

AGREEMENT FOR CONSTRUCTION MANAGER AT RISK SERVICES

THIS AGREEMENT FOR CONSTRUCTION MANAGER AT RISK SERVICES ("Agreement") is entered into by and between the **CITY OF OCALA**, a Florida municipal corporation ("City" or "Owner"), and **WHARTON-SMITH, INC.**, a for-profit corporation duly organized and authorized to do business in the state of Florida (EIN# 59-2392802) ("Wharton-Smith" or "CMAR").

R E C I T A L S :

WHEREAS, the City requires certain Pre-Construction Phase Services and Construction Phase Services in support of the phased completion of the City's Membrane Water Treatment Plant Project, the Project being more particularly described in Article 2, herein; and

WHEREAS, the City has secured funding for the Project through grants provided by the St. Johns Water Management District and the Florida Department of Environmental Protection, as well as other funding sources, to assist in the completion of the Project; and

WHEREAS, on May 16, 2023, the City competitively solicited proposals from qualified, experienced, and licensed firms to provide Pre-Construction Phase and Construction Phase Services via its advertised Request for Proposals ("RFP") No. WRS/220664 (the "Solicitation"); and

WHEREAS, a single firm responded to the Solicitation and, after consideration of competency, qualifications, and experience, Wharton-Smith, Inc. was chosen as the intended awardee to provide construction manager at risk services for the Pre-Construction and Construction Phases of the Project subject to the successful negotiation of a Guaranteed Maximum Price for Construction Phase Services; and

WHEREAS, the City's Project Team shall consist of the City, CMAR, and the City's design professional, Kimley-Horn and Associates, Inc. (hereinafter referred to as the "Architect-Engineer"); and

WHEREAS, Wharton-Smith, Inc. has reviewed the services that will be required of CMAR under the terms of this Agreement and hereby represents that it is qualified, willing and able to provide and perform all such services in accordance with said terms; and

WHEREAS, CMAR covenants with the City to furnish its best skill and judgment, efficient Project administration and supervision, and to cooperate with the City and its Architect-Engineer in furthering the interest of the City to complete the Project using the best and most sound methods consistent with the interests of the City; and

WHEREAS, CMAR accepts the relationship of good faith established between CMAR and the City by this Agreement and agrees to furnish at all times an adequate supply of workers and materials to complete the Project and to perform the Services in the best and the most expeditious and economical manner, consistent with the interests of the City and the terms and conditions of the Contract Documents; and

WHEREAS, CMAR acknowledges that: (i) it has represented to the City that it possesses specific expertise in the planning, reviewing, management and construction of projects of similar size, cost and complexity; and (ii) that such representation is a material inducement to the City to enter into this Agreement.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the City and Wharton-Smith, Inc. hereby agree as follows.

TERMS OF AGREEMENT:

**ARTICLE 1 - INCORPORATION OF RECITALS, PROJECT AND PROJECT TEAM,
PURPOSE, AND EXTENT OF THE AGREEMENT**

- 1.1. **INCORPORATION OF RECITALS.** City and CMAR hereby represent, warrant, and agree that the Recitals set forth above are true and correct and are incorporated herein by reference.
- 1.2. **PROJECT.** The Project shall include Pre-Construction Phase Services and Construction Phase Services for the City's Membrane Water Treatment Plant Project as described in RFP No. WRS/220664 and this Agreement.
 - 1.2.1. The Pre-Construction Phase of the Project shall include coordination of all architectural, landscaping and engineering design, and other Pre-Construction Services, including without limitation, the preparation of a proposed Guaranteed Maximum Price necessary to provide a complete and usable facility in accordance with this Agreement.
 - 1.2.2. The Construction Phase of the Project shall include the construction of the facility, along with project management and coordination and quality assurance services necessary to complete the Project to the City's satisfaction.
 - 1.2.3. The full buildout of the Membrane Water Treatment Plant Project will be designed and constructed in multiple phases to meet the funding and capacity needs of the City. It is anticipated that the phasing will include Phase 3 to Phase 8. The City reserves the right to continue each phase with CMAR or to readvertise for re-selection at the completion of each phase.
- 1.3. **RELATIONSHIP OF THE PARTIES.** The City, CMAR and the Architect-Engineer, including their representatives (hereinafter collectively referred to as the "Project Team"), shall work jointly during the Project's Pre-Construction Phase through Final Completion of construction and shall be available thereafter should additional services be required.
 - 1.3.1. CMAR shall provide leadership to the Project Team on all matters relating to construction.
 - 1.3.2. Architect-Engineer shall provide leadership on all matters related to Project design with support from CMAR.
 - 1.3.3. Nothing contained in the Contract Documents shall be construed to create a contractual relationship between any person or entity other than the City and CMAR.
- 1.4. **PURPOSE OF AGREEMENT.** The primary purpose and intent of this Agreement is to secure for the City the services of a firm thoroughly experienced and highly qualified in both hands-on construction methods and techniques and the efficient management of construction operations to: provide technical consultation on the Project; determine the cost of constructing each component of the Project and the associated contingency funds required, thereby arriving at the estimated Project Budget and ultimately establish the Guaranteed

Maximum Price for Construction; schedule the Project efficiently for construction phases and prepare the Project Schedule such that the Project will be ready for occupancy at the earliest practical date; and review the design documents of the Project with the Architect-Engineer and advise upon the most efficient use of materials and construction methods to be employed for achieving quality construction at the least cost.

1.5. **EXTENT OF AGREEMENT.**

- 1.5.1. **Entire Agreement.** This Agreement is complementary to the Drawings, Specifications, Conditions, recordings of presentations and interviews, and, together with them, comprises the full and entire agreement and understanding between the Owner and CMAR and supersedes all prior negotiations, representations or agreements.
- 1.5.2. **Amendment.** No modification or amendment to the Agreement shall be valid or binding upon the Owner or CMAR unless in writing and executed by both the Owner and CMAR.
- 1.5.3. **Section Headings.** The headings contained within this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such articles, sections, paragraphs, schedules, exhibits and/or attachments hereto.
- 1.5.4. **Mutuality of Negotiation.** The Owner and CMAR acknowledge they have carefully reviewed this Agreement and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Agreement shall not be construed more strongly against any party, regardless of who is responsible for its preparation. The remedies granted to Owner in the Agreement are cumulative and not in limitation of any other rights and remedies of Owner at law or in equity.
- 1.5.5. **Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
- 1.5.6. **Survival.** All representations and covenants of the parties shall survive the expiration of the Agreement. All of CMAR's representations, indemnifications, warranties, and guarantees made in or required by the Agreement, as well as all continuing obligations indicated in the Agreement, will survive final payment, completion, and acceptance of CMAR's Work or termination or completion of the Agreement or termination of the Work of CMAR.
- 1.5.7. **Legal Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained herein.
- 1.5.8. **Electronic Signatures.** The Parties, if and by offering electronic signatures in any form whatsoever, accept and agree to be bound by said electronic signatures to all terms and conditions of this Agreement. Further, a duplicate copy of this Agreement containing a non-original signature will be treated the same as the original signed copy of this Agreement for all purposes.

ARTICLE 2 - DEFINITIONS

For this Agreement and any incorporated Exhibits or Addendums, certain terms, phrases, words and their respective derivations will have the meaning set forth and defined therein and shall be applicable in both. Definitions of terms in the Agreement shall first be governed by this Agreement and second by the incorporated Contract Documents. In the event of any conflict among the foregoing, the conflict will be resolved in the order of priority set forth in the preceding sentence. If there is no applicable definition as described above, the terms, phrases, and words, and their respective derivations when used in this Contract and the Scope of Service, will have the meanings ascribed to them in Merriam-Webster's Collegiate Dictionary (Merriam-Webster, Inc., 11th ed., 2020, or any subsequent edition).

- 2.1. **"Allowance"** –shall refer to funds and time the CMAR and Owner agree to that are typically known work with unknown costs. Any unused allowance funds shall be returned to the City by Change Order at completion of the Project.
- 2.2. **"Architect-Engineer"** – shall refer to Kimley-Horn and Associates, Inc., as the qualified, licensed firm retained by the City to serve as its design professional.
- 2.3. **"Calendar Day"** – shall include any day of 24 hours measured from midnight to the next midnight, including Saturday, Sundays, and holidays, regardless of weather conditions.
- 2.4. **"Change Order"** – shall mean a written order to CMAR signed by the Owner and CMAR, authorizing an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Agreement. CMAR, when requested by City, shall prepare Change Order documentation.
- 2.5. **"City" or "Owner"** – shall refer to the City of Ocala, Florida, a municipal corporation of the State of Florida.
- 2.6. **City Engineer** – Shall refer to the Florida registered professional engineer appointed by the City Manager pursuant to section 2-312 of the Code of Ordinances for the City of Ocala to serve as the head of the City of Ocala Engineering Department. The City Engineer is the duly appointed representative of the City of Ocala for the purposes of the Project and has been given authority to manage the Project on behalf of the City of Ocala.
- 2.7. **"City Project Manager"** – shall mean the person designated by the City Engineer to provide direct interface with Architect-Engineer and CMAR regarding the City's interests and responsibilities. The City Project Manager shall have authority to transmit instructions, receive information, and interpret and define City's policies and decisions with respect to the Work.
- 2.8. **"Construction Documents"** – shall consist of the design, project and performance specifications, and plans for the construction of the Project as completed by Architect-Engineer and approved in writing by the City Engineer which set forth the materials to be employed and the precise detail of the manner in which the Work of CMAR is to be executed, including any revisions.
- 2.9. **"Construction Phase Services Addendum"** – shall refer to the document formally establishing the Agreement's GMP, Contract Time, and Liquidated Damages for incorporated phases of work, which upon Owner's acceptance and execution by City and CMAR shall be incorporated into this Agreement.

- 2.10. **"Construction Manager" or "CMAR"** - shall mean Wharton-Smith, Inc., as the licensed firm retained by the City to implement, direct and control the phased construction of the Project as set forth in the Contract Documents
- 2.11. **"Contract Documents"** – the Contract Documents shall consist of the following documents, each expressly incorporated herein:
 - 2.1.1 this Agreement, the Exhibits described herein, and any duly executed addenda, amendments, Notice(s) to Proceed, and Change Orders;
 - 2.1.2 the "Construction Documents" as that term is defined in this Article;
 - 2.1.3 City's latest edition of the City's Standard Specifications for Construction of Streets, Stormwater, Traffic, Water and Sewer Infrastructure as updated and accessible at: www.ocalafl.gov/home/showpublisheddocument/24606.
 - 2.1.4 Upon Owner's acceptance of CMAR's Guaranteed Maximum Price Proposal, the fully executed Construction Phase Services Addendum incorporated herein.

The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, precedence shall be given to the Contract Documents in the following order: First, duly executed addenda, amendments, Notices to Proceed, and Change Orders; Second, the Agreement (not including the Exhibits); Third, the Exhibits to the Agreement; and Fourth, all other Contract Documents.

- 2.11. **"Contract Time"** – shall refer to the period of time beginning with the commencement of the Construction Work through the date required for Substantial Completion and Final Completion of the Work.
- 2.12. **"CMAR's Project Manager"** – shall mean the individual authorized and responsible to act on behalf of CMAR and who shall have full authority to bind and obligate CMAR on any matter arising under this Agreement, unless substitute arrangements or individuals have been furnished to and approved in writing by the City. CMAR's Project Manager shall be responsible for acting on CMAR's behalf to administer, coordinate and interpret all aspects of the Work to be provided and performed by CMAR under this Agreement and to otherwise manage the contractual provisions and requirements set forth in this Agreement and all Change Order(s) issued hereunder. CMAR agrees that CMAR Project Manager shall devote whatever time is required to satisfactorily direct, supervise, coordinate and manage the Work provided and performed by CMAR under this Agreement.
- 2.13. **"Drawings"** – shall refer to the detailed construction plans and details of the Contract Documents that graphically show the scope, extent, and character of the Work to be performed by CMAR.
- 2.14. **"Effective Date"** – shall be the date this Agreement and any subsequently issued addendum, amendment, or other modification is fully executed by the City and the CMAR.
- 2.15. **"Final Completion"** – shall mean the time at which the Work, in the opinion of the City Engineer, is complete in accordance with the Contract Documents, and there are no remaining Punch List items and CMAR is eligible for Final Payment.

- 2.16. **“Final Payment”** – shall refer to the final payment of all payments due to CMAR for the Project, including all retainage.
- 2.17. **“Guaranteed Maximum Price (“GMP”)”** – shall refer to the CMAR’s guaranteed offer to the City of the maximum price for which CMAR will construct the Project as represented in the design documents, including a fee for CMAR’s services.
- 2.18. **“Performance Specifications”** – shall refer to those specifications provided by Architect-Engineer which identify the specific objectives and the minimum operating standards for the Project upon final completion and thereafter. Performance Specifications require that CMAR employ its prior experience in constructing comparable operating facilities, as well as its skill and ingenuity in detailing the Work in shop drawings so that CMAR can then effectively and efficiently execute the Work in a manner that, at Substantial Completion, the Project achieves those objectives and also there after maintains those standards.
- 2.19. **“Project Budget”** – consists of Owner’s budgeted, requested and available funds for Pre-Construction Phase Services, Construction Phase Services, Construction Manager Fees, City Allowance, and the Cost of Work (including contingency) for Phases 3 through 8. The City’s Project Budget is \$69,518,726, as further identified below:

Pre-Construction Phase Services	\$680,163
Construction Phase Services	TBD
Construction Manager Fee	TBD
City Allowance	TBD
TOTAL	\$69,518,726

- 2.20. **“Project Schedule”** – shall refer to the CMAR’s proposed Project schedule established after the conclusion of the CMAR’s Pre-Construction Phase Services and set forth in the Construction Phase Services Addendum which, upon Owner’s acceptance and execution by City and CMAR, shall be incorporated into this Agreement.
- 2.21. **“Schedule of Values”** – shall refer to the schedule, prepared and maintained by CMAR, allocating portions of the Contract Price to various portions of the Work, which will be used as a basis for progress payments to be made to CMAR by the City during performance of the Work subject to the review and approval of the City.
- 2.22. **“Shop Drawings”** – shall refer to those drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for CMAR and submitted by CMAR to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
- 2.23. **“Solicitation Documents”** – shall refer to the City’s advertised Request for Proposals No. WRS/220665, including all attachments and addenda, and CMAR’s response thereto.
- 2.24. **“Substantial Completion”** – shall mean that: (1) the Project is sufficiently completed, in accordance with the Contract Documents, so that the Owner can reasonably occupy or utilize the Project (or designated portions thereof) for the use for which it is intended; (2) a Certificate of Substantial Completion has been executed and issued by Architect-Engineer and CMAR; and (3) a Certificate of Occupancy has been issued by the permitting authority.

- 2.25. **“Subcontractor” or “Trade Contractor”** – shall refer to any person or entity that is performing, furnishing, supplying, or providing any portion of the Work pursuant to a contract directly with the CMAR. CMAR shall be solely responsible for and have control over the Subcontractors. CMAR shall negotiate all Change Orders and Requests for Proposals with all affected Subcontractors and shall review the costs of those proposals and advise Owner and Architect-Engineer of their validity and reasonableness, acting in Owner’s best interest, prior to requesting approval of each Change Order or Amendment from Owner. The terms “Trade Contractor” and “Subcontractor” shall be used interchangeably herein.
- 2.26. **“Value Engineering”** – shall refer to CMAR’s obligation to continuously review all aspects of the Project during both the Pre-Construction Phase and the Construction Phase of the Project in order to determine whether lower costs can be realized by the City without compromising the achievement of the specific objectives and the minimum operating standards that are set forth in the Project’s Construction Documents and to timely present to the City and Architect-Engineer detailed, written recommendations in order to realize those costs.
- 2.27. **“Work”** – shall include any and all activities, labor, materials, equipment, obligations, and services required on the part of CMAR and its subcontractors to advance and complete the Project, all of which shall be provided in full and strict compliance with the Contract Documents.

ARTICLE 3 - OWNER

3.1. OWNER’S DUTIES AND RESPONSIBILITIES.

3.1.1. Information to be Furnished by Owner.

- (a) Owner shall provide full information in a timely manner regarding the requirements of the Project, including information regarding the Owner’s objectives, constraints and criteria, to include space requirements and relationships, flexibility and expandability requirements, special equipment and systems and site requirements.
- (b) Owner shall furnish (unless other provisions are made) the following with reasonable promptness and at the Owner’s expense, and CMAR shall be entitled to rely on this information:
 - (1) reports, surveys, drawings and tests concerning the conditions of the site;
 - (2) surveys describing physical characteristics, legal limitations and utility locations for the project site; and
 - (3) services of geotechnical engineers when such services are required for site evaluation.

- 3.1.2. **Owner’s Project Manager.** Owner shall designate a City Project Manager who will be fully acquainted with the Project and shall define the lines of Owner authority to approve construction budgets and changes in the Project within the Owner approved Scope of Work and Product Budget. The City Project Manager shall be available as required for conferences during the Pre-Construction Phase and at the Project Site during the Construction Phase to manage the Project on Owner’s behalf.

- 3.1.3. **Owner's Architect-Engineer.** Owner shall retain an Architect-Engineer for design services and to prepare the Construction Documents for the Project.

3.2. **OWNER'S RIGHTS AND DUTIES.**

- 3.2.1 **Right to Inspect Work.** Owner shall have the right to inspect the Work at all times. Such inspection will not relieve CMAR of any of its obligations to perform the Work in strict accordance with the Contract Documents.
- 3.2.2 **Right to Reject Work.** Owner shall have the right to reject Work that does not conform to the Contract Documents. Owner may require special inspection or testing of the Work to determine if the Work is non-conforming. If the Work is found to be conforming, the cost of inspection or testing will be charged to Owner and an appropriate Change Order issued. If such Work is found to be non-conforming, CMAR will pay the cost of correction, inspection or testing.
- 3.2.3 **Right to Stop Work.** If Owner reasonably believes that CMAR is failing to carry out the Work in accordance with the Contract Documents, then Owner may order CMAR to stop the Work, or a portion of the Work, until such time as the cause for such Stop-Work Order has been eliminated. Stop-Work Orders shall be issued by the City Engineer. Owner shall incur no liability for delays occasioned by any Stop-Work Order issued in accordance with this Article.
- 3.2.4 **Right to Carry Out Work.** Should CMAR fail to prosecute the Work properly (including, but not limited to, the failure to man the Work due to labor disputes of any type), or fail to perform any provision set forth in the Contract Documents including, without limitation, unauthorized Project Schedule delays, Owner, after seven (7) calendar days written notice to CMAR without correction, may, without prejudice to any other rights or remedy Owner may have, correct the deficiencies or otherwise supplement CMAR performance through the Owner's own forces or through others, and may deduct the cost thereof from the payment then or thereafter due to CMAR.
- 3.2.5 **Right to Audit.** City shall have the right to audit the books, records, and accounts of CMAR that are directly related to the Agreement.
- (a) CMAR agrees to maintain such financial records and other records as may be prescribed by the City or by applicable federal and state laws, rules, and regulations.
 - (b) CMAR shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Agreement.
 - (c) CMAR shall preserve and make available, at reasonable times for examination and audit by the Florida Office of the Inspector General, the City's internal and/or external auditors, or by any other Florida official with proper authority all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be

retained until resolution of the audit findings; provided, however, that it shall be City's responsibility to notify CMAR of the pendency of such audit.

- (d) Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

3.2.6 **Right to Access.** Owner shall have the right of access to the Work at all times.

3.2.7 **Right to Perform Work and Engage Others.** CMAR acknowledges that portions of the Work related to the Project may be performed by Owner's own forces or under separate contracts by Owner.

3.2.8 **Duty to Coordinate.** Nothing in the Contract Documents shall be deemed to create any duty on the part of the Owner to coordinate the Work with the work of the CMAR, other contractors or subcontractors. CMAR shall be responsible for coordinating all work with others so as to facilitate the general progress of the Project.

ARTICLE 4 – OWNER'S ARCHITECT-ENGINEER

4.1. GENERAL.

4.1.1 **Architect-Engineer.** Owner shall retain an Architect-Engineer lawfully licensed to practice architecture/engineering in the state of Florida. That person or entity is identified as the Owner's Architect-Engineer in this Agreement and is referred to throughout the Contract Documents as if singular in number.

4.1.2 **Consent.** The duties, responsibilities and limitations of authority of Architect-Engineer, as set forth in the Contract Documents, shall not be restricted, modified or extended without written consent of the Owner, CMAR and Architect-Engineer. Consent shall not be unreasonably withheld.

4.2. AUTHORITY AND RESPONSIBILITIES.

4.2.1 **Authority.** Kimley-Horn has been retained to design the Project, to assume all duties and responsibilities of Architect-Engineer during the construction of the Project, and to have the rights and authority assigned to Architect-Engineer under this Agreement.

4.2.2 **Site Observations.** Architect-Engineer will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work is in accordance with the Contract Documents. However, Architect-Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Architect-Engineer will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the CMAR's rights and responsibilities under the Contract Documents.

- 4.2.3 **Report of Findings.** On the basis of the site visits, Architect-Engineer will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner: (1) any known deviations from the Contract Documents and from the most recent construction schedule submitted by the CMAR; and (2) any defects and deficiencies observed in the Work. Architect-Engineer will not be responsible for the CMAR's failure to perform the Work in accordance with the requirements of the Contract Documents. Architect-Engineer will not have control over or charge of and will not be responsible for acts or omissions of the CMAR, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.
- 4.2.4 **Communications Facilitating Contract Administration.** Except as otherwise provided in the Contract Documents, or when direct communications have been specifically authorized, the Owner and CMAR shall endeavor to communicate through the City Project Manager about matters arising out of or relating to the Agreement. Communications by and with the Architect-Engineer's consultants shall be through the Architect-Engineer. Communications by and with subcontractors and material suppliers shall be through the CMAR.
- 4.2.5 **Interpretations.** The interpretations and decisions of Architect-Engineer will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of Drawings.
- 4.2.6 **Requests for Information.** Architect-Engineer will review and respond to requests for information about the Contract Documents. Architect-Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, Architect-Engineer will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 – CONSTRUCTION MANAGER AT RISK

5.1. DUTIES, ACKNOWLEDGEMENTS, AND RESPONSIBILITIES - GENERAL.

- 5.1.1 CMAR accepts the relationship of trust and confidence established by this Agreement.
- 5.1.2 Except as otherwise provided within this Agreement, CMAR shall have a duty to anticipate and provide for adequate contingencies within the Contract Documents for risks associated with the Work for the project taking into consideration all site conditions and difficulties involved in the completion of the Work, variations in permitting time frames and the time frames available to the City. Given this duty, CMAR shall not request additional compensation or time to complete if such delays and complicating factors should have reasonably been anticipated.
- 5.1.3 CMAR agrees to: (1) cooperate with Architect-Engineer; (2) utilize CMAR's best skill, efforts and judgment in furthering the interest of Owner; (3) furnish efficient business administration and supervision; (4) furnish at all times an adequate supply of workers and materials; and (5) perform the Work in the best way and the most expeditious and economical manner, consistent with the interests of Owner.

- 5.1.4 CMAR acknowledges and agrees that CMAR shall be acting as an independent contractor at all times during the performance of the Work and no provision in the Agreement shall create an employment or agent relationship between the parties.
- 5.1.5 CMAR shall be solely responsible for the acts of its employees and subcontractors in the performance of the Work.
- 5.1.6 CMAR represents and warrants that it: (1) is authorized to do business in the state of Florida where the Project is located; (2) is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Work and the Project; (3) is familiar with the local and special conditions under which the Work is to be performed; and (4) has, or prior to the submission of the GMP Proposal will have, correlated onsite observations with the requirements of the Contract Documents.
- 5.1.7 Notwithstanding anything to the contrary in the Contract Documents, and despite CMAR's delegation of the responsibility therefor to any of its subcontractors, CMAR remains fully responsible to Owner for all duties of CMAR under the Contract Documents including: (1) the construction means, methods, techniques, sequences and procedures in performing the Work; and (2) initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement.
- 5.1.8 CMAR acknowledges and agrees that in no event shall Owner be deemed to have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted Owner in the Contract Documents.
- 5.1.9 CMAR agrees that if CMAR is injured or damaged by any other contractor, including without limitation, delay damages, acceleration costs, extra work claims, inefficiency claims, damage to others' work, damage to property and injuries to persons (including death), CMAR's sole remedy is to assert a Claim or cause of action directly against the other contractor causing the injury or damage. CMAR hereby releases, acquits, holds harmless and forever discharges Owner of and from any and all liability for performance or non-performance of other contractors or for any act or omission of other contractors.
- 5.2. **SCOPE OF CMAR SERVICES - GENERALLY**
 - 5.2.1. **Availability.** CMAR and its representatives shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. CMAR shall communicate regularly with Owner and shall designate a Project Manager with requisite authority to act on behalf of CMAR.
 - 5.2.2. **Maintenance of Licensure.** CMAR shall at all times be a person or entity qualified to perform work under section 489.105, Florida Statutes, and who is registered and licensed under the Florida Department of Business and Professional Regulation and in compliance with local laws and ordinances to provide construction services other

than as a materialman or laborer and directly obtain all bonds and insurance required under the Contract Documents relative to the Project.

- 5.2.3. **Inspection of Project Site.** CMAR represents and warrants that it will inspect the Project Site and all surfaces and areas or structure(s) related to the Work, prior to performance of the Work, and immediately notify Owner in writing of any deficiencies that would adversely affect the Project. By commencing Work, CMAR accepts full responsibility of all surfaces and areas or structure(s) on which Work has begun, except to the extent that such deficiencies are concealed prior to the start of Work.
- 5.2.4. **Review of Contract Documents.** CMAR shall review, carefully study, and compare the Contract Documents, materials and other information provided by the Owner and Architect-Engineer, and shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered, or any variance from any laws.
- 5.2.5. **Review of Construction Documents.** CMAR shall review the Construction Documents and advise on site, foundation, building systems, materials and equipment, construction feasibility, availability of labor and materials, time requirements for procurement, installation and construction relative costs, and provide recommendations which will include, but shall not be limited to, the division of work into separate bid packages to affect economy and permit phasing of procurement and construction as appropriate.
- 5.2.6. **Technical Proposals.** CMAR shall review performance and other technical specifications, in consultation with the Architect-Engineer, to verify their availability and for the structuring of requests for proposals for the procurement and installation of technical systems and other components of the Project. Technical consultation between CMAR and Architect-Engineer and its professional disciplines shall not infringe upon the design responsibility of those disciplines. CMAR shall make recommendations relating to the cost, constructability and other such technical and economical characteristics of a particular design or material selection; however, if such recommendations are accepted for incorporation into the Project, their application with regard to structural stability and life safety shall be the responsibility of the Architect-Engineer. CMAR will not be assigned responsibilities that duplicate those assigned in the design professionals' contract for Architect-Engineer services.
- 5.2.7. **Project Site Facilities.** CMAR shall review plans and specifications to ensure that they provide for all necessary temporary facilities required for the performance, management, inspection, and supervision of the Work.
- 5.2.8. **Sufficiency of Documents.** CMAR warrants that all Contract Documents and other documents or materials prepared and/or provided by CMAR and/or its subcontractors will be complete and functional in all respects and will set forth in sufficient detail the necessary information to properly perform the Project in accordance with commonly accepted professional standards.
- 5.2.9. **Cost Consultation.** CMAR shall provide continuous cost consultation services for the duration of this Agreement. CMAR shall prepare solicitation and purchasing

documents and be responsible for all procurement and construction cost estimates. CMAR shall prepare final cost estimates for all early procurement of equipment and materials; for all building systems and components; and for all construction labor. CMAR shall notify the City when, in its opinion, the estimated construction cost will exceed the GMP and at any time the anticipated completion date will exceed the approved scheduled completion.

- 5.2.10. **Value Engineering.** CMAR shall review the plans and specifications as prepared by Architect-Engineer and perform value engineering services. The City Project Manager, the Architect-Engineer, and CMAR shall review the proposed changes, and the City shall determine which of those changes will be incorporated into the plans and specifications.
- 5.2.11. **Long Lead Time Procurement.** CMAR shall identify, recommend for purchase, and expedite the procurement of equipment, materials, and supplies that require long lead time for procurement or manufacture.
- 5.2.12. **Trade Work Coordination.** CMAR shall review and analyze the plans, specifications, and schedules for the Project and make recommendations necessary to minimize conflict and overlap of jurisdiction between Trade Contractors.
- 5.2.13. **Procurement Services.** CMAR shall provide advise regarding the current construction market, bidding climate, status of key subcontractor and supplier markets, and other local economic conditions and develop a procurement strategy plan based on same.
 - (a) **No-Conflict of Interest.** The procurement activity of CMAR should be conducted in a manner so as to preclude any conflict of interest. In particular, CMAR shall avoid bidding work in competition with bidding Trade Contractors. Neither CMAR, nor any firm in which a principal stockholder or member of CMAR's firm has a financial interest, may make or cause to be made any bid for construction work on the Project during the term of the Agreement. Notwithstanding the foregoing, and upon City's written approval, CMAR may: (1) perform the work of a Trade Contractor who fails to perform in accordance with the provision of its trade contract; or (2) perform certain portions of the Work if doing so will result in documented cost savings to the City.
 - (b) **Assembling Work Packages.** As the design develops, CMAR shall, in collaboration with the Architect-Engineer, review all design documents and divide the Work into bid packages ("Bid Packages" or "Work Packages") to affect economy and to permit phasing of procurement and construction; giving consideration to such factors as type and scope of work, time of performance, availability of labor and materials, community relations, factory versus on-site production costs, shipping costs and size limitations, building code restrictions, local ordinances requirements, and other limiting factors.

- (c) **Solicitation of Competitive Bids.** CMAR shall endeavor to achieve maximum competition among qualified bidders in order to obtain the most reasonable price for acceptable work. CMAR shall endeavor to obtain no less than three bids for each Work Package and avoid imposing any unnecessarily restrictive requirements which might unduly limit the number of bids received. CMAR shall prepare invitation for bids describing each package clearly, accurately, and in sufficient detail to inform prospective bidders of the nature and scope of the work, including instructions for submitting qualifications. CMAR shall also prepare a list of potential bidders for the various portions of the Work for review with the City, verify references and previous performance of potential bidders, and review all such findings with appropriate representatives of the City. The procedure for advertising, pre-qualification, bidding, and awarding trade contracts must be agreed upon by the City and the CMAR.
- (d) **Advertisement of Bidding Opportunities.** Using its best business skills, CMAR shall develop and attract interest in the Project from Trade Contractors by publicizing the invitation for bids through distribution to reputable Trade Contractors and suppliers, posting in public places, advertising in trade journals and newspapers, and using such other means as may be appropriate in sufficient time to enable prospective bidders to prepare and submit their qualifications.
- (e) **Pre-Bid Conferences.** CMAR shall conduct pre-bid conferences to inform prospective bidders of the requirements of the Contract Documents, provide clarifications, and answer questions as necessary. Any specific requirements for compliance with the laws and regulations governing the agencies having jurisdiction over the Project (i.e. Public Entity Crimes, Equal Opportunity/Non-Discrimination, Diverse Business Enterprise, etc.) shall be fully explained and emphasized at pre-bid conferences.
- (f) **Bid Bonds and Minimum Qualifications.** CMAR may require bidders to submit bid bonds and evidence of bonding capacity, as well as meet specified qualifications as prerequisite to bidding on the Work.
- (g) **Diverse Business Participation.** CMAR shall promote opportunities for DBE firms to participate in submitting offers for subcontracts. CMAR shall make a good faith effort to encourage DBE participation and make potential subcontractors and suppliers aware that participation is taken into consideration when awarding contracts. Notwithstanding the foregoing, CMAR is under no obligation to award subcontracting opportunities to a higher-priced DBE firm where doing so will result in an upward adjustment of the GMP.
- (h) **Opening Bids and Award of Trade Contracts.** CMAR shall open bids submitted by subcontractors and suppliers for all Work Packages at the time and location so indicated in its advertisement for bid (or as altered by addendum sent to all plan holders). Bids shall be reviewed in the presence of the City Project Manager in a way that does not disclose the contents of the bid during the selection process to any entity other than the City and the CMAR.

- (1) CMAR shall analyze and evaluate the bids received and their relationship to budgeted amounts and prepare for review with the City a bid tabulation and such other supporting data as necessary to properly compare the bids and their responsiveness to the desired scope of work;
- (2) CMAR shall review the scopes of work in detail with apparent qualified low bidders and attempt to achieve additional savings through negotiation whenever practical. CMAR shall maintain records of all pre-award interviews with apparent low bidders;
- (3) CMAR shall prepare and submit written recommendations to the City for the award of trade contracts;
- (4) CMAR shall award and execute trade contracts with successful bidders and provide the City with copies of fully executed trade contracts, insurance certificates, and bonds.

5.2.14. **Construction Means, Method, and Management.** CMAR will be solely responsible for the means, methods and techniques of performing the Work. CMAR shall be responsible for providing and implementing a construction management plan that incorporates (at least) the following elements:

- (a) Organization of the Construction Phase of the Project, including assigned responsibilities and level of authority within the management of the Project;
- (b) Communication plan for the distribution and management of documents, implementation of action items, the frequency of reporting, and project controls;
- (c) Construction contract administration;
- (d) Cost management;
- (e) Time management;
- (f) Quality management;
- (g) Risk management;
- (h) Site management and environmental controls;
- (i) Regulatory requirements and permitting;
- (j) Procurement strategy; and
- (k) Project start up and commissioning.

5.2.15 **Safety Management.** CMAR shall be responsible for developing, implementing, maintaining and supervising all safety programs in connection with the Work and the Project site. CMAR shall be responsible for taking all reasonable safety precautions to prevent injury or death to persons and/or damage to property. These obligations extend to the protection of all individuals performing Work or on the Project site, including visitors to the Project site, and all other persons who may be affected by the Work in any way.

- (a) **Safety of Property.** CMAR will be responsible for taking all reasonable precautions to prevent damage to property and securing the property. Protection of property includes the Work and all materials and equipment to be incorporated into the Work, whether in storage on or off the Project Site, or under the care, custody or control of CMAR or any person or entity for whom CMAR is responsible. In addition, protection of property includes other property at the Project site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities. CMAR acknowledges that the site is located in an undeveloped area and will secure the property against trespassing, vandalism and other unauthorized access to the property.
- (b) **Applicable Safety Laws.** CMAR will ascertain and comply with all notice and posting requirements and will comply with all applicable Laws bearing on the safety of persons or property or their protection from damage, injury or loss.
- (c) **Required Safeguards.** CMAR will ascertain the requirements for and will erect and maintain, as required by Law and/or existing conditions, all reasonable safeguards for safety and protection, including but not limited to, the posting of danger signs and other warnings against hazards, and the promulgation of safety regulations and notification to owners and users of adjacent property.
- (d) **Hazardous Activities.** If the Work involves any hazardous activities or the use or storage of hazardous materials or equipment, CMAR and subcontractors will fully coordinate with Owner exercise the utmost care and will carry on such activities under the supervision of properly qualified and licensed personnel. The use of explosives while undertaking any Project is prohibited.
- (e) **Remedy of Damages.** Any and all damage or loss to any property, caused in whole or in part by CMAR, subcontractors or any other person or entity for whose performance CMAR is responsible, will be promptly remedied or repaired to its original condition at the expense of CMAR.

5.2.16 **Management Control System.** CMAR shall initiate and activate a management control system (the "MCS") as an integral part of its administration of the Project, using both manual and automated procedures to support functions such as planning, organizing, scheduling, budgeting, reporting construction progress and expenditures, accounting, documentation, identifying variances and problems, and facilitating decision making. The data provided by the MCS chosen by CMAR must be timely, accurate, responsive to the needs of management at all levels, and fully capable of providing a sound basis for managing the construction of the Project. The MCS must contain subsystems for use in meeting CMAR's Project objectives relating to timely completion, economy, and quality for the entire duration of the Agreement.

- (a) **Planning and Progress Monitoring.** CMAR shall use the MCS to prepare a schedule that integrates the projected activities of the CMAR, the Architect-Engineer, and the City particularly as they relate to the value engineering effort and the preparation of the GMP. CMAR shall produce a Preliminary Construction Schedule for review and approval by the City. CMAR shall prepare a final construction schedule incorporating changes required as a result of the City's

review. This schedule shall be based on the Critical Path Method (CPM) and shall be updated and included in monthly progress reports.

- (b) **Budget Control and Accounting.** CMAR shall provide for the periodic inclusion of approved change orders in the original budget. The new budget figure will be identified as the "current working estimate." CMAR shall also identify variances between "current working estimate" and the original budget and report them promptly to the City.
- (c) **Documentation and Document Control.** CMAR shall provide documentation of all changes made in the original schedule and original budget so that complete traceability is maintained between the original plan (schedule and budget) and the latest approved plan.
- (d) **Document Control.** CMAR shall utilize a system for Project document control and shall provide for access to the system by the Project Team.
- (e) **Records Maintenance.** CMAR will maintain at the Project Site copies of records of all documents relating to the Project, including all contracts, Submittals, permits, a current marked set of working Drawings and Specifications, including as-builts to facilitate the preparation of record drawings, subcontracts, orders for materials, equipment and/or supplies and governmental, commercial and technical standards and specifications. At a time prior to Substantial Completion, CMAR will deliver duplicates of such documents to Owner.
- (f) **Accounting Records.** CMAR will maintain cost accounting records relating to the Work in accordance with generally accepted accounting principles. Owner will have access to CMAR's accounting records at all reasonable times and CMAR agrees to make such changes to its system of keeping these records as Owner may reasonably request in writing.
- (g) **Reporting.** The MCS, when fully implemented, will generate reports necessary for effective control of the overall construction program. Reports will be provided to management in summary form. Reports will also be provided to subordinate levels of management in sufficient detail consistent with their respective requirements and responsibilities.

5.2.17. **Preparation of the Guaranteed Maximum Price Proposal (the "GMP Proposal").** CMAR shall prepare and submit for City's approval an itemized GMP Proposal to construct the Project, clearly summarizing the cost for each component of the Work as it was packaged and bid and establishing the amount of contingency funds required. Upon negotiation and acceptance of the GMP Proposal by City and CMAR, the detailed itemization of costs, prices and supporting data comprising the selected GMP will be incorporated into and made a part of the Construction Phase Services Addendum to this Agreement.

5.2.18. **Project Site Clean Up.** At all times CMAR shall be responsible for keeping the Project site and related storage areas and public and private areas free from accumulations of waste materials or rubbish. If for any reason, CMAR or any subcontractor fails to completely clean up and remove its waste materials, rubbish and other materials at

the Project site to a level acceptable to the Owner, Owner may do so and the cost thereof will be charged to CMAR, through a deduction from the final pay application.

- 5.2.19. **Owner Occupancy.** CMAR shall provide a smooth Owner occupancy of the Project. CMAR shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the Work, as completed by CMAR, "online" and in such condition as will satisfy Owner's operational requirements. CMAR recognizes Owner is a public entity responsible for operating public facilities. If the Project, or any portion, is not complete in time for regularly scheduled occupancy by the City, then Owner may, at its option, occupy the Project or a portion thereof prior to CMAR obtaining Substantial Completion. In the event of occupancy prior to Substantial Completion, the parties agree that occupancy will not be construed as acceptance of the Work or construed as Substantial Completion. CMAR shall conduct the punch list inspection, incorporating the Owner's punch list, and coordinate the completion of all final punch list work to be done with Owner occupancy requirements in mind.

5.3. **SUBCONTRACTUAL RELATIONS.**

- 5.3.1 **List of Subcontractors/Sub-subcontractors.** CMAR shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work at a time agreed upon by the Owner. The Owner may reply within fourteen (14) days to CMAR in writing stating: (a) whether the Owner has reasonable objection to any such proposed person or entity or (b) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.
- 5.3.2 **Reasonable Objection.** CMAR shall not contract with a proposed person or entity to whom the Owner has made reasonable objection. CMAR shall not be required to contract with anyone to whom CMAR has made reasonable objection. If the Owner has reasonable objection to a person or entity proposed by the CMAR, CMAR shall propose another to whom the Owner has no reasonable objection.
- 5.3.3 **Substitution.** CMAR shall not substitute a subcontractor, person or entity previously selected if the Owner makes reasonable objection to such substitution.
- 5.3.4 **Subcontract Requirements.**
- (a) By appropriate written agreement, CMAR shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to CMAR by terms of the Contract Documents, and to assume toward CMAR all the obligations and responsibilities, including the responsibility for safety of the subcontractor's Work, which the CMAR, by these Documents, assumes toward the Owner.
 - (b) Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the subcontractor, unless specifically provided otherwise in the

subcontract agreement, the benefit of all rights, remedies and redress against CMAR that the CMAR, by the Contract Documents, has against the Owner.

- (c) Where appropriate, CMAR shall require each subcontractor to enter into similar agreements with sub-subcontractors.
- (d) CMAR shall make available to each proposed subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the subcontractor will be bound, and, upon written request of the subcontractor, identify to the subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors shall be similarly required to make copies of applicable portions of such documents available to their respective proposed sub-subcontractors.
- (e) Each subcontract agreement for a portion of the Work shall be assignable by CMAR to the Owner, provided that:
 - (1) assignment is effective only after termination of the Agreement by the Owner for either cause or convenience pursuant to the terms of this Agreement, and only for those subcontract agreements that the Owner accepts by notifying the subcontractor and CMAR in writing; and
 - (2) assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Agreement.
- (f) When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Construction Manager's rights and obligations under the subcontract.
- (g) Upon any such assignment to the Owner under this Article, the Owner may further assign the subcontract to a successor CMAR or other entity. Any assignment made under this Article shall not relieve CMAR of its duties and responsibilities under this Contract nor shall any assignment be deemed a waiver by the Owner of any action or claims which it could assert against the Construction Manager.

5.3.5 **Owner Payments to Subcontractors.**

- (a) **In Event of CMAR Default.** In case of any default hereunder by the CMAR, that is not the fault of a subcontractor, the Owner may make direct payment to the subcontractor, less appropriate retainage. In that event, the amount so paid the subcontractor shall be deducted from the payments to the CMAR.
- (b) **No Payment Obligation of Owner.** Nothing contained herein shall create any obligation by the Owner to make any payments to any subcontractor and no payment by the Owner to any subcontractor shall create any obligation to make any further payments to any subcontractor.

5.4 **PERMITS, COMPLIANCE, AND TAXES**

- 5.4.1. **Application and Payment for Permits.** CMAR will apply for, obtain and pay for any and all required permits and all other required approvals, governmental fees, licenses and inspections necessary for the proper execution and completion of the Work. CMAR shall include such cost as part of the Guaranteed Maximum Price Proposal.

- 5.4.2. **Variance of Contract Documents.** CMAR is not required to ascertain whether the drawings or specifications are in accordance with applicable laws, statutes, ordinances, codes rules and regulations, or lawful orders of public authorities. In the event CMAR believes that any of the Contract Documents are at variance with applicable laws in any respect, CMAR shall promptly notify Owner in writing and any necessary changes will be accomplished by an appropriate modification to the Contract Documents.
- 5.4.3. **Work in Violation of Laws.** CMAR shall assume full responsibility for any Work performed by CMAR or its subcontractors which was knowingly contrary to any laws at the time the Agreement was executed.
- 5.4.4. **Taxes.** City is exempt from all federal excise and state sales taxes (State of Florida Consumer's Certification of Exemption 85-8012621655C-9). CMAR shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work. CMAR shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the City, nor will CMAR be authorized to use City's Tax Exemption Number for securing materials listed herein. Notwithstanding anything herein to the contrary, because Owner is exempt from sales tax and wishes to generate sales tax savings for the Project, Owner reserves the right to make direct purchases of various construction materials and equipment included in the Work.

ARTICLE 6 - COMPENSATION FOR PRE-CONSTRUCTION PHASE SERVICES

- 6.1 **COMMENCEMENT OF PRE-CONSTRUCTION PHASE.** The Pre-Construction Phase shall commence upon the issuance of a Notice to Proceed for same.
- 6.2 **PRE-CONSTRUCTION PHASE COMPENSATION.** As total compensation for all Pre-Construction Phase Services as defined herein and in CMAR'S **Pre-Construction Phase Scope of Services** attached hereto as **Exhibit A**, including, but not limited to: attending meetings, programming, providing schematic and design development estimates, constructability reviews, pricing alternates, value engineering, prequalifying subcontractors, developing subcontractor bid packages and preparing the GMP, CMAR shall receive a fee not to exceed **SIX HUNDRED EIGHTY THOUSAND, ONE HUNDRED SIXTY-THREE AND NO/100 DOLLARS (\$680,163)** based on the hour and fee schedule attached to Exhibit A.
- 6.3 **FREQUENCY OF INVOICING.** CMAR shall invoice Pre-Construction Costs monthly and such costs shall be based upon the percent completion of the designated portion of the Pre-Construction Services for each particular month as determined by Owner and an itemized statement of reimbursable expenses incurred for such month, respectively, and Owner's receipt of CM's written invoice for such payment.
- 6.4 **INVOICE SUBMISSION.** CM's invoices shall be in a form reasonably acceptable to Owner and be accompanied by such other information, documentation, and materials as Owner may reasonably require. Invoices must be reviewed and approved by the City's Project Manager prior to payment. Review and approval shall not be unreasonably withheld, conditioned, or delayed. All invoices, reports, and other supporting documentation submitted by CMAR shall include the City Contract Number, date, and an assigned Invoice Number and be submitted

to the City Project Manager at: **City of Ocala Capital Improvement Projects Division, Attn: Jimmy Lopez, Address: 1805 NE 30th Avenue, Bldg. 700, Ocala, Florida 34470, E-Mail: jlopez@ocalafl.gov.**

- 6.5 **SUBMISSION OF FINAL INVOICE FOR PRE-CONSTRUCTION PHASE SERVICES.** The final invoice for Pre-Construction Services shall not be submitted until either: (i) the Construction Phase Services Addendum is executed for the entire Work but prior to construction starting; or (ii) the Parties fail to reach agreement on the GMP and Owner elects to terminate the Agreement as provided herein, whichever occurs first.
- 6.6 **PAYMENT OF INVOICES.** Florida law requires timely payment for both construction and non-construction services. All payments made by City shall be subject to the Florida Prompt Payment Act, Part VII of Chapter 218, Florida Statutes. CMAR shall be paid the unpaid balance of monies due for work covered by invoices reviewed and approved by the City Project Manager, less any disputed amounts, within twenty-five (25) business days of approval. CMAR shall be notified of disputed amounts within twenty-five (25) business days of the receipt of the invoice.

ARTICLE 7 - COMPENSATION FOR CONSTRUCTION PHASE SERVICES

- 7.1 **GUARANTEED MAXIMUM PRICE.** The Guaranteed Maximum Price (the "GMP") shall represent CMAR's guaranteed offer to the City of the maximum price for which it will construct the Project, as represented in the design documents, including the fee for CMAR's services.
- 7.1.1 The intent and purpose of the GMP is to establish a maximum not-to-exceed price for the construction of the Project, not a maximum price for line items. CMAR shall provide a line-item reconciliation at the conclusion of the Project, at the time of the submission of the Final Payment Application, reconciling the final Schedule of Values to CMAR's final job cost detail by line item.
- 7.1.2 CMAR agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Construction Documents.
- 7.2 **GMP PROPOSAL SUBMITTAL AND NEGOTIATION.** The GMP shall be negotiated.
- 7.2.1 CMAR shall submit its initial GMP Proposal to the City for review within forty-five (45) days of receipt of all construction/design documents.
- 7.2.2 City shall identify, in writing, all discrepancies in the GMP Proposal and provide same to CMAR. CMAR and City shall collaborate to resolve any estimate differences in order to reach a GMP satisfactory to both Parties.
- 7.2.3 This negotiation process must be accomplished within a maximum of twenty-one (21) days of submission of the initial GMP Proposal unless additional time is mutually agreed to in writing by the parties.
- 7.2.4 Upon approval and acceptance by the City, the final Guaranteed Maximum Price shall be set forth in the GMP Proposal attached to the Construction Phase Services Addendum executed by the Parties and incorporated in this Agreement.

- 7.3 **GMP PROPOSAL CONTENTS.** The Guaranteed Maximum Price shall include the cost of the Construction Management Fee and the Cost of the Work (general conditions, subcontracted costs and other direct costs as defined herein) and represent the sum total of all costs associated with completing the Work. The GMP Proposal shall also include the following items which, once approved, shall be incorporated into this Agreement as part of the Construction Phase Services Addendum:
- 7.3.1 An itemized statement of CMAR's General Conditions expenses for the Project which are to be paid as the Work progresses with each Application for Payment based on the percentage of completion of the Work;
 - 7.3.2 A proposed Construction Schedule;
 - 7.3.3 If the drawings and specifications are not 100% complete and the preparation of the GMP is required to maintain the Project Schedule, CMAR shall provide line items within the GMP Proposal for further development of drawings and specifications by the Architect-Engineer, which shall not include changes in scope, systems, materials, or equipment.
 - 7.3.4 A written statement thoroughly explaining the foundation on which the GMP is based including, but not limited to:
 - (a) a complete list of drawings and specifications used to prepare the GMP;
 - (b) all addenda and changes in conditions of the Agreement used to prepare the GMP;
 - (c) a complete list of Owner provided allowances and a statement explaining the CM's understanding of their use;
 - (d) a proposed Substantial Completion date; and
 - (e) a detailed list of assumptions, exclusions, allowances and clarifications that were made in preparing the GMP.
 - 7.3.5 If the Drawings and Specifications are not 100% complete and the preparation of the GMP is required to maintain the Project Schedule, CMAR shall provide line items within the GMP Proposal for further development of Drawings and Specifications by the Architect-Engineer, which shall not include changes in scope, systems, materials, or equipment.
- 7.4 **CONTINGENCY.** CMAR shall include in the GMP an agreed upon sum as the Contingency, which is included for the purpose of defraying the risks associated with cost estimates based on incomplete construction documents, estimating errors, code compliance issues, owner-directed changes in the scope of Work, and unforeseen circumstances relating to the procurement of Trade Contracts. These funds may only be accessed by CMAR when and to the specific extent authorized by Owner in Owner's sole discretion.
- 7.4.1 **Contingency Use Requests (CUR)**. A Contingency Use Request will identify the cost of work based on time and material supported by invoices and daily time records with a not-to-exceed limit. Lump sum or unit priced Contingency Use Requests submitted by CMAR may be accepted at the Owner's sole discretion.

- (a) Contingency may be used for design errors and omissions, scope gaps in the Trade Contracts and unforeseen conditions in the Work.
- (b) Owner may use the Contingency to increase the scope of Work if the increased Work will not cause the schedule to be extended or the GMP to be exceeded.
- (c) Use of the Contingency shall increase Construction Management fees but not General Conditions.

7.4.2 **Effect of Trade Contract Pricing on Contingency.**

- (a) If CMAR Trade Contracts are executed below the applicable line items reflected in the GMP, any surplus will be added to the Contingency.
- (b) If CMAR Trade Contracts are executed above the applicable line item in the GMP, the deficiency will be taken from the Contingency.

7.4.3 **Contingency Balance Upon Completion.** If any funds remain in the Contingency at the completion of the Project, the GMP shall be reduced by Change Order to return all unused Contingency to the Owner.

7.4.4 **Value Engineering Savings.** Value engineering savings, proposed by CMAR and approved by Owner, shall be added to the Contingency.

7.4.5 **Final GMP.** Upon completion of the Project, the Final Guaranteed Maximum Price shall not include any unused Contingency, sales tax savings, or Owner-direct purchases.

7.5 **TRUTH IN NEGOTIATION.** CMAR certifies that the wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of execution of each Project of which this certificate is a part. The original price and any additions thereto shall be adjusted to exclude any sums by which the Owner determines the Project amount was increased due to inaccurate, incomplete or non-current wage rates, labor burden rates and other factual unit costs (including wage rates and labor burden rates that include amounts that are not considered reimbursable under the terms of the Agreement) and that such original Project adjustments shall be made within one year following the end of the Agreement.

7.6 **REIMBURSEABLE COSTS.** In consideration of the performance of the Agreement, Owner shall pay CMAR for the following listed items, all of which shall be considered as reimbursable Costs of Work for the Project ("Reimbursable Costs" or "Costs of Work"). Reimbursable Costs shall be directly related to the Project and be proposed by CMAR in the Guaranteed Maximum Price Proposal for approval by the Owner. Upon acceptance and approval, CMAR's General Condition expenses shall be incorporated into this Agreement as part of the Construction Phase Services Addendum. CMAR shall not incur any Reimbursable Costs prior to the Owner's acceptance of the GMP Proposal and issuance of a Notice to Proceed.

7.6.1 **List of Reimbursable Costs.** These items will be billed monthly and will require supporting documentation acceptable to the Owner. Any items not listed are subject to approval by the Owner.

- (a) Wages or salaries of direct employees of CMAR performing Work at the Project site or, with the prior written approval of Owner, working off-site. Normal and

appropriate components CMAR's Labor Burden shall include actual costs of payroll taxes (FICA, SUTA, FUTA), insurance (health, life, dental, disability), retirement plan, Workers Compensation (blended rates are not acceptable – reimbursement will be based on the actual rate for each person charging to the project and shall include modifier and discounts). Owner's target for Labor Burden is less than forty percent (40%). Labor Burden components which will not be reimbursed include, but are not limited to, bonuses, excessive pension/profit sharing cost (not to exceed 8% of qualifying wages), club dues, automobiles, training/seminars, uniforms, and administrative support.

- (b) Wages or salaries of CMAR's supervisory and administrative personnel engaged in the performance of the Work at the Project site or, with the prior written approval of Owner, working off-site.
- (c) Costs of the subcontractors for their work completed in accordance with subcontracts with the CM.
- (d) Costs, including transportation, inspection, testing, storage and handling of materials, equipment and supplies incorporated or reasonably used in completing the Work.
- (e) Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of CMAR, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.
- (f) Costs of removal of debris and waste from the Project Site.
- (g) Reasonable costs and expenses incurred in establishing, operating and demobilizing the Project site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.
- (h) Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by CMAR at the Site, whether rented from CMAR or others, and incurred in the performance of the Work.
- (i) Premiums for insurance and bonds required by this Agreement. Owner will not reimburse components of General Liability or Professional Liability Insurance that are not direct costs of insurance for the Project. If any component of insurance premiums is self-insured, the cost must be based on actual costs or actuarially determined estimates. CMAR will need to disclose such to the Owner, and provide the basis upon which such costs are allocated to the Project. CMAR shall disclose if they are self-insuring any portion of their reimbursable insurance costs.
- (j) All fuel and utility costs incurred in the performance of the Work.

- (k) Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work (except where sales tax is credited to Owner).
- (l) Costs for permits, royalties, licenses, tests and inspections incurred by CMAR as a requirement of the Contract Documents.
- (m) Permit fees, licenses, royalties, and deposits which are lost, except to the extent caused by CMAR's negligence.
- (n) Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property for causes other than CMAR's negligence.
- (o) Costs of correction of the Work that are not attributable to negligence or willful or wanton misconduct of CMAR or subcontractors shall be submitted to the Owner for review and consideration of reimbursement.
- (p) Vehicle costs to be limited to reasonable lease, maintenance, gas and insurance expenses as determined by Owner.
- (q) Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing in advance by Owner.

7.6.2 Construction Management Fee (Overhead and Profit).

- (a) Owner shall pay to CMAR a negotiated fixed Construction Management Fee based on the Cost of Work established at the time the GMP is formally approved by the Parties.
- (b) The Construction Management Fee shall constitute the total compensation to CMAR for all overhead not reimbursable as a Cost of Work, as well as the CMAR's total profit for Construction Phase Services.
- (c) The total amount of the Construction Management Fee shall be paid proportionately to the Cost of Work in place, less retainage.

7.6.3 Exclusions (Costs Not to be Reimbursed).

- (a) Owner will not reimburse components of Labor Burden that are not normal and appropriate. Labor Burden components which will not be reimbursed include, but are not limited to, bonuses, excessive pension/profit sharing cost (not to exceed 8% of qualifying wages), club dues, auto, training/seminars, uniforms, administrative support.
- (b) Owner will not reimburse components of insurance or bond expenses reserved for deductibles, coverage not related to the Project (pollution insurance, kidnap & ransom insurance, director's liability insurance, others as determined by Owner) and administration.
- (c) Salaries and other compensation of CMAR personnel stationed at CMAR's principal office or offices other than the Project site office unless agreed in writing by Owner.

- (d) Expenses associated with the CMAR's principal office and branch offices other than the office located at the Project site.
- (e) Other off-site overhead and general expenses of CMAR not expressly included in the Reimbursable Costs identified in this Article.
- (f) Costs due to the negligence of CMAR, any subcontractor, or anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable.
- (g) Costs incurred by CMAR for the repair or correction of defective, damaged or non-conforming Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- (h) Costs associated with CMAR's staff bonuses, profit sharing/pension costs in excess of 8% of qualifying wages, incentive compensation, staff training, uniforms, warranty costs and unsupported costs.
- (i) Costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

7.7 **APPLICATIONS FOR PAYMENT.** Each Application for Payment shall constitute a certification and representation by CMAR to Owner that the construction has progressed to the point indicated and the quality of the Work covered by the application is in accordance with the Contract Documents. Payment requests shall be processed and paid in accordance with Part VII, Chapter 218, Florida Statutes, known as the Florida Prompt Payment Act, and the terms of this Agreement.

7.7.1 **Schedule of Values.** Before submitting its first Application for Payment to Owner, CMAR will submit a Schedule of Values based upon the Project GMP allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Owner may require. This Schedule of Values, unless objected to by Owner, will be used as the basis for CMAR's Application for Payment.

7.7.2 **Itemized Application for Payment.** CMAR shall submit to Owner on the twenty-fifth (25th) day of each month, beginning with the first month after approval of the Project GMP and related Notice to Proceed, an itemized Application for Payment, in compliance with the approved Schedule of Values, supported by such data substantiating CMAR's right to payment as Owner may require, but in each case less the total of payments previously made, and less amounts properly withheld.

7.7.3 **Construction Management Fee.** The amount of Construction Management Fee to be included in CMAR's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Construction Management Fee.

7.7.4 **Materials at Project Site.** Payments will be made on account of materials or equipment not yet incorporated in the Work but delivered, suitably stored and protected at the Project site.

7.7.5 **Materials Off Project Site.** Payments will not be made for materials or equipment stored for the Project at some other location.

- 7.7.6 **Transfer of Title.** Title of all Work, materials and equipment covered by an Application for Payment will pass to Owner either by incorporation in the Work or upon the receipt of payment by CMAR, whichever occurs first, and will be free and clear of all liens, claims, security interests or encumbrances. CMAR will have no property interest in Work, materials and equipment, including without limitation, stored materials and equipment, for which title has passed to Owner.
- 7.7.7 **Payment.** After review of the Application for Payment, Owner will make payment within twenty-five (25) Days after approval or, if Owner does not agree with the Application for Payment, it will promptly so notify CMAR in writing. Owner will withhold payment for only those items in dispute; undisputed items will be paid in accordance with the Agreement.
- 7.7.8 **Change Orders.** Application for Payments will show agreed upon Change Orders as separate itemized line items for payment, including the percent of completion of the Change Order, the amounts of previous Application for Payments, retainage and payments for the Change Order.
- 7.7.9 **Payment to Subcontractors.** Upon receipt of payment from Owner, CMAR shall promptly pay each Subcontractor (provided such subcontractor has not been paid previously) within ten (10) days from receipt the amount to which said subcontractor is entitled out of the amount paid to CMAR on the account of such Subcontractor's work, less a retainage of five percent (5%).
- (a) If there remain items to be completed, CMAR shall notify subcontractor of those items required for completion.
 - (b) Thereafter, CMAR shall pay to the subcontractors, monthly, the amount retained for each incomplete item after each of said items is completed.
 - (c) Before issuance of final payment without any retainage, the subcontractor shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-builts have been submitted and instructions for the Owner's operating and maintenance personnel is complete.
 - (d) To the extent a subcontractor has not completed the work in accordance with the Construction Documents (or CMAR disputes the subcontractor's invoice or pay request in good faith) and CMAR notifies the party whose payment is disputed, in writing, of the amount in dispute and the actions required to cure the dispute, CMAR may withhold the disputed portion of the payment.
 - (e) Should CMAR withhold any payment to a subcontractor, CMAR shall provide a weekly report to the Owner listing all outstanding payments to subcontractors. Upon request, CMAR shall return the disputed payment to the Owner and CMAR shall provide a credit to the costs of the Project in the CM's next Application for Payment in the amount of any interest earned on any such disputed payment.
 - (f) Final Payment may be made to only those subcontractors whose work is satisfactorily completed prior to the total completion of the Project, but only upon approval by the Owner and CMAR.

- 7.7.10. **Payments in Trust.** Notwithstanding the foregoing, payments received by CMAR will be held in trust for the benefit of all subcontractors, and others claiming a right to payment from CMAR from the Contract Price. CMAR agrees that CMAR will not have any property interest in payments made by Owner except for the balance in excess of all amounts owed to subcontractors and other claimants.
- 7.7.11. **Notice of Intent to Withhold.** If Owner decides to withhold payment of all or part of an invoice, Owner will promptly notify CMAR in writing. The notice will include specific reasons for the withholding of payment.
- 7.7.12. **Revocation of Prior Approval.** Owner may also nullify in whole or in part any prior approval on the basis of subsequently discovered evidence of defective Work not remedied, probable third party claims, failure of CMAR to pay its subcontractors or others, reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price, CMAR damage to Owner, reasonable evidence that the Work will not be completed within the Project Schedule or persistent failure to carry out the Work in accordance with the Contract Documents. As soon as the above grounds are removed, payment will be made for the amounts withheld.

7.8 **RETAINAGE ON PROGRESS PAYMENTS**

- 7.8.1 Owner shall withhold an amount equal to five percent (5%) of each monthly progress payment as retainage to secure CMAR's full and faithful performance of its obligations under this Agreement. Retainage shall not be held on Owner direct purchases.
- 7.8.2 CMAR shall not be entitled to any interest received by City on retainage funds held.
- 7.8.3 Owner may release any portion of any retainage withheld which is attributable to the labor, services, or materials supplied by CMAR or by one or more subcontractors or suppliers at any point at all. If the Owner's retainage payment under this subsection is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers CMAR shall timely remit payment of such retainage to those subcontractors and suppliers.

7.9. **SUBSTANTIAL COMPLETION.**

- 7.9.1 **Notification.** As soon as CMAR considers that the Work, or a designated portion thereof which Owner has previously indicated Owner will accept, is Substantially Complete, CMAR will prepare for submission to Owner and/or Owner's Architect-Engineer a notice that CMAR believes that the Work is Substantial Complete, which will include a punch list of items to be completed or corrected ("Punch List").
- 7.9.2 **CMAR Responsibility.** The failure to include any items on the Punch List does not alter the responsibility of CMAR to complete all Work in accordance with the Contract Documents.
- 7.9.3 **Inspection.** Owner and/or Owner's Architect-Engineer will then inspect the Work or designated portion thereof to determine if Substantial Completion of the Work has been achieved, as defined in the Contract Documents, and to verify the accuracy and completeness of the Punch List.

- 7.9.4 **Certificate of Substantial Completion.** If Owner and/or Owner's Architect-Engineer agrees with CMAR that the Substantial Completion of the Work has been met, CMAR will then prepare a "Certificate of Substantial Completion" which will set forth the Date of Substantial Completion of the Work, will state the responsibilities of Owner and CMAR for security, maintenance, utilities, damage to the Work, and insurance, and will fix the time within which CMAR will complete the items on the Punch List.
- 7.9.5 **Release of Retainage.** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to CMAR all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion Punch List and all Liquidated Damages and other damages for which Owner determines CMAR is liable.
- 7.10. **FINAL PAYMENT.**
- 7.10.1. **Final Invoice.** When CMAR believes that the Work is ready for Final Inspection and acceptance, CMAR will prepare the Final Pay Application and send it to Owner along with CMAR's certification that, in its opinion, the Work is complete.
- 7.10.2. **Audit.** The Owner will submit the Final Invoice to its Auditor. CMAR will cooperate with the Owner's Auditor to reconcile any discrepancies prior to final payment by the Owner.
- 7.10.3. **Inspection.** Owner and CMAR will promptly make an inspection, and if Owner finds the Work acceptable under the Contract Documents and all the terms and conditions of the Contract Documents have been fulfilled, the date of such inspection will be the Date of Final Completion of the Work.
- 7.10.4. **Documentation Required Prior to Payment.** Neither the final payment, nor payment of any remaining retained percentage will be made to CMAR until it submits to Owner:
- (a) A sworn or notarized affidavit that all payrolls, bills for materials and equipment, all charges by CMAR's subcontractors, and other indebtedness connected with the Work for which Owner and its property might in any way be responsible, have been paid or otherwise satisfied;
 - (b) Consent to final payment by CMAR's Surety Company;
 - (c) All other data required by Owner establishing payment or satisfaction of all such obligations, including, but not limited to, close-out documentation, receipts, releases, and waivers of lien arising out of and required under the Agreement; and
 - (d) Any other data required by Owner's Auditor.
- 7.10.5. **Final Payment.** Owner will pay the final invoice, following the third-party audit. Final payment received by CMAR will be held in trust for the benefit of all Subcontractors and others claiming a right to payment from CMAR out of the Contract Price. CMAR agrees that CMAR will not have any property interest in payments made by Owner except for the balance in excess of all amounts owed to Subcontractors and other claimants.

- 7.10.6. **No Waiver by Payment.** It is mutually agreed that no payment (including final payment) under the Contract Documents will be evidence of the performance by CMAR under the Agreement, either wholly or in part.
- 7.10.7. **No Waiver by Use.** Neither the partial nor the entire use or occupancy of the Project by Owner, will constitute an acceptance of any Work not in accordance with the Contract Documents.
- 7.10.8. **No Waiver by Inspection.** Neither inspection by Owner or by any of his duly authorized representatives, nor any order, measurement or certificate by Owner will constitute a waiver of any of Owner's rights under the Agreement.
- 7.10.9. **Waiver by CMAR.** The acceptance of final payment by CMAR will constitute payment in full of the Contract Price and a waiver of all claims by CMAR except those previously made in writing, in accordance with the Contract Documents and identified by CMAR in writing as unsettled at the time of the final invoice.

ARTICLE 8 - CHANGES IN THE WORK

- 8.1. **CHANGE ORDERS AND AMENDMENTS.** A Change Order or Amendment is a written order to CMAR signed by the Owner issued after the execution of this Agreement, authorizing a change in the Project, CM's fee, or the construction completion date. Each adjustment in the GMP resulting from a Change Order or Amendment shall clearly identify the amount attributable to the addition, deletion or other revision.
 - 8.1.1. Without invalidating the Agreement, Owner may order changes in the Project within the general scope of the Agreement, inclusive of additions, deletions or other revisions. All such changes shall be authorized by a Change Order or Amendment and signed by the Owner before the change is implemented.
 - 8.1.2. The GMP and construction completion date shall be adjusted only in accordance with an approved Change Order or Amendment.
 - 8.1.3. Except in an emergency endangering life or property, no additions, deletions or other revisions shall be made except upon written order of Owner as described herein, and Owner shall not be liable to CMAR for any increased compensation or adjustment to the completion date without such written order.
 - 8.1.4. No course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be a basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided in the Contract Documents. All Change Orders and Amendments shall be approved by the Owner.
 - 8.1.5. The Owner's Project Manager has the authority to order minor changes in the Work not involving adjustments in the Contract Price or extension of the Contract Time consistent with the intent of the Contract Documents. Such changes will be effected by written Change Order executed and approved by Owner and CMAR.

- 8.2. **ADJUSTMENT TO CONTRACT PRICE.** In the event a requested change is approved by Owner that results in either an increase or decrease to the Contract Amount, a Change Order or Amendment shall be issued, which increases or decreases the GMP by the full amount of CM's actual direct and indirect costs including overhead and profit and general conditions that are to be paid to CMAR and Subcontractors or sub-subcontractors. Such Change Order or Amendment shall be supported by full documentation of all costs in an itemized cost estimate including labor by hours and rate, materials, supplies, taxes and insurance, and any other documentation required to allow Owner to properly evaluate the cost estimate. The cost or credit to Owner resulting from a change in the Work will be determined in one or more of the following ways, as selected by Owner:
- 8.2.1. By mutual acceptance of a lump sum itemized and supported with sufficient data to permit evaluation;
 - 8.2.2. By unit prices stated in the Contract Documents or subsequently agreed upon with an Owner established not-to-exceed limit; or
 - 8.2.3. By time and material supported by invoices and daily time records with an Owner established not-to-exceed limit.

ARTICLE 9 – DISCOUNTS AND PENALTIES

- 9.1 **DISCOUNTS.** All discounts for prompt payment shall accrue to the Owner to the extent the cost of the Project is paid directly by the Owner or from a fund made available by the Owner to the CMAR. To the extent permitted by applicable law, all trade discounts, rebates and refunds including, but not limited to insurance premiums, and all returns from sale of surplus material and equipment shall belong to the Owner - regardless of when issued - shall be credited to the cost of the Project. To the extent that any discounts, rebates and refunds occur or accrue subsequent to Final Completion of the Project, such funds shall be paid to Owner within fifteen (15) days of receipt by CMAR.
- 9.2 **PENALTIES.** All penalties incurred due to the fault of CMAR for late payment of the cost of the Project, except, late payments by Owner, will be paid by the CMAR.
- 9.3 **COMPUTATION OF SAVINGS.** Savings will be computed as of the date of Final Completion and shall consist of the difference between (A) the GMP (as it may be adjusted in accordance with the terms of the Contract Documents) and (B) the total aggregate sum of the Cost of Work plus the Construction Management Fee paid by Owner and shall accrue to the sole benefit of Owner. A deductive Change Order or Amendment shall be issued reducing the GMP by the amount of such savings. For the avoidance of doubt, any savings obtained may not be moved to the Contingency fund or be used to offset cost overruns in other items within the GMP without prior written consent of the Owner.

ARTICLE 10 - CONTRACT TIME, TIME EXTENSIONS, LIQUIDATED DAMAGES, AND FORCE MAJURE

- 10.1 **TIME OF THE ESSENCE.** Owner and CMAR mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents. Owner and CMAR

recognize that Owner will suffer financial loss if the Work is not substantially completed within the time specified in the Construction Phase Services Addendum, as said time may be adjusted as provided for herein.

- 10.2 **START AND EXPEDITIOUS COMPLETION OF THE WORK.** CMAR shall begin Work per the Notice(s) to Proceed issued by the City, provide adequate staffing, and man the Project site with adequate forces to achieve Substantial Completion and Final Completion of the Work within the schedule identified in the Construction Phase Services Addendum.
- 10.3 **LIQUIDATED DAMAGES.** The parties agree that it would be extremely difficult and impracticable under the presently known facts and anticipated circumstances to ascertain and quantify the total amount of damages that Owner would incur should CMAR fail to achieve Substantial Completion and/or Final Completion of the Work by the dates specified for each under the terms of this Agreement because this is a public construction project that will, when completed, benefit the public. These liquidated damages are in lieu of all liability for extra costs, losses, expenses, claims, penalties and any other damages of any nature incurred by Owner resulting from not attaining the Substantial Completion and/or Final Completion date(s).
 - 10.3.1 Accordingly, the Parties agree that it is appropriate and fair for Owner to assess against CMAR and/or its Surety, as liquidated damages and not as a penalty, the amounts set forth in the Construction Phase Services Addendum to be incorporated as part of this Agreement for CMAR's failure to achieve Substantial Completion of the Work as required by the Contract Documents on the first day following expiration of the established Contract Time and continuing each calendar day until the actual date that Substantial Completion is achieved.
 - 10.3.2 After Substantial Completion is achieved, the Parties agree that it is appropriate and fair for Owner to assess against CMAR and its Surety, as liquidated damages and not as a penalty, for CMAR's neglect, failure, or refusal to complete punch list items or other remaining Work by the date established in the Contract Documents for Final Completion of the Work. Liquidated Damages for punch list items shall commence on the first day following expiration of the established date for Final Completion and shall accrue until the Final Application for Payment has been approved by Owner.
 - 10.3.3 The Liquidated Damages amount per calendar day is fixed and agreed upon by and between CMAR and the Owner because of the impracticality and difficulty of ascertaining actual damages the Owner will sustain. It is agreed that the liquidated damages amount per calendar day is adequate to cover damages, which the Owner will sustain by reason of inconvenience, loss of use, loss of monies, and additional costs of contract administration by the Architect-Engineer and Owner.
 - 10.3.4 Permitting CMAR to continue and finish the Work, or any part thereof after the time fixed for its completion or after any date to which time for completion may have been extended shall in no way constitute a waiver on the Part of Owner of any rights under the Agreement.
 - 10.3.5 Owner shall have the right to: (a) deduct the liquidated damages from any money in its hands or from any money otherwise due or to become due to CMAR; or to (b)

initiate any applicable dispute resolution procedure for the recovery of liquidated damages within the times specified under this Agreement.

- 10.3.6 It is further mutually understood and agreed that Owner's assessment of liquidated damages for delays is intended to compensate Owner solely for CMAR's failure to substantially complete the Work in the Contract Time and shall not release CMAR from liability from any other breach of Agreement requirements.
- 10.3.7 If the liquidated damages set forth herein are deemed unenforceable for any reason, Owner instead shall be entitled to recover those actual delay damages that it sustained as a result of CM's failure to achieve Substantial Completion of the Work.

10.4 **DELAYS AND EXTENSIONS OF TIME.**

- 10.4.1 **Delays.** If CMAR is materially delayed at any time in the commencement or progress of the Work by a wrongful act or neglect of the Owner or Owner's Architect-Engineer, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes not caused by wrongful or unlawful acts of CMAR, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond CMAR control; or by other causes that the Owner determines may justify delay, then the Contract Time may be extended (an "Extension of Time") by Change Order for such reasonable time and/or cost as the Owner may determine.

- 10.5 **FORCE MAJEURE.** Neither party will be liable for any failure or delay in the performance of its obligations under the Agreement to the extent such failure or delay necessarily results from the occurrence of a Force Majeure Event beyond the control or reasonable anticipation of either party, including, but not limited to, compliance with any unanticipated government law or regulation not otherwise in effect at the time of execution of this Agreement, acts of God, acts of domestic or international terrorism, pandemic, unforeseeable governmental acts or omissions, fires, strikes, natural disasters, wars, riots, transportation problems, and/or any other unforeseeable cause whatsoever beyond the reasonable control of the parties (and such cause being referred to as a "Force Majeure Event"). Accordingly, the parties further agree that:

- 10.5.1 Upon the occurrence of a Force Majeure Event, the affected party shall notify the other party of the occurrence of such event and describe in reasonable detail the effect(s) of such event upon the party's performance of its obligations and duties pursuant to this Agreement. Such notice must be delivered or otherwise communicated to the other party within three (3) business days following the failure or delay caused by the Force Majeure Event or as soon as possible after such failure or delay if the Force Majeure Event precludes the affected party from providing notice within such time period.
- 10.5.2 Upon the occurrence of Force Majeure Event, the affected party will be excused from any further performance of those obligations under this Agreement that are affected by the Force Majeure Event for as long as (a) the Force Majeure Event continues; and (b) the affected party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

- 10.5.3 In the event of a Force Majeure Event, the time for performance by the parties under the applicable statement of work will be extended for a period of time equal to the time lost by reason of such cause through execution of a Change Order pursuant to the terms of the Agreement. Additionally, CMAR will be entitled to reasonable compensation for any additional compensable project costs and expenses directly resulting from the Force Majeure Event, subject to the City's verification of such costs via documentation and mutual agreement between the parties.

ARTICLE 11 - INDEMNITY, SOVEREIGN IMMUNITY, AND INSURANCE

- 11.1 **INDEMNITY.** CMAR shall indemnify and hold harmless City, its officers, directors, agents and employees against and from any and all claims, damages, losses, expenses, penalties, demands, judgments, actions, proceedings, losses, or costs, including reasonable attorneys' and paralegal fees, whether resulting from any claimed breach of CMAR or arising out of resulting from the performance of the Work, provided that any such claim, damage, loss, expense, direct or consequential damages, or other economic loss is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by the negligent acts or omissions, recklessness, or intentional wrongful conduct of CMAR, its subcontractors, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist to any party or person described in this Section.
- 11.1.1 CMAR's indemnification obligations under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CMAR or any subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.
- 11.1.2 To the extent that this Agreement constitutes a contract subject to the limitations of section 725.06, Florida Statutes, CMAR's indemnification obligations contained herein shall be deemed or otherwise interpreted to provide the maximum indemnification allowed by same and to fully comply with section 725.06, Florida Statutes, including any amendments thereto, in all respects. Furthermore, if (and only if) applicable law requires that there be a maximum monetary limit of indemnification for which CMAR is responsible so that any such indemnification provision remains enforceable, such limit shall be One Million Dollars (\$1,000,000) per occurrence, which City and CMAR agree bears a commercially responsible relationship to this Agreement and the Work and Services to be performed hereunder. CMAR's indemnification obligations in the Agreement are in addition to and not in lieu of any common law indemnification to which any of the indemnified parties are entitled.
- 11.2 **SOVEREIGN IMMUNITY.** The City expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes (as amended). Nothing herein may be deemed as a waiver of immunity by City to which sovereign immunity may be applicable, or of any rights or limits of liability existing under Florida Statute § 768.28.

This term shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until any proceeding brought under this Agreement is barred by any applicable statute of limitations.

11.3 **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.** For the life of this Agreement, CMAR shall procure and maintain Commercial Automobile Liability Insurance providing coverage for all automobiles owned, non-owned, hired, and scheduled by CMAR with a combined limit of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage for each accident. CMAR's policy of Commercial Automobile Liability Insurance shall name the City of Ocala, a political subdivision of the State of Florida, as an additional insured.

11.4 **COMMERCIAL GENERAL LIABILITY INSURANCE.** For the life of this Agreement, CMAR shall procure and maintain Commercial General Liability Insurance with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) in the aggregate. The only aggregate limit acceptable is "project aggregate" and the Certificate must show an appropriate endorsement (ISO CG 25 01 or equal). CMAR may provide evidence of an umbrella policy to meet this requirement.

11.4.1 CMAR's Commercial General Liability Insurance shall include coverage for CMAR's operations, independent contractors, subcontractors and "broad form" property damage coverages protecting itself, its employees, agents, contractors, or subsidiaries, and their employees or agents for claims for damages caused by bodily injury, property damage, or personal advertising injury, and products liability/completed operations including what is commonly known as Groups A, B, and C.

- (a) Such policies shall include coverage for claims by any person as a result of actions directly or indirectly related to the employment of such person or entity by CMAR or by any of its subcontractors arising from work or services performed under the Agreement.
- (b) Public liability coverage shall include either blanket contractual insurance or a designated contractual liability coverage endorsement indicating expressly the CMAR's agreement to indemnify, defend, and hold harmless the City as provided in this Agreement.
- (c) The commercial general liability policy shall provide coverage to City when it is required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, 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 any endorsements excluding or limiting coverage for Bodily Injury, Property Damage, Products/Completed Operations, independent contractors, Property of City in Contractor's Care, Custody or Control or Property of City on which contracted operations are being performed, Explosion, Collapse or Underground hazards (XCU Coverage, Contractual Liability or Separation of Insureds).

- 11.4.2 When City is added as additional insured by endorsement, ISO Endorsements CG 20 10 and CG 20 37 or their equivalent shall be used and shall provide such additional insured status that is at least as broad as ISO form CG 20 10 11 85.
- 11.4.3 CMAR shall require its subcontractors performing work under this Agreement to add the City of Ocala as an additional insured to their respective Commercial General Liability policies as an additional insured by ISO Endorsement CG 20 38.
- 11.4.4 All commercial liability policies required by this Section shall provide a waiver of subrogation in favor of the City.
- 11.5 **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY COVERAGE.** For the life of this Agreement, CMAR shall procure and maintain Workers' Compensation and Employer's Liability Insurance in amounts necessary to meet the requirements under Florida law. CMAR waives, and shall ensure that its insurance carrier waives, all subrogation rights against the City and the City's officers, employees, and volunteers for all losses or damages. CMAR's policy must be endorsed with WC 00 03 13 Waiver of Our Right to Recover from Others, or equivalent.
- 11.6 **BUILDER'S RISK (PROPERTY) COVERAGE.** From the issuance of the notice to proceed for construction and continuing until the Work has been completed and the project has been accepted by City, CMAR shall take out and maintain a Builder's Risk Policy insuring the interests of the Owner, CMAR, and Subcontractors in the property against all risk of physical loss and damage, as their interests may appear. Owner shall be listed as an Additional Insured under the policy. Coverage shall be afforded in an amount not less than 100% of the total project cost, including soft costs and written on an "all risk" basis including theft, stored materials, and flood and windstorm with no co-insurance clause. Coverage and protection under the policy shall not be diminished, altered, waived, or otherwise affected by partial or complete occupancy by Owner. In addition to the foregoing, the coverage form shall include, but be not limited to, the following:
 - 11.7.1 guaranteed policy extension provision;
 - 11.7.2 storage and transport of materials, equipment, supplies of any kind whatsoever to be used on or incidental to the Project;
 - 11.7.3 equipment breakdown for cold testing of all mechanized, pressurized, or electrical equipment; and
 - 11.7.4 LEG2 coverage or equivalent.
- 11.7 **ADDITIONAL INSURANCE PROVISIONS.**
 - 11.8.1 **Insurance Requirements.** These insurance requirements shall not relieve or limit the liability of CMAR. City does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect CMAR's interests or liabilities but are merely minimums. No insurance is provided by the City under this contract to cover CMAR. CMAR's insurance coverage shall be primary insurance as respects to the City, a Florida municipal corporation, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, a Florida municipal corporation, its officials, employees, or volunteers shall be non-contributory.

- 11.8.2 **Premiums and Deductibles.** CMAR has sole responsibility for payment of all insurance premiums and shall be fully and solely responsible for any costs or expenses incurred as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the City as an Additional Insured shall be at the CMAR's expense. Approval will not be unreasonably withheld.
- 11.8.3 **Certificates of Insurance.** No work shall be commenced under this contract until the required Certificate(s) of Insurance have been provided. Binders are unacceptable. Insurance written on a "Claims Made" form is not acceptable without consultation with City of Ocala Risk Management.
- (a) The "City of Ocala, 110 SE Watula Avenue, Ocala, FL 34471" shall appear as an additional insured and certificate holder on Certificates of Insurance for all liability policies, with the exception of Workers' Compensation and Professional Liability policies. City shall be granted a Waiver of Subrogation on the Contractor's Workers' Compensation insurance policy.
 - (b) The title of the Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the Certificate of Insurance.
 - (c) CMAR shall provide Certificates of Insurance, accompanied by copies of all endorsements required by this section, that are issued by an agency authorized to do business in the State of Florida and with an A.M. Best rating* of at least an A.
 - (d) Work shall not continue after expiration (or cancellation) of the Certificates of Insurance and shall not resume until new Certificate(s) of Insurance have been provided.
 - (e) Original and renewal certificates must be forwarded to the **City of Ocala Contracting Department, Third Floor, 110 SE Watula Avenue, Ocala, FL 34471, E-Mail: vendors@ocalafl.org** prior to the policy expiration.

- 11.8.4 **Subcontractor and Independent Contractor Compliance.** It is the Contractor's responsibility to ensure that any and all of the Contractor's independent contractors and subcontractors carry similar coverages and limits for their work. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the Contractor.
- 11.8.5 **Notice of Cancellation.** CMAR shall provide to the City a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of CMAR to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- 11.8.6 **Failure to Maintain Coverage.** In the event CMAR fails to disclose each applicable deductible/self-insured retention or obtain or maintain in full force and effect any insurance coverage required to be obtained by CMAR under this Agreement, CMAR shall be considered to be in default of this Agreement.
- 11.8.7 **Severability of Interests.** CMAR shall arrange for its liability insurance to include, or be endorsed to include a severability of interests/cross-liability provision so that the "City of Ocala" (where named as an additional insured) will be treated as if a separate policy were in existence, but without increasing the policy limits.

ARTICLE 12 - BONDS

- 12.1 **BONDING REQUIREMENTS.** CMAR shall furnish a separate Payment and Performance Bond (covering faithful and satisfactory performance of the work contracted) and a Public Construction Bond (covering payment in full for all services rendered materials furnished, and labor supplied or performed) each in amount not less than One Hundred Percent (100%) of the total GMP and in such form as prescribed pursuant to section 255.05, Florida Statutes and with such sureties as are acceptable to the City. Bonds must be submitted with the Guaranteed Maximum Price and approved prior to commencement of the Construction Phase Services for the Project. The bond form shall be AIA A-311.
- 12.2 **QUALIFICATION OF SURETIES.** To be acceptable to Owner as Surety for Payment and Performance Bonds and Public Construction Bonds, a Surety Company shall comply with the following provisions:
- 12.2.1 The surety shall be rated "A+" or better on the Financial Strength Rating (FSR), published by A. M. Best Company. Financial Strength Rating of companies providing insurance for the project shall be "A-" or better.
- 12.2.2 The surety shall also be listed on the U.S. Department of Treasury (Dept. Circular 570) entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies."
- 12.2.3 The surety companies proposed by CMAR and/or Trade Contractor for the Project are subject to City's approval which approval shall not be unreasonably

withheld. At any time after approval, if the City, for cause (such cause being defined as the filing for liquidation, appointment of receiver to manage said surety business, insolvency, filing petitions or applications for protection or liquidation under federal bankruptcy laws, or other causes adversely affecting the surety's ability to perform under its bonds), becomes dissatisfied with any surety or sureties then upon the bond(s), CMAR or Trade Contractor shall, within fifteen (15) days after written notice from the City to do so, substitute acceptable bond(s) in such form and sum, and signed by such other surety or sureties as may be satisfactory to the City. The premiums on the bond(s) shall be paid by CMAR or Trade Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished acceptable bond(s) to the City.

ARTICLE 13 - SUSPENSION OF WORK AND TERMINATION

- 13.1 **RIGHT OF OWNER TO SUSPEND WORK.** Owner may, at any time and without cause, order CMAR to suspend, delay or interrupt the Work in whole or in part for such period of not more than sixty (60) consecutive days by written notice to CMAR. Any such directive shall fix the date upon which Work will be resumed and CMAR shall resume the Work on the date so fixed. CMAR shall be entitled to an adjustment in the Cost of Work as set forth in the GMP or the Contract Time, or both, for verified increases and time directly attributable to such suspension, delay or interruption. Adjustment of the Cost of Work shall not include an increase to the Construction Manager's Fee unless scope changes arise. No adjustment shall be made to the extent that:
- 13.1.1 performance is, was or would have been so suspended, delayed or interrupted by another cause for which CMAR is responsible; or
 - 13.1.2 an equitable adjustment is made or denied under another provision of the Agreement.
- 13.2 **TERMINATION FOR CONVENIENCE BY OWNER.** The Owner may, at any time, terminate this Agreement for the Owner's convenience and without cause.
- 13.2.1 **CMAR's Action Upon Notice.** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, CMAR shall:
- (a) cease operations as directed by the Owner in the notice;
 - (b) take those actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
 - (c) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
- 13.2.2 **CMAR Payment.** In case of termination for the Owner's convenience, CMAR shall be entitled to receive payment for Work executed, and costs actually and reasonably incurred by reason of such termination, but not for General Conditions, Cost of the

Work or the CMAR Fee (as a percentage remaining incomplete) on Work not performed.

13.3 **TERMINATION BY THE CITY FOR CAUSE.**

13.3.1 **Time Frame and Causes.** Owner may terminate this Agreement for cause if CMAR:

- (a) persistently refuses or fails to perform the Work in accordance with the Contract Documents (including, but not limited to, supplying enough properly skilled workers or proper materials or failing to adhere to the Project Schedule);
- (b) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between CMAR and the subcontractors;
- (c) disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- (d) otherwise materially breaches a provision of the Contract Documents, which may include failure to comply with the Project Schedule, failure to provide adequate supervision, or failure to maintain a safe Project site.

13.3.2 **Owner's Rights Upon Breach.** When any of the above causes exist, Owner may, without prejudice to any other rights or remedies of the Owner and after giving CMAR and the CMAR's surety, if any, ten (10) days' written notice, terminate employment of CMAR and may, subject to any prior rights of the surety:

- (a) exclude CMAR from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon paid for and intended to become part of the Project by the CMAR;
- (b) accept assignment of subcontracts pursuant to the terms of this Agreement;
- (c) finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the CMAR, the Owner shall furnish to CMAR a detailed accounting of the costs incurred by the Owner in finishing the Work; and
- (d) accept CMAR's proposed remedy to immediately correct any material breach of a provision of the Contract Documents.

13.3.3 **Payment to CMAR.** Upon Owner's termination for cause for one of the reasons set forth in this Section, CMAR shall not be entitled to receive further payment until the Work is finished.

13.3.4 **Effect of Termination for Cause on GMP Balance.** In the event of Owner termination for cause, should the unpaid balance of the GMP exceed the costs of finishing the Work, including other damages incurred by the Owner and not expressly waived, such excess shall be retained by the Owner. If such costs and damages exceed the unpaid balance, CMAR shall pay the difference to the Owner. The amount to be paid to the Owner shall survive termination of the Agreement. Owner's costs of finishing the Work include, without limitation, all reasonable attorney's fees, additional insurance, additional interest because of any delay in completing the Work, and all other direct and indirect costs, including, but not limited to, the loss of use of

the Project incurred by the Owner because of the termination of CMAR as stated herein.

13.4 **TERMINATION BY THE CONSTRUCTION MANAGER.**

13.4.1 **Time Frame and Causes.** CMAR may terminate the Agreement if the Work is stopped for a period of 90 consecutive days through no act or fault of CMAR or a subcontractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the CMAR, for any of the following reasons:

- (a) issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- (b) an act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- (c) because the Owner and/or Owner's Architect-Engineer has not issued a Certificate of Substantial Completion and has not notified CMAR of the reason for withholding certification, or because the Owner has not made a required payment on an Application for Payment within the time stated in the Contract Documents.

13.4.2 **CMAR's Rights Upon Cause.** When any of the above causes exists, CMAR may, upon ten (10) days' written notice to the Owner terminate the Agreement and recover from the Owner payment for Work properly executed, including reasonable overhead and profit for the percentage/portion of work properly performed, and costs incurred by reason of such termination.

13.4.3 **Suspension of Work.** If all of the Work is stopped for a period of 90 consecutive days through no act or fault of CMAR or a subcontractor or their agents or employees or any other persons performing portions of the Work under contract with CMAR because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, CMAR may, upon seven (7) additional days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work properly executed, including reasonable overhead and profit for the percentage/portion of work properly performed, and costs incurred by reason of such termination.

ARTICLE 14 - CLAIMS AND DISPUTES

14.1 **CLAIMS.** The following disputes between Owner and CMAR (each considered a "Claim" under this Agreement) shall be first submitted through the Claims process set forth in this Article, which, together with the Final Resolution of Disputes as set forth herein, shall serve as the formal dispute resolution procedure prescribed in the construction contract pursuant to section 218.735(4), Florida Statutes:

14.1.1 CMAR's appeal of the City of Ocala Engineer's decisions regarding Change Orders;

14.1.2 Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and

- 14.1.3 Disputes that the City Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.

14.2 **SUBMITTAL OF CLAIMS.**

- 14.2.1 Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to the City Engineer and other party to the contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto.
- 14.2.2 Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless the Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter).
- 14.2.3 A Claim for an adjustment in Contract Price or Contract Time shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Claim shall be accompanied by claimant's statement certifying that the Claim is made in good faith that the supporting data are accurate and complete, and that to the best of claimant's knowledge and belief that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event.
- 14.2.4 The opposing party, if any, shall submit its response to the Engineer and the Claimant within 30 days after receipt of the Claimant's last submittal (unless the City Engineer allows additional time).

14.3 **REVIEW AND RESOLUTION OF CLAIMS.**

- 14.3.1 **Decision by the City Engineer.** The City Engineer will render a formal decision in writing within thirty (30) days after receipt of the last submittal of the Claimant or the last submittal of the opposing party, if any. The written decision of the City Engineer on such Claim, dispute, or other matter shall be final and binding upon the Owner and CMAR unless a written notice of CMAR's intention to appeal is delivered to the City Engineer within thirty (30) days after the date of such decision, and, if applicable, providing pre-suit notice to Owner of CMAR's intent to file a cause of action in Circuit Court in Marion County, Florida.
- 14.3.2 **No Decision.** Should the City Engineer fail to render a formal written decision within the time set forth herein, a decision denying the Claim in its entirety shall be deemed to have been issued thirty-one (31) days after receipt of the last submittal of the Claimant or the last submittal of the opposing party, if any.
- 14.3.3 **Partial Approval:** Should the City Engineer approve the Claim in part and deny it in part, such action shall be final and binding unless within thirty (30) days of such action the other party invokes the procedure set forth herein for final resolution of disputes.

14.3.4 **Denial of Claim.** A denial of the Claim shall be final and binding unless within thirty (30) days of the denial the other party invokes the procedure set forth herein for the Final Resolution of Disputes.

14.3.5 **Appeal of Claim.** Contractor shall be entitled to an appeal by filing a formal proceeding instituted by the appealing party in Circuit Court, Marion County, Florida, within thirty (30) days of CMAR's notice to Owner of Claim, sixty (60) days after the date of the written decision of the City Engineer, or within sixty (60) days after Substantial Completion, whichever is later (unless otherwise agreed in writing by the City Engineer and the CMAR), to exercise such rights of remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable laws and regulations.

14.4 **FINAL RESOLUTION OF DISPUTES**

14.4.1 **Disputes Subject to Final Resolution.** The following disputed matters are subject to final resolution under the provisions of this Article, which serves as the formal dispute resolution procedure prescribed in the construction contract pursuant to Section 218.735(4), Florida Statutes:

- (a) timely appeal of an approval in part and denial in part of a Claim;
- (b) timely appeal of a denial in full; and
- (c) disputes between Owner and CMAR concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.

14.4.2 **Final Resolution.** Neither mediation nor arbitration will be acceptable as a means for settling claims, disputes, or other matters. Claims and disputes between the Owner and the Contractor which cannot be resolved to the satisfaction of both parties, shall be filed in the Circuit Court, Marion County, Florida.

14.5 **ATTORNEYS FEES.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges billed by the attorney to the prevailing party.

14.6 **JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY

OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

- 14.7 **GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.
- 14.8 **JURISDICTION AND VENUE.** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court and/or the right to bring an action or proceeding in any other court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.

ARTICLE 15 - MISCELLANEOUS PROVISIONS

- 15.1 **PERFORMANCE EVALUATION.** At the end of the contract, City may evaluate CMAR's performance. Any such evaluation will become public record.
- 15.2 **NOTICE REGARDING FAILURE TO FULFILL AGREEMENT.** Any contractor who enters into an Agreement with the City of Ocala and fails to complete the contract term, for any reason, shall be subject to future bidding suspension for a period of one (1) year and bid debarment for a period of up to three (3) years for serious contract failures.
- 15.3 **PUBLIC RECORDS.** CMAR shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, CMAR shall:
- A. Keep and maintain public records required by the public agency to perform the service.
 - B. Upon request from the public agency's custodian of public records, provide the public agency 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 Chapter 119, Florida Statutes, or as otherwise provided by law.
 - C. Ensure that public records that are exempt or confidential and exempt from 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 CMAR does not transfer the records to the public agency.
 - D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of CMAR or keep and maintain public records required by the public agency to perform the service. If CMAR transfers all public records to the public agency upon completion of the contract, CMAR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CMAR keeps and maintains public records upon completion of the contract, CMAR shall

meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF CMAR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CMAR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY CLERK; 352-629-8266; E-mail: clerk@ocalafl.org; City Hall, 110 SE Watula Avenue, Ocala, FL 34471.

- 15.4 **AUDIT.** CMAR agrees to maintain such financial and other records as may be prescribed by the City or by applicable federal and state laws, rules, and regulations. CMAR shall comply and cooperate immediately with any inspections, reviews, investigations, or audits relating to this Agreement as deemed necessary by the Florida Office of the Inspector General, the City's Internal or External auditors or by any other Florida official with proper authority.
- 15.5 **PUBLICITY.** CMAR shall not use City's name, logo, seal or other likeness in any press release, marketing materials, or other public announcement without City's prior written approval.
- 15.6 **PUBLIC ENTITY CRIMES.** Neither Contractor, its parent corporations, subsidiaries, members, shareholders, partners, officers, directors or executives, nor any of its affiliates, contractors, suppliers, subcontractors, or consultants under this Agreement have been placed on the convicted vendor list following a conviction of a public entity crime. Contractor understands that a "public entity crime" as defined in section 287.133(1)(g), Florida Statutes, is "a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States..." Contractor further understands that any person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime: (1) may not submit a bid, proposal, or reply on a contract: (a) to provide any goods or services to a public entity; (b) for the construction or repair of a public building or public work; or (c) for leases of real property to a public entity; (2) may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and (3) may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- 15.7 **NON-DISCRIMINATORY EMPLOYMENT PRACTICES.** During the performance of the contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, sexual orientation, gender identity, marital or domestic partner status, familial status, or veteran status and shall take affirmative action to ensure that an employee or applicant is afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training.

- 15.8 **COMPLIANCE WITH F.S. 287.135.** City may terminate Agreement immediately upon discovering that Contractor: (A) has been placed on the Scrutinized Companies that Boycott Israel List; (B) is engaged in a boycott of Israel; (C) has been placed on the Scrutinized Companies with Activities in Sudan List; (D) has been placed on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or (E) has been engaged in business operations in Cuba or Syria. This Agreement may also be terminated immediately if the Contractor falsely certified they are eligible to bid and contract with local government entities under F.S. 287.135.
- 15.9 **DISADVANTAGED BUSINESS ENTERPRISE (DBE):** The City of Ocala adopts FDOT's goal of 10.65% as a race-neutral DBE goal. This means the City's goal is to spend at least 10.65% of expenditures with certified DBE's as prime firms, or as subcontractors/subcontractors. Race-neutrality means the City hopes the overall goal can be achieved through the normal competitive procurement process without using DBE required goals. Although not a requirement, the City believes this DBE percentage can realistically be achieved on projects through use of DBE prime and DBE subcontractors performing services anticipated on projects. Prime contractors may be requested to submit a DBE Utilization form indicating their firm's proposed use of DBE subcontractors.
- 15.10 **DRUG FREE WORKPLACE REQUIREMENT.** CMAR submitted a drug free workplace certification with their proposal, and agrees to provide a drug free workplace.
- 15.10.1. The CMAR, if other than an individual, shall-within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration:
- (a) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the CMAR's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 - (b) Establish an ongoing drug-free awareness program to inform such employees about: (i) the dangers of drug abuse in the workplace; The CMAR's policy of maintaining a drug-free workplace; (ii) any available drug counseling, rehabilitation, and employee assistance programs; and (iii) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - (c) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph 15.10.1(a) of this Section;
 - (d) Notify such employees in writing in the statement required by subparagraph 15.10.1(a) of this Section that, as a condition of continued employment on this contract, the employee will: (a) abide by the terms of the statement; and (b) notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction;

- (e) Notify the Contracting Officer in writing within ten (10) days after receiving notice under subparagraph 15.10.1(d) of this Section, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- 15.10.2. Within 30 days after receiving notice under subparagraph 15.10.1(e) of this Section of a conviction, CMAR shall take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
 - (a) take appropriate personnel action against such employee, up to and including termination; or
 - (b) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
 - (c) make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 15.10.1(a) through 15.10.1(d) of this Section.
- (b) CMAR agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing Work under this Agreement.
- (c) In addition to other remedies available to the City, CMAR's failure to comply with the requirements of this Section may, pursuant to FAR 23.506, render CMAR subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.
- 15.11 **E-VERIFY.** Pursuant to section 448.095, Contractor shall register with and use the U.S. Department of Homeland Security's ("DHS") E-Verify System, accessible at <https://e-verify.uscis.gov/emp>, to verify the work authorization status of all newly hired employees. Contractor shall obtain affidavits from any and all subcontractors in accordance with paragraph 2(b) of section 448.095, Florida Statutes, and maintain copies of such affidavits for the duration of this Agreement. By entering into this Agreement, Contractor certifies and ensures that it utilizes and will continue to utilize the DHS E-Verify System for the duration of this Agreement and any subsequent renewals of same. Contractor understands that failure to comply with the requirements of this section shall result in the termination of this Agreement and Contractor may lose the ability to be awarded a public contract for a minimum of one (1) year after the date on which the Agreement was terminated. Contractor shall provide a copy of its DHS Memorandum of Understanding upon City's request. Please visit www.e-verify.gov for more information regarding the E-Verify System.
- 15.12 **WAIVER.** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.

15.13 **SEVERABILITY OF ILLEGAL PROVISIONS.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.

15.14 **NOTICES.** All notices, certifications or communications required by this Agreement shall be given in writing and shall be deemed delivered when personally served, or when received if by facsimile transmission with a confirming copy mailed by registered or certified mail, postage prepaid, return receipt requested. Notices can be concurrently delivered by e-mail. All notices shall be addressed to the respective parties as follows:

If to CMAR: Wharton-Smith, Inc.
Attention:
750 Monroe Road
Sanford, Florida 32746
Phone: 407-321-8410
Email:

If to City of Ocala: Sean Lanier, PE, CFM, City Engineer
City of Ocala Engineering Department
1805 NE 30th Avenue, Building 600
Ocala, Florida 34470
Phone: 352-351-6772
Fax: 352-351-6718
Email: slanier@ocalafl.gov

With copies to: Daphne M. Robinson Esq., Contracting Officer
City of Ocala Procurement and Contracting Department
110 SE Watula Avenue, 3rd Floor
Ocala, Florida 34471
Phone: 352-629-8343
Fax: 352-690-2025
Email: notices@ocalafl.gov

William E. Sexton, Esq., City Attorney
City of Ocala
110 SE Watula Avenue, 3rd Floor
Ocala, Florida 34471
Email: cityattorney@ocalafl.gov

15.15 **REFERENCE TO PARTIES.** Each reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all who shall be bound by the provisions hereof.

15.16 **RIGHTS OF THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors



and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on _____.

ATTEST

CITY OF OCALA

Angel B. Jacobs
City Clerk

Barry Mansfield
City Council President

Approved as to form and legality

WHARTON-SMITH, INC.

William E. Sexton
City Attorney

(Name of Authorized Signatory)

(Title of Authorized Signatory)



Wharton-Smith, Inc.
CONSTRUCTION GROUP

December 21, 2023
Mr. Jimmy Lopez
Division Head Capital Projects
City of Ocala
1805 NE 30th Avenue Building 700
Ocala, FL 34470

RE: Membrane Water Treatment Plant Project (LOI # WRS/220664)
 Task Order 1 - Preconstruction Scope of Services

Dear Mr. Lopez,

Please find attached the subject preconstruction services proposal for the subject project for your review and approval. The preconstruction services fee broken down as follows:

Wharton-Smith Direct Labor	\$	570,113
Subcontractor Services	\$	44,020
Allowances	\$	66,030
Total		\$ 680,163

Bidding and GMP activities (Task 5) are based on the funding phasing presented by the City. We understand that there may be reduction or consolidation to this phasing as part of the upcoming project progression. These modifications could result in scope and budget reductions associated with the currently presented tasks.

We have included allowances for both site investigation activities and public outreach. Both tasks and budgets are presented as placeholders and cannot proceed without written approval by the City. Any unused allowances will be returned to the City at the end of this project scope of services.

This proposal includes the following attachments:

1. Attachment 1 - Scope of Services Narratives
2. Attachment 2 - Budget Matrix

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Dwayne Kreidler, P.E.
Preconstruction Services Manager
Wharton-Smith, Inc.

750 Monroe Road • Sanford, Florida 32746 • (407) 321-8410 • Fax: (407) 829-4453
Mailing Address: P.O. Box 471028 • Lake Monroe, Florida 32747-1028
CG C032669 PC C048385 CU C056506

CONTRACT NO. WRS/240193

EXHIBIT A - PRE-CONSTRUCTION PHASE SCOPE OF SERVICES

Wharton-Smith, Inc.

Sign: _____ Name/Position: _____ Date: _____

City of Ocala

Sign: _____ Name/Position: _____ Date: _____



Wharton-Smith, Inc.
CONSTRUCTION GROUP

Scope of Services Narrative



LOI# WRS/220664

CITY OF OCALA

MEMBRANE WATER TREATMENT PLANT PROJECT

TASK ORDER 1: PRECONSTRUCTION SCOPE OF SERVICES

Wharton Smith, Inc. (CMAR) has been requested by the City of Ocala (Owner) to provide the following preconstruction scope of services for their Membrane Water Treatment Plant (MWTP) Project. This narrative is to provide detail to the separate phases identified in the budget matrix for Task Order 1.

The duration of Task Order 1 is assumed to be approximately 12 months for design and GMP development.

Generally:

Attend general progress review and coordination meetings with Owner and the project team.

Attend periodic design meetings to provide consultation on aspects of the design and construction that will impact the budget, schedule, and quality of the completed Work.

- CMAR will coordinate, conduct, attend, and facilitate meetings. Following each meeting detailed meeting minutes will be distributed to the entire team for review.
- CMAR will work with Owner to develop the optimum scope and quality of Work to meet Owner's budget and funding limitations. Such work will consist of considering options and alternates with scope and quality adjustments as determined by Owner. CMAR will assess cost and schedule impact of these options and alternates.
- Consult with Owner regarding site use and improvements, and the selection of materials, building systems, and equipment.
- Provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation, and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible opportunities for savings.
- Provide recommendations on construction schedule for opportunities for time savings.
- Provide input to the Owner regarding current construction market, bidding climate, status of key Subcontractor and Supplier markets, and other local economic conditions.
- Develop Subcontractor and Supplier interest in the Work, consistent with Legal Requirements. Furnish Owner a list of suggested Subcontractors and Suppliers, from whom bids will be requested



for each principal portion of the Work. Submission of this list is for information and discussion purposes only and not for prequalification.

- In conjunction with the Owner, identify the appropriate early work packages including procurement of long-lead time items and equipment and other Work required to meet the schedule for the Owner.
- In conjunction with the Owner, identify the appropriate Work packages from the Contract Documents for distribution to prospective bidders for providing all elements of Work not included in the General Conditions. Appropriate Work packages shall mean scopes of work that will maximize the competition for those Work packages. Work packages will also be identified with appropriate scopes of work should the Owner have any goals for involvement of the local and/or small contracting communities.

The following breakdown lists the anticipated tasks and expectations considered when producing the preconstruction proposal.

Task 1 Project Coordination

- 1.1 Attend Design Review Milestone Meetings – The CMAR will attend design review workshops with the Owner and Kimely Horn, Inc. (Engineer). These meetings will be workshop style meetings to review drawings and specifications at the 60%, revised 60% and 90% design submittals. It is assumed that three, 4-hr workshops will be required. It is assumed that the
- 1.2 Attend Bi-Monthly Progress Meetings – The CMAR will attend progress meetings with the Owner, Engineer, and other project stakeholders twice per month for the anticipated duration of the preconstruction services for this project. It is anticipated that this meeting will be setup as a hybrid meeting allowing attendees to attend either in person at the Owner's location or through MS Teams.
- 1.3 Estimate Review Meetings– The CMAR will coordinate and conduct an estimate review workshop with the Owner and the Engineer. These meetings will be in-person workshops to present each estimate deliverable to the project stakeholders. It is assumed that three, 2-hr workshops will be required. It is assumed that these meetings will be in-person at the Owner's offices.
- 1.4 Site Visits & Investigation – The CMAR will perform a site visit to investigate existing conditions, review spatial constraints, evaluate structure placement, develop ingress & egress plan during construction, and analyze site conditions for development of site-specific safety and quality plans. The CMAR will provide site reports of encountered conditions to the Owner and Engineer.
- 1.5 Bidding Workshop – The CMAR will prepare for and conduct workshops to coordinate upcoming bidding activities with the Owner and Engineer. The workshops will list potential bidders for review, coordination of the potential schedule and list of activities anticipated during the bidding. It is assumed that five bidding workshops will be conducted one for each phase option and each 2 hours in duration.



- 1.6 GMP Review Workshop – The CMAR will prepare for and conduct workshops to summarize the GMP information and associated bid results for each proposed phase with the City and Engineer. A total of ten workshops are assumed each 1 hour in duration. The workshops will be hybrid type meeting for attendance.
- 1.7 Funding Coordination Workshops – The CMAR will attend funding workshops to coordinate necessary requirements as part of procurement activities, limitations and guidelines to funding amounts, and implementation to the design phases. A total of four workshops are assumed each 1 hour in duration. The workshops will be hybrid type meetings for attendance.
- 1.8 Permitting Coordination – CMAR staff will attend pre-application meetings, coordination meetings, site visits, and assist with the preparation and submittal for the design phase permits. It is assumed that one meeting will be held in person for the Owner's site and building permit requirements.
- 1.9 Project Management & Administration – The CMAR provides overall project management for the preconstruction phase. This includes budget control, schedule control, quality planning, safety planning, subcontractor management, and coordination with the Owner and the Engineer.

Task 2 Preliminary Cost Estimates

- 2.1 60% Cost Estimate – The CMAR will perform detailed takeoffs (based on drawing concepts) on all construction trades such as site work, concrete, process equipment, utilities, mechanical, building, finishes, etc. A full cost estimate book will be provided showing all material, labor, and equipment take-offs and any subcontractor cost estimates. It is assumed for this project that the original 60% documents will be estimated, and a second version will be provided with the anticipated revised 60% documents.
- 2.2 90% Cost Estimate – The CMAR will perform an updated estimate to the items outlined in Task 2.1, but more accurate cost data will be provided as more detail is provided in the design. A comparison of the previous estimate and schedule will be provided along with an action plan to address major deviations. This task includes updating the estimate at each GMP completion for Owner reference.

Task 3 Design and Constructability Reviews

- 3.1 60% Submittal Constructability Review – The CMAR will perform detailed design and constructability review to identify changes, conflicts, constructability concerns, spatial concerns, general questions, and overall consistency of the design disciplines (structural, civil, process, etc.). Each of the preliminary design evaluation options will also be reviewed during this phase. Value engineering options are also provided during this phase and throughout the life cycle of the project. It is assumed that a revised 60% submittal will be provided after this submittal and assumed a second review will be performed on this revised submittal.



- 3.2 90% Submittal Constructability Review (GMP Development Set) – These costs are for the same items outlined in Task 3.2 but for the GMP design documents including specifications and detailed review of all documents to ensure that they are “bid ready”.
- 3.3 100% Submittal / Conformed Document Review – These costs are for the same items outlined in Task 3.2 but include final review of all documents to ensure that they are conformed and ready for construction.

Generally, Design-Builder shall review in-progress design documents, including at a minimum the documents generally described above in 3.1 through 3.5 and provide input and advice to Owner on constructability, materials and equipment selections, and availability. Provide timely suggestions for modifications to improve:

- Constructability, including sequencing or coordination issues, to enable Work to be completed with a minimum of RFI's and change orders.
- Adequacy of details for construction.
- Potential conflicts during construction.
- Ability to coordinate among Subcontractors and Suppliers.
- Coordination between Contract Documents.
- Operability.
- Ability to minimize disruptions to existing operations and maintain plant operations.
- Ability to complete construction connections to existing facilities or utilities.
- Modifications to facilitative commissioning and start-up and/or performance testing.
- Ability of Owner to operate/maintain the Work in a safe, time and cost-efficient manner when completed.

Task 4 CPM Master Schedule

- 4.1 Schedule Development and Phasing – At the 60% Submittal - The CMAR will develop a baseline Critical Path Method (CPM) schedule using Primavera P6 software based on available information (and providing reasonable allowances for Owner review time and time for permits and approvals from governmental agencies). The schedule will be broken down by phase (design/permitting, procurement, construction, and closeout) as by structure. A detailed schedule sequence will be provided for each structure. All portions of the project will be interrelated by schedule logic so that a true “critical path” is easily identifiable. The CMAR will also prepare and maintain a progress schedule during the preconstruction phase. It is assumed that the schedule will be revised at the second 60% deliverable milestone.
- 4.2 Schedule Update at 90% Submittal – The schedule developed in Task 4.2 is updated and modified based on the 60% design documents and construction sequencing is determined.
- 4.3 Final Schedule Update at GMP Schedule (Determines GC's) – The schedule developed in Task 4.2 is modified based on the GMP design documents and construction sequencing is determined. This schedule shall serve as the basis for General Condition's costs in the GMP as well as the contract



time required for the duration of construction. This task is anticipated to be updated for each GMP phase of the project.

Task 5 Bidding, Procurement, and GMP

The following activities are based on the funding phasing presented by the City. Modifications to reduce or consolidate the bidding and GMP activities presented below may result in a reduction in the original budget.

- 5.1 Long Lead Equipment / Early Work Packages – The CMAR will identify and break-out long lead equipment and early work packages for these scopes to be procured and executed as early as practical so that the overall construction schedule is minimized. It is anticipated that three different Long Lead Equipment/ Early Work packages will be developed from the different phases for this project.
- 5.2 -Receive Bids – Early Work –The CMAR will receive bids throughout the course of an entire day and tabulated and logged for later review. It is anticipated that three different bid days will be developed for the early work packages from the different phases for this project.
- 5.3 Review Bids and Recommend Award – Early Work – The CMAR will review the long lead equipment and/or early work package bids for completeness, responsiveness, exceptions, clarifications, and deviations from the GMP documents. Value engineering ideas and schedule commitments will also be evaluated. The CMAR will provide a bid tabulation worksheet and make a recommendation for package award, based on the best interest of the Owner. Final decision is made by the Owner. It is assumed that three different tasks for the early work will be developed from the different phases for this project.
- 5.4 Assemble and Approve GMP – Early Work – The CMAR will assemble the documents that comprise the GMP into a single tabbed and searchable binder/pdf document (both hard copy and electronic copy can be provided). This includes all schedules, bid documents, subcontractor and supplier bids, other backup quotes, general conditions breakdowns, value engineering logs, contingencies, and allowances, and other GMP relevant documents that were considered in creation of the GMP.
- 5.5 Phase 3 and 4 - GMP Bid Package Development – The CMAR will identify and assembly appropriate work packages from GMP design documents to solicit prospective subcontractor and supplier proposals for providing all elements of Work not included in the General Conditions. Work packages will be assembled with appropriate scopes that will including required goals for involvement of the local and/or small contracting community and/or specific funding requirements. The CMAR will perform detailed takeoffs (based on the GMP design documents) for all self-perform work. A full cost estimate book will be provided showing all material, labor, and equipment take-offs and any subcontractor/supplier cost estimates. This estimate will be submitted as the GMP Proposal for the work.



- 5.6 Phase 3 and 4 - Pre-Bid Site Visit – The CMAR will host, coordinate, and manage a pre-bid site visit for all potential bidders for the subcontract and purchase order work packages. The CMAR will take notes. Clarifications/addenda will be issued to bidding parties to respond to written questions as needed.
- 5.7 Phase 3 and 4 - Receive Bids –The CMAR will receive bids throughout the course of an entire day and tabulated and logged for later review.
- 5.8 Phase 3 and 4 - Review Bids and Recommend Award – The CMAR will review the subcontractor and purchase order work package bids for completeness, responsiveness, exceptions, clarifications, and deviations from the GMP documents. Value engineering ideas and schedule commitments will also be evaluated. The CMAR will provide a bid tabulation worksheet and make a recommendation for package award, based on the best interest of the Owner. Final decision is made by the Owner.
- 5.9 Phase 3 and 4 - Assemble and Approve GMP – The CMAR will assemble the documents that comprise the GMP into a single tabbed and searchable binder/pdf document (both hard copy and electronic copy can be provided). This includes all schedules, bid documents, subcontractor and supplier bids, the CMAR self-perform cost estimates, other backup quotes, general conditions breakdowns, value engineering logs, contingencies, and allowances, and other GMP relevant documents that were considered in creation of the GMP.
- 5.10 Phase 5 - GMP Bid Package Development – The CMAR will identify and assembly appropriate work packages from GMP design documents to solicit prospective subcontractor and supplier proposals for providing all elements of Work not included in the General Conditions. Work packages will be assembled with appropriate scopes that will including required goals for involvement of the local and/or small contracting community and/or specific funding requirements. The CMAR will perform detailed takeoffs (based on the GMP design documents) for all self-perform work. A full cost estimate book will be provided showing all material, labor, and equipment take-offs and any subcontractor/supplier cost estimates. This estimate will be submitted as the GMP Proposal for the work.
- 5.11 Phase 5 - Pre-Bid Site Visit – The CMAR will host, coordinate, and manage a pre-bid site visit for all potential bidders for the subcontract and purchase order work packages. The CMAR will take notes. Clarifications/addenda will be issued to bidding parties to respond to written questions as needed.
- 5.12 Phase 5 - Receive Bids –The CMAR will receive bids throughout the course of an entire day and tabulated and logged for later review.
- 5.13 Phase 5 - Review Bids and Recommend Award – The CMAR will review the subcontractor and purchase order work package bids for completeness, responsiveness, exceptions, clarifications, and deviations from the GMP documents. Value engineering ideas and schedule commitments will also be evaluated. The CMAR will provide a bid tabulation worksheet and make a



recommendation for package award, based on the best interest of the Owner. Final decision is made by the Owner.

- 5.14 Phase 5 - Assemble and Approve GMP – The CMAR will assemble the documents that comprise the GMP into a single tabbed and searchable binder/pdf document (both hard copy and electronic copy can be provided). This includes all schedules, bid documents, subcontractor and supplier bids, the CMAR self-perform cost estimates, other backup quotes, general conditions breakdowns, value engineering logs, contingencies, and allowances, and other GMP relevant documents that were considered in creation of the GMP.
- 5.15 Phase 6 - GMP Bid Package Development – The CMAR will identify and assembly appropriate work packages from GMP design documents to solicit prospective subcontractor and supplier proposals for providing all elements of Work not included in the General Conditions. Work packages will be assembled with appropriate scopes that will including required goals for involvement of the local and/or small contracting community and/or specific funding requirements. The CMAR will perform detailed takeoffs (based on the GMP design documents) for all self-perform work. A full cost estimate book will be provided showing all material, labor, and equipment take-offs and any subcontractor/supplier cost estimates. This estimate will be submitted as the GMP Proposal for the work.
- 5.16 Phase 6 - Pre-Bid Site Visit – The CMAR will host, coordinate, and manage a pre-bid site visit for all potential bidders for the subcontract and purchase order work packages. The CMAR will take notes. Clarifications/addenda will be issued to bidding parties to respond to written questions as needed.
- 5.17 Phase 6 - Receive Bids –The CMAR will receive bids throughout the course of an entire day and tabulated and logged for later review.
- 5.18 Phase 6 - Review Bids and Recommend Award – The CMAR will review the subcontractor and purchase order work package bids for completeness, responsiveness, exceptions, clarifications, and deviations from the GMP documents. Value engineering ideas and schedule commitments will also be evaluated. The CMAR will provide a bid tabulation worksheet and make a recommendation for package award, based on the best interest of the Owner. Final decision is made by the Owner.
- 5.19 Phase 6 - Assemble and Approve GMP – The CMAR will assemble the documents that comprise the GMP into a single tabbed and searchable binder/pdf document (both hard copy and electronic copy can be provided). This includes all schedules, bid documents, subcontractor and supplier bids, the CMAR self-perform cost estimates, other backup quotes, general conditions breakdowns, value engineering logs, contingencies, and allowances, and other GMP relevant documents that were considered in creation of the GMP.
- 5.20 Phase 7 - GMP Bid Package Development – The CMAR will identify and assembly appropriate work packages from GMP design documents to solicit prospective subcontractor and supplier proposals for providing all elements of Work not included in the General Conditions. Work packages will be



assembled with appropriate scopes that will including required goals for involvement of the local and/or small contracting community and/or specific funding requirements. The CMAR will perform detailed takeoffs (based on the GMP design documents) for all self-perform work. A full cost estimate book will be provided showing all material, labor, and equipment take-offs and any subcontractor/supplier cost estimates. This estimate will be submitted as the GMP Proposal for the work.

- 5.21 Phase 7 - Pre-Bid Site Visit – The CMAR will host, coordinate, and manage a pre-bid site visit for all potential bidders for the subcontract and purchase order work packages. The CMAR will take notes. Clarifications/addenda will be issued to bidding parties to respond to written questions as needed.
- 5.22 Phase 7 - Receive Bids –The CMAR will receive bids throughout the course of an entire day and tabulated and logged for later review.
- 5.23 Phase 7 - Review Bids and Recommend Award – The CMAR will review the subcontractor and purchase order work package bids for completeness, responsiveness, exceptions, clarifications, and deviations from the GMP documents. Value engineering ideas and schedule commitments will also be evaluated. The CMAR will provide a bid tabulation worksheet and make a recommendation for package award, based on the best interest of the Owner. Final decision is made by the Owner.
- 5.24 Phase 7 - Assemble and Approve GMP – The CMAR will assemble the documents that comprise the GMP into a single tabbed and searchable binder/pdf document (both hard copy and electronic copy can be provided). This includes all schedules, bid documents, subcontractor and supplier bids, the CMAR self-perform cost estimates, other backup quotes, general conditions breakdowns, value engineering logs, contingencies, and allowances, and other GMP relevant documents that were considered in creation of the GMP.
- 5.25 Phase 8 - GMP Bid Package Development – The CMAR will identify and assembly appropriate work packages from GMP design documents to solicit prospective subcontractor and supplier proposals for providing all elements of Work not included in the General Conditions. Work packages will be assembled with appropriate scopes that will including required goals for involvement of the local and/or small contracting community and/or specific funding requirements. The CMAR will perform detailed takeoffs (based on the GMP design documents) for all self-perform work. A full cost estimate book will be provided showing all material, labor, and equipment take-offs and any subcontractor/supplier cost estimates. This estimate will be submitted as the GMP Proposal for the work.
- 5.26 Phase 8 - Pre-Bid Site Visit – The CMAR will host, coordinate, and manage a pre-bid site visit for all potential bidders for the subcontract and purchase order work packages. The CMAR will take notes. Clarifications/addenda will be issued to bidding parties to respond to written questions as needed.



- 5.27 Phase 8 - Receive Bids –The CMAR will receive bids throughout the course of an entire day and tabulated and logged for later review.
- 5.28 Phase 8 - Review Bids and Recommend Award – The CMAR will review the subcontractor and purchase order work package bids for completeness, responsiveness, exceptions, clarifications, and deviations from the GMP documents. Value engineering ideas and schedule commitments will also be evaluated. The CMAR will provide a bid tabulation worksheet and make a recommendation for package award, based on the best interest of the Owner. Final decision is made by the Owner.
- 5.29 Phase 8 - Assemble and Approve GMP – The CMAR will assemble the documents that comprise the GMP into a single tabbed and searchable binder/pdf document (both hard copy and electronic copy can be provided). This includes all schedules, bid documents, subcontractor and supplier bids, the CMAR self-perform cost estimates, other backup quotes, general conditions breakdowns, value engineering logs, contingencies, and allowances, and other GMP relevant documents that were considered in creation of the GMP.

Task 6 Miscellaneous –No Services Anticipated for this Task.

Task 7 Subcontractor Services

- 7.1 Electrical Estimating and Design Reviews– A budget is provided for an electrical subcontractor to provide cost estimating efforts and design/constructability reviews. The subcontractor will provide cost estimation and review the documents to present value engineering and constructability options for each of the anticipated design milestones.
- 7.2 I&C Estimating and Design Reviews– A budget is provided for an instrumentation and control subcontractor to provide cost estimating efforts and design/constructability reviews. The subcontractor will provide cost estimation and review the documents to present value engineering and constructability options for each of the anticipated design milestones.

Task 8 – Allowances

The following tasks and budgets are presented as retainage for this project. These scope activities and subsequent amounts will not be used unless the Owner provides written authorization approving the scope and associated budget. Any unused allowance budgets will be returned to the Owner at the end of the project.

- 8.1 Allowance for Site Investigation Activities – A \$50,000 allowance for site investigation activities has been included for field work that may be identified during the design phase.
- 8.2 Allowance – Public Outreach – A \$10,000 allowance is provided for public outreach activities requested by the Owner to be performed by the CMAR for this project.

EXHIBIT A - PRE-CONSTRUCTION PHASE SCOPE OF SERVICES


Wharton-Smith, Inc.
 CONSTRUCTION GROUP

Fee Summary: Below is a fee summary for this Scope of Services. A detailed hours and fee table for this phase of the project has been included as an attachment to this scope.

Description	Fee
Task 1: Meetings & Site Investigation	\$109,371
Task 2: Preliminary Cost Estimates	\$99,953
Task 3: Design Review And Value Engineering	\$50,118
Task 4: CPM Master Schedule	\$22,130
Task 5: Bidding, Procurement, and GMP	\$236,531
Task 6: Miscellaneous	\$0
Task 7 – Subcontractor Services	\$40,000
Task 8 - Allowances	\$60,000
Subtotal	\$618,049
MARKUP (9.0%)	\$55,624
Insurance (1.05%)	\$6,490
Total	\$680,163



Wharton-Smith, Inc.
CONSTRUCTION GROUP

ATTACHMENT 2

Budget Matrix

				Executive Management		Project Director		General Superintendent		Senior Preconstruction Manager		Director of Estimating		Senior Project Manager		Specialty Estimator		Administrative Assistant		Quality Manager		Safety Manager		Risk Coordinator		Document Specialist		Project Accountant		WHARTON-SMITH PERSONNEL				SUBCONTRACTOR		
					\$171.00		\$163.00		\$165.00	Rate	\$154.00	Rate	\$171.00	Rate	\$154.00	Rate	\$133.00	Rate	\$85.00	Rate	\$154.00	Rate	\$119.00	Rate	\$116.00	Rate	\$85.00	Rate	\$108.00	HR's	LABOR COSTS	MISC. COSTS (PRO-RATED)	SUBTOTAL	SUB	COST	\$ TOTALS
Item	TASK	QTY	UNIT	HR	\$	HR	\$	HR	\$	HR	\$	HR	\$	HR	\$	HR	\$	HR	\$	HR	\$	HR	\$	HR	\$	HR	\$	HR	\$							
TASK 1	MEETINGS & SITE INVESTIGATION																																			
1.1	ATTEND DESIGN REVIEW MILESTONE MEETINGS	3	EA		0	24	3912		0	24	3696		0		0		0		0		0		0		0		0		0	48	7,608	54	7,662	-	7,662	
1.2	ATTEND BI-MONTHLY PROGRESS MEETINGS	24	EA		0	12	1956		0	72	11088		0	24	3696		0	24	2040		0		0		0		0		0	132	18,780	149	18,929	-	18,929	
1.3	ESTIMATE REVIEW MEETINGS	3	EA	4	684	4	652		0	12	1848	8	1368		0		0		0		0		0		0		0		0	28	4,552	32	4,584	-	4,584	
1.4	SITE VISITS & INVESTIGATION	2	EA		0	16	2608	16	2640	16	2464	8	1368		0		0		0		4	616	4	476	4	464		0		0	76	11,868	86	11,954	-	11,954
1.5	BIDDING WORKSHOP	5	EA		0	12	1956		0	15	2310	6	1026	16	2464		0		0			0		0		0		0		0	49	7,756	55	7,811	-	7,811
1.6	GMP REVIEW WORKSHOP	10	EA	8	1368	8	1304		0	20	3080	10	1710	20	3080		0	10	850			0		0		0		0		0	76	11,392	86	11,478	-	11,478
1.7	FUNDING COORDINATION WORKSHOPS	5	EA		0	5	815		0	30	4620		0	30	4620		0	10	850			0		0		0		0		0	75	10,905	85	10,990	-	10,990
1.8	PERMITTING COORDINATION	1	EA		0		0		0	4	616		0	8	1232		0	2	170			0		0		0		0		0	14	2,018	16	2,034	-	2,034
1.9	PROJECT MANAGEMENT & ADMINISTRATION	1	EA	24	4104	24	3912		0	96	14784		0		0		0	24	2040	8	1232	8	952	12	1392		0	48	5184	244	33,600	276	33,876	-	33,876	
SUBTOTALS				36	6156	105	17115	16	2640	289	44506	32	5472	106	16324	0	0	70	5950		12	1848	12	1428	16	1856	0	0	48	5184	742	108,479	838	109,317	-	109,317
TASK 2	PRELIMINARY COST ESTIMATES																																			
2.1	60% COST ESTIMATE	2	EA	8	1368	16	2608		0	24	3696	80	13680	24	3696	240	31920	24	2040			0		0	16	1360		0	432	60,368	488	60,856	-	60,856		
2.2	90% COST ESTIMATE- Update at each GMP	1	EA	2	342	8	1304		0	12	1848	40	6840	16	2464	180	23940	16	1360			0		0	8	680		0	282	38,778	319	39,097	-	39,097		
SUBTOTALS				10	1710	24	3912	0	0	36	5544	120	20520																							

TOTAL 680,163