

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Convention Center Owner's Representative Services Agreement

DEPARTMENT: Administrative Services **DIVISION:** Support Services

AUTHORIZED BY: Jamie Crockett **CONTACT:** Meloney Lung **EXT.** 5256

Agenda Date	<u>2/11/03</u>	Regular	<input checked="" type="checkbox"/>	Consent	<input type="checkbox"/>	Work Session	<input type="checkbox"/>	Briefing	<input type="checkbox"/>
		Public Hearing – 1:30	<input type="checkbox"/>	Public Hearing – 7:00	<input type="checkbox"/>				

MOTION/RECOMMENDATION: Staff is seeking direction on RFP 4170-02/BJC – Owner's Representative Services Agreement. The following choices are available:

1. Approve and authorize Chairman to execute agreement in the amount of \$376,035 with Cumming McGillivray, LLC, Orlando and begin using their services
2. Delay motion to approve the Owner's Representative Services Agreement until preliminary design and budget decisions are complete
3. Approve and authorize Chairman to execute agreement in the amount of \$376,035 with Cumming McGillivray, LLC, Orlando and immediately place on hold

BACKGROUND:

On January 28, 2003 the Board of County Commissioner pulled the approval of the Owner's Representative Agreement and requested that it be brought back at the next meeting.

On September 24, 2002, the Board of County Commissioners selected the firm of Cumming McGillivray, LLC, Orlando, to provide Owner's Representative for the construction of the Seminole County Convention Center and authorized staff to negotiate the agreement.

Funds are available in the Tourist Development Fund. The negotiated agreement is included as part of the back up documents.

The attached Convention Center timeline depicts the proposed timing for contracts for the Architectural and Engineer and the Construction Manager. The construction phase of the Convention Center is anticipated to be completed by April 2005. Staff will bring funding options for the Convention Center for the Board's consideration in May 2003.

Reviewed by:	<u>[Signature]</u>
Co Atty:	<u>[Signature]</u>
DFS:	<u> </u>
Other:	<u> </u>
DCM:	<u>SS [Signature]</u>
CM:	<u>[Signature]</u>
File No.	RAS01

Staff is seeking direction on RFP 4170-02/BJC – Owner’s Representative Services Agreement. The following choices are available:

1. Approve and authorize Chairman to execute agreement in the amount of \$376,035 with Cumming McGillivray, LLC, Orlando and begin using their services
2. Delay motion to approve the Owner’s Representative Services Agreement until preliminary design and budget decisions are complete
3. Approve and authorize Chairman to execute agreement in the amount of \$376,035 with Cumming McGillivray, LLC, Orlando and immediately place on hold

**OWNER'S REPRESENTATION SERVICES AGREEMENT (RFP-4170-02/BJC)
SEMINOLE COUNTY CONVENTION CENTER**

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by and between **CUMMING MCGILLIVRAY, LLC**, duly authorized to conduct business in the State of Florida, whose address is 4303 Vineland Road, Suite F-16, Orlando, Florida 32811, hereinafter called the "CONSULTANT" and **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter called the "COUNTY".

W I T N E S S E T H:

WHEREAS, the COUNTY desires to retain the services of a competent and qualified consultant to provide Owner's Representatives services during the design and construction of the Seminole County Convention Center; and

WHEREAS, the COUNTY has requested and received expressions of interest for the retention of services of consultants; and

WHEREAS, CONSULTANT is competent and qualified to furnish Owner's Representatives services to the COUNTY and desires to provide its professional services according to the terms and conditions stated herein,

NOW, THEREFORE, in consideration of the mutual understandings and covenants set forth herein, COUNTY and CONSULTANT agree as follows:

SECTION 1. SERVICES. COUNTY does hereby retain CONSULTANT to furnish professional services and perform those tasks as further described in the Scope of Services attached hereto and incorporated herein as Exhibit "A".

SECTION 2. AUTHORIZATION FOR SERVICES. Authorization for performance of professional services by the CONSULTANT under this

Agreement shall be in the form of written Notice to Proceed issued and executed by the COUNTY.

SECTION 3. TIME FOR COMPLETION. The services to be rendered by CONSULTANT shall commence upon execution of this Agreement by the parties and shall be completed concurrently with the proposed project timeline schedule attached hereto as Exhibit "B".

SECTION 4. FIXED FEE COMPENSATION AND PAYMENT.

(a) The COUNTY agrees to compensate CONSULTANT for the professional services called for under this Agreement a fixed fee in the amount of THREE HUNDRED SEVENTY-SIX THOUSAND THIRTY-FIVE AND NO/100 DOLLARS (\$376,035.00). CONSULTANT shall perform all work required by the Scope of Services but, in no event, shall CONSULTANT be paid more than the negotiated Fixed Fee amount stated above. This fee includes, but is not limited to, administration support for the CONSULTANT's staff, reproductions, and progress photos.

(b) Payments shall be made to the CONSULTANT as work progresses as indicated in Exhibit "B" "Payment Schedule" attached hereto.

(c) At the COUNTY's option, the Convention Center project may be placed on temporary hold, not to exceed one (1) year in length for each instance of hold status, during which times the CONSULTANT's performance of the Scope of Services shall temporarily cease and the COUNTY shall not be obligated to make monthly compensation payments to the CONSULTANT.

The COUNTY shall notify the CONSULTANT of the onset of such hold period in writing, not less than seven (7) days before the time said hold begins and shall give CONSULTANT a reasonable estimation of the length of time said hold is expected to last. At the conclusion of the hold period the CONSULTANT shall resume performance of the Scope of Services and the COUNTY shall resume monthly payments to the CONSULTANT. Hold periods shall not affect the total amount of compensation paid to the

CONSULTANT pursuant to this Agreement.

SECTION 5. BILLING AND PAYMENT.

(a) CONSULTANT shall render to the COUNTY, at the close of each calendar month, an itemized invoice, properly dated including, but not limited to, the following information:

(1) The name and address of the CONSULTANT;

(2) Contract Number;

(3) A complete and accurate record of services performed by the CONSULTANT for all services performed by the CONSULTANT during that month and for which the COUNTY is billed;

(4) A description of the services rendered in (3) above with sufficient detail to identify the exact nature of the work performed; and

(5) Such other information as may be required by this Agreement or requested by the COUNTY from time to time.

The original invoice shall be sent to:

Director of County Finance
Seminole County Board of County Commissioners
Post Office Box 8080
Sanford, Florida 32772

A duplicate copy of the invoice shall be sent to:

Seminole County Administrative Services
200 West County Home Road
Sanford, Florida 32773

(b) Payment shall be made after review and approval by COUNTY within thirty (30) days of receipt of a proper invoice from the CONSULTANT.

SECTION 6. AUDIT OF RECORDS.

(a) COUNTY may perform or have performed an audit of the records of CONSULTANT after final payment to support final payment hereunder. This audit would be performed at a time mutually agreeable to CONSULTANT and COUNTY subsequent to the close of the final fiscal period in which

the last work is performed. Total compensation to CONSULTANT may be determined subsequent to an audit as provided for in subsection (b) and of this subsection, and the total compensation so determined shall be used to calculate final payment to CONSULTANT. Conduct of this audit shall not delay final payment as required by Section 5(b).

(b) The CONSULTANT agrees to maintain all CONSULTANT's books, documents, papers, accounting records and other evidences pertaining to work performed under this Agreement in such a manner as will readily conform to the terms of this Agreement and to make such materials available at CONSULTANT's office at all reasonable times during the Agreement period and for five (5) years from the date of final payment under the contract for audit or inspection as provided for in subsection (a) of this Section. All documents which, pursuant to Section 8 of this Agreement become the property of the COUNTY at the conclusion of this project, shall be promptly turned over to the CITY after final payment is made to the CONSULTANT pursuant to this Agreement.

(c) In the event any audit or inspection conducted after final payment, but within the period provided in subsection (b) of this Section reveals any overpayment by COUNTY under the terms of the Agreement, CONSULTANT shall refund such overpayment to COUNTY within thirty (30) days of notice by the COUNTY.

SECTION 7. RESPONSIBILITY OF CONSULTANT.

(a) CONSULTANT shall be responsible for the professional quality, technical accuracy and the coordination of all plans, studies, reports and other services furnished by CONSULTANT under this Agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in his services.

(b) Neither the COUNTY'S review, approval or acceptance of, nor payment for, any of the services required shall be construed to operate

as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and the CONSULTANT shall be and remain liable to the COUNTY in accordance with applicable law for all damages to the COUNTY caused by the CONSULTANT'S performance of any of the services furnished under this Agreement.

SECTION 8. OWNERSHIP OF DOCUMENTS. All deliverable reference data, survey data, plans and reports that result from the CONSULTANT'S services under this Agreement shall become the property of the COUNTY after final payment for the specific service provided is made to CONSULTANT. No changes or revisions to the documents furnished by CONSULTANT shall be made by COUNTY or its agents without the written approval of CONSULTANT.

SECTION 9. TERM. This Agreement shall take effect on the date of its execution by COUNTY and shall run concurrently with the construction schedule as indicated in Exhibit "B".

SECTION 10. TERMINATION.

(a) The COUNTY may, upon seven (7) days written notice to the CONSULTANT, terminate this Agreement, in whole or in part, at any time, either for the COUNTY'S convenience or because of the failure of the CONSULTANT to fulfill CONSULTANT'S Agreement obligations. Upon receipt of such notice, the CONSULTANT shall:

(1) immediately discontinue all services affected unless the notice directs otherwise, and

(2) deliver to the COUNTY all plans, studies, reports, estimates, summaries, and such other information and materials as may have been accumulated by the CONSULTANT in performing this Agreement, whether completed or in process.

(b) If the termination is for the convenience of the COUNTY, the CONSULTANT shall be paid compensation for services performed to the date

of termination. CONSULTANT shall be paid no more than a percentage of the Fixed Fee amount equivalent to the percentage of the completion of work contemplated by the Agreement.

(c) If the termination is due to the failure of the CONSULTANT to fulfill his Agreement obligations, the COUNTY may take over the work and prosecute the same to completion by Agreement or otherwise. In such case, the CONSULTANT shall be liable to the COUNTY for reasonable additional costs occasioned to the COUNTY thereby. The CONSULTANT shall not be liable for such additional costs if the failure to perform the Agreement arises out of causes beyond the control and without the fault or negligence of the CONSULTANT. Such causes may include, but are not limited to, acts of God or of the public enemy, acts of the COUNTY in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but, in every case, the failure to perform must be beyond the control and without the fault or negligence of the CONSULTANT.

(d) If, after notice of termination for failure to fulfill Agreement obligations, it is determined that the CONSULTANT had not so failed, the termination shall be deemed to have been effected for the convenience of the COUNTY. In such event, adjustment in the Agreement price shall be made as provided in subsection (b) of this Section.

(e) The rights and remedies of the COUNTY provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

SECTION 11. EQUAL OPPORTUNITY EMPLOYMENT. CONSULTANT agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin, or disability and will take steps

to ensure that applicants are employed, and employees are treated during employment, without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

SECTION 12. NO CONTINGENT FEES. CONSULTANT warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement and that CONSULTANT has not paid or agreed to pay any persons, company, corporation, individual or firm, other than a bonafide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, COUNTY shall have the right to terminate the Agreement at its discretion, without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

SECTION 13. ASSIGNMENT. This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties hereto without prior written consent of the opposite party and only by a document of equal dignity herewith.

SECTION 14. SUBCONTRACTORS. In the event CONSULTANT, during the course of the work under this Agreement, requires the services of any subcontractors or other professional associates in connection with service covered by this Agreement, CONSULTANT must secure the prior written approval of the COUNTY. If subcontractors or other professional associates are required in connection with the services covered by this

Agreement, CONSULTANT shall remain fully responsible for the services of subcontractors or other professional associates.

SECTION 15. INDEMNIFICATION OF COUNTY. The CONSULTANT agrees to hold harmless, replace, and indemnify the COUNTY, its commissioners, officers, employees, and agents against any and all claim, losses, damages or lawsuits for damages, arising from, allegedly arising from, or related to the provision of services hereunder by the CONSULTANT, whether caused by the CONSULTANT or otherwise. This hold harmless, release and indemnification shall include any claim based on negligence, action or inaction of the parties.

SECTION 16. INSURANCE.

(a) General. The CONSULTANT shall at the CONSULTANT's own cost, procure the insurance required under this Section.

(1) The CONSULTANT shall furnish the COUNTY with a Certificate of Insurance signed by an authorized representative of the insurer evidencing the insurance required by this Section (Professional Liability, Workers' Compensation/Employer's Liability, Commercial General Liability, and Business Auto). The COUNTY, its officials, officers, and employees shall be named additional insured under the Commercial General Liability policy. The Certificate of Insurance shall provide that the COUNTY shall be given not less than thirty (30) days written notice prior to the cancellation or restriction of coverage. Until such time as the insurance is no longer required to be maintained by the CONSULTANT, the CONSULTANT shall provide the COUNTY with a renewal or replacement Certificate of Insurance not less than thirty (30) days before expiration or replacement of the insurance for which a previous certificate has been provided.

(2) The Certificate shall contain a statement that it is being provided in accordance with the Agreement and that the insurance

is in full compliance with the requirements of the Agreement. In lieu of the statement on the Certificate, the CONSULTANT shall, at the option of the COUNTY submit a sworn, notarized statement from an authorized representative of the insurer that the Certificate is being provided in accordance with the Agreement and that the insurance is in full compliance with the requirements of the Agreement.

(3) In addition to providing the Certificate of Insurance, if required by the COUNTY, the CONSULTANT shall, within thirty (30) days after receipt of the request, provide the COUNTY with a certified copy of each of the policies of insurance providing the coverage required by this Section.

(4) Neither approval by the COUNTY or failure to disapprove the insurance furnished by CONSULTANT shall relieve the CONSULTANT of the CONSULTANT's full responsibility for performance of any obligation including CONSULTANT's indemnification of COUNTY under this Agreement.

(b) Insurance Company Requirements. Insurance companies providing the insurance under this Agreement must meet the following requirements:

(1) Companies issuing policies other than Workers' Compensation must be authorized to conduct business in the State of Florida and prove same by maintaining Certificates of Authority issued to the companies by the Department of Insurance of the State of Florida. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by Section 440.57, Florida Statutes.

(2) In addition, such companies other than those authorized by Section 440.57, Florida Statutes, shall have and maintain a Best's Rating of "A" or better and a Financial Size Category of "VII" or better according to A.M. Best Company.

(3) If, during the period which an insurance company is providing the insurance coverage required by this Agreement, an insurance company shall: 1) lose its Certificate of Authority, 2) no longer comply with Section 440.57, Florida Statutes, or 3) fail to maintain the requisite Best's Rating and Financial Size Category, the CONSULTANT shall, as soon as the CONSULTANT has knowledge of any such circumstance, immediately notify the COUNTY and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until such time as the CONSULTANT has replaced the unacceptable insurer with an insurer acceptable to the COUNTY the CONSULTANT shall be deemed to be in default of this Agreement.

(c) Specifications. Without limiting any of the other obligations or liability of the CONSULTANT, the CONSULTANT shall, at the CONSULTANT's sole expense, procure, maintain and keep in force amounts and types of insurance conforming to the minimum requirements set forth in this Section. Except as otherwise specified in the Agreement, the insurance shall become effective prior to the commencement of work by the CONSULTANT and shall be maintained in force until the Agreement completion date. The amounts and types of insurance shall conform to the following minimum requirements.

(1) Workers' Compensation/Employer's Liability.

(A) CONSULTANT's insurance shall cover the CONSULTANT for liability which would be covered by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. The CONSULTANT will also be responsible for procuring proper proof of coverage from its subcontractors of every tier for liability which is a result of a Workers' Compensation injury to the .

subcontractor's employees. The minimum required limits to be provided by both the CONSULTANT and its subcontractors is outlined in subsection (c) below. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the United States Longshoremen and Harbor Workers' Compensation Act, Federal Employers' Liability Act and any other applicable Federal or State law.

(B) Subject to the restrictions of coverage found in the standard Workers' Compensation Policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Florida Workers' Compensation Act, the United States Longshoremen's and Harbor Workers' Compensation Act, or any other coverage customarily insured under Part One of the standard Workers' Compensation Policy.

(C) The minimum amount of coverage under Part Two of the standard Workers' Compensation Policy shall be:

\$500,000.00	(Each Accident)
\$500,000.00	(Disease-Policy Limit)
\$500,000.00	(Disease-Each Employee)

(2) Commercial General Liability.

(A) The CONSULTANT's insurance shall cover the CONSULTANT for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements other than the elimination of Coverage C, Medical Payment and the elimination of coverage for Fire Damage Legal Liability.

(B) The minimum limits to be maintained by the CONSULTANT (inclusive of any amounts provided by an Umbrella or Excess policy) shall be as follows:

LIMITS

General Aggregate	\$Three (3) Times the Each Occurrence Limit
-------------------	--

Personal & Advertising Injury Limit \$1,000,000.00

Each Occurrence Limit \$1,000,000.00

(3) Professional Liability Insurance. The CONSULTANT shall carry limits of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00).

(4) Business Auto Policy.

(A) The CONSULTANT's insurance shall cover the CONSULTANT for those sources of liability which would be covered by Part IV of the latest edition of the standard Business Auto Policy (ISO Form CA 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements. Coverage shall include owned, non-owned and hired autos.

(B) The minimum limits to be maintained by the CONSULTANT (inclusive of any amounts provided by an Umbrella or Excess policy) shall be per accident combined single limit for bodily injury liability and property damage liability. If the coverage is subject to an aggregate, the CONSULTANT shall maintain separate aggregate limits of coverage applicable to claims arising out of or in connection with the work under this Agreement. The separate aggregate limits to be maintained by the CONSULTANT shall be a minimum of three (3) times the per accident limit required and shall apply separately to each policy year or part thereof.

(C) The minimum amount of coverage under the Business Auto Policy shall be:

	<u>LIMITS</u>
Each Occurrence Bodily Injury and Property Damage Liability Combined	\$500,000.00

(d) Coverage. The insurance provided by CONSULTANT pursuant to this Agreement shall apply on a primary basis and any other insurance or self-insurance maintained by the COUNTY or the COUNTY's officials, officers, or employees shall be excess of and not contributing with the insurance provided by or on behalf of the CONSULTANT.

(e) Occurrence Basis. The Workers' Compensation Policy and the Commercial General Liability required by this Agreement shall be provided on an occurrence rather than a claims-made basis. The Professional Liability insurance policy must either be on an occurrence basis, or, if a claims-made basis, the coverage must respond to all claims reported within three (3) years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

(f) Obligations. Compliance with the foregoing insurance requirements shall not relieve the CONSULTANT, its employees or agents of liability from any obligation under a Section or any other portions of this Agreement.

SECTION 17. ALTERNATIVE DISPUTE RESOLUTION (ADR).

(a) In the event of a dispute related to any performance or payment obligation arising under this Agreement, the parties agree to exhaust COUNTY ADR procedures prior to filing suit or otherwise pursuing legal remedies. COUNTY ADR procedures for proper invoice and payment disputes are set forth in Section 55.1, "Prompt Payment Procedures," Seminole County Administrative Code. Contract claims include all controversies, except disputes addressed by the "Prompt Payment Procedures," arising under this Agreement and ADR procedures therefor are set forth in Section 220.102, "Contract Claims," Seminole County Code.

(b) CONSULTANT agrees that it will file no suit or otherwise pursue legal remedies based on facts or evidentiary materials that were not presented for consideration in the COUNTY ADR procedures set forth in subsection (a) above of which the CONSULTANT had knowledge and failed to present during the COUNTY ADR procedures.

(c) In the event that COUNTY ADR procedures are exhausted and a suit is filed or legal remedies are otherwise pursued, the parties shall exercise best efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be mutually acceptable to the parties. Costs of voluntary mediation shall be shared equally among the parties participating in the mediation.

SECTION 18. REPRESENTATIVE OF COUNTY AND CONSULTANT.

(a) It is recognized that questions in the day-to-day conduct of performance pursuant to this Agreement will arise. The COUNTY, upon request by CONSULTANT, shall designate in writing and shall advise CONSULTANT in writing of one (1) or more COUNTY employees to whom all communications pertaining to the day-to-day conduct of the Agreement shall be addressed. The designated representative shall have the authority to transmit instructions, receive information and interpret and define the COUNTY's policy and decisions pertinent to the work covered by this Agreement.

(b) CONSULTANT shall, at all times during the normal work week, designate or appoint one or more representatives of CONSULTANT who are authorized to act on behalf of CONSULTANT regarding all matters involving the conduct of the performance pursuant to this Agreement and shall keep COUNTY continually advised of such designation.

SECTION 19. ALL PRIOR AGREEMENTS SUPERSEDED. This document incorporates and includes all prior negotiations, correspondence,

conversations, agreements or understandings applicable to the matters contained herein and the parties agree that there are not commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained or referred to in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

SECTION 20. MODIFICATIONS, AMENDMENTS OR ALTERATIONS. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

SECTION 21. INDEPENDENT CONTRACTOR. It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of copartners between the parties, or as constituting the CONSULTANT including its officers, employees, and agents, the agent, representative, or employee of the COUNTY for any purpose, or in any manner, whatsoever. The CONSULTANT is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

SECTION 22. EMPLOYEE STATUS. Persons employed by the CONSULTANT in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the COUNTY's officers and employees either by operation of law or by the COUNTY.

SECTION 23. SERVICES NOT PROVIDED FOR. No claim for services furnished by the CONSULTANT not specifically provided for herein shall be honored by the COUNTY.

SECTION 24. PUBLIC RECORDS LAW. CONSULTANT acknowledges COUNTY's obligations under Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, to release public records to members of the public upon request. CONSULTANT acknowledges that COUNTY is required to comply with Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, in the handling of the materials created under this Agreement and that said statute controls over the terms of this Agreement.

SECTION 25. NOTICES. Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended at the place last specified and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to wit:

FOR COUNTY:

Seminole County Administrative Services
200 West County Home Road
Sanford, Florida 32773

FOR CONSULTANT:

Cumming McGillivray, LLC
4303 Vineland Road, Suite F-16
Orlando, Florida 32811

SECTION 26. RIGHTS AT LAW RETAINED. The rights and remedies of the COUNTY, provided for under this Agreement, are in addition to any other rights and remedies provided by law.

SECTION 27. COMPLIANCE WITH LAWS AND REGULATIONS. In providing all services pursuant to this Agreement, the CONSULTANT shall abide by all statutes, ordinances, rules, and regulations pertaining to, or regulating the provisions of, such services, including those now in

effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement, and shall entitle the COUNTY to terminate this Agreement immediately upon delivery of written notice of termination to the CONSULTANT.

SECTION 28. CONFLICT OF INTEREST.

(a) The CONSULTANT agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the COUNTY or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government.

(b) The CONSULTANT hereby certifies that no officer, agent or employee of the COUNTY has any material interest (as defined in Section 112.312(15), Florida Statutes, as over 5%) either directly or indirectly, in the business of the CONSULTANT to be conducted here, and that no such person shall have any such interest at any time during the term of this Agreement.

(c) Pursuant to Section 216.347, Florida Statutes, the CONSULTANT hereby agrees that monies received from the COUNTY pursuant to this Agreement will not be used for the purpose of lobbying the Legislature or any other State or Federal Agency.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement for the purposes stated herein.

CUMMING MCGILLIVRAY LLC

Witness

By: _____
IAIN MCGILLIVRAY
Principal in Charge

Witness

(CORPORATE SEAL)

Date: _____

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
DARYL G. MCLAIN, Chairman

Date: _____

For the use and reliance
of Seminole County only.
Approved as to form and
legal sufficiency.

As authorized for execution by
the Board of County Commissioners
at their _____, 20____,
regular meeting.

County Attorney

AC/lpk
rfp-4170
2/4/03

- Attachments:
Exhibit "A" - Scope of Services
Exhibit "B" - Construction Schedule
Exhibit "C" - Payment Schedule

EXHIBIT A

General Information

Seminole County Board of County Commissioners requires the services of a qualified consultant to provide Owner's Representative for the construction of the Sanford Convention Center approximately 63,000 \pm square feet that will be in compliance with the International Association of Conference Center guidelines. The budget for this project is approximately \$18,000,000 \pm inclusive off all design, construction, and ancillary project costs.

The Owner's Representative shall provide professional construction management services during the design and construction of projects. During the Pre-construction Phase of the facility the Owner's Representative may be required to assist in the implementation of design, scheduling, and value engineering. Anticipated Services are outlined in Section I. During the Construction Phase the Owner's Representative will assist in the oversight of construction related activities as described in Section II.

SCOPE OF SERVICES:

I. GENERAL SCOPE OF WORK – Pre-construction Phase and On-going

The Consultant's work shall include the following Tasks:

- A. Assist the County in negotiating A/E and construction management contract services;
- B. Review management structure and make recommendations as appropriate;
- C. Facilitate cooperation and communications between all parties associated with the project; providing full information in a timely manner.
- D. Participate in project meetings;
- E. Review Architect/Engineer's plans, specifications and construction documents for consistency, compliance to approved program, coordination of technical disciplines, constructability and value engineering.
- F. Participate in reviews of design documents for conformance with project scope, budget, and construction phase.
- G. Review and make recommendations regarding construction packaging for purpose of bidding to facilitate an effective fast tracking construction process.
- H. Review and monitor Architect/Engineer's design schedule to ensure adequate progress is being achieved to attain the objectives of the project;
- I. Review and monitor project budgets, recommend actions, as required, to maintain established budget;
- J. Review and recommend payment of Architect/Engineer's and Construction Manager invoices based on progress and overall accomplishment;
- K. Assist the County in evaluating contract changes, modifications, and change orders submitted by the Architect/Engineer;
- L. Assist the County in evaluating changes in fees to the Architect/Engineer;
- M. Prepare and/or reconcile an independent cost estimate for budgeting purposes;
- N. Prepare and/or reconcile cost estimates of facility systems and components for value engineering purposes;
- O. Interface, in conjunction with the County, tenant groups, local government/business associations, etc., as required, to inform parties of plans and progress of design activities;

- P. Assist County in obtaining required permits and approvals;
- Q. Review and make recommendations, as required, on the Construction Manager's construction plan for Facility;
- R. Review and make recommendations to the Construction Manager's proposed construction sequencing schedule and bid packages; including review of proposed suppliers and subcontractors.
- S. Assist the County in establishing milestones for the project completion activities;
- T. Assist the County in developing pre-construction conference checklist;
- U. Assist the County in establishing basis for the "Guaranteed Maximum Price" (GMP) contract with the Construction Manager;
- V. Prepare and/or reconcile cost estimates and assist County in negotiations with Construction Manager with GMP;
- W. Facilitate cooperation among Architect/Engineer, Construction Manager, and County to expedite delivery of Facility;
- X. Perform value engineering as required. Estimate and evaluate cost and schedule impacts of changes on project;
- Y. Interface, in conjunction with the County, tenant groups, local government/business associations, etc., as required, to inform parties of proposed construction activities;
- Z. Establish a point of contact with tenant groups, local government/business associations, etc., as required, to facilitate a "Good Neighbor Policy" in an effort to ensure cooperation of all groups and minimize complaints arising from construction activities;
- AA. Review and make recommendations, as required, of Construction Manager's proposed Traffic Program;
- BB. Review and make recommendations, as required, of Construction Manager's proposed Schedule of Values/trade payment breakdown and method payment;
- CC. Establish a cost reporting program to provide up-to-date financial information as to the status of the project; to include tracking and coordinating the County's direct purchase program.
- DD. Coordinate activities and track documentation of the County, Architect, and Construction Manager.
- EE. Provide other services as deemed appropriate by the County.

II. GENERAL SCOPE OF WORK – Construction Phase

The Consultant's work shall include the following Tasks:

- A. Provide on-site construction oversight of the project to review the job site daily and continuously as required; to include an on-site and staffed office.
- B. Monitor construction work for Construction Manager's compliance with contract and construction documents,
- C. Participate in periodic Construction Manager's construction planning meetings;
- D. Recommend an Approval and Review Process for the County's approval and the Construction Manager's implementation.
- E. Assist the County in monitoring the processing of shop drawings to insure that it follows the schedule submitted by the Construction Manager and that the Architect/Engineer reviews the shop drawings in a timely manner;
- F. Assist the County in securing, building and environmental permits and approvals for construction. This includes City, County, State and Federal permits as required for the project;
- G. Assist the County in reviewing the daily quality control inspection reports to ensure all tests required by the specifications and drawings are performed.

- H. Assist the County, as required, in determining extent of hazardous materials within job site, perimeter and the development of actions to be taken regarding disposal;
- I. Assist the County in determining if the Construction Manager has contacted with sufficient fore warnings of all affected utilities and arrange for inspection and acceptance of construction work and coordinate on utility outages, closures, changeovers, disconnects and reconnects, etc.;
- J. Assist the County in determining that all building department inspections are conducted in a timely and efficient manner;
- K. Recommend rejection of all construction work or materials that do not comply with the contract requirements;
- L. Review and approve materials and equipment that are under an allowance to avoid delays in work.
- M. Recommend to County issuance of Notice of Non-Compliance to Construction Manager to correct non-conforming and/or defective work;
- N. Recommend to the County, as required, ordering corrective actions in writing if the Construction Manager fails to promptly remove, correct, or replace rejected construction work or materials;
- O. Assist the County in determining if the Construction Manager's Traffic Program is consistent with objectives of the project;
- P. Interface, in conjunction with the County, tenant groups, local government/business associations, etc., as required, to inform participants of upcoming construction activities;
- Q. Monitor Construction Manager's adherence to a "Good Neighbor Policy" with regard to tenants in the surrounding area. This includes, but is not limited to, Construction Manager's compliance with dust control, noise control, safe site practices, security, temporary signage for roadway construction, notice to motorists, work day work hours etc.;
- R. Prepare a monthly report detailing consulting activities.
- S. Monitor Construction Manager's construction schedule;
- T. Analyze construction progress vs. Construction Manager's proposed invoice and make recommendation of payment to the Construction Manager;
- U. Review and recommend actions to the County on proposed design and construction changes to assess impact on project budget.
- V. Review, evaluate and make recommendations to County, as required, on Contract modifications and change orders.
- W. Maintain required records, photographs, files and reports for the construction history of the project.
- X. Assist the County Architect/Engineer and the Construction Manager in the preparation and review of punch lists and pre-final and final inspection of the work. Monitor performance of punch list work.
- Y. Assist the County in the assembly and transmittal of, (1) As-built documents, (2) Manuals (3) Warrantees;
- Z. Coordinate turnover of Facility, final inspection by the building department; clarify expected level of completion with Construction Manager prior to pre-final, final inspection, and final acceptance.
- AA. Monitor FF&E plan, purchase and installation, and monitor tenant moves.
- BB. Turn over all Consultants generated project-related equipment, inventories, etc., to the County in close out activities.
- CC. Provide other services as deemed appropriate by the County.

EXHIBIT B

**Proposed
Convention Center Timeline**

Action	Proposed Date
Owners Representative Contract to BCC	1/28/03
Negotiation of Architectural and Engineering Contract	2/03
Architectural and Engineering Contract to BCC	2/25/03
Negotiation of Construction Manager Contract	3/03
Construction Manager Contract to BCC	3/25/03
Design Phase Begins	3/03
Design Phase Complete	3/04
Construction Phase Begins	3/04
Construction Phase Complete	4/05

SEMINOLE COUNTY CONVENTION CENTER

FEE PROPOSAL

Seminole County Convention Center

Professional fees:

	<u>Mar-04</u>	<u>Apr-04</u>	<u>May-04</u>	<u>Jun-04</u>	<u>Jul-04</u>	<u>Aug-04</u>	<u>Sep-04</u>	<u>Oct-04</u>	<u>Nov-04</u>	<u>Dec-04</u>	<u>Jan-05</u>	<u>Feb-05</u>	<u>Mar-05</u>	<u>Apr-05</u>	<u>Total Fee</u>
	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,035	\$168,035
Principal															
Director of Project Management															
Project Manager															
Senior Estimator															
Estimator															
Project Financial Analyst (PFA)															
Sub-Total Construction Phase															<u>\$168,035</u>
Project Monthly Fees	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,035	168,035