this Contract. In the event the policy is canceled, non-renewed, switched to occurrence form, or any other event which triggers the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this Contract the CMAR agrees to purchase the SERP with a minimum reporting period of not less than two (2) years. Purchase of the SERP shall not relieve the CMAR of the obligation to provide replacement coverage.

By entering into this Contract CMAR agrees to provide a waiver of subrogation or a waiver of transfer of rights of recovery, in favor of the Library for the workers' compensation and general liability policies as required herein. When required by the insurer or should a policy condition not permit the CMAR to enter into a pre-loss agreement to waive subrogation without an endorsement, then CMAR agrees to notify the insurer and request the policy be endorsed with a Waiver of Subrogation or a Waiver of Transfer of Rights of Recovery Against Others endorsement.

Prior to execution and commencement of any Services provided under the Contract the CMAR

shall provide the Library with current certificates of insurance evidencing all required coverage. In addition to the certificate(s) of insurance the CMAR shall also provide endorsements for each policy as specified above. All specific policy endorsements shall be in the name of the Library Board of Trustees.

The CMAR shall submit insurance renewal certificates annually to the Library and immediately upon request by either the Library or the Library's contracted certificate compliance management CMAR. The certificates shall clearly indicate that the CMAR has obtained insurance of the type, amount and classification as required for strict compliance with this insurance section. The CMAR shall notify the Library not less than thirty (30) business days (ten [10] business days for non-payment of premium) of any material change in or cancellation/non-renewal of insurance coverage. The CMAR shall provide evidence of replacement coverage to maintain compliance with the aforementioned insurance requirements to the Library or its certificate management representative five (5) business days prior to the effective date of the replacement policy(ies).

The certificate holder shall read:

Orange County Library Board of Trustees
c/o Chief Financial Officer
101 East Central Blvd
Orlando, Florida 32801

INDEMNIFICATION - CMAR:

The CMAR to the extent permitted in Section 725.08, Florida Statutes shall indemnify and hold harmless the Library and its officers and employees from liabilities damages, losses, and costs (including attorney's fees) to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CMAR and persons employed or utilized by the CMAR in the performance of this Contract. The remedy provided to the Library by this paragraph shall be in addition to and not in lieu of any other remedy available under this Contract or otherwise and shall survive the termination of this Contract.

X. SAFETY AND PROTECTION OF PROPERTY **(for Work provided on the premises of Library)**

The CMAR shall at all times:

- ...Initiate, maintain and supervise all safety precautions and programs in connection with its Services or performance of its operations under this Contract.
- Take all reasonable precautions to prevent injury to CMAR employees, Library employees. Library attendees and all other persons affected by their operations.
- Take all reasonable precautions to prevent damage or loss to property of Library, or of other vendors, CMARs or agencies and shall be held responsible for replacing or repairing any such loss or damage.
- Comply with all ordinances, rules, regulations, standards and lawful orders from authority bearing on the safety of persons or property or their protection from

damage, injury or loss. This includes but is not limited to:

- ✓ ...Occupational Safety and Health Act (OSHA)
- ✓ ...National Institute for Occupational Safety & Health (NIOSH)
- ✓ ...National Fire Protection Association (NFPA)
- ✓ ...American Society of Heating, Refrigeration & Air-Conditioning Engineers (ASHRAE)
- ✓ ...Manual of Accident Prevention in Construction of the Associated General CMARs of America, Inc.
- ✓ ...Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD)

Emergencies - In emergencies affecting the safety of persons, the Work or property at the site or adjacent thereto, the CMAR, without special instruction or authorization from the Library's Project Manager, is obligated to act at his/her discretion to prevent threatened damage, injury or loss. He/she shall give the Library's Project Manager prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby, and a Change Order shall thereupon be issued covering the changes and deviations involved. If the CMAR believes that additional Work done by him/her in an emergency which arose from causes beyond his/her control entitles him/her to an increase in the Contract Amount or an extension of the Contract Time, he/she may make a claim therefore as provided in the Contract.

XI.

TRUTH IN NEGOTIATION AND MAINTENANCE AND EXAMINATION OF RECORDS

- A.** The CMAR hereby represents, covenants and warrants that wage rates and other factual unit costs supporting the compensation provided for in this Contract are accurate, complete and current as of the date of contracting. It is further agreed that the Contract price shall be adjusted to exclude any amounts where the Library determines the Contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs.
- B.** The CMAR shall keep adequate records and supporting documents applicable to this Contract. Said records and documentation shall be retained by the CMAR for a minimum of five (5) years from the date of final payment on this Contract. If any litigation, claim or audit is commenced prior to the expiration of the five (5) year period, the records shall be maintained until all litigation, claims or audit findings involving the records have been resolved.
- C.** If applicable, time records and cost data shall be maintained in accordance with generally accepted accounting principles.

This includes full disclosure of all transactions associated with the Contract. Also, if applicable, all financial information and data necessary to determine overhead rates in accordance with Federal and State regulatory agencies and the Contract shall be maintained.

- D.** CMAR's "records and supporting documents" as referred to in this Contract shall include any and all information, materials and data of every kind and character, including without

limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, invoices, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in the Library's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract document.

Such records and documents shall include (hard copy, as well as computer readable data, written policies and procedures; time sheets; payroll registers; cancelled checks; sub-contract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating worksheets; correspondence; change order files (including pricing data used to price change proposals and documentation covering negotiated settlements); back-charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other CMAR records which may have a bearing on matters of interest to the Library in connection with the CMAR's dealings with the Library (all foregoing hereinafter referred to as "records and supporting documents") to the extent necessary to adequately permit evaluation and verification of:

- 1) CMAR compliance with contract requirements; or
- 2) Compliance with provisions for pricing change orders; or
- 3) Compliance with provisions for pricing invoices; or
- 4) Compliance with provisions regarding pricing of claims submitted by the CMAR or his/her payees; or
- 5) Compliance with the Library's business ethics; or
- 6) Compliance with applicable state statutes and Library Ordinances/Regulations.

- E.** Records and documents subject to audit shall also include those records and documents necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Contract. In those situations where CMAR's records have been generated from computerized data (whether mainframe, mini-computer, or PC based computer systems), CMAR agrees to provide the Library's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer exchange formats.
- F.** The Library and its authorized agents shall have the right to audit, inspect and copy records and documentation as often as the Library deems necessary throughout the term of this Contract and for a period of five (5) years after final payment. Such activity shall be conducted during normal business working hours. The Library, or any of its duly authorized representatives, shall have access within forty-eight (48) hours to such books, records, documents, and other evidence for inspection, audit and copying.
- G.** The Library, during the period of time defined by the preceding paragraph, shall have the right to obtain a copy of and otherwise inspect any audit made at the direction of the CMAR as concerns the aforesaid records and documentation.
- H.** Records and documentation shall be made accessible at the CMAR's local place of business. If the records are unavailable locally, it shall be the CMAR's responsibility to ensure that all required records are provided at the CMAR's expense including payment of travel and maintenance costs incurred by the Library's authorized representatives or designees in accessing records maintained out of the Library. The direct costs of copying

records, excluding any overhead cost, shall be at the Library's expense.

- I. CMAR shall require all payees (examples of payees include sub-consultants, insurance agents, material suppliers, etc.) to comply with the provisions of this article by including the requirements hereof in a written contract agreement between CMAR and payee. Such requirements include a flow-down right of audit provisions in contracts with payees, which shall also apply to sub-consultants and sub-sub consultants, material suppliers, etc. CMAR shall cooperate fully and shall cause all aforementioned parties and all of CMAR's sub-contractors (including those entering into lump sum sub-contracts and lump sum major material purchase orders) to cooperate fully in furnishing or in making available to the Library from time to time whenever requested in an expeditious manner any and all such records, documents, information, materials and data.
- J. The Library's authorized representatives or designees shall have reasonable access to the CMAR's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Contract and shall have adequate and appropriate work space, in order to conduct audits in compliance with this article.
- K. Even after a change order proposal has been approved, CMAR agrees that if the Library later determines the cost and pricing data submitted was inaccurate, incomplete, not current or not in compliance with the terms of the Contract regarding pricing of change orders, then an appropriate contract price reduction will be made. Such post-approval contract price adjustment will apply to all levels of CMARs and/or sub-contractors and to all types of change order proposals specifically including lump sum change orders, unit price change orders, and cost-plus change orders.
- L. If an audit inspection or examination by the Library, or its designee, in accordance with this article discloses overpricing or overcharges (of any nature) by the CMAR to the Library in excess of one-half of one percent (0.5%) of the total contract billings, the reasonable actual cost of the Library's audit shall be reimbursed to the Library by the CMAR. Any adjustments and /or payments that must be made as a result of any such audit or inspection of the CMAR's invoices and/or records and supporting documents shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the Library's findings to the CMAR.

XII. OWNERSHIP OF DOCUMENTS

It is understood and agreed that all documents, including detailed reports, plans, original drawings, survey field notebooks, and all other data other than working papers, prepared or obtained by the CMAR in connection with its Services hereunder and are the sole property of the Library upon acceptance of same by the Library.

Record Drawings - The CMAR shall keep one record copy of all Specifications, Drawings, Addenda, Change Orders and Shop Drawings at the site in good order, and annotated and/or marked on a current basis to indicate the progress of the work done and to show all changes made during the construction process or conditions varying from RFQ OCLS-MAIN-23-002 Documents. These shall be available to the Library's Project Manager for inspection throughout construction and shall be delivered to the Library's Project Manager upon completion of the Services, but prior to final payment.

Shop Drawing and Samples - After checking and verifying all field measurements, the CMAR shall submit to the Library's Project Manager for review, in accordance with the accepted schedule of Shop Drawing submission, five copies (or at the Library's Project Manager's option, one reproducible copy and one electronic copy) of all Shop Drawings, which shall have been checked by and stamped with the approval of the CMAR and identified as the Library's Project Manager may require. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and the like to enable the Library's Project Manager to review the information as required.

The CMAR shall submit to the Library's Project Manager for review with such promptness as to cause no delay in the Services, all samples required by the Contract Documents. All samples shall be checked by and stamped with the approval of the CMAR, identified clearly as to material, manufacturer, any pertinent numbers and the use for which intended.

At the time of each submission, the CMAR shall in writing call to the Library's Project Manager's attention to any deviations that the Shop Drawing or sample may have from the requirements of the Contract documents.

The Library's Project Manager will review with reasonable promptness and take appropriate action with regard to Shop Drawings and samples, but its review shall be only for general conformance with the design concept of the Project and for compliance with the information given in the Contract Documents. The acceptance of a separate item as such will not indicate approval of the assembly in which the item functions.

The CMAR shall make any corrections required by the Library's Project Manager and will return the required number of corrected copies of Shop Drawings and re-submit new samples until accepted.

The CMAR's stamp of approval on any Shop Drawing or sample shall constitute a representation to the Library's Project Manager that the CMAR has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers and similar data or he assumes full responsibility for doing so, and that he/she has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and Contract Documents.

No Work requiring a Shop Drawing or sample submission shall be commenced until the submission has been accepted by the Library's Project Manager. A copy of each accepted Shop Drawing and each accepted sample shall be kept in good order by the CMAR at the site and shall be available to the Library's Project Manager.

The Library's Project Manager's acceptance of Shop Drawings or samples shall not relieve the CMAR from his/her responsibility for any deviations from the requirements of the Contract Documents, unless the CMAR has in writing called the Library's Project Manager's attention to such deviation at the time of submission and the Library and the Library's Project Manager have given written acceptance to the specific deviation; nor shall any acceptance by the Library's Project Manager relieve the CMAR from responsibility for errors or omissions in the Shop Drawing.

Each Shop Drawing or sample submittal or substitution request by the CMAR shall contain a reference identifying the applicable, specific Section of the Specifications to which it pertains. Submittals failing to comply with this provision shall be rejected and returned to the CMAR without

review. Each Shop Drawing or sample submittal or substitution request shall include the following stamped certification by the CMAR:

"The General CMAR has reviewed the Shop Drawing, sample or substitution submitted herewith and has determined and hereby certifies that in all respects this submittal is in full compliance and conformance with the Contract specifications, drawings and all other Contract requirements pertaining thereto".

Failure of the CMAR to include the above stated specification reference number or certification of compliance shall result in the rejection of the submittal. The CMAR shall also submit to the Library's Project Manager for acceptance all samples required by the Contract Documents. All samples shall have been checked by and stamped with the approval of the CMAR, identified clearly as to material, manufacturer, any pertinent numbers and the use for which intended.

In the event that the CMAR, or anyone working for or on behalf of the CMAR on this project, should commence or do any work requiring submission of a Shop Drawing or sample, or involving a substitution or an "or-equal" request without having such submittal accepted by the Library in writing, then the CMAR is advised that any and all such work will be done at its risk and is subject to rejection and/or removal at the CMAR's expense and at no additional cost to the Library if applicable Shop Drawing, sample, substitution, "or-equal" or other submittal is not accepted.

Further, the CMAR shall not receive "progress" or "final" payment for any and all work commenced or done which requires, but has not received acceptance of Shop Drawings, samples, substitution requests, or "or-equal" requests or any other required submittal, nor will the CMAR receive "progress" or "final" payment for any and all work that has been determined by the Library's Design Team or the Library's Project Manager not to be in compliance or conformance with the established Contract requirements, Contract change orders, written directives, written clarifications provided to the CMAR, or accepted Shop Drawings, accepted samples, accepted substitutions, or accepted "or-equals".

XIII. WORK COMMENCEMENT/PROGRESS/DELAYS

- A. **COMMENCEMENT OF THE CONSTRUCTION WORK:** The construction Work to be rendered by the CMAR shall be commenced subsequent to the execution of the GMP Amendment and upon written notice to proceed from the Library or designee. The Work shall be completed within the time period agreed upon in the GMP Amendment (the "Contract Time").

The CMAR will start the Work within **five (5)** calendar days of the official "Notice to Proceed" date. The Contract Time shall commence on the effective date of the "Notice to Proceed."

Preconstruction Conference: Within 20 days after the effective date of the Contract, but before CMAR starts the Work at the site, a conference attended by CMAR, Library's Project Manager, Library's A/E Team and others as appropriate will be held to discuss

such topics as may include, but not limited to; schedules, procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, maintenance of traffic, initiation of coordination with affected utilities, agreement upon the Notice to Proceed date, and to establish a working understanding among the parties as to the Work.

B. JOB SEGMENT DEADLINES: A detailed segment completion schedule will be included in the GMP Amendment. The purpose of this schedule is to:

1. Provide job segment deadlines for the CMAR upon which the Library may rely;
2. Provide guidance for the Library in honoring the CMAR'S monthly invoices for progress payments; and
3. Provide a framework against which the Library may suspend progress payments as provided herein.

C. CONFERENCES: The Library will be entitled at all times to be advised, at its request, as to the status of work being done by the CMAR and of the details thereof. Coordination shall be maintained by the CMAR with representatives of the Library, or of other agencies interested in the Project on behalf of the Library. Either party to the Contract may request and be granted a conference.

D. DELAYS NOT FAULT OF CMAR; DISCRETIONARY EXTENSIONS OF COMPLETION TIME BY LIBRARY: In the event there are delays on the part of the Library as to the approval of any of the shop drawings submitted by the CMAR, or if there are delays occasioned by circumstance beyond the control of the CMAR which delay the Project Schedule Substantial Completion date, the Library may grant to the CMAR, by "Letter of Approval of Project Schedule" an extension of the Contract Time or revision to the Project Schedule, equal to the aforementioned delays, provided there shall be no changes in compensation. It shall be the responsibility of the CMAR to ensure at all times that sufficient Contract time remains within which to complete Work on the Project. In the event there have been delays which would affect the Project Substantial Completion date, the CMAR shall submit a written request to the Library which identifies the reason(s) for the delay and the amount of time related to each reason.

The Library will review the request and make a determination as to granting all or part of the requested extension.

E. SUSPENSION OF SERVICES BY LIBRARY:

1. Right of Library to Suspend Services and Order Resumption – The performance of CMAR's Services hereunder may be suspended by the Library at any time. However, in the event the Library suspends the performance of CMAR's Services hereunder, it shall so notify the CMAR in writing, such suspension becoming effective upon the date of its receipt by CMAR. The Library shall promptly pay to the CMAR all fees which have become due and payable to the CMAR prior to the effective date of such suspension. Library shall thereafter have no further obligation for payment to the CMAR unless and until the Library notifies the CMAR that the Services of the CMAR called for hereunder are to be resumed. Upon receipt of written notice from the Library that CMAR'S Services hereunder are to

be resumed, CMAR shall complete the Services of CMAR called for in any Purchase Order and this Contract and CMAR, shall, in that event, be entitled to payment of the remaining unpaid compensation which becomes payable to it under this Contract, same to be payable in the manner specified herein.

In no event will the compensation or any part thereof become due or payable to CMAR under this Contract unless and until CMAR has attained that stage of Services where the same would be due and payable to CMAR under the provision of this Contract.

2. Renegotiation by CMAR; Right to Terminate – If the aggregate time of the Library's suspension or suspension of CMAR's Services for the Project exceeds one hundred twenty (120) days, then CMAR and Library shall, upon request of CMAR, meet to assess the Services remaining to be performed and the total fees paid to CMAR hereunder. The parties shall then have the opportunity of negotiating a change in fees to be paid to the CMAR for the balance of the Services to be performed hereunder. No increase in fees to the CMAR shall be allowed unless based upon clear and convincing evidence of an increase in CMAR'S costs attributable to the aforesaid suspensions. If an increase in the CMAR'S cost is demonstrated by clear and convincing evidence and the Library refuses to increase said fees, CMAR may terminate this Contract by delivering written notice thereof to the Library within ten (10) days after the Library has given notice of its refusal to increase said fees.

XIV. STANDARDS OF CONDUCT

- A. The CMAR represents that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CMAR, to solicit or secure this Contract and that he/she has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the CMAR any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of this Contract.

The CMAR shall comply with all Federal, State and local laws and ordinances in effect on the date of this Contract and applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, religion, sex, sexual orientation and gender expression/identity, color, age, disability or handicap, national origin, creed, marital status or veteran's status in the performance of work under this Contract. Violation of such laws shall be grounds for immediate contract termination.

- B. The CMAR hereby certifies that no undisclosed conflict of interest exists with respect to the present Contract, including any conflicts that may be due to representation of other clients, other contractual relationships of the CMAR, or any interest in property which the CMAR may have. The CMAR further certifies that any apparent conflict of interest that arises during the term of this Contract will be immediately disclosed in writing to the Library. Violation of this section will be considered as justification for immediate termination of this Contract.

XV. ASSIGNABILITY; EMPLOYMENT OF SPECIALISTS

- A.** The CMAR shall maintain an adequate and competent professional staff and may associate with such staff, professional specialists for the purpose of ensuring and enlarging its Services hereunder, without additional cost to the Library. Should the CMAR desire to utilize such specialists, the CMAR is fully responsible for satisfactory completion of all work within the scope of this Contract.
- B.** The CMAR shall be responsible for the integration of all specialists or outside professional work into the documents and for all payments to such specialists or sub-contractors from the fee heretofore stated. Services rendered by the CMAR in connection with coordination of the Services of the aforementioned personnel shall be considered within the scope of the basic Contract and no additional fee will be due the CMAR for such Services.
- C.** All final plans and documents prepared by the CMAR must bear the endorsement of a person in the full employ of the CMAR and be duly registered as a Professional Engineer/Architect in the State of Florida.
- D.** The CMAR shall not assign any interest in this Contract and shall not transfer any interest in the same without prior written approval of the Library, provided that claims for the money due or to become due the CMAR from the Library under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Library.

XVI. INDEMNIFICATION FOR TORT ACTIONS/LIMITATION OF LIABILITY

- A.** The provisions of Florida Statute 768.28 applicable to Library apply in full to this Contract. Any legal actions to recover monetary damages in tort for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the Library acting within the scope of his/her office or employment are subject to the limitations specified in this statute.
- B.** No officer, employee or agent of the Library acting within the scope of his/her employment or function shall be held personally liable in tort or named as a defendant in any action for any injury or damage suffered as a result of any act, event, or failure to act.
- C.** The Library shall not be liable in tort for the acts or omissions of an officer, employee, or agent committed while acting outside the course and scope of his/her employment. This exclusion includes actions committed in bad faith or with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

XVII. EQUAL OPPORTUNITY

The Library's policies of equal opportunity and non-discrimination are intended to assure equal opportunities to every person, regardless of race, religion, sex, sexual orientation and gender expression/identity, color, age, disability or handicap, national origin, creed, marital status or veteran's status, in securing or holding employment in a field of work or labor for which the person is qualified. It is also the Library policy that person(s) doing business with the Library shall recognize and comply with this policy and that the Library shall not extend public funds or

resources in a manner as would encourage, perpetuate or foster discrimination. As such:

- A. The CMAR shall adopt and maintain or provide evidence to the Library that CMAR has adopted and maintains, a policy of nondiscrimination throughout the term of this Contract.
- B. The CMAR agrees that, on written request, the CMAR shall permit reasonable access to all business records or employment, employment advertisement, applications forms, and other pertinent data and records, by the Library, for the purpose of investigating to ascertain compliance with the non-discrimination provisions of this Contract; provided, that the CMAR shall not be required to produce for inspection records covering periods of time more than one year prior to the date of this Contract.
- C. The CMAR agrees that, if any obligations of this Contract are to be performed by sub-contractor(s), the provisions of subparagraphs 1 and 2 of this Section shall be incorporated into and become a part of the sub-contract.

XVIII. CONTROLLING LAWS

This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the provisions of this Contract will be held in Orange County, Florida. Venue for any litigation involving this Contract shall be the Ninth Circuit Court in and for Orange County, Florida.

XIX. CONTRACT CLAIMS

“Claim” as used in this provision means a written demand or written assertion by one of the contracting parties seeking as a matter of right, the payment of a certain sum of money, the adjustment or interpretation of contract terms, or other relief arising under or relating to this Contract.

Claims made by a CMAR against the Library relating to a particular contract shall be submitted to the Library’s Chief Financial Officer in writing clearly labeled “Contract Claim” requesting a final decision. The CMAR also shall provide with the claim a certification as follows: “I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the CMAR believes the Library is liable; and that I am duly authorized to certify the claim on behalf of the CMAR.”

Failure to document a claim in this manner shall render the claim null and void. Moreover, no claim shall be accepted after final payment of the contract.

The decision of the Library’s Chief Financial Officer shall be issued in writing and shall be furnished to the CMAR. The decision shall state the reasons for the decision reached. The Library’s Chief Financial Officer shall render the final decision within sixty (60) days after receipt of CMAR’s written request for a final decision. The Library’s Chief Financial Officer decision shall be final and conclusive.

The CMAR shall proceed diligently with performance of this Contract pending final resolution of any request for relief, claim, appeal or action arising under the contract and shall comply with any final decision rendered by the Library's Chief Financial Officer.

XX. AVAILABILITY OF FUNDS

The obligations of Library under this Contract are subject to availability of funds lawfully appropriated for its purpose by the Library Board of Trustees, or other specified funding source for this Contract.

XXI. PROHIBITION AGAINST CONTINGENT FEES

The CMAR warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CMAR, to solicit or secure this Contract and that they have not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the CMAR any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of this Contract. For the breach or violation of this provision, the Library shall have the right to terminate the Contract at its sole discretion, without liability and to deduct from the Contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

XXII. TOBACCO FREE CAMPUS

All Library facilities and operations shall be tobacco free. This policy shall apply to parking lots, parks, break areas and worksites. It is also applicable to CMAR and their personnel during contract performance on Library owned or leased property. Tobacco is defined as tobacco products including, but not limited to, cigars, cigarettes, e-cigarettes, pipes, chewing tobacco and snuff. Failure to abide by this policy may result in civil penalties levied under Chapter 386, Florida Statutes and/or contract enforcement remedies.

XXIII. VERIFICATION OF EMPLOYMENT STATUS

Prior to the employment of any person performing Services under this Contract, the CMAR shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of: (a) all employees within the State of Florida that are hired by the CMAR after the execution of the contract who are providing labor under the contract during the contract term; and, (b) all employees within the State of Florida of any of the CMAR'S sub-contractors that are hired by those sub-contractors after the execution of the contract who are providing labor under the contract during the contract term. Please refer to USCIS.gov for more information on this process.

Only those employees determined eligible to work within the United States shall be employed under the contract.

Therefore, by submission of a proposal in response to this solicitation, the CMAR confirms that all employees in the above categories will undergo e-verification before performing labor under this Contract. The CMAR further confirms his/her commitment to comply with the requirement by completing the E-Verification certification, contained in this solicitation.

XXIV. ASBESTOS FREE MATERIALS

CMAR shall provide a written and notarized statement on company letterhead to certify and warrant that the project was designed and built with asbestos free materials. Such statement shall be submitted with the final payment request. Final payment shall not be made until such statement is submitted. CMAR agrees that if materials containing asbestos are subsequently discovered at any future time to have been included in the design, CMAR shall be liable for all costs related to the redesign or modification of the construction of the project so that materials containing asbestos are removed from the design, plans or specifications or construction contract documents, and, in addition, if construction has begun or has been completed pursuant to a design that includes asbestos containing materials, the CMAR shall also be liable for all costs related to the abatement of such asbestos.

XXV.

DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION:

By executing this Contract, the CMAR affirms that it is in compliance with the requirements of 2 C.F.R. Part 180 and that neither it, its principals, nor its sub-contractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

XXVI.

FLORIDA CONVICTED/SUSPENDED/DISCRIMINATORY COMPLAINTS:

By executing this Contract, the CMAR affirms that it is not currently listed in the Florida Department of Management Services Convicted/Suspended/Discriminatory Complaint Vendor List.

XXVII. SEVERABILITY

The provisions of this Contract are declared by the parties to be severable. However, the material provisions of this Contract are dependent upon one another, and such interdependencies a material inducement for the parties to enter into this Contract. Therefore, should any material term, provision, covenant or condition of this Contract be held invalid or unenforceable by a court of competent jurisdiction, the party protected or benefited by such term, provision, covenant, or condition may demand that the parties negotiate such reasonable alternate contract language or provisions as may be necessary either to restore the protected or benefited party to its previous position or otherwise mitigate the loss of protection or benefit resulting from holding.

XXVIII.

PUBLIC RECORDS COMPLIANCE (APPLICABLE FOR SERVICE CONTRACTS)

The Library is a public agency subject to Chapter 119, Florida Statutes. The CMAR agrees to comply with Florida's Public Records Law. Specifically, the CMAR shall:

- Keep and maintain public records required by Library to perform the service.
- Upon request from Library's custodian of public records, provide Library with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

- Ensure that public records that are exempt or confidential and exempt from the public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the CMAR does not transfer the records to Library.
- Upon completion of the contract, CMAR agrees to transfer at no cost to Library all public records in possession of the CMAR or keep and maintain public records required by Library to perform the service. If the CMAR transfers all public record to Library upon completion of the contract, the CMAR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CMAR keeps and maintains public records upon completion of the contract, the CMAR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Library, upon request from Library's custodian of public records, in a format that is compatible with the information technology systems of Library.
- A CMAR who fails to provide the public records to Library within a reasonable time may be subject to penalties under section 119.10, Florida Statutes.
- **IF THE CMAR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CMAR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT LOVEVIA WILLIAMS, THE Library's CUSTODIAN OF PUBLIC RECORDS AT:**

Orange County Library System
 Attn: Public Records Custodian
 5th Floor Finance Offices
 101 East Central Blvd.
 Orlando, Florida 32801

XXIX.
SCRUTINIZED COMPANIES LIST

By executing this Contract, the CMAR certifies that it is not: (1) listed on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725 of the Florida Statutes, (2) engaged in a boycott of Israel, (3) listed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473 of the Florida Statutes, or (4) engaged in business operations in Cuba or Syria. Pursuant to section 287.135(5) of the Florida Statutes, Space Florida may immediately terminate this Contract for cause if the CMAR is found to have submitted a false certification as to the above or if the CMAR is placed on the Scrutinized Companies that Boycott Israel List, is engaged in a boycott of Israel, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria, during the term of the Contract. If Library determines that the CMAR has submitted a false certification, Library will provide written notice to the CMAR. Unless the CMAR demonstrates in writing, within 90 calendar days of receipt of the notice, that Library's determination of false certification was made in error, Library shall bring a civil action against the CMAR. If Library's determination is upheld, a civil penalty equal to the greater of \$2 million or twice the amount of this Contract shall be imposed on the CMAR, and

the CMAR will be ineligible to bid on any Contract with a Florida agency or local governmental entity for three years after the date of Library's determination of false certification by the CMAR.

b. If federal law ceases to authorize the states to adopt and enforce the contracting prohibition in this Section, this Section shall be null and void without further action of the parties.

XXX. INTERPRETATION AND INTENT OF THE CONTRACT DOCUMENTS

It is the intent of the Specifications and Drawings to describe the complete Work to be constructed in accordance with the Contract Documents. However, the Library makes no representation or warranty of any nature whatsoever to the CMAR concerning such documents. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If the CMAR finds a conflict, error or discrepancy in the Contract Documents, he/she will call it to the Library's Project Manager's attention in writing before proceeding with the Work affected thereby. Any work that may reasonably be inferred from the Specifications or Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, materials or equipment described in words which so applied have a well known technical or trade meaning shall be deemed to refer to such recognized standards. In case of conflict, the more stringent requirements shall take precedence and govern.

Written clarifications or interpretations (which shall be consistent with or reasonably inferable from the Contract Documents) will be issued in response to a CMAR Request for Interpretation (RFI) or as the Library's Project Manager or Library's A/E Team may otherwise determine necessary. If the CMAR believes a written clarification or interpretation justifies an increase in Contract Amount or Contract Time, the CMAR shall make a claim for such increase in accordance with Article 19. If the CMAR is authorized by the Library to proceed with the Services involved before full agreement is reached on (a) whether any increases are due at all, or (b) the extent of any such increases (if any are determined to be due), the CMAR shall furnish daily to the Library's Project Manager, or Library's A/E Team, actual cost records.

XXXI. REFERENCE POINTS

Availability of Lands: The Library will furnish, as indicated in the Contract Documents and not later than the date when needed by the CMAR, the lands upon which the Work is to be done, rights-of-way for access thereto and such other lands which are designated for the use of the CMAR. Easements for permanent structures or permanent changes in existing facilities will be obtained by the Library unless otherwise specified in the Contract Documents. If the CMAR believes that any delay in the Library's furnishing these lands or easements entitles it to an extension of the Contract Time, he/she may make a claim therefore. The CMAR will provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment. The Library's Project Manager will, upon request, furnish to the CMAR copies of all available boundary surveys and subsurface test.

Unforeseen Subsurface Conditions: The CMAR will promptly notify the Library's Project Manager in writing of any subsurface or latent physical conditions at the site which may differ materially from those indicated in the Contract Documents. The Library's Project Manager will promptly investigate those conditions and advise the CMAR in writing if further material testing, surveys or subsurface tests are necessary. Promptly thereafter, if needed, the Library's Project

Manager will obtain the necessary additional surveys and tests and furnish copies to the CMAR. If the Library's Project Manager finds that the results of such surveys or tests indicate subsurface or latent physical conditions differing significantly from those indicated in the Contract Documents, a Change Order shall be issued incorporating the necessary revisions.

Reference Points: The CMAR shall be responsible for all field survey work coincidental with completion of this Work as specified herein. All survey work shall be done under the supervision of a Registered Professional Surveyor and Mapper. The Library shall furnish, one time, a set of permanent reference markers along the line of work to form the basis for the above CMAR's survey.

All **Section Corners** and **Quarter Section** corners falling within the limits of this Work shall be perpetuated by a Florida Registered Surveyor and Mapper.

- A.** All such corners falling within or on the boundaries of this project shall have reference ties made, certified to and submitted to the County Surveyor, Orange County, Florida, prior to the commencing of construction.
- B.** Upon completion of construction and prior to Final Completion, certified corner records shall be submitted to the Department of Natural Resources in compliance with Florida Statutes, Chapter 177.507 and a copy of said certified corner record shall also be submitted to the Orange County Surveyor. Said corner records shall reflect the corner as perpetuated and which shall meet these minimum standards.
 - 1. If the corner falls in asphalt or concrete construction, the corner shall be a 2 1/4" metal disc marked according to standard government practices and set in concrete no less than 18" in depth and shall be encased in an adjustable 5 1/4" diameter or larger valve box raised to the finished surface of construction.
 - 2. If the corner falls at any other location, it shall be a 4" x 4" concrete monument no less than 23" long with a 2 1/4" metal disc marked according to standard government practices. The top of said monument shall be set flush with the ground ($\pm 0.5'$ depending on conditions).
- C.** Any U.S.C. and G.S. monument within limits of construction are to be protected. If monuments are in danger of damage, the CMAR shall contact the Library's Project Manager and the Orange County Surveyor prior to the commencing of construction.
- D.** Payment for all necessary survey work shall be included in the bid as part of other items of work.

XXXII. WORK BY OTHERS AND UTILITY COORDINATION

Work by Others – The Library may perform additional work related to the project by itself, or it may let other direct contracts which shall contain general conditions similar to these. The CMAR shall afford the other contractors who are parties to such direct contracts (or the Library, if it is performing the additional work itself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of work, and shall properly connect and coordinate his/her Work with theirs.

Should the contract entail relocation of facilities not a part of this Contract, the CMAR shall coordinate and cooperate with the applicable entity responsible for this portion of the work.

If any part of the CMAR's Work depends (for proper execution of results) upon work of any such other CMAR (or the Library), the CMAR shall inspect and promptly report to the Library's Project Manager in writing any defects, deficiencies or delays in such work that render it unsuitable for such proper execution and results.

The CMAR's failure to report shall constitute an acceptance of the other work, except as to defects, deficiencies and delays which may appear in the other work after the execution of the work.

The CMAR shall do all cutting, fitting and patching of his/her Work that may be required to make its several parts come together properly, and fit it to receive or be received by such other work. The CMAR shall not endanger any work of others by cutting, excavating or otherwise altering such other work and will only cut or alter such other work with the written consent of the Library's Project Manager.

If the performance of additional work by other CMARs or the Library is not noted in the contract documents prior to the execution of the Contract, written notice thereof shall be given to the CMAR prior to starting any such additional work. If the CMAR believes that the performance of such additional work by the Library or others involves him/her in additional expense or entitles him/her to an extension of the Contract Time, he/she may make a claim therefore as provided in Article 19.

Utility Coordination – Section 337.401 (1), Florida Statutes and other applicable law allows utility owners to install and maintain along, above, under, across or on any road or right-of-way any electric transmission or distribution facilities, telephone, telegraph, pole lines, poles, railway structures, ditches, sewers, water, heat, gas mains, pipelines, fences, gasoline tanks and pumps, waterlines, gas lines, wire lines, utility service connections, water and gas meter boxes, valve boxes, light standards, cable lines, cable ways, signals, signal boxes, and all other utility installations, improvements and utility appurtenances to be installed and maintained in the right-of-way.

The CMAR understands and agrees that the lands upon which the Work is to be performed consists of prior existing right-of-way, as well as, recently acquired right-of-way. The CMAR acknowledges and agrees that utility installations and appurtenances are located within the limits of the planned construction Work. The utility installations and appurtenances may be in conflict with the CMAR's Work or require relocation or adjustments. All utility conflict resolutions, relocations, or adjustments are to be moved by the utility owners at their expense, unless otherwise provided in the Contract documents.

The CMAR, by submission of a proposal, agrees that prior to proposal he/she has studied, performed field inspections, and evaluated all potential utility conflicts, the locations of permanent and temporary utility appurtenances in their present and relocated positions as may be shown on the plans. The CMAR acknowledges and agrees that the CMAR's proposal has considered all potential utility conflicts, the locations of permanent and temporary utility appurtenances in their present and relocated positions including those shown on the plans, not shown on the plans, and those identified during the CMAR's pre-bid study or that should have been identified during the CMAR's field inspections, and evaluation of the limits of the planned construction Work.

The Library's A/E Team may show surface or subsurface utility conflicts, relocations, or adjustments in the drawings and plans. The surface and subsurface utility information shown in the drawings and plans was obtained and used by the Library's A/E Team to establish design criteria for the design plans. The accuracy as to location and the identification of all surface or subsurface utility information is not warranted or guaranteed and is not to be construed as part of

the construction plans governing the construction Work. The CMAR shall solely make his/her own determinations as to surface and subsurface conditions.

The CMAR shall be solely responsible for utility coordination including all utility conflict resolutions, relocations, and adjustments. The concept of “utility coordination” means that the CMAR shall, at a minimum:

- A. Investigate both subsurface and aboveground conditions to identify potential conflicts far enough in advance of his planned construction operations to allow the CMAR to coordinate with utility owners and responsible parties any necessary conflict resolutions, relocations, or adjustments such that they can occur without delay to the CMAR’s operations and Progress Schedule.
- B. Conduct regularly scheduled Utility Coordination Meetings with all affected utilities, and shall maintain detailed minutes of the discussions.
- C. Contact all utility owners in advance of any needed conflict resolutions, relocations, or adjustments.
- D. Contact the Library’s Project Manager as to all CMAR scheduled utility conflict resolutions, relocations, or adjustments.
- E. Schedule all work to be performed by the utility owners related to utility conflict resolutions, relocations, or adjustments.
- F. Schedule all work to be performed by the utility owners so as not to delay or disrupt in any way the CMAR’s own performance of the CMAR’s Performance Schedule.
- G. Assure the proper connection of the CMAR’s Work with the work of the utility owners.
- H. Assure that the schedule, contacts, and proper connections between the CMAR’s Work and the utility owner’s work harmonize the work of both in a common action to achieve resolution of utility conflicts, relocations, and adjustments.
- I. All shipments are to be quoted with Shipping Point “ FOB Destination “.
- J. CMAR shall, at no cost to the Library, adjust the project schedule to allow the work to proceed in such a manner that delays to the progress of the work are minimized.

As discussed more fully in Article 35, delays to the CMAR’s Progress Schedule resulting from the resolution of utility conflicts, relocations, and adjustments to utilities will not be considered as the basis for granting a change in Contract Amount or Contract Time.

XXXIII. CONDITION OF MATERIALS AND PACKAGING:

In instances where the Specifications make this subject applicable (and unless otherwise indicated), all goods and items offered for sale and/or shipped by the CMAR pursuant to the requirements imposed upon said CMAR by this bid package, will be new and in first class condition; all related containers being new and suitable for storage and shipment; all prices including the cost of standard commercial packaging. CMARs will be solely responsible for making any and all claims against carriers as concerns missing or damaged items.

XXXIV. WARRANTY AND GUARANTEE, ACCEPTANCE OF DEFECTIVE WORK

Warranty and Guarantee - The CMAR warrants and guarantees to the Library that all materials and equipment will be new unless otherwise specified and that all Work will be of good quality, free from faults or defects and in accordance with the requirements of the Contract Documents including any required inspections, tests or approvals. All unsatisfactory Work, all faulty Work, and all Services not conforming to the requirements of the Contract Documents or such inspections, tests or approvals shall be considered defective. Prompt notice of all defects shall be given to the CMAR. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Article.

All warranty and guarantee coverage periods shall commence from the Final Completion date of the project as determined by the Library's Project Manager. The coverage commencement date of warranties and guarantees shall, in accordance with the provisions stated above, be entered on each warranty or guarantee document.

However, in the event the coverage commencement date entered on the warranty or guarantee document is not in accordance with the provisions stated above, the coverage commencement date shall nonetheless be the date determined by applying the provisions stated above.

Tests and Inspections - If the Contract Documents, laws, ordinances, rules, regulations or order of any public authority having jurisdiction require any Work to specifically be inspected, tested or approved by someone other than the CMAR, the CMAR shall give the Library's Project Manager timely notice of readiness therefore. The CMAR shall furnish the Library's Project Manager with the required certificates of inspection, testing or approval. All such tests shall be in accordance with the methods prescribed by the American Society for Testing Materials or such other applicable organizations as may be required by law or the Contract Documents.

If any such Work required to be inspected, tested or approved is covered without written approval of the Library's Project Manager, it must, if requested by the Library's Project Manager, be uncovered for observation at the CMAR's expense. The cost of all such inspections, tests and approvals shall be borne by the CMAR unless otherwise provided. Neither observations by the CMAR nor inspections, tests or approvals by persons other than the CMAR shall relieve the CMAR from his obligations to perform the Work in accordance with the requirements of the Contract Documents.

Access To The Work - The Library's Project Manager and his/her representative and other representatives of the Library and the Library's A/E Team will at all times have access to the Work. The CMAR shall provide proper facilities for such access and observation of the Work and also for any inspection or testing thereof by others.

Uncovering Work - If any Work is covered contrary to the request of the Library's Project Manager it must, if requested by the Library's Project Manager be uncovered for observation and replaced at the CMAR's expense. If any Work has been covered which the Library's Project Manager has not specifically requested to observe prior to its being covered, or if the Library's Project Manager considers it necessary or advisable that covered Work be inspected or tested by others, the CMAR, at the Library's Project Manager's request, will uncover, expose or otherwise make available for observation, inspection or testing as the Library's Project Manager may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, the CMAR shall bear all the expense of such uncovering, exposure, observation, inspection and testing, and of satisfactory reconstruction. If,

however, such Work is not found to be defective, the CMAR shall be allowed an increase in the Contract amount or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and re-construction, if he makes a claim therefore.

Notice to Cure - If the Library determines the Work is defective or deficient; if the CMAR fails to supply sufficient skilled workers or suitable materials or equipment; if the CMAR fails to make prompt payments to Subcontractors for labor, materials or equipment; if the work is not progressing in a safe, orderly or well coordinated manner; or if the general progress and/or quality of the work is not adequate to ensure continuation or completion of the work in accordance with the Contract completion time requirements, then the Library's Chief Financial Officer shall issue a notice to cure, giving the CMAR a specific period of time (1) in which to submit to the Library's Project Manager a written Plan of Action including a schedule setting forth a plan by which the deficiencies shall be corrected, and (2) a specific period of time in which to correct the deficiencies.

If the CMAR does not submit a Plan of Action to indicate how and when the deficiencies indicated in the notice to cure will be cured within the specified time frame that is acceptable to the Library's Project Manager, and if those deficiencies are not corrected within that time frame, then the Library shall take further action, up to and including Contract termination. The CMAR shall not be entitled to any delay claims as a result of the Library's issuance of the notice to cure.

Correction or Removal of Defective Work - If required by the Library's Project Manager prior to approval of final payment, the CMAR shall, promptly, without cost to the Library and as specified by the Library's Project Manager, either correct any defective Work whether or not fabricated, installed or completed or, if the Work has been rejected by the Library's Project Manager, remove it from the Site and replace it with non-defective Work.

If the CMAR does not correct such defective Work or remove and replace such rejected work within a reasonable time, or as specified in a written notice from the Library's Project Manager, the Library may have the deficiency corrected or the rejected work removed and replaced. All direct and indirect costs of such correction or removal and replacement shall be paid by the CMAR. The CMAR shall also bear the expense of making good all work of others destroyed or damaged by this correction, removal or replacement of his defective Work.

One (1) Year Correction Period - The CMAR shall be responsible for the timely correction of any deficiencies in the work for a period of one (1) year after final acceptance or such longer period of time as may be prescribed by law or by any other terms required by the Contract. The CMAR shall promptly without cost to the Library and in accordance with the Library's Project Manager's written instructions either correct such defective Work or, if it has been rejected by the Library's Project Manager, remove it from the site and replace it with non-defective Work. If the CMAR does not promptly comply with the terms of such instructions, the Library's Project Manager may have the defective Work corrected or the rejected Work removed and replaced. All direct and indirect costs of such removal and replacement shall be paid by the CMAR.

Acceptance Of Defective Work - If, instead of requiring correction or removal and replacement of defective Work, the Library's Project Manager prefers to accept it, then he/she may do so. In such case, if acceptance occurs prior to approval of final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents including an appropriate reduction in the Contract amount. If the acceptance occurs after approval of final payment, the appropriate amount shall be paid by the CMAR to the Library.

Neglected Work By CMAR - If the CMAR should neglect to prosecute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, the Library may, after reasonable written notice to the CMAR and without prejudice to any other remedy it may have, make good such deficiency and the cost thereof shall be charged against the CMAR. A Change Order shall be issued incorporating the necessary revision in the Contract Documents including an appropriate reduction in the Contract Amount. If the payments then or therefore due the CMAR are not sufficient to cover such amount, the CMAR will pay the difference to the Library.

Notice is hereby given that the Library will retain and pay for an independent geotechnical and materials testing laboratory to perform certain tests. Subsequent tests required after the initial tests to verify compliance with the Contract Documents in areas failing the initial tests shall be paid by the CMAR by back charge to subsequent applications for payment.

The CMAR shall perform and pay for all material testing and other testing specified in the Contract Documents and as stated. The purpose of performing these tests is to verify compliance with the specifications as set forth in the Contract Documents.

Subsequent tests required after the initial tests to verify compliance with the Contract Documents in areas failing the initial tests shall be paid for by the CMAR by back charge to subsequent applications for payment.

The CMAR shall perform and pay for all material testing and other testing specified in the Contract Documents and as stated. The purpose of performing these tests is to verify compliance with the specifications as set forth in the Contract Documents.

MISCELLANEOUS SERVICES. The CMAR shall perform certain miscellaneous Services when requested by the Library for additional compensation using the hourly rates in **Exhibit "B"**, including, but not limited to, the following types of Services:

1. Litigation assistance and court testimony,
2. Witnessing manufacturer's shop testing,
3. Periodic visits to inspect field conditions,
4. Special investigations regarding potential liability suits,
5. Preparation of various soils, materials, and Geotechnical reports, as required,
6. Permitting/negotiations with regulatory agencies,
7. Pipe coupon analysis for life cycle determination or the forensic investigations of pipeline failure including camera inspection, and
8. Ground penetrating radar investigations (soils, concrete, asphalt, subsurface)

XXXV. DELAYS AND EXTENSION OF TIME

Library Obligation – The Library owes no duty, obligation, damages, change in Contract Amount or GMP, or liability to CMAR as a result of any delay, interference, suspension or other event which may impact CMAR's progress schedule for the Project.

Extension of Time Sole Remedy – Should CMAR's performance, in whole or in part, be interfered with, delayed, re-sequenced, disrupted, or be suspended in the commencement, prosecution or completion, for reasons beyond CMAR's control, and without any fault or negligence on its part contributing thereto, CMAR's sole remedy shall be an extension of Contract Time in which to complete the Contract.

Contract Time Extension – The Library may grant an extension of Contract Time when a controlling item of work on the critical path of CMAR’s progress schedule is delayed by factors not reasonably anticipated or foreseeable at the time of bid. Such time extension may be allowed only for delays occurring during the time for performance set forth in the progress schedule. Extensions of Contract Time will not be granted for delays due, in whole or in part, to the fault or negligence of CMAR or any entity or person for whom CMAR is responsible.

Utility Conflicts, Relocation, and Adjustment Delays – The CMAR is solely responsible for the coordination and resolution of all utility conflicts, relocations, and adjustments. Delays resulting from the resolution of utility conflicts, relocations, and adjustments to utilities will not be considered as the basis for granting a change in Contract Amount or Contract Time.

Limitation on Damages – In the event the provision regarding an extension of time as being the sole remedy, see above, is not legally enforceable and CMAR is not limited to the sole remedy of an extension of time, the CMAR shall not under any circumstances be allowed to recover any of the following items of damage against the Library: (1) profit; (2) loss of profit; (3) work inefficiencies; (4) loss of productivity; (5) overtime premiums; (6) escalation; (7) home office overhead, including but not limited to costs of any kind for home office personnel; (8) indirect damages; and (9) consequential damages, including but not limited to loss of bonding capacity, loss of bidding opportunities, and insolvency.

Special and Supplemental Conditions of the Contract – The terms and conditions of **Exhibit “C”** are incorporated by reference.

Electronic Signatures. The parties agree that this Contract and any amendments may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. For purposes of this Contract “electronic signature” includes faxed versions of an original signature, electronically scanned and transmitted versions (via pdf) of an original signature, and portable document formats which include, but are not limited to, Abode or DocuSign.

558 Opt Out. The provisions of Florida Statute Chapter 558 are waived by both parties and shall not be applicable to this Contract.

COVID19. CMAR’s fees include all amounts necessary to comply with all regulations, ordinances, and laws concerning COVID19, including PPE, sanitation, and social distancing requirements.

[Rest of Page Left Blank Intentionally]

Signature Page

CMAR

Orange County Library District

Signature

Steven Powell, Director/CEO

Name Typed or Printed

Title

LIBRARY Signed Date

CMAR Signed Date

CMAR Witness:

LIBRARY Witness:

1. _____
Signature

1. _____
Signature

1. _____
Printed Name

1. _____
Printed Name

2. _____
Signature

2. _____
Signature

2. _____
Printed Name

2. _____
Printed Name

CONTRACT OCLS-RFQ-MAIN-23-002
Construction Manager At Risk (CMAR)
FOR THE ORANGE COUNTY LIBRARY DISTRICT
MAIN LIBRARY FIRST FLOOR RENOVATION PROJECT
Exhibit A
SCOPE OF SERVICES

The CMAR shall provide Construction Management Services for the Orange County Library District's Main Library First Floor Renovation Project.

BACKGROUND AND PROJECT OVERVIEW

The Orange County Library District (Library), an independent special taxing district to the State of Florida, and operates 15 locations throughout Orange County. The Library is currently undertaking the renovation of its Main Library's First Floor Area with approximately 45,000 square feet of conditioned space.

The Library has issued RFQ-Main-23-002 for design services for the Main Library's First Floor Renovation Project. The CMAR will work with the chosen design firm in two (2) areas. First with pre-construction review for constructability and value engineering, and second while under construction.

The Library's Administration Team, Project Manager and Facility Operations Manager is the User Group requesting this work and, therefore is named as the Owner going forward in this Scope of Services document.

THE FOLLOWING SERVICES SHALL BE PROVIDED BY THE CMAR:

The CMAR shall provide Construction Services for the above referenced Project. These Services are described herein, as required per project needs.

The negotiated Guaranteed Maximum Price (GMP) fees and task-hour requirements shall be presented utilizing forms provided by the Library. The tasks included in this Scope of Services can be generally grouped into the following primary categories:

- General Responsibilities
- Design Assist
- Pre-Construction
- Construction
- Post Construction

This Scope of Services addresses each task within these elements and serves to further define specific project requirements. The CMAR shall provide construction Services in a timely manner in order to allow sufficient time to complete construction within the agreed upon number of calendar days after 100% drawings are complete and Notice to Proceed is given. The construction contract shall be delivered as a "Construction Manager at Risk with a GMP". The CMAR shall be available to provide cost estimates for comparison and value engineering

concepts for review. Construction is projected to start within 30 calendar days after award of the Notice To Proceed is given. However, work can only progress on the facility when specifically authorized in writing by the Owner.

The CMAR in conjunction with the Library's A/E Design Team shall manage and execute the design of the project to account for schedule and sequence of the work such that minimal to no impact shall result to the scheduled completion timeframe.

The Scope of Services to be provided under Contract will include complete preconstruction, construction and post construction Services for all phases of the project, subject to the direction of the Owner. Further details of the categories to be provided are as follows:

1. GENERAL RESPONSIBILITIES:

1.1 The CMAR shall be responsible for the bid, award and day-to-day management of all Trade/Construction contracts for its contracted project. The CMAR shall provide problem solving, quality assurance, scheduling, general and specific coordination of activities and trades, contract administration, scope and budget management, and management of construction at the contract level. The CMAR shall obtain all permits required for construction with the assistance of the Library's A/E Design Team. The Library will pay for all permit application fees and review fees required to process construction documents and obtain approval from the Agency Having Jurisdiction (AHJ) over the project. The CMAR shall maintain onsite a well-qualified Senior Project Manager and/or Project Manager.

The CMAR shall perform design assist, cost estimating, project scheduling, value engineering, and constructability reviews. During the Enabling Work and Construction Phase, the CMAR's scope shall include management of all aspects of construction, coordination of all agencies having jurisdiction over the contracted project, including but not limited to governing municipalities' Building Departments, systems commissioning, claims avoidance, safety monitoring and project closeout and post construction warranty Services, all within a GMP.

1.2 Communication and General Oversight. The CMAR shall communicate with all project participants during all phases of enabling project(s), design, bidding, permitting, pre-construction, construction, and other project activities to include the following:

- Communicate daily or periodically with the Library Project Manager and the Owner Project Team as needed. The CMAR shall submit a report daily, weekly, and monthly on concerns related to design and construction efforts, activities, costs, scope and schedule.
- Utilize an approved e-Builder™ (or similar) program for all communications between the Library's A/E Design Team, and other members of Owner Project Team.
- Assist in facilitating workshops and key stakeholder meetings with the Owner. These meetings will be held to determine requirements for the Project as required.

1.3 Owner Direct Purchase Program. The Owner may utilize the Owner Direct Purchase program (ODP) to the extent reasonable and practical for this Project including ODP of GMP subcontractor bid packages if in the best interest of the Owner. Particular emphasis will be placed on the selection, purchase, and delivery of specific equipment and material purchases to facilitate the construction schedule. The CMAR, as a condition of this scope of Services, shall review the necessary technical documentation to support the Owner Project Team as required to facilitate the purchase of equipment and material.

1.4 Owner Furnished Material. The Owner may furnish material directly to the CMAR for delivery, storage and installation. The CMAR shall be responsible for coordinating the delivery, storage and installation with all subcontractors and other vendors, ensuring that all infrastructure needed by the Owner furnished material is in place in a timely manner. The CMAR, as a condition of this scope of Services, shall review the necessary technical documentation to support the Owner Project Team as required to facilitate the purchase of equipment and material. The CMAR shall warranty installation for a period consistent with contractual requirements and specifications. This material will be noted on the drawings and specifications.

1.5 Project Status Meetings. The CMAR shall ensure the appropriate members of the CMAR attend weekly meetings with the Owner Project Team and staff to discuss project progress, schedule and status, technical issues, cost concerns, potential changes and conflicts, and upcoming events and activities. The purpose of these meetings is to maintain clear communication with the Library and the Owner Project Team.

1.6 Construction Project Schedule. The CMAR shall prepare and submit a detailed construction schedule prior to the Notice to Proceed meeting for completion of the project identifying major tasks, their duration and tasks relationships. All significant events shall be identified as milestones on the schedule. This schedule shall utilize the MicroSoft Project (or similar) Schedule format. The Project Schedule is the schedule of activities, in a Work Breakdown Structure format (WBS), by which all activity progress in each project are measured. The schedule shall identify a reasonable critical path.

1.7 Utility Coordination. The CMAR shall coordinate with all utility providers within the project limits. The CMAR shall participate in on-going utility coordination efforts to ensure field activity goes according to plan. The resolution to existing utility conflicts and limitations shall be presented in an "Enabling Design and Construction package". These plans are designated the Enabling Projects. The Library's A/E Design Team will determine any capacity limitations for development, including electric, gas, potable water, reclaimed water, and chilled water. Resolution of any utility capacity limitations and/or conflicts will be designed in the Enabling Project Package for execution before construction begins. The CMAR shall bid, negotiate and execute these enabling plans to facilitate building construction and expedite the schedule.

1.8 Quality Assurance/Quality Control (QA/QC). The CMAR shall submit a quality assurance/quality control program for review and approval as the QA/QC Plan deliverable. The CMAR shall designate appropriate staff to conduct QA/QC reviews of all work products. These reviews shall be performed for all work products submitted to the Library for review or use. Each submittal shall include a Project QA/QC Form provided by the

Owner or suitable alternative. The CMAR shall be directly responsible for the quality of its work and/or work product. Quality evaluations/determinations by others will in no way invalidate the CMAR's responsibility to produce the specified quality.

1.9 Safety and Site Security Plan. The CMAR shall develop and submit a site Safety Plan that will include maintaining safety of workers, visitors, subcontractors, and the public from any dangers associated with the construction site. Further, the CMAR shall submit a Site Security Plan designed to maintain control over the site during construction to insure against any loss or damage. These plans shall constitute the Site Safety and Security Plan deliverable. The Owner Project Team will review and approve these plans prior to the start of construction.

1.10 Asbestos Free Material. The CMAR shall prepare the certified written and notarized statement that warrants the project was constructed with asbestos free materials. Such statement shall be submitted with the final payment request.

1.11 Project Management and Supervision. The CMAR shall provide full time, on-site representatives during design assist, pre-construction, bidding, permitting, and construction phases that shall coordinate and aid in the design, construction, start-up and service contracts entered into by the Library. The Senior Project Manager and/or Project Manager shall maintain an on-site presence for the duration of the project.

1.12 Building Information Modelling (BIM). BIM shall be a required element from the CMAR and the CMAR's subcontractors. The three dimensional model shall be used to coordinate building elements to minimize conflicts in the field and to provide a common platform to optimize installation. Should the CMAR identify any conflicts, these conflict shall be immediately brought to the attention of the Owner Project Team at the same time they become known to CMAR. The Library's A/E Design Team will participate in these coordination meetings with the CMAR and subcontractors to identify and resolve installation conflicts during the design and construction phases. The CMAR shall develop and maintain this model. As part of the close out package, the CMAR shall submit the complete final model in as-built condition. The Library's A/E Design Team will certify that the final model is free of conflicts prior to construction.

1.13 Deliverables. Work to be completed under this section by the CMAR shall require the following items to be delivered and accepted by the Owner (as outlined in section 1.6 Construction Project Schedule):

- BIM Model
- QA/QC Plan
- Building, Water Management and all other Permits
- Safety and Site Security Plan
- Primavera (or MS Project or similar) Project Schedule
- Asbestos Free Certification
- Review of Owner Direct Purchase Program technical documents

1.14 Pay Task. Services to be completed under this section by the CMAR will be paid for under the following Pay Tasks as listed on the Activity and Fee Summary:

- BIM Model
- QA/QC Plan
- Building, Water Management and all other Permits
- Safety and Site Security Plan
- Primavera (or MS Project or similar) Project Schedule
- Asbestos Free Certification
- Review of Owner Direct Purchase Program technical documents

2. DESIGN ASSIST:

The CMAR shall provide Design Assist Services for this project. These Services shall provide insight into the current costs, the constructability, and relative benefits of design elements. These Services shall be provided at meetings with the Library's A/E Design and Owner Project Team, in reports generated by the CMAR and reviews of documents and specifications. Each submittal shall be accompanied by documentation indicating that proper QA/QC procedures have been applied.

2.1 Cost Estimating. The Owner is utilizing a Design to Budget approach for the Main Library First Floor Renovation Project. As such, at the completion of each phase under the CMAR's contracts to include Schematic Design (SD), Design Development (DD) phases, and 90% Design Drawings, the CMAR shall submit a project cost estimate and reconcile it with the Owner's Project Team Estimate. Cost estimates will be reviewed and validated by the Owner Project Team and the Library's A/E Design Team during the plans review phase. The CMAR shall submit detailed cost estimates for each phase of the 30%, 60% and 90% design drawings. These itemized estimates shall follow the required estimate format as detailed by Construction Specifications Institute (CSI) index.

Note: If no estimate is within +/- 10 % of the construction estimate, the CMAR shall prepare a revised estimate, re-evaluate the construction plans, evaluate the bids and submit a report that summarizes this information. This report shall include recommendations for revisions to the construction documents, if needed. This report shall be prepared at no cost to the Library.

2.2 Value Engineering. Value Engineering (VE) is to establish the best-cost balance in relation to the targeted/intended overall performance of the finalized project. VE exercises shall be conducted at the end of each design phase to incorporate ideas to improve the construction and/or performance of the building. The VE Reviews shall be conducted through a standardized approach endorsed by the Society of American Value Engineers (SAVE). The CMAR shall participate in each scheduled VE session. Following each VE session the CMAR shall submit a report which itemizes the VE session results of all evaluations into a prioritized listing of alternatives for discussion.

VE sessions shall be as scheduled below. Actual dates shall be established by agreement between the s A/E Design Team and the Library. The approximate schedule for these exercises is noted below:

- Late Schematic Design Phase (Approximate 30% Level)
 - Evaluation of Alternatives
 - Decisions

- Middle to late Design Development Phase (Approximate 60% Level)
 - Design Review
 - Alternative Technical Solutions
 - Cost Evaluations
 - Priorities and Trade-offs (if necessary)

Modifications or changes resulting from value engineering and design review sessions must be incorporated into design documents before approval is given to proceed to design development phase and cost evaluations.

2.3 Constructability Reviews. Throughout the design development process, constructability reviews shall be conducted by the CMAR to confirm that the design addresses key construction phase issues, including technical feasibility, claims avoidance and quality. The constructability comments shall be provided to the Owner Project Team, who is responsible for confirming that they are addressed and/or resolved by the Library's A/E Design Team. The CMAR shall make recommendations and submit a report upon the general constructability of the design; construction documents that appear to be ambiguous, incomplete, excessively restrictive, defective or incorrect; designs and specifications not in compliance with codes and standards; the use of alternative materials and/or means or methods of construction; and other economies in design or construction.

2.4 Green Design. The CMAR shall assist the Owner Project Team and Library's A/E Design Team with the design and applying "Green Design Principles" to the overall project design.

2.5 Phasing and Logistics Plan. The CMAR shall prepare and submit a phasing plan for the construction of the proposed improvements. This plan shall include limits of construction, fencing, screening, schedule, staging, logistics and proposed trailer locations. This plan will be reviewed and approved by the Owner Project Team in conjunction with the Library's A/E Design Team.

2.6 Deliverables. Services to be completed under this section by the CMAR shall require the following items to be delivered and accepted by the Owner (as outlined in section 1.6 Construction Project Schedule):

- Updated Project Schedule
- Constructability Review Report
- 30%, 60% and 90% Construction Cost Estimate
- 30%, 60% Value Engineering Report
- Phasing and Logistics Plan

2.7 Pay Tasks. Services to be completed under this section by the CMAR shall be paid for under the following Pay Tasks as listed on the Activity and Fee Summary:

- Updated Project Schedule
- Constructability Review Report
- 30%, 60% and 90% Construction Cost Estimate
- 30%, 60% Value Engineering Report
- Phasing and Logistics Plan

3. PRECONSTRUCTION:

3.1 Project Scheduling. The CMAR shall submit an updated project schedule with each updated design submittal. The Project Schedule is the schedule of activities, in a Work Breakdown Structure format (WBS), by which all activity progress in the project is measured. The schedule shall identify a reasonable critical path. This schedule shall incorporate all significant milestones from the Library's A/E Design Team schedule in the overall Master Project. All significant events shall be identified as milestones on the schedule. This schedule shall utilize Microsoft Project (or similar) scheduler.

3.2 Pre-Construction Meeting. The CMAR shall hold Pre-Construction meetings for subcontractors and provide answers regarding questions from the Subcontractors. The Owner Project Team and the Library's A/E Team will be invited to each of these meetings. The number and size of these meetings shall be determined by the CMAR in conjunction with the Library's A/E Team and the Owner Project Team. The CMAR shall submit meeting minutes within 48 hours of each meeting detailing the discussion and agreements.

3.3 Construction Plans. The CMAR shall assist the Owner Project Team during all phases of design development for the project, including monitoring compliance with design guidelines and criteria by reviewing all design submittals for constructability, operations and maintainability, analyzing life-cycle costs and performing value engineering on all stages of design development. The CMAR shall submit a report documenting the review and concurrence with civil, architectural, mechanical, electrical, plumbing, fire protection and structural system design. The CMAR's recommendations shall include information, data, cost estimates, and documentation, as necessary, which the CMAR shall develop, and the Library may use as a basis for evaluating the acceptability of each recommendation. Changes recommended by the CMAR will not be deemed final and part of the contract until the A/E Firm of Record and the Owner Project Team accept these recommendations.

3.4 Agency Coordination. The CMAR shall notify the Owner's Program Management Team of all meetings with regulatory agencies to coordinate attendance by Library staff.

3.5 Agency Field Review. The CMAR, shall conduct and coordinate field investigations as necessary with Library staff and with the appropriate regulatory agencies.

3.6 Deferred Permit Preparation. The CMAR shall prepare and submit permit applications, construction drawings, specifications, and related support documentation for all **deferred** permits and approval requirements for the project. Deferred permits shall include fire suppression and alarm systems, health department and any other permits that cannot be obtained prior to complete design. Copies of all permit application shall be provided to the Owner for review and signature prior to submittal.

3.7 Site Preparation. The CMAR shall establish their physical presence on site, including trailers, facilities, utilities, waste removal and parking as deemed necessary during negotiations. A suitable location shall be identified on site for these facilities. A location for subcontractors' trailers, laydown and staging facilities will be identified during the design process by the Owner Project Team.

3.8 Guaranteed Maximum Price. Once the construction documents have been certified as 90% complete, the CMAR shall establish a **Guaranteed Maximum Price (GMP)** for which the Project can be constructed. This GMP shall be all inclusive of general conditions, fees, profit, labor, materials, logistics, taxes, storage, transportation, insurance, site maintenance and any other cost needed to build the project. The CMAR shall account for all current conditions, escalation costs and any other factors that may impact the price. The CMAR shall submit a warranty letter at this time stating that the CMAR has completed the constructability check and warrants the constructability and bid-ability of the Construction Documents. At this time, the CMAR assumes responsibility for the completeness of the construction documents. The Owner anticipates that the CMAR Contingency will not exceed 5% of the GMP.

A separate **Allowance Fund** shall be established for any undefined scope of work. These allowances shall be for scopes that will be installed as part of the Project, but will not be specifically described by the 100% Design drawings. These allowances shall be inclusive of all labor, material, fees, taxes, freight and any other costs associated with the scope. Any unused Allowance Funds shall be returned to the Owner.

A **CMAR Contingency Fund** shall be set aside for the CMAR's use. The CMAR Contingency Fund shall be used for unpredictable changes in the scope of the work and only at the discretion of the Owner per the terms of the Contract. Any funds remaining in the CMAR Contingency Fund upon Final Completion of the Project will be divided twenty percent (20%) to the CMAR and eighty percent (80%) to the Library based upon the CMAR achieving all performance goals. Upon the earlier termination of the Contract, all CMAR Contingency Funds remaining shall be returned to the Library.

Any incentive plan involving the sharing of the residual CMAR Contingency Funds shall be based on the CMAR completing the Project on time and within the budget, and maintaining throughout its performance of the Contract a satisfactory safety performance for this type of construction.

The amount of any funds remaining in the CMAR Contingency shall be confirmed by the written certification of the Library at the time of the Library's final payment under this Contract. Eighty (80%) percent of any funds remaining in the CMAR Contingency Fund after this written certification shall be distributed to the Library.

Of the funds remaining in the CMAR Contingency Fund (ie: 20% of the fund balance) after the eighty (80%) percent distribution to the Library:

Fifty (50%) percent of the CMAR's share of the CMAR Contingency Fund shall be distributed to the CMAR if the CMAR's safety record for the performance of all Services under this Contract meets standards proposed by the CMAR and accepted by the Library as part of the Change Order fixing the Guaranteed Maximum Price. If this condition has not been met at the time of the written certification of the Library referred to above, this fifty (50%) percent of such remaining funds in the CMAR Contingency Fund shall be released to the Library.

Fifty (50%) percent of the CMAR's share of the CMAR Contingency Fund shall be distributed to the CMAR if all of the following conditions are met:

1. The CMAR has achieved substantial completion of the Project by or before the date required, achieved Final Completion of the Project by or before the date required and achieved Final Completion of the overall Project by or before the Contract Completion Date.
2. The CMAR uses no more than fifty (50%) percent of the amount identified as the CMAR Contingency in the Change Order fixing the Guaranteed Maximum Price.
3. The Project, as completed by the CMAR, achieves a LEED Silver or better LEED rating.

If any of the preceding conditions have not been met at the time of the written certification of the Library referred to above, this fifty (50%) percent of the remaining CMAR Contingency funds shall be released to the Library.

There shall be no fee associated with any funds spent on the CMAR Contingency. Fee will be allowed on changes associated with Library Contingency.

An Owner Contingency shall be established for Library directed changes and other conditions at the discretion of the Library. This contingency can only be used with the explicit approval of the Library Project Team. The Library Project Team may direct the CMAR to use this contingency for specific additional improvements as required by the Project. Unused Owner Contingency Funds shall be released to the Library.

3.9 Deliverables. Services to be completed under this section by the CMAR shall require the following items to be delivered and accepted by the Library (as outlined in section 1.6 Construction Project Schedule):

- Guaranteed Maximum Price with a warranty letter
- Deferred Permits
- Pre-Construction Meeting Minutes
- Construction Plan Report
- Updated Project Schedule

3.10 Pay Tasks. Services to be completed under this section by the CMAR shall be paid for under the following Pay Tasks as listed on the Activity and Fee Summary:

- Guaranteed Maximum Price with a warranty letter
- Deferred Permits
- Pre-Construction Meeting Minutes
- Construction Plan Report
- Updated Project Schedule

4. CONSTRUCTION:

4.1 CMAR Responsibilities. The CMAR's responsibility during construction is all-inclusive. The CMAR shall administer, coordinate, schedule, obtain, contract, inspect, control, arrange, supervise, manage and/or otherwise provide and perform all work in a manner that is in full accordance with the requirements of the Contract Documents. The CMAR shall be accountable for the quality control of all the work provided and/or performed by his personnel or by trade contractors, subcontractors or others.

4.2 Coordination. The CMAR shall be responsible for full coordination between portions of the work provided and/or performed by trade contractors, subcontractors and others. The CMAR shall promptly address and resolve any conflicts, gaps or uncertainties that exist in the Contract Documents or which occur during the work, as well as for confirming that the work of all the trade contractors, subcontractors or others is clearly understood, fully coordinated and results in the work complying with the requirements of the Contract Documents in all respects and to the fullest extent as governed by the agreement between the CMAR and the Library.

4.3 Best Practices. The CMAR shall establish, implement and maintain, throughout the entire term of the Contract, practices that demonstrate the status of the planned and actual work is progressing in a proper, orderly, harmonious, well documented, well-coordinated manner, without conflict, interruption, disruption or delay in the scheduled prosecution, execution and completion of the required work.

4.4 Enabling Projects. Based upon the results of the design analysis, one or more enabling projects may be required prior to proceeding to full scale design development. These enabling projects may include selective demolition, modification of traffic and pedestrian routes, temporary facilities for truck and bus loading zones and/or relocation of kitchen facilities and utilities that are in conflict with proposed improvements.

This would include development of standalone construction documents not limited to drawings and specifications that can be permitted and released for construction. The CMAR shall participate in these design discussions providing insight into construction means and methods and advising the Library Project Team of alternatives regarding the Enabling Project. The CMAR shall submit a report detailing its findings and recommendations for the Enabling Project.

Once the documents for the Enabling Projects have been completed, the CMAR shall submit them to the Building Department for review and approval.

The 100% Enabling Projects Construction Documents will be negotiated with the CMAR and issued as a separate purchase order, in accordance with Library Procurement Policies. Once permits have been issued for construction, a Notice to Proceed will be issued and construction may commence.

4.5 Bid Process. The CMAR shall arrange, coordinate and administer the bidding process of the project as requested by the Library. The CMAR shall contract with the subcontractors for specific scopes of work who shall construct the project. It is anticipated that the entire project shall be bid as one package but modifications can be made to accommodate the needs of the CMAR.

4.5.1 Pre-Bid Meeting. The CMAR shall establish pre-bid meetings after requesting bids from subcontractors. These pre-bid meetings shall be held at the Library at a prescribed location and scheduled with the Library Project Team and Library's Procurement Division.

4.5.2 Addenda. The CMAR shall coordinate with the Library's A/E Design Team to develop responses to questions from the prospective subcontractors that may include addenda as required to interpret, clarify or expand the construction documents. The CMAR Team will prepare addenda in a manner that allows timely reception of addenda by all IFB interested parties.

4.5.3 Bid Review. The Library Project Team will review the bids received by the CMAR and make any recommendation for additives or alternates, as applicable. The CMAR shall submit a final bid tabulation of all bids received for all trades upon completion of each bidding sequence.

4.5.4 Progress Meetings. The CMAR shall hold weekly construction progress meetings with, or in the absence of, the Library Project Team to discuss project progress and status, technical issues, and upcoming activities. The purpose of these meetings is to identify construction progress, discuss issues that arise in the field, quality of the work, potential and actual claims and disputes, expedite critical RFIs and submittals, and insure that construction is being performed safely. The CMAR shall submit Two Week Look Ahead Schedule updates at each meeting.

4.6 Daily and Monthly Construction Reports. The CMAR shall submit and record in e-Builder (or similar) Daily Construction Reports within 48 hours. These reports shall contain information on construction activities, manpower, equipment, materials, deliveries, safety, and other pertinent information.

Each construction daily report shall include:

- The date, time on and off site, weather conditions and temperature
- General discussion of the daily work and progress, including a description of the activities completed and started and an assessment of the work accomplished by location
- Project accidents, deficiencies, changes or corrective action to maintain schedule
- Damage to existing facilities
- Project delays, reason for delay and corrective action to maintain schedule

- Record when CMAR is on site, number of workers by craft and list of equipment items by type
- Construction testing activities, results, and observations
- Where possible and appropriate, the quantities of work put into place
- Visitor names and purpose of site visit
- Description of potential disputes between the CMAR and Library and/or Library's A/E Design Team
- Description of any direction or corrective action given to the CMAR
- Description of non-conforming work
- Detailed record of materials, equipment and number of works by craft used in connection with extra work, or in situations where there is reason to suspect a request for change order or claim maybe submitted by the CMAR.
- Photographic documentation and associated log with description. These photographs should be capturing daily project progress, overall site conditions, job accidents, deficiencies noted, deviations or changes from drawings or technical specifications, items that could cause delays (i.e. weather conditions, unforeseen conditions) and staged materials/equipment.
- Incident Reports (if applicable)

Monthly reports shall be submitted to the Library Project Team by the 5th of every month, (thus the activity that occurred between April 1 and April 30 will be recorded no later than May 5) detailing construction progress during the month, costs, safety remarks, schedule milestones, manpower and upcoming events. Each monthly report shall be recorded in e-Builder (or similar).

4.7 CMARs' Submittals. The Library's A/E Design Team in conjunction with the Library Project Team, will establish procedures for review of shop drawings, mockups, samples and other submittals, and assist in expediting approval process. The Library's A/E Design Team will review all submittals on e-Builder (or similar) concerning product data, shop drawings and other submissions, as required for general conformance with design concept of this Project and the Contract Documents in consultation with the Library. All submittals will be returned to the CMAR and all responses shall also be recorded on e-Builder (or similar). All approved submittals shall bear the Library's A/E Design Team's stamp and be delivered to the Library Project Team at Substantial Completion. The Library Project Team will manage and monitor at all times the Submittal log in conjunction with the Library's A/E Design Team. Status of the log will be reviewed by the Library Project Team as a part of each Construction Progress Meeting. The goal for the return of submittals shall be within fourteen (14) calendar days. Larger, more complicated submittals will require more time accordingly.

4.8 Design Clarification Responses. The CMAR shall submit all Requests for Information (RFI) on e-Builder (or similar) to request technical interpretation of the plans/drawings and specifications. The Library's A/E Team will evaluate requested deviation from the approved design or specification; will review and respond to RFIs. Any supplementary sketches will be provided for clarification of construction plans and assist in resolving actual field conditions encountered via e-Builder (or similar). The Library Project Team will monitor and manage at all times a RFI log of all RFI's submitted by the CMAR in conjunction with the Library's A/E Design Team. Status of RFI log will be reviewed as part

of each Construction Progress Meeting. The goal for the return of RFI's will be seven (7) calendar days.

4.9 Field Orders, Change Order Requests and Claims. The Library's A/E Design Team will review the technical interpretations of the Contract Documents, evaluate requested deviations from the approved design drawings or specifications. The Library Project Team will issue Field Orders as necessary. The Library's A/E Design Team will review all CMAR's Change Order Requests and Claims, and recommend an appropriate cost and course of action within ten (10) calendar days. The Library Project Team will maintain a log of all Change Order Requests and Claims. Status of the log will be reviewed as part of each Construction Progress Meeting.

4.10 LEED Reports. The CMAR shall submit any interim reports to the LEED Coordinator to fulfill requirements for LEED Silver Certification. These reports shall be detailed in coordination efforts with the Library's A/E Design Team, and the Library Project Team during the design phase of the project.

4.11 Final Construction Plans. The Library's A/E Design Team will provide signed and sealed copies of the updated final construction plans. The number of signed and sealed copies will be determined by the needs of the permitting agency as well as the needs of the Library Project Team.

4.12 Application for Payment. The Library Project Team will establish a procedure for processing of the progress payment applications; the CMAR shall prepare a pencil requisition (draft application for payment) and shall review it with the Library's A/E Design Team and the Library Project Team. The Library's A/E Design Team will make recommendations to the Library for payment. Based on the project progress site visit observations, and on the evaluation of the invoice requests, the Library Project Team will evaluate the appropriate amount to be paid to the CMAR(s) for the current stage of project as reviewed by the Library's A/E Design Team. The CMAR shall submit the notarized invoice to the Library Project Team for payment within five (5) business days of receipt in accordance with FS 218.735, Local Government Prompt Payment Act. Such certificate for payment will constitute a representation to the Library that the quantity of the work has been performed in accordance with the Contract Documents. During Project Close-out, the Library Project Team will assist in negotiating the final payment for the project with justification upon which final settlement and termination of Contract can be based upon.

4.13 Deliverables. Work to be completed under this section by the CMAR shall require the following items to be delivered and accepted by the Library (as outlined in section 1.6 Construction Project Schedule):

- Daily Reports
- Monthly Reports
- Submittals
- RFIs
- Enabling Project Report
- Enabling Project Permit
- Progress Meeting 2-week Look Ahead Schedule

- Progress Meeting Minutes
- LEED Reports
- Bid Tabulation

4.14 Pay Tasks. Services to be completed under this section by the CMAR shall be paid for under the following Pay Tasks as listed on the Activity and Fee Summary:

- Daily Reports
- Monthly Reports
- Submittals
- RFIs
- Enabling Project Report
- Enabling Project Permit
- Progress Meeting 2-week Look Ahead Schedule
- Progress Meeting Minutes
- LEED Reports
- Bid Tabulation

5 POST CONSTRUCTION:

- 5.1 Final Close-out.** The CMAR shall submit project close-out documents for acceptance by the Library. In coordination with the Library's A/E Design Team, the Library Project Team will develop and implement procedures for orderly completion of punch-list items (rolling punch list), checkout of utilities, operational systems and equipment, and initial startup and testing. The CMAR shall submit the punch list in accordance with these procedures.
- 5.2 Substantial Completion and Final Completion.** Substantial Completion is when a designated portion of the project is sufficiently complete, in accordance with the construction contract documents, so that the Library may use or occupy the building project or designated portion thereof for the intended purpose. The Library's A/E Design Team will issue certification of Substantial and Final Completion. The Library Project Team will ensure the necessary signed and sealed documents needed for partial clearances and certifications of completion are provided to the appropriate regulatory agency.
- 5.3 Operation and Maintenance (O&M) Manual.** The CMAR shall submit to the Library Project Team documents for the operation and maintenance of the completed facility. The CMAR shall submit all O & M Manuals in conformance with project specifications and contract language. O & M Manuals will be in print and electronic (PDF) format.
- 5.4 Testing and Start-up.** The Library Project Team and Library's A/E Design Team will coordinate with the CMAR to conduct a facility operations and performance meeting to test the equipment in accordance with Technical Specifications and manufacturer parameters. Prior to the commencement of the full commissioning process, the CMAR shall submit to the Library documentation proving successful pretesting. The CMAR shall conduct the testing and start-up regimen to be witnessed by the Library Project Team and the Library's A/E Design Team.

- 5.5 Commissioning.** Commissioning is the process of verifying and documenting that a project and all of its systems and assemblies are planned, designed, installed, tested, operated, and maintained to meet the project requirements. The Owner Project Team will designate the Commissioning Team, who will be responsible for the development of the project Master Test Plan. This Team will direct the Library's A/E Design Team and the CMAR to coordinate and perform a complete commissioning regimen to ensure the building is ready for turnover. The CMAR shall attend commissioning meetings, review and comment on the Master Test Plan, execute the Master Test Plan and review and take corrective action to rectify issues that are identified by the Commissioning Team. The CMAR shall submit all commissioning reports to the Library Project Team.
- 5.6 Training.** The CMAR shall conduct the proper training of Library staff in the use of the equipment and proper care of all installations. The specific type and quantity of training that shall be identified in the Construction documents and contract and will be managed by the Library Project Team.
- 5.7 As-Built and Record Drawings.** The Library Project Team will verify that the CMAR is preparing, updating, and maintaining as-built drawing documentation. The Library Project Team will ensure regular maintenance of field As-built drawings by the CMAR of record. The CMAR shall submit all as-built drawings to the Library Project Team. The Library Project Team will review and verify final as-built drawings. The Library's A/E Design Team will revise original design drawings of the project using contractor supplied as-builts and submit to the Library within thirty (30) working days of the final completion date, a CD, USB drive or other Library acceptable electronic format with the drawings in AutoCAD and PDF, certification as to the accuracy of the record drawings and specifications in MS-Word and PDF (latest editions). Current as-built documents from the CMAR shall be a requirement for pay application approval.
- 5.8 Warranty.** The CMAR shall submit to the Library the guaranties, warranties, certifications, releases, affidavits, bonds, manuals, insurance certificates and other items required by the contract documents. The Library's A/E Design Team will assist the Library in documentation and resolution of warranty issues within the first year of the warranty period.
- 5.9 Post Construction Warranty Inspection.** The CMAR, along with its Sub-contractors, within ten (10) months after issuance of a Certificate of Substantial Completion and before expiration of the contractual one year warranty and/or guarantee period, in the company of the Library's A/E Design Team Representative and the representative of the Library Project Team, shall conduct an on-site inspection of the Project to determine the condition of all items of equipment, materials or building systems which are under warranty or guarantee coverage pursuant to the requirements of the Construction Contract. The Library's A/E Design Team, along with its Sub-contractors, will provide the Library with a written report listing all items covered by warranty or guarantee coverage that are observed or otherwise found to be defective, inoperable, or not performing their intended function in a satisfactory manner. The report shall include recommendations for resolving all the items so noted in the warranty inspection report. All corrections shall be made under the project's one year warranty.

5.10 Deliverables. Services to be completed under this section by the CMAR shall require the following items to be delivered and accepted by the Library Project Team (as outlined in section 1.6 Construction Project Schedule):

- Substantial Completion Letter
- Punch List
- Final Completion Letter
- Startup and Testing Reports
- LEED Summary Reports
- Operation and Maintenance (O & M) Manual
- O and M Training
- Commissioning Reports
- Warranties
- Lien Waivers
- Warranty Inspection Report
- Project QA/QC Form
- As-Built Drawings

5.11 Pay Tasks. Pay Tasks. Services to be completed under this section by the CMAR shall be paid for under the following Pay Tasks as listed on the Activity and Fee Summary.

- Substantial Completion Letter
- Punch List
- Final Completion Letter
- Startup and Testing Reports
- LEED Summary Reports
- Operation and Maintenance (O & M) Manual
- O and M Training
- Commissioning Reports
- Warranties
- Lien Waivers
- Warranty Inspection Report
- Project QA/QC Form
- As-Built Drawings

6 SUSTAINABILITY:

As part of the Library's commitment to sustainability and high performing buildings, the CMAR shall:

6.1 Coordinate with the Library Facilities Operations to identify opportunities for integrated design and construction with respect to best energy and environmental practices within the project scope of work by the Library's A/E Design Team.

6.2 The CMAR shall use the Library's Project Requirements (OPR) analysis to guide the Green design and construction. This report shall include objectives for the project, budget considerations, space / use requirements, commissioning requirements and expected utility performance outcomes for the building spaces in the Design Criteria Package. The CMAR shall coordinate with the Library Project Team and the Library's A/E Design Team regarding the OPR and identify any opportunities to improve the Green design and construction efforts. The CMAR shall submit a report detailing performance relative to the OPR goals.

6.3 The Project, within the scope of work, shall use best GREEN practices to identify specific opportunities to achieve the following: (1) materials and resources, (2) indoor air quality, (3) energy and atmosphere, (4) water efficiency, (5) sustainable sites, and (6) location and transportation performance credits which are economically feasible regarding project costs and long term operating expenses

6.4 Deliverables. Services to be completed under this section by the CMAR shall require the following items to be delivered and accepted by the Library (as outlined in section 1.6 Construction Project Schedule):

- Owner's Project Requirements Report
- Utility Performance Report

6.5 Pay Tasks. Services to be completed under this section by the CMAR shall be paid for under the following Pay Tasks as listed on the Activity and Fee Summary:

- Owner's Project Requirements Report
- Utility Performance Report

7.0 OTHER CONDITIONS:

The Library has the right to verify, and the CMAR hereby represents, promises and warrants to Library, (i) that CMAR is financially solvent and possesses sufficient experience, licenses, authority, personnel and working capital to complete the Services required hereunder, and (ii) that CMAR has visited the site for the Project and generally familiarized itself with the local conditions under which the Services required hereunder are to be performed, and the CMAR will correlate its observations of same with all of the requirements of this Contract.

7.1 Upon Library's reasonable request at any time during the design or construction Phases of this Contract, and as often as reasonably requested, the CMAR shall promptly provide Library with an Estimated Cost at Completion. The Library shall at all times have reasonable access to the files and Principals and the Project Manager of CMAR relating to the Project in order to answer any reasonable questions the Library may have relating to the CMAR's performance.

- 7.2** The CMAR shall respond to design documents for limited alternative materials and systems for comparative pricing for the purpose of determining which such materials and systems should be ultimately included in the Construction Documents. The documents for limited separate or sequential bids will be made available by the Library's A/E Design Team. The CMAR shall provide Services in connection with limited bidding, negotiations, or construction prior to the completion of the Construction Documents Phase. The drawing packages for the CMAR's use in separate or sequential bids shall be listed in the Design Documents.
- 7.3** The CMAR shall provide interior design and other similar Services required for and in connection with the selection, procurement and installation of furniture, furnishings and related equipment for the Project.
- 7.4** As requested by the Library and as Additional Services, the CMAR shall make investigations and/or inventories of materials and equipment, general valuations and/or detailed appraisals of existing facilities.
- 7.5** The CMAR shall provide assistance to the Library in the utilization of equipment or Systems of the Project, such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
- 7.6** Notwithstanding any other provisions of this Contract, the CMAR understands that the Library has made commitments that require the Project to be completed and operational within a mutually agreeable number of calendar days of receiving 100% construction documents and Notice to Proceed. As part of its Basic Services, the CMAR shall perform its obligations under this Contract with diligence and sufficient manpower to maintain the progress of the work at a pace necessary to meet this deadline. As needed to meet this completion deadline, the CMAR may be required to accelerate its Services by performing certain parts of the Services before other parts, adding extra manpower, or ordering overtime labor, all as part of its Basic Services. Further, the CMAR shall perform its Basic Services, if asked, in such manner as shall allow the bidding and negotiation for the numerous trade contracts to be let in phases, instead of all at once.
- 7.7** The CMAR acknowledges that the Library may retain a consulting firm to provide project management Services and advice. The contractor will not be the Library's Authorized Representative and, unless declared in writing otherwise by the Library, will not have the authority to render decisions on behalf of the Library. However, as part of its Basic Services, the CMAR shall cooperate fully at all times with the contractor and shall respond promptly to all the contractor's inquires and requests for documents and information.
- 7.8 Deliverables.** Services to be completed under this section by the CMAR shall require the following items to be delivered and accepted by the Library (as outlined in section 1.6 Construction Project Schedule):

- Letter Response

7.11 Pay Tasks. Services to be completed under this section by the CMAR shall be paid for under the following Pay Tasks as listed on the Activity and Fee Summary:

- Letter Response

TABLE OF DELIVERABLES

The CMAR shall produce and deliver to the Library the deliverables outlined as follows:

CATEGORIES	Hard Copies	Paper Copy Size	Digital File	File Type(s)
<u>1.0 GENERAL RESPONSIBILITIES</u>				
BIM Model	-	-	1	BIM Model Format
Permits	3	Full	1	MS Word & PDF
QA/QC Plan	3	Full	1	MS Word & PDF
Safety and Site Security Plan	3	Full	1	MS Word & PDF
Primavera (or similar) Project Schedule	3	Full	1	Primavera File Format & PDF
Asbestos Free Certification	3	Full	1	MS Word & PDF
<u>2.0 DESIGN ASSIST</u>				
Updated Project Schedule	3	Full	1	Primavera File Format & PDF
Constructability Review Report	3	Full	1	MS Word & PDF
30%, 60%, 90% Construction Cost Estimate	3	Full	1	MS Word & PDF
Phasing and Logistics Plan	3	Full	1	DWG & PDF
30%, 60% Value Engineering Report	3	Full	1	MS Word & PDF
Categories	Hard Copies	Paper Copy Size	Digital File	File Type(s)
<u>3.0 PRECONSTRUCTION</u>				
Deferred Permits	3 1	Full Half	1	MS Word, DWG and PDF
Updated Project Schedule	3	Full	1	Primavera File Format & PDF
Pre-Construction Meeting Minutes	1	Full	1	MS Word & PDF

Guaranteed Maximum Price with a warranty letter	3	Full	1	MS Word & PDF
Construction Plan Report	3	Full	1	MS Word & PDF
<u>4.0 CONSTRUCTION</u>				
Daily Reports	1	Full	1	MS Word & PDF
Enabling Projects Report	3	Full	1	MS Word & PDF
Enabling Projects Permit	1	Full	1	MS Word & PDF
Look Ahead Schedule	1	Full	1	MS Word & PDF
Submittals	3	Full	1	MS Word & PDF
Monthly Reports	1	Full	1	MS Word & PDF
RFIs	1	Full	1	MS Word & PDF
Progress Meeting Minutes	1	Full	1	MS Word & PDF
LEED Results and Reports	1	Full	1	MS Word & PDF
Final Bid Tabulation	1	Full	1	MS Word & PDF
<u>5.0 POST CONSTRUCTION</u>				
Substantial Completion Letter	3	Full	1	MS Word & PDF
Punch list Completion	1	Full	1	MS Word & PDF
Final Completion Letter	1	Full	1	MS Word & PDF
Startup and Testing Reports	1	Full	1	MS Word & PDF
LEED Summary Reports	3	Full	1	MS Word & PDF
Operation and Maintenance (O & M) Manual	5	Full	1	DWG & PDF
Training	3	Full	1	MS Word & PDF
Commissioning Reports	3	Full	1	MS Word & PDF
Warranties	1	Full	1	MS Word & PDF
Lien Waivers	3	Full	1	MS Word & PDF
Warranty Inspection Report	3	Full	1	MS Word & PDF
Project QA/QC Form	3	Full	1	MS Word & PDF
As-Built Drawings	3	Full	1	DWG & PDF
Categories	Hard Copies	Paper Copy Size	Digital File	File Type(s)
<u>6.0 SUSTAINABILITY REVIEW AND MANAGEMENT</u>				MS Word & PDF
Library's Project Requirements Report	1	Full	1	MS Word & PDF
Utility Performance Report	1	Full	1	MS Word & PDF
LEED Performance Report	1	Full	1	MS Word & PDF
<u>7.0 OTHER CONDITIONS</u>				

Letter Response	1	Full	1	MS Word & PDF
-----------------	---	------	---	---------------

End of Exhibit A

DRAFT

CONTRACT OCLS-RFQ-MAIN-23-002
Construction Manager At Risk (CMAR)
FOR THE ORANGE COUNTY LIBRARY DISTRICT
MAIN LIBRARY FIRST FLOOR RENOVATION PROJECT

Exhibit B
Hourly Rates

[To Be Filled In]

DRAFT

CONTRACT OCLS-RFQ-MAIN-23-002
Construction Manager At Risk (CMAR)
FOR THE ORANGE COUNTY LIBRARY DISTRICT
MAIN LIBRARY FIRST FLOOR RENOVATION PROJECT

EXHIBIT C

SUPPLEMENTAL CONDITIONS/SPECIAL PROVISIONS

1. SECURITY AND IDENTIFICATION:

- A. The CMAR is responsible for obtaining the necessary forms for background checks on Key Personnel and Key Sub-CMAR Personnel before working at the Library (a Level 1 - 5 years FDLE Background check preferred).
- B. The CMAR, or their sub-contractors, shall be responsible for all costs for background investigations. The Library shall have the right to request any additional investigative background information including, but limited to, the employment record, Right-To-Know records, E-Verify system records, training records, payroll records, position for which hired including site location of any personnel assigned to perform the Services. The CMAR shall furnish, in writing, such information to the extent allowed by law, prior to commencement of Services. The Library reserves the right to conduct its own investigation of any employee of the CMAR.
- C. CMAR will provide, or coordinate the issuance of, photo ID badges to all Key Personnel and generic ID badges to day workers. An affidavit of Identity form (issued by the CMAR) and a State of Florida ID or Driver's License will be required from the staff before being issued an ID. CMAR will maintain a log of all badges issued and returned.

- 2. CONSTRUCTION SCHEDULE:** During the project, the CMAR shall sequence their work to accommodate the scheduled construction activity to complete the Project on-time and within budget. The Project site will be available to the CMAR seven (7) days per week. **CMAR work hours are anticipated to be from 7:00 PM to 6:00 AM,** exceptions to the work hours must be approved in advance by the Library Project Manager. Daytime work is permissible with Library Project Manager approval.

3. WORK RESTRICTIONS: The CMAR shall provide their own equipment and method of construction waste disposal.

The CMAR shall maintain a clean and safe work environment. Trash shall be disposed of daily, all work areas shall be kept neat and orderly, halls and floors free of slip and trip hazards and waste materials (e.g., paper, cardboard) and other fire hazards shall be removed from work areas. Waste materials shall be properly sorted to allow for recycling and possible LEED credits. The CMAR shall adhere to all OSHA housekeeping and safety requirements. Deviations from these standards shall be corrected at the direction of the Library and the non-

reimbursable cost of the CMAR. The Library will retain the right to utilize a third party in the event the CMAR fails to maintain site properly.

Employee facilities need to be adequate, clean and well maintained. Washroom facilities require cleaning once or more each shift. They also need to have a good supply of soap, towels plus disinfectants, if needed. The CMAR shall supply all facilities as needed for the duration of the project.

Availability of space for staging/lay down area will determine whether Library will permit the CMAR to set up a staging area. The Library Project Manager will make reasonable staging/storage accommodations on property. The CMAR staging area on site will depend on availability of space; however, relocation of staging area may be required during the project.

After completion of the work, the CMAR shall replace or restore to the original condition all affected areas within the project limits. The CMAR shall provide all materials for patching and painting per the finishes information to the Library Project Manager.

- 4. OWNER PROVIDED EQUIPMENT (OPE)/CMAR INSTALLED:** If the CMAR is provided with owner equipment and/or material, the CMAR shall install, connect, erect, use, clean and condition, as required, in accordance with the instructions of the applicable manufacturer warranty. The CMAR shall schedule and coordinate with the Library Project Manager the inspections and delivery of equipment and/or material during normal business hours between 8 am - 4 pm local time. Any request outside of normal business hours must be approved by Library Project Manager at least forty-eight (48) hours in advance. The CMAR shall inspect the equipment and/or material prior to accepting it. After acceptance, the CMAR shall assume and accept full and complete responsibility and liability for the storage, custody, security, care and safe-keeping of the equipment and/or material in the event of theft, pilferage, fire or any other damage or loss until such time as said material and/or equipment is incorporated in the Work, and the Work is completed and accepted by the Library. Any delivered equipment/material found to be damaged shall be reported to Library Project Manager within 48 hours (via email with pictures and serial number and description of damages). The Owner will be responsible for contacting suppliers regarding any warranty issues. After installation, the CMAR shall guarantee the workmanship during the equipment/material warranty period.
- 5. CHANGE OF CONTRACT AMOUNT AND CONTRACT TIME:** Proposals or Claims for adjustment shall be in accordance with the Contract. The CMAR shall submit in the form prescribed by the Library an itemized cost breakdown together with supporting data.
- 6. UTILITY COORDINATION:** The CMAR shall coordinate any utility improvements and / or relocations for this project. The CMAR shall not use utility delays as a basis for additional compensation. The CMAR shall coordinate with utilities and shall cooperate fully with utility companies in the relocation of their facilities.
- 7. REQUEST FOR INTERPRETATION/INFORMATION (RFI):** The Library will require a reasonable amount of time, at least 10 business days, to respond to any RFI submitted by the CMAR. Any delays in responding to the RFI shall not be the basis for reimbursement of any additional compensation, including delay claims.

8. LIQUIDATED DAMAGES:

JOB SEGMENT DEADLINES: A detailed segment completion schedule has been approved by the Library and is attached as **Exhibit "E"** "Progress Schedule - CPM" and made a part hereof by this reference. The purpose of this schedule is to:

1. Provide job segment deadlines for the CMAR upon which the Library may rely;
2. Provide guidance for the Library in honoring the CMAR'S monthly invoices for progress payments called for in the Contract; and
3. Provide a framework against which the Library may suspend progress payments as provided in the Contract.

Should the CMAR fail to substantially complete all Services under this Contract and make the project available for beneficial use on or before the date stipulated for **Substantial Completion** in the GMP Amendment (or such later date as may result from extension of time granted by Library), CMAR shall pay and/or the Library may retain from the compensation otherwise to be paid to the CMAR, as liquidated damages, the following amounts:

\$500.00 per calendar day

For each consecutive calendar day that terms of the Contract remain unfulfilled beyond date allowed by the Contract, which sum is agreed upon as a reasonable and proper measure of damages which Library will sustain per diem by failure of CMAR to complete work within time as stipulated; it being recognized by Library and CMAR that the injury to Library which could result from a failure of CMAR to complete on schedule is uncertain and cannot be computed exactly. In no way shall costs for liquidated damages be construed as a penalty on the CMAR.

For each consecutive calendar day that the Services remains incomplete after the date established for **Final Completion** in the GMP Amendment, the Library will retain from the compensation otherwise to be paid to the CMAR, as liquidated damages, the following amounts:

\$250.00 per calendar day

This amount is the mutually agreed upon minimum measure of damages the Library will sustain by failure of the CMAR to complete all remedial work, correct deficient work, clean up the project and other miscellaneous tasks as required to complete all Work specified and this amount of liquidated damages is in addition to the liquidated damages prescribed above for failure to timely achieve Substantial Completion.

9. Sales Tax Savings Program. Library is a government tax exempt organization. The CMAR shall work with and assist the Library to prevent payment of taxes not due.

Notwithstanding anything herein to the contrary, because Library is exempt from sales tax and wishes to generate sales tax savings for the Project. Library reserves the right to make direct purchases of various construction materials and equipment included in the Work. Before purchasing materials or equipment for the Project or a combination of like items that exceed \$5,000 in cost, CMAR shall identify in writing to Library all materials and equipment or a

combination of like items to be included in the Services that will generate sales tax savings if purchased direct by Library. CMAR shall comply with the written procedures for Library Purchased materials provided by Library to CMAR and shall incorporate a similar provision to this provision in all of its subcontracts requiring the Subcontractors' compliance with said procedures. Library shall execute direct purchase orders with vendors for such Library Purchased materials. The purchase orders shall contain Library's Consumer Certificate of Exemption number. Library shall acquire title to all Library Purchased materials at the time same are delivered to the Project site. Library shall obtain insurance on the Library Purchased Materials and Library shall assume all risk of loss and theft for the Library Purchased Materials upon their delivery to the Project site and until they are incorporated into the real property. Vendors shall invoice Library directly for the Library Purchased Materials. Library shall pay vendors directly for the Library Purchased Materials. CMAR represents and warrants that it will use its best efforts to cooperate with Library in implementing this sales tax savings program in order maximize cost savings for the Project. Upon the execution of a purchase order, Library and CMAR shall execute a Change Order decreasing the Contract Sum by the total cost, including the saved sales tax for the materials or equipment purchased directly by Library under said purchase order. With respect to all direct purchases by Library, CMAR shall remain responsible for coordinating, installing, inspecting, storing, safekeeping, handling, warranting, installation, and quality control for all direct purchases. Notwithstanding anything herein to the contrary, CMAR expressly acknowledges and agrees that any materials or equipment directly purchased by Library pursuant to this Paragraph shall be included within and covered to the same extent as all other warranties and performance guarantees provided by CMAR pursuant to the terms of the Contract Documents, including bonds. Library assigns to CMAR any and all warranties and rights Library may have from any manufacturer or supplier of any such direct purchases by Library. The Parties understand that the above Library direct purchase procedures are generally not available to purchase fabricated materials from a vendor that, in addition to fabricating them, also installs those same fabricated materials into the Project.

The Library agrees to indemnify and hold harmless the CMAR, its Subcontractors, vendors and suppliers from and against the payment of or liability for any sales or use taxes arising out of or resulting from the Library purchasing materials for the Project under the Library's sales tax exempt status, and for which the Library or the CMAR, Subcontractors, vendors or suppliers should become liable, but only upon the condition that CMAR has properly complied with the Library's written sales tax program procedures

CONTRACT OCLS-RFQ-MAIN-23-002
Construction Manager At Risk (CMAR)
FOR THE ORANGE COUNTY LIBRARY DISTRICT
MAIN LIBRARY FIRST FLOOR RENOVATION PROJECT

Exhibit D
Cost of the Work

COST OF THE WORK

1. Costs to Be Reimbursed

1.1 The term Cost of the Work shall mean the actual costs necessarily incurred by the CMAR in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Library. The Cost of the Work shall include only the items set forth in Sections 1 through 7.

1.2 Where any cost is subject to the Library's prior approval, the CMAR shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

2. Labor Costs

2.1 Wages of construction workers directly employed by the CMAR to perform the construction of the Work at the site or, with the Library's prior approval, at off-site workshops.

2.2 Wages or salaries of the CMAR's supervisory and administrative personnel when stationed at the site with the Library's prior approval. (included in lump sum General Conditions costs).

(If it is intended that the wages or salaries of certain personnel stationed at the CMAR's principal or other offices shall be included in the Cost of the Work, identify below, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

None.

2.3 Wages and salaries of the CMAR's supervisory or administrative personnel (including CMAR's Project Manager) engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. Prior to commencing the Work, the CMAR shall submit to the Library for approval, a list of supervisory and field office personnel, their duties on the Work and their respective pay rates, and anticipated hours for the Project that will be assigned as a Cost of the Work. Time and wages beyond 40 hours per week for salaried personnel will not be reimbursed.

2.4 Costs paid or incurred by the CMAR for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays,

vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 2.1 through 2.3.

2.5 Relocation and temporary out of town living costs of personnel, but only if approved in advance by Library in writing.

3. Subcontract Costs

Payments made by the CMAR to Subcontractors in accordance with the requirements of the subcontracts.

4. Costs of Materials and Equipment Incorporated in the Completed Construction

4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

4.2 Costs of materials described in the preceding Section 4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Library's property at the completion of the Work or, at the Library's option, shall be sold by the CMAR. Any amounts realized from such sales shall be credited to the Library as a deduction from the Cost of the Work.

5. Costs of Other Materials and Equipment, Temporary Facilities and Related Items

5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the CMAR at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the CMAR shall mean fair market value.

5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the CMAR at the site and costs of transportation, installation, minor repairs, dismantling and removal. Rates of CMAR-owned equipment and quantities of equipment shall be subject to the Library's prior approval. The total rental cost of any piece of equipment for the duration of the Project that the CMAR or any related party owns shall not exceed 75% of the fair market value of that equipment at the commencement of the rental period. Where a rental agreement contains an option to purchase and this option is exercised, the equity accrued shall be credited to the Library against the total rental cost of that equipment on the Work. Prior to beginning the Work, the CMAR shall submit a list to the Program Manager and Library of rental equipment owned by the CMAR or a related party of the CMAR indicating the fair market value at commencement of the Work and the proposed rental rates. The CMAR shall attach to each monthly Application for Payment an itemized list of rental equipment owned by the CMAR or a related party and the applicable rates for such equipment used on the Project during that period.

5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office. There shall be no markup on these expenses.

5.5 That portion of the reasonable expenses of the CMAR's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Library's prior approval.

5.7 Job site vehicle shall be limited to one per site or as agreed to in writing by the Library. Rental rates for the job site vehicle shall include gas, maintenance, repairs, and taxes and licenses and shall not be billed separately. This single job site vehicle is in addition to the supervisors' vehicle allowances.

6. Miscellaneous Costs

6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Library's prior approval. If the Library optionally implements and funds directly an Library Controlled Insurance Program (OCIP) for the Project, no insurance costs other than the insurance costs required in the OCIP contract provisions to be paid by CMAR shall be included in the Cost of the Work. However, the cost of the Performance and Payment Bonds required for the CMAR by this Contract shall be included in the Cost of the Work.

6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the CMAR is liable.

6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the CMAR is required by the Contract Documents to pay.

6.4 Fees of laboratories for tests required by the Contract Documents, except those to be provided by the Library and those related to defective or nonconforming Work for which reimbursement is excluded by the Contract Documents, and which do not fall within the scope of Section 7.3.

6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents.

6.6 Small tools shall be treated as a Cost item and are defined as those tools costing five hundred dollars (\$500.00) or less. A record showing the disposition of these tools is to be on file at the CMAR's office on the project site. Ownership of small tools not consumed during construction shall remain with the Library upon completion of the Project.

6.7 Deposits lost for causes other than the CMAR's negligence or failure to fulfill a specific responsibility in the Contract Documents.

6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Library and CMAR, reasonably incurred by the CMAR after the execution of this Contract in the performance of the Work and with the Library's prior approval, which shall not be unreasonably withheld.

6.9 In lieu of renting certain items of equipment, machinery and tools, valued at more than five hundred dollars (\$500.00) from the CMAR or other third parties, the Library reserves the right to have those items purchased and maintained as a Cost of the Work. A record showing the

disposition of these items is to be on file at the CMAR's office on the project site. Library's Project Manager will verify disposal of said items. Ownership of the items not consumed during construction shall remain with the Library upon completion of the Project.

6.10 Bond costs for CMAR's subcontractors.

7. Other Costs and Emergencies

7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Library.

7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the CMAR, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the CMAR and only to the extent that the cost of repair or correction is not recovered by the CMAR from insurance, sureties, Subcontractors, suppliers, or others.

7.4 The costs described in Sections 1 through 7 shall be included in the Cost of the Work, unless such costs are excluded by the provisions of Section 8.

8. Costs Not To Be Reimbursed

8.1 The Cost of the Work shall not include the items listed below:

8.1.1 Salaries and other compensation of the CMAR's personnel stationed at the CMAR's principal office or offices other than the site office, except as specifically provided in Section 2;

8.1.2 Expenses of the CMAR's principal office and offices other than the site office;

8.1.3 Overhead and general expenses, except as may be expressly included in Sections 1 to 7;

8.1.4 The CMAR's capital expenses, including interest on the CMAR's capital employed for the Work;

8.1.5 Except as provided in Section 7.3 of this Contract, costs due to the negligence or failure of the CMAR, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

8.1.6 Any cost not specifically and expressly described in Sections 1 to 7;

8.1.7 Costs for Change Orders not approved by the Library;

8.1.8 Costs for Work incurred during the Preconstruction Phase, unless provided for in a separate Change Order;

8.1.9 Payments to CMAR's employees over and above their regular pay (bonuses, incentive pay, profit sharing, severance pay, etc.), including salary increases not identified in the CMAR's bid proposal;

8.1.10 Technology, Data Processing, Project Specific Web Sites, or Project Management System Cost incurred by the CMAR in preparing the Project Schedule, Payroll, Accounting, Project Cost Reports or Project Status Reports and any other reports necessary to the progress of the Work;

8.1.11 Any fees paid to CMAR organizations (AGC, ABC, etc.);

8.1.12 CMAR's business license;

8.1.13 Recruitment or training costs of personnel;

8.1.14 Overtime expense of any salaried personnel;

8.1.15 Except as provided in Section 7, any cost not specifically and expressly described in Section 6; and

8.1.16 Bond costs for CMAR's suppliers.

9. Discounts, Rebates and Refunds

9.1 Cash discounts obtained on payments made by the CMAR shall accrue to the Library. Trade discounts, commissions, volume discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Library, and the CMAR shall make provisions so that they can be obtained.

9.2 Amounts that accrue to the Library in accordance with the provisions of Section 9.1 shall be credited to the Library as a deduction from the Cost of the Work.

10. Cost of Work Schedule of Values

Insert Schedule of Values Chart when GMP is established

DRAFT

CONTRACT OCLS-RFQ-MAIN-23-002
Construction Manager At Risk (CMAR)
FOR THE ORANGE COUNTY LIBRARY DISTRICT
MAIN LIBRARY FIRST FLOOR RENOVATION PROJECT

Exhibit E
Progress Schedule – CPM
Job Segment Completion Schedule

[to be filled in]

DRAFT