



July 19, 2023

**REQUEST FOR PROPOSAL
RP016-23**

The Gwinnett County Board of Commissioners is soliciting competitive sealed proposals from qualified contractors for a **Construction Manager at Risk (CMAR) for the F. Wayne Hill Water Resources Center Biosolids Dryer Project** for the Department of Water Resources.

Responses to this Request for Proposal will follow a two-step process. Proposals must be returned in a sealed container marked on the outside with the Request for Proposal number and Company Name.

Submittals for Step I will be received until 2:50 P.M. local time on **August 17, 2023** at the Gwinnett County Financial Services - Purchasing Division – 2nd Floor, 75 Langley Drive, Lawrenceville, Georgia 30046. Any proposal received after this date and time will not be accepted. Proposals will be publicly opened and only names of submitting firms will be read at 3:00 P.M. A list of firms submitting Step I Proposals will be available the following business day on our website www.gwinnettcounty.com.

Questions regarding the Step I Proposals should be directed to Brittany Bryant, Purchasing Associate II at Brittany.Bryant@GwinnettCounty.com or by calling 770-822-7759 no later than **3:00 P.M., local time, on August 10, 2023**.

Submittals for Step II will be received until **2:50 P.M. local time on September 14, 2023** at the Gwinnett County Financial Services - Purchasing Division – 2nd Floor, 75 Langley Drive, Lawrenceville, Georgia 30046. Any submittals received after this date and time will not be accepted. Proposals will be publicly opened and only names of submitting firms will be read at 3:00 P.M. A list of firms submitting Step II Proposals will be available the following business day on our website www.gwinnettcounty.com.

Proposals are legal and binding upon the proposer when submitted. One unbound single-sided original, six (6) bound copies, and one electronic copy on a flash drive of the Step I and Step II Proposals should be submitted. **Only one cost proposal for the Step II submittal is necessary in a sealed envelope. Do not put additional copies of the cost proposal in the technical proposal copies. The original proposal will not be bound as stated in the invitation to propose, and therefore, the separately sealed cost proposal shall be unbound as well.**

A **pre-proposal conference** is scheduled for **10:00 A.M. on August 31, 2023** at the F. Wayne Hill Water Resources Center, 1500 One Water Way, Buford, GA 30519 – Operations Building, and a brief tour of the plant will follow. **All contractors are strongly urged to attend.** The site visit is to be utilized by contractors to take pictures, measurement, and visual assessment to submit a proposal.

Questions regarding Step II Proposals should be directed to Brittany Bryant, Purchasing Associate II, at Brittany.Bryant@gwinnettcounty.com no later than **3:00 P.M., local time, on September 07, 2023**.

All contractors must submit with bid a bid bond, certified check, or cashier's check in the amount of five percent (5%) of the base amount for preconstruction services. Failure to submit a bid bond with the proper rating will result in the proposal being deemed non-responsive. The successful supplier will be required to meet insurance requirements, submit a one hundred percent (100%) performance bond and a one hundred percent (100%) payment bond. Insurance and Bonding Company should be licensed to do business by the Georgia Secretary of State, authorized to do business in Georgia by The Georgia Insurance Department, listed in the Department of Treasury's Publication of Companies holding Certificates of Authority as Acceptable Surety on Federal Bonds and as acceptable

reinsuring companies. **The bid bond, payment bond, and performance bond must have an A.M. Best rating of A-12 for construction or higher. Please see the solicitation document for further information regarding insurance and bonding.**

Liquidated Damages may become due in the amount of \$20,000.00 per day for each day that the delayed completion of the Project incurs additional cost to Gwinnett County for continued existing operations with landfill disposal of biosolids. The date for this delayed completion will be finalized with CMAR following acceptance of GMP. Additionally, Liquidated Damages may become due in the amount of \$1,000.00 per day for each day that the work may be delayed beyond the GEFA Loan Expenditure date, which will be defined as the date noted in the EJCDC Agreement, Article 15.01 as "on or before 12/18/2026".

Gwinnett County does not discriminate on the basis of disability in the admission or access to its programs or activities. Any requests for reasonable accommodations required by individuals to fully participate in any open meeting, program or activity of Gwinnett County Government should be directed to the ADA Coordinator at the Gwinnett County Justice and Administration Center, 770-822-8165.

The written proposal documents supersede any verbal or written prior communications between the parties.

Selection criteria are outlined in the request for proposal documents. Gwinnett County reserves the right to reject any or all proposals to waive technicalities, and to make an award deemed in its best interest.

Award notification will be posted after award on the County website, www.gwinnettcounty.com and companies submitting a proposal will be notified via email.

We look forward to your proposal and appreciate your interest in Gwinnett County.

Brittany Bryant
Purchasing Associate II

I. INVITATION TO SUBMIT PROPOSALS

- A. Gwinnett County Department of Water Resources (GCDWR) is requesting proposals from Construction Managers at Risk (CMARs) for the Preconstruction and Construction of the F. Wayne Hill Water Resources Center Biosolids Dryer Project.

Responses to this Request for Proposal will follow a two-step process. In Step I, contractors are invited to submit a Statement of Qualifications proposal to include information that addresses the contractor's firm stability; experience, qualifications, and availability of project team proposed; and past experience and proven performance as detailed in Section V.

After Step I Proposals are submitted, an independent Selection Committee will evaluate each proposal using the criteria in Section VIII. The top-rated firms that are determined by Gwinnett County to be sufficiently qualified will be invited to offer Step II Proposals for services detailed in Section VI (Step II of the selection process).

In Step II, short-listed contractors are invited to submit a Technical Approach and Cost proposal to include information that addresses their understanding and approach to the overall project. After Step II proposals are submitted, an independent Selection Committee will evaluate each proposal using the criteria in Section VIII (Step II). Following review of the Step II Proposals, Gwinnett County reserves the right to request a presentation/interview as determined in its best interests.

Final selection will be determined by carrying the scores from Step I forward and by evaluating/scoring the Step II Proposals, including the interview/presentation if performed. The Selection Committee will determine the final rankings by compiling scores from all steps to determine the successful Proposer.

B. Proposals

Proposals shall be submitted in a **sealed envelope/package**. One (1) unbound original – single sided (designated as the original), six (6) bound copies (may be double sided), and one (1) electronic version on a thumb drive of the Step I and Step II proposals should be submitted. All copies of the proposals must be identical. The electronic version should be a single .pdf file that is identical to the hard copies and not multiple files.

Cost proposals for Step II shall be submitted in one **separately sealed envelope** clearly marked "cost proposal" with the proposal copies. Do not put additional copies of the cost proposal in the technical proposal copies.

The proposals shall be addressed to the following and labeled as shown below:

Gwinnett County Purchasing Division
 Gwinnett Justice and Administration Center - Second Floor
 75 Langley Drive
 Lawrenceville, Georgia 30046

<p><u>Proposal Package – Step I</u></p> <p>Construction Manager at Risk (CMAR) for the F. Wayne Hill Water Resources Center Biosolids Dryer Project <i>Company Name</i> STEP I - STATEMENT OF QUALIFICATIONS PROPOSAL – RP016-23</p>
<p><u>Proposal Package – Step II</u></p> <p>Construction Manager at Risk (CMAR) for the F. Wayne Hill Water Resources Center Biosolids Dryer Project <i>Company Name</i> STEP II – TECHNICAL APPROACH AND COST PROPOSAL – RP016-23</p>

The full cost of proposal preparation is to be borne by the proposing firm. The original proposal must be signed in ink by a company official who has authorization to commit company resources. These officials will also be individuals noted as authorized to sign the Agreement.

C. Contractor Proposal Development and Submittal Responsibilities

Request for Proposal Questions: All questions concerning this RFP should be directed IN WRITING by the date indicated on the cover page of the invitation. Where appropriate, GCDWR responses to formal questions will be in writing and will be distributed to all firms on our record as having received a copy of this RFP.

Please note that it is the contractor’s responsibility to confirm with the Purchasing Associate that the Proposer is on record as having received a copy of this RFP and associated addendum. In each case of formal questions, GCDWR will determine whether a response is appropriate or necessary. If questions require a formal response or changes are made to the RFP, an Addendum(s) will be issued to all proponents via email to the address on file.

Proposal Development Costs: GCDWR will not pay any contractor for work done in preparation of this proposal submittal.

Proposal Submittals: Sole responsibility rests with the firm to ensure that their proposals are received on time at the above stated location.

Proposals submitted by alternate means other than those specified in this solicitation will be rejected and disposed of accordingly. This includes proposals sent by facsimile, email, or any other electronic or telegraphic means. If the County receives a proposal through such alternate means, the County does not assume any burden or liability to notify the contractor that the proposal has been rejected.

Proposers are to follow the instructions outlined in this solicitation and failure of the Proposer to do so may result in the County deeming the Proposer's submittal as non-responsive. Firms are expected to allow adequate time for delivery of their proposals either by hand delivery, postal service, or other means. Late proposals will **not** be accepted and will be returned to the Proposer. If hand delivery, allow extra time as you will be required to go through security.

D. No Communication Period

Between the date of the issuance of the solicitation and the date of the final contract award by the Board of Commissioners, individuals, firms and businesses seeking an award of a Gwinnett County contract may not initiate or continue any verbal or written communications regarding a solicitation with any County officer, elected official, employee or other County representative without written permission of the Purchasing Associate named in the solicitation. Violations will be reviewed by the Purchasing Director. If determined that such communication has compromised the competitive process, the offer submitted by the individual, firm or business may be disqualified from consideration for award. This process is to ensure that all prospective respondents have the same level of knowledge relative to the RFP, as well as ensuring any additional data is made available to all proposers.

E. Proposals Received

Submitted proposals and all documentation regarding the proposals will not be made available to the public until such time that an official action has been taken by the Gwinnett County Board of Commissioners to award or reject this solicitation. All proposals and supporting materials, as well as correspondence relating to this RFP, become property of Gwinnett County when received and will be subject to the Georgia Open Records Act.

Information submitted by a contractor in the proposal shall be subject to disclosure in accordance with the Georgia Open Records Act. Gwinnett County reserves the right to use the best ideas suggested or proposed by any contractor during the RFP process. All such ideas may be incorporated within the scope of work for this project.

F. Proprietary Information

Information submitted by Proposer in the procurement process shall be subject to disclosure after award in accordance with the Georgia Open Records Act.

Proprietary information must be identified and be accompanied by a signed affidavit outlining the redacted information. Entire Proposals may not be deemed proprietary. Proposers are encouraged to review the Georgia Open Records Act, O.C.G.A. §50-18-70 through 50-18-77.

G. Legal

All applicable State of Georgia and Federal laws, City and County ordinances, licenses and regulations of all agencies having jurisdiction shall apply to the contractors and services throughout and incorporated herein by reference. The Agreement with the selected firm, and all questions concerning the execution, validity or invalidity, capacity of the parties, and the performance of the Agreement, shall be interpreted in all respects in accordance with the Charter and Code of Gwinnett County and the laws of the State of Georgia. Gwinnett County reserves the right to use the best ideas suggested or proposed by any contractor during the RFP process. All such ideas may be incorporated within the scope of work for this project.

II. GENERAL INFORMATION

The F. Wayne Hill Water Resource Center (FWH WRC) is located at 1500 One Water Way, Buford, GA 30519. The FWH WRC was originally constructed in 2000 and operations began in March 2001 with a treatment capacity of 20 million gallons per day (MGD) maximum month average daily flow (MMADF). An upgrade and facility expansion to 60 MGD MMADF was completed in 2006. The FWH WRC also receives primary sludge and waste activated sludge from the Yellow River Water Reclamation Facility (YRWRF).

Gwinnett County Department of Water Resources (GCDWR) proposes to construct a biosolids dryer facility at the FWH WRC. The proposed facility will process the biosolids from both YRWRF and FWH WRC to produce a marketable Class A product. GCDWR will utilize a Construction Manager-at-Risk (CMAR) delivery method for this project.

Goals for the F. Wayne Hill Water Resources Center Biosolids Dryer project include:

- Improve the sustainability of the biosolids management strategy in Gwinnett County from an environmental and economic perspective.
- Reduce FWH WRC's reliance on landfill disposal of biosolids.
- Meet funding requirements of all grants and loans that will be utilized for this project.
- Implement a biosolids dryer facility that meets return on investment goals of GCDWR.
- Collaborate with GCDWR and Consultant to construct the project within a construction budget of \$85 million.
- Evaluate two potential sites within FWH WRC for the new dryer facility and assist in the selection of the site that provides the best return on

investment to GCDWR taking into consideration construction cost and schedule, impact on plant operations, and other factors.

- Design and construct an integrated rotary drum dryer facility that will handle biosolids generated from YRWRF and FWH WRC sized for an ultimate capacity of 49 dry ton/d (annual average) and 61 dry ton/d (maximum month).
- Produce a high quality (Class A) product that is both marketable and sellable.
- Provide facilities and equipment that are sustainable and will operate reliably and produce processed biosolids in full compliance with federal and state regulations and current industry operating and design standards.
- Provide a quality facility and equipment that provides flexibility, reliability, redundancy, resiliency, and sustainability.
- Provide a facility that is easy to operate and maintain.
- Meet the dryer system's energy needs using excess biogas generated from the onsite anaerobic digestion process to reduce the facility's reliance on natural gas.
- Minimize impact on operations and maintenance of existing facilities during construction.
- Maintain a safe working environment for consultants, contractors, and GCDWR employees during design and construction.
- Design and construct a facility that is easily accessible with respect to maintaining the system.

It is emphasized that the FWH WRC will continue to operate its solids handling facilities throughout this Project requiring detailed sequencing of construction plans to be developed.

Response to this Request for Proposals (RP) represents the first and only part of the CMAR selection process for Preconstruction and Construction of the F. Wayne Hill Water Resources Center Biosolids Dryer Project. GCDWR will utilize a CMAR delivery method for this project. GCDWR will contract with an engineering firm (Consultant) to provide design and support services during construction for the F. Wayne Hill Water Resources Center Biosolids Dryer Project. Hazen and Sawyer (Hazen) have been retained under a separate contract by GCDWR as the Owner's Advisor for the F. Wayne Hill WRC Biosolids project. GCDWR, Hazen, and Consultant will have an interactive role in planning efforts and preparation of the project design, schedule, and budgeting.

As part of proposals submitted, contractors shall demonstrate their ability and experience to collaborate with the Owner, Owner's Advisor, and selected engineering Consultant within a CMAR delivery method regarding constructability reviews, value engineering, and project packaging.

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GCDWR has identified two potential locations on the F. Wayne Hill WRC site for the proposed Dryer facility (see RP016-23 Exhibit A, Existing Underground Utilities, Proposed Locations, Existing Process Flow Diagram). Previous biosolids studies performed for GCDWR are included in RP016-23 Exhibit B, including:

- Biosolids End Use Study, Phase I Technical Memorandum (Black & Veatch, Inc., June 21, 2019)
- Biosolids Technology Evaluation and Strategy Plan, Phase II Technical Memorandum (Black & Veatch, Inc., September 20, 2019)
- Biosolids Implementation and Preliminary Engineering, Conceptual Design Report (Black & Veatch, Inc., June 30, 2020)
- FWH WRC Dryer and Disposal Options Analysis (Black & Veatch, Inc., May 31, 2022)

The following documents are also provided:

- RP016-23 Exhibit C – Preliminary Geotechnical Investigation performed by Owner’s Geotechnical Firm (January 9, 2023). This document is being provided for informational purposes only.
- RP016-23 Exhibit D – Environmental Planning and Review Document and Notice of No Significant Impact

A. Project Budget and Funding

The cost for construction of the Project is budgeted at approximately \$85 million. Such budget does not include GCDWR’s other Project costs, including but not limited to professional advisory services, professional engineering design services, property or access rights, site investigations, environmental studies, certain governmental approvals, taxes, etc. GCDWR will use an American Rescue Plan Act (ARPA) grant and the proceeds of loans from the Clean Water State Revolving Fund, administered by the Georgia Environmental Finance Authority (GEFA), to provide the capital funding for the Project. Funding may also be obtained from U.S. Department of Agriculture (USDA); Gwinnett County has applied for funding through the Fertilizer Expansion Grant Program.

The GEFA Supplemental General Conditions for Federally Assisted State Revolving Loan Fund Construction Contracts, dated December 7, 2022, included as Exhibit C of the Agreement, shall be adhered to by the contractor and its subcontractors and subconsultants. Proposers shall refer to Exhibit C of the Agreement for information on the forms required by GEFA to be submitted with the Proposal.

GEFA-funded projects have a project goal of a minimum of 4 percent Women Business Enterprise (WBE) and 4 percent Minority Business Enterprise (MBE) participation, as applied to the total value of the project. The Proposal shall include the contractor’s plan for meeting and exceeding the DBE participation goals and shall

include a summary of the contractor's planning and actual goal achievement on past projects.

B. Project Schedule

It is anticipated that the Agreement may be awarded by the Gwinnett County Board of Commissioners by then end of 4Q 2023, with execution of the Agreement and a Notice to Proceed shortly thereafter. It is anticipated that the Consultant design services contract will be awarded by 3Q 2023.

III. INSTRUCTIONS TO PROPOSERS

A. Contractor Qualifications

No proposal shall be accepted from, and no contract will be awarded to any person, firm, or corporation that is in arrears to Gwinnett County, upon debt or contract that is a defaulter, as surety or otherwise, upon any obligation to Gwinnett County or that is deemed irresponsible or unreliable by Gwinnett County. If requested, Contractor shall be required to submit satisfactory evidence that they have a practical knowledge of the particular service proposed upon and that they have the necessary staffing and financial resources to provide the proposed service category called for as described in Section IV. SCOPE OF SERVICES of this RFP.

B. Agreement

The Contractor will be expected to sign the Agreement (Attachment A). The proposal should contain a statement that the Contractor has carefully reviewed the Agreement, can meet all insurance and other requirements, and if selected, will sign the Agreement. No modifications to the Agreement will be permitted. This information must be included in the cover letter as referenced in Section V. STEP I PROPOSALS of this RFP.

Selected Contractor is required within ten (10) days of the Notice of Award to provide the following:

- Certificate of Insurance meeting requirements specified in this RP for pre-construction services.
- Two (2) sets of properly executed contract documents.

C. Certifications

A Disadvantaged Business Enterprise (DBE) is generally defined as a Female, Black American, Hispanic American and any other minority owned business. The Federal Government has long had a program in place to ensure participation of DBE vendors and suppliers on federally funded contracts. The State of Georgia has established a similar program whereby DBE firms are defined, certified, and made known. This effort is managed by the Georgia Department of Transportation (GDOT). Additional information regarding this State program can be found at <http://www.dot.ga.gov/PS/Business/DBE>.

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Gwinnett County Government encourages the participation of all businesses in offering their services and/or products. The Gwinnett County Government has the goal to fairly and competitively procure the best product at the most reasonable cost. While the Gwinnett County Government does not administer a DBE certification program, the County does desire to identify DBE participation in our contracts and to quantify that participation. The Contractor is requested to indicate DBE status (if any) in your submittal, on the firm information page.

IV. SCOPE OF SERVICES

Gwinnett County will contract with a Consultant to provide engineering design services and support during construction of the FWH WRC Biosolids Dryer Project. The Scope of Services for the Consultant as advertised in RP003-23 for Engineering Design and Support during Preconstruction and Construction of the F. Wayne Hill Water Resources Center Biosolids Dryer Project is provided in RP016-23 Exhibit E for information purposes only.

The Contractor selected from this RFP will provide preconstruction services and construct the FWH WRC Biosolids Dryer Project as detailed herein. The CMAR Scope of Services is Exhibit A of the Engineers Joint Contract Documents Committee (EJCDC) Agreement Between Owner and Construction Manager At Risk (CMAR-525-2023).

V. STEP I PROPOSALS

The Contractor shall read all sections of this RFP including the instructions, and all attachments hereto. Failure to do so will be at the Contractor's risk. The Contractor must sign the proposal by an authorized representative and shall give their full business address.

The Gwinnett Standard

The Gwinnett Standard is an expectation of excellence in all that we do. That standard, set over decades, has made Gwinnett a preferred community where everyone can thrive. We make it our mission to deliver superior services that support our vibrantly connected community and as an extension of the County, we expect our business partners to do the same. Beyond just executing the work, we expect our partners to be standard bearers; to act with integrity; to innovate and adapt; to be accountable and transparent; to be fair and respectful to everyone; and to engage, embrace, and unify our community. The successful Contractor will incorporate into their response their commitment to upholding and promoting the Gwinnett Standard.

Proposals do not have an overall page limit; however, page limits within each Tab are specified below. Proposals should be letter size (unless otherwise stated), using an Arial font size no smaller than **11-point font** (narrow fonts are not recommended); customary page margins should be utilized. Figures, charts, and exhibits shall be included under the appropriate tabs as described below, unless indicated otherwise. Points may be deducted for failure to comply with the page limit requirements.

Proposals must be typed on standard (8½" x 11") paper unless otherwise allowed as stated in the instructions. All pages should be numbered. Page counts will be determined by pages with print on them, not by the physical piece of paper. Each proposal shall be prepared simply and economically. Colored displays and promotional materials are not desired. Emphasis must be on completeness, relevance, and clarity of content. Hyperlinks, QR codes, or embedded videos are not allowed.

The following information shall be submitted in the proposal in the format as specified herein. Include a Table of Contents and divider sheets labeling each Tab (these items do not count toward any page limits specified for the various sections).

Cover Letter

A cover letter should be provided presenting an Executive Summary of the Contractor's proposal. The cover letter should document the commitment of the firm to utilize and make fully available all key staff resources identified in the proposal, including the Project Manager and all other Key Team Leaders, and to complete all Project tasks within the project schedule. The cover letter should also incorporate the firm's commitment to upholding and promoting the Gwinnett Standard.

The cover letter must contain a statement that the Contractor has carefully reviewed the Agreement, can meet all insurance and other requirements, and if selected, will sign the Agreement as identified in Item III. INSTRUCTIONS TO PROPOSERS, Item B. Agreement.

The cover letter must be signed in ink by a company official who has authorization to commit company resources. These officials will also be individuals noted as authorized to sign the Agreement.

Page Limit: 4 pages.

Tab A – Contractor Identification, Capability, and Safety

Include the following information for the Contractor:

1. Full legal company name as licensed to provide contractor services in the state of Georgia. See requirements for Appendix A regarding providing copies of contractor licenses.
2. Corporate ownership and history.
3. History of firm's acquisitions and mergers within the last 10 years as related to project references presented in Tab B, Project Experience.
4. Affiliates and subsidiaries.
5. Operating philosophy.
6. Principal business office and local office locations, inside or outside Gwinnett County. Provide location of other offices outside of Georgia that may provide additional support for the Project.

7. Provide ranges of services, capabilities and strengths of the Contractor related to this Project. Contractor (CMAR) shall self-perform at least 25 percent of the total scope of Work under this Contract, as determined on a monetary basis (see 10.01.B.1 of Agreement).
8. Name and all contact information (direct telephone number(s), mailing address, and e-mail address) of Prime Contractor contact (this will be the individual who will receive all future communications related to this solicitation).
9. Contractor Capability: Provide a brief description of the following information pertaining to factors or events that have the potential to adversely impact the Contractor's capability to perform its contractual commitments. Detailed explanations, if needed, and supporting information may be provided in Appendix B of the Proposal as indicated below. Describe any material adverse changes in financial position: Describe any material historical, existing, or anticipated changes in financial position, including mergers, acquisitions, takeovers, joint ventures, bankruptcies, divestitures, or any material changes in the mode of conducting business.
 - a. Legal proceedings and judgments: List and briefly describe any pending or past (within five years) legal proceedings and judgments, or any contingent liability that could adversely affect the financial position or ability to perform contractual commitments to Owner. If no such proceedings or judgments are listed, provide a sworn statement to that effect from the Contractor's General Counsel.
 - b. Completion of contracts: Has the Contractor failed to complete any contract, or has any contract been terminated due to alleged poor performance or default, within the past five years? Has Contractor been assessed liquidated damages for late completion of any project within the past five years? If so, describe the circumstances.
 - c. Violation of laws: Has the Contractor been convicted of any criminal conduct or been found in violation of any federal, state, or local statute, regulation, or court order concerning antitrust, public contracting, employment discrimination, or prevailing wages within the past five years? If so, describe the circumstances.

If any of the above questions is answered in a manner that indicates that any of these unfavorable factors or events are present, it is the Proposer's responsibility to: (1) describe in detail the unfavorable factor or event; and (2) provide sufficient information to demonstrate that the unfavorable factor or event will not adversely impact the Contractor's ability to perform any contractual commitments to Owner. Include these responses in the Proposal. The answers to these questions and any associated discussion shall be provided in the form of a written certification that is signed by an officer or duly authorized official of the Proposer (including evidence of authorization if not provided elsewhere in the Proposal).

The Proposer must notify the Owner of any changes subsequent to submission of the Proposal and before the selection process is completed (and in the case of the selected Proposer before execution of the Agreement).

10. Safety: Provide a summary description of the Contractor's corporate safety program and include safety statistics or records indicating categories of accidents and their incidence or frequency rates for the past five years. The following safety records must be provided for the Contractor for the current and past five years:
 - a. The experience modification rate (EMR) calculated by the National Council on Compensation Insurance or similar rating bureau. (The EMR is also referred to as the experience modification rating, experience modification factor, experience modifier or X-mod.)
 - b. The days-away-from-work injury incidence rate. A day-away-from-work injury is an injury that prevents an employee from returning to his or her next regularly scheduled shift. The incidence rate is calculated by multiplying the number of days-away-from-work injuries for the particular year by 200,000 and then dividing the product by the person-hours worked for that year. Demonstrated safety records on prior construction and the proposed Project safety plan will be evaluated.

Page Limit: 6 pages.

Tab B – Project Experience

The Contractor needs to demonstrate relevant project experience by providing reference project information sheets for up to five (5) projects completed or in progress within the past 10 years. Referenced projects must demonstrate comparable experience in terms of scope, size, and complexity to this Project. At least one project must demonstrate construction manager at risk or alternative delivery experience. At least three projects must be greater than \$50 million and demonstrate experience on a large water reclamation facility. Project experience should demonstrate the ability to complete projects within the Contract Price and Contract Times. **References should be submitted on references sheet in Attachment B.**

Provide a summary table that cross-references the Key Team members as defined in Tab C with their participation in the reference projects. For each project information sheet, provide the following required information including, but not be limited to:

1. Project Description. Include project location, type and size of project (highlighting scope similar in nature to this Project), project delivery method, funding source(s), project value, and final completion date. Provide role of proposer, contract value, year started, and year completed (initial contract duration and final contract duration at completion), and key personnel that participated in project and are included in this Proposal, along with a clear description of the project role and responsibility of each.
2. Roles and Responsibilities. Description of the major roles and responsibilities of the Contractor and services provided. List firm names and roles of major subcontractors that supported the delivery of the project.
3. Project Approach. Specific details that indicate where the Contractor's approach saved either cost or time for the client.

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4. Budget and Schedule. Dollar value for construction services. Include final budget and schedule compared to the initial budget and schedule – explain negative variances (i.e., exceeded original budget or schedule).
5. Staff. Indicate firm's staff that worked on the project that will be assigned to and available in the delivery of this Project.
6. Indicate Disadvantage Business Enterprise participation in the Project by qualified DBEs.
7. Reference. Provide a minimum of one reference per project with current contact information including name, email address, and phone numbers. Note: Inaccurate reference information may impact Gwinnett County's ability to reach the reference and therefore may impact Tab B scoring.

Page Limit: 1 page to introduce section, 1 page to cross-reference Key Team members with Projects, and up to 2 pages per project.

Tab C – Key Staff Qualifications, Experience, and Location

Provide an overall organization chart for the Project for preconstruction, construction, and closeout. The Contractor should identify the roles/positions/responsibilities of each proposed Key Team Member. Key Team Members include overall Principal-in-Charge (PIC), Project Manager, Pre-Construction Manager, Construction Manager, Project Superintendent, Lead Estimator, Procurement Manager, Project Scheduler, Project Engineer, Safety Manager, and Quality Control Manager for this Project. Proposed Key Team Members shall not be changed unless approved by Gwinnett County. Any changes in the proposed Key Team Members that occur subsequent to this submittal prior to award must be identified.

The Principal-in-Charge (PIC) is an Owner or Officer of the Prime Contractor firm. This person will sign the Agreement and will be the single point of contact for all contractual related matters. The PIC will have the authority to commit the necessary resources of the proposing firm to execute the scope of the Project. The Project Manager must be a full-time employee of the Prime Contractor for at least the past 12 months and will be the single point of contact for all Project related matters.

Provide a separate table for the Project Manager and all Key Team Members summarizing their physical location, degree(s), professional registrations, certifications, total years of professional experience and years of experience with the firm, and levels of responsibility. The table should include a brief description of how the experience of each individual will add the most value toward achieving GCDWR's goals (See II. General Information) for the Project.

Provide a list of ALL projects on which the proposed Project Manager and all Key Team Members are committed over the anticipated duration of this Project to enable Gwinnett County to ascertain the key staff's availability. Utilize a table that includes the following minimum information: Name of Project, Client Name, Location of Project, Staff Role(s), brief Project Description, Current Status of Project, Project Completion Date, Monthly Time Commitment (hours per month). As part of this table include an estimate of the time commitment (hours per month) of each individual for this Project, if awarded. Reference the firm's commitment to ensuring availability of the Project Manager and each Key Team Leader in the Cover Letter, including a commitment from any subcontractor firm that will provide Key Team Leaders.

Page Limit: 8 pages.

Tab D – Resumes of Individuals

Provide resumes of Key Team Members, which describe qualifications, experience, certifications and licenses, safety training, and responsibilities. Experience shown on resumes should be relevant to the proposed role of the individual and scope of work for this Project.

In addition to relevant experience, the resumes should include a recent photograph of the individual (headshot), firm employer, project role, education, registrations/certifications, professional affiliations, and the time of employment. Resumes should also include the office location where the individual domiciles and is based. If the physical locations are different, please indicate.

Page Limit: 2 pages per person for Project Manager and Key Team Members.

Step I Appendix A – Required Forms

Provide the following required forms in Appendix A (forms are provided in **Attachment B**):

1. Contractor Affidavit and Agreement
2. Code of Ethics Affidavit
3. Step I Firm Information (Statement of Non-Collusion and Acknowledgement of Addenda)
This acknowledgement must be appropriately completed.
4. Required Contract Provisions for Non-Federal Entity Contracts Under Federal Awards - Appendix II to 2 CFR Part 200)
5. Copy of relevant Contractor's Georgia licenses (e.g., General Contractor, Utility Contractor).
6. Proposal Bond for Pre-Construction Services

Page Limit: None.

VI. STEP II PROPOSALS

The Contractor shall read all sections of this RFP including the instructions, and all attachments hereto. Failure to do so will be at the Contractor's risk. The Contractor must sign the proposal by an authorized representative and shall give their full business address.

The following information shall be submitted in the proposal in the format as specified herein. Include a Table of Contents and divider sheets labeling each Tab (these items do not count toward any page limits specified for the various sections).

Tab E – Project Approach

Provide an understanding and approach to the overall project. Discuss issues and concerns; and provide ideas and methodology on how to best approach and execute the project to meet the Owner's project goals and objectives. The following items should be addressed:

1. Collaboration and Communication: Discuss how a collaborative relationship with the Owner, Owner's Advisor and Consultant would be established during the execution of the design development, scheduling and cost estimating, including value engineering and constructability. Describe the plan for coordination and communication with Owner and internally among Project Team members. Briefly discuss external communications (regulatory, permitting authorities, etc.)
2. Project Management: Discuss issue resolution, design and construction interface, and leadership approach.
3. Schedule Management: Discuss the proposed process for establishing and maintaining the schedule needed to meet DWR funding deadlines.
4. Cost Development: Discuss the proposed cost model development for design, cost estimate submittals, and the open book cost estimation process.
5. Cost Control: Describe unique cost control approach and systems to ensure project budget is met to include monthly check and balances against work package approvals.
6. Supply Chain Management: Discuss the proposed approach to managing supply chain issues during procurement and impacts on the cost model.
7. Subcontractor and Supplier Management: Describe approach to managing subcontractors, vendors, and suppliers successfully.
8. Risk Management: Provide a description of key risk factors perceived and how key risk factors will be identified and managed through this project, including items included in proposed contingency.
9. Work Packages: Provide a description of unique work package development approach and bid and procurement approach.
10. Self-Performance: Identify self-performance plan for this project. See Article 10 of the Agreement for self-performance requirement.
11. Start-Up and Maintenance of Plant Operations: Describe how the project will transition from completion of installation, functional testing, start-up and testing, training, and Owner acceptance while maintaining plant operations. Provide a start-up and operations transition plan.

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12. Federal and state funding compliance requirements: Provide a description of how the project will be administered to be prepared for the requirements of ARPA and GEFA funding requirements.
13. Disadvantage Business Enterprise Requirements: Indicate ability to provide subcontracting opportunities that will meet the GEFA goals for participation in the Project by qualified DBEs.
14. Quality Management: Describe the Quality Management Plan.

Page Limit: none.

Step II Appendix A – Required Forms

Provide the following required forms in Appendix A. Forms are provided as noted below.

1. Step II Firm Information (Statement of Non-Collusion and Acknowledgement of Addenda) This acknowledgement must be appropriately completed. Failure to acknowledge any addenda may result in the Proposal being declared non-responsive.
2. Required Contract Provisions for Non-Federal Entity Contracts Under Federal Awards – Appendix II to 2CFR Part 200. This is to be submitted for the Prime Consultant AND any Major Subconsultants. (form provided in Attachment B)
3. Provide a letter or Certificates of Insurance from the Contractor's insurance company stating Contractor's ability to acquire and provide the insurance coverage required by Exhibit D of the Agreement (Insurance Requirements).
4. Provide a letter from the Contractor's surety to provide evidence of the ability of the Contractor to provide payment and performance bonds up to \$85 million for this Project. The surety must be authorized by law to do business in the State of Georgia and must have an A.M. Best Company Rating of A-12 or better. The surety must also be listed in the U.S. Department of Treasury's Circular 570. Payment and performance bonds provided in Exhibit E of the Agreement.

Cost Proposal – Separate Sealed Envelope

Proposals shall demonstrate the Proposer's ability to provide project cost certainty following the CMAR project delivery method. The Proposer must complete Attachment B Fee Cost tables with all required pricing information. The proposal shall include a lump sum (stipulated price) for CMAR Basic Preconstruction Services and Basic Procurement Services (Proposal Fee Cost Tables – Exhibit B of Agreement).

The proposal shall also include a CMAR Fee as a specific percentage of the Cost of Work as determined by Proposer to meet the total project construction allocation of \$85 million. The Proposer shall include a detailed description of all items included in the proposed CMAR Contingency Allowance.

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The compensation for CMAR services, construction support costs, CMAR fee applied to estimated cost work, and CMAR contingency allowance will be used in the evaluation of cost.

The following tables, provided in Exhibit B of EJCDC CMAR-525 Agreement, are to be submitted with the Cost Proposal in a separate Sealed Envelope:

Table No.	Table Title
1	Estimated Contract Price
2	Compensation for CMAR Services
3	Basis of Compensation for Fixed Construction Support Costs
4	Basis of Compensation for Time Sensitive Construction Support Costs

VII. PROPOSAL PROCESS SCHEDULE

While Gwinnett County will make every attempt to meet this schedule, Gwinnett County reserves the right to revise the schedule as necessary. The dates below are subject to change.

STEP I	DATE	TIME
Issue Public Advertisement of RP016-23	7/19/2023, 7/26/2023, and 8/02/2023	
Deadline for Submission of Written Questions	8/10/2023	3:00 PM
Last Day for Addendum Publication	8/14/2023	2:50PM
Step I Proposals Due	8/17/2023	2:50 PM
STEP II	DATE	TIME
Pre-proposal Conference and Tour	8/31/2023	9:00 AM
Deadline for Submission of Written Questions	9/7/2023	3:00 PM
Last Day for Addendum Publication	9/11/2023	2:50 PM
Step II Proposals Due	9/14/2023	2:50 PM
BOC Approval of Selection Recommendation	4Q2023	
NTP to Contractor	TBD	

VIII. PROPOSAL EVALUATION CRITERIA

Proposals will be reviewed by a selection team composed of County personnel. During the first step of the evaluation, the selection team will have access to all proposal materials.

Table 1 summarizes the proposal evaluation criteria that will be used in the scoring of each proposal and their relative weights shown as point values (Maximum total = 100 not including the optional presentation). The selection team will use these criteria and associated point values to select the Contractor.

Table 1. Proposal Evaluation Criteria

Proposal Evaluation Criteria (Step I)		Tabs	Points
1.	Cover Letter	N/A	
2.	Contractor Identification, Capability, and Safety	A	5
3.	Project Experience	B	25
4.	Key Staff Qualifications, Experience, and Location + Resumes of Individuals	C-D	20
Subtotal Step I			50
Proposal Evaluation Criteria (Step II)		Tabs	Points
5.	Project Approach	E	35
6.	Cost Proposal (to be submitted in separate sealed envelope)	N/A	15
Subtotal Step II			50
Subtotal Step I and II			100
Optional Interview/Presentation			20
Total Step I and II with Interview/Presentation			120

Evaluation Criteria

Contractor Identification, Capability, and Safety (Tab A)

The Selection Committee will evaluate Firm’s Identification and Qualification based on the following criteria:

1. Contractor’s ability to provide all required services and strengths of firm related to this Project.
2. Contractor’s principal business office and local office locations that would support the Project,
3. Financial stability and approach to financial management of projects.
4. Safety programs and past safety performance.
5. History of claims and mitigation.

Project Experience (Tab B)

The Selection Committee will evaluate Contractor’s Experience based on the following criteria:

1. Contractor’s experience provided construction management, preconstruction, and construction phase services for large water or wastewater treatment plant capital projects similar in complexity to this Project, including but not limited to, project scope, project delivery method, and funding source(s).
2. Contractor’s experience in delivering projects with a Construction Manager at Risk (CMAR) project delivery method or other alternative delivery method, including proven ability to work collaboratively with an Owner and Contractor.

3. Contractor's experience in meeting reporting requirements for funding sources planned to be utilized for this Project.
4. Qualifications of the Contractor's proposed management team.
5. Contractor's design and construction phase experience for projects with large rotary drum dryers and dewatering systems.
6. Contractor's proven experience on Gwinnett County DWR projects.
7. Contractor's proven performance on reference projects, including budget, schedule, quality, and client satisfaction.
8. Contractor's operating philosophy and approach to managing changes in project scope.
9. Contractor's demonstrated ability to provide subcontracting opportunities that meet the GEFA DBE goals for participation for the Project.
10. Experience of Major Subcontractors, if applicable, will be considered in the evaluation of Tab B.

Key Staff Qualifications, Experience and Location (Tab C) and Resumes of Individuals (Tab D)

The Selection Committee will evaluate Availability, Experience, Location, and Qualifications of Project Manager and Other Key Team Leaders based on the following criteria:

1. Contractor's experience and qualification of the proposed Project Manager, Construction Manager, Project Superintendent, Safety Manager, and Quality Control manager (Key Team Leaders) for this Project, including:
 - a. Education, training, and personal experience in delivering similar projects while serving in the capacity for which they are being proposed.
 - b. Demonstrated ability to complete quality projects on time and within budget as demonstrated by proposal information and reference check for individuals proposed.
 - c. Availability and education, registration, relevant engineering experience, and relevant project management experience, including prior experience with alternative delivery projects.
2. Project Manager's workload capacity.
3. Workload capacity of other Key Team Leaders.
4. Location of Project Manager and other Key Team Leaders (proximity to jobsite) that will deliver this Project.

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5. Firm's commitment to ensuring availability of Project Manager and other Key Team Leaders dedicated to delivering this Project.

Project Approach (Tab E)

The Selection Committee will evaluate the Project Approach based on the following criteria:

1. Demonstrated experience and approach in providing Preconstruction, Construction, and Procurement Services.
2. Demonstrated ability to complete projects for the Contract Price and on Contract Time.
3. Construction contract administration, site safety and risk management ability, and quality management experience and approach.
4. Demonstrated past, experience of ingenuity, transparency, and collaborative approaches using CMAR delivery methodologies.
5. Value added ideas to improve quality, reduce costs and improve schedule without adversely impacting quality or design integrity.
6. Experience in resolution of construction issues, disputes and claims.

Cost Proposal (separate sealed envelope)

The Selection Committee will consider the Cost Proposal in determining the best value to the Owner. The score of this category will be made after the receipt and evaluation of the Step II Proposals.

Basis of Short-Listing / Selection

GCDWR will select the Proposer that best demonstrates it would add the most value toward achieving the key objectives for implementing and providing construction services for the Project. Gwinnett County's Selection Committee will evaluate proposals using the following process:

Step I – Step I Proposals will be evaluated and scored based on their relative responsiveness to the criteria described in the Cover Letter and Tabs A through D. Proposals will be scored based on the weighted point values as shown in Table 1 for items 1 through 4. Proposals will then be ranked from highest to lowest based on the cumulative Subtotal Step I point value.

Step II – GCDWR may, at their discretion, short-list firms for further consideration. The Step II Proposal of the short-listed firms from Step I will be evaluated and scored based on their relative responsiveness to the criteria described in Section VII. Proposals will be scored based on the weighted point values as shown in Table 1 for items 5 and 6.

Interviews, if conducted, will be performed using a 0–20 point scoring system. The determination of whether or not interviews will be performed, and with whom, is solely up to the County.

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Price information in the Cost Proposal, the scoring from Step I and Step II, and the interview scoring, if conducted, will be used to prepare a final ranking of Proposers and identification of the successful Proposer to which an award of the CMAR Contract will be issued.

EXHIBITS A THROUGH D (can be found at [Bids and RFPs - Gwinnett | Gwinnett County](#))

Exhibit A Existing Underground Utilities, Proposed Locations, Existing Process Flow Diagram

Exhibit B BV TMs

Exhibit C Preliminary Geotechnical Investigation

Exhibit D Environmental Planning and Review Document and Notice of No Significant Impact

EXHIBIT E – RP003-23 Consultant Scope of Services, Page

ATTACHMENT A – EJCDC CMAR-525 Agreement between Owner and Construction Manager at Risk Exhibitsof Agreement, 51

Exhibit A CMAR Scope of Services, **Page 5**

Exhibit B Proposal Fee Cost Tables (submitted in a separate sealed envelope), **Page**

Exhibit C GEFA Supplemental General Conditions American Iron and Steel Special Conditions, **Page**

Exhibit D Insurance Requirements, **Page 1**

Exhibit E Payment and Performance Bonds, **Pages 1 5**

ATTACHMENT B – FORMS

- Contractor Affidavit and Agreement, **Page 1 1**
- Code of Ethics Affidavit, **Page 1**
- References Sheet, **Page 1**
- Firm Information, **Page 1 5 and Page 1 5**
- Contract Provisions for Non-Federal Entity Contracts Under Federal Awards – Appendix II to 2cfr Part 200, **Page 1**
- Bid Bond, **Page 1**

ATTACHMENT C – GENERAL CONDITIONS, PAGE 149

ATTACHMENT D – SUPPLEMENTAL CONDITIONS, PAGE 0

ATTACHMENT E – GENERAL INSTRUCTIONS FOR VENDORS, TERMS AND CONDITIONS, PAGE 1

RP003-23 EXHIBIT E – CONSULTANT SCOPE OF SERVICES

The selected Consultant will provide engineering design services and support during construction of the FWH WRC Biosolids Dryer Project. The design of the FWH WRC Biosolids Dryer will include the following major facilities:

- Depending on location selected, new centrifuge dewatering facilities including new thickened sludge storage and new polymer feed system, or modifications to the existing centrifuge dewatering facility may be required.
- New rotary drum thermal drying facility

The Scope of Services for the FWH WRC Biosolids Dryer Project is comprised of the following elements further described in the following sections:

- 1.0 – Project Management
- 2.0 – Phase I – Preliminary Engineering
- 3.0 – Phase II – Detailed Design
- 4.0 – Phase III – Engineering Support During Construction

1.0 PROJECT MANAGEMENT

The project management task includes those activities involved with the detailed planning and subsequent monitoring and control of the project. In addition to the Consultant's normal in-house staff management and job tracking procedures, the following subtasks will be considered project management services (to be performed as part of Phase I, II, and III services):

- 1.1 Following Consultant selection, the project schedule will be developed and will be updated monthly by the Consultant throughout the project. The project schedule will include major activities milestones and all deliverables outlined herein, as necessary to effectively plan the work and to report on the status of the project.

Deliverables: Project schedule and monthly updates.

- 1.2 Monthly invoices and progress reports will be prepared and submitted by Consultant to GCDWR. Monthly invoices will be prepared in a format approved by GCDWR's Project Manager. The progress report will give a summary of activities completed during the reporting period and activities anticipated for the next reporting period. It also will identify action items required by the Consultant and/or GCDWR, provide updates of the project schedule, and report engineering changes under consideration by the project team. The reporting period will coincide with the billing period and progress reports will be submitted with the invoices.

Progress reports will include a summary of expenditures to date as well as updates to monthly projected expenditures for the Project duration. Detailed

documentation required for all state and federal funding will also be included with each invoice.

Deliverables: Monthly invoices and progress reports and supporting documentation.

- 1.3 Consultant will coordinate with other utility companies, and any local, State, or Federal department or agency, as required for the proper execution of the work throughout the Project. Work will include arranging meetings, resolving technical issues, and coordinating tasks that will involve GCDWR personnel. Coordination will include discussions and support of GCDWR staff on technical or operations issues that may arise during the project. GCDWR's Project Manager and FWH WRC's plant manager will be the primary points of contact for this communication.

Deliverables: Meeting minutes and/or other documentation and tracking of action items identified, and the results for all meetings.

- 1.4 Work Plan. Consultant will prepare a detailed Work Plan describing the approach to completing the project. Suggested components of the Work Plan include, but are not limited to, Project Procedures related to scope, schedule and budget; Quality Management Plan describing the project's quality organization and procedures; Health and Safety Plan for site visits and field work performed by Consultant's team; Technology Plan for all software and tools to be used and how files will be organized and managed; and Communication Plan. As needed, the Project Work Plan will be updated over the duration of the Project.

Deliverables: Work Plan.

- 1.5 Kick-Off Meetings, Progress Meetings, Workshops, and Design Review Meetings. Kick-off Meetings will be conducted upon receipt of Consultant's Notice to Proceed for Phases I, II, and III. Workshops and design review meetings will be conducted over the course of Phase I and Phase II. Monthly in-person progress meetings will be held throughout design and construction (Phases I, II, and III). Each formal meeting will be preceded by Consultant's delivery of an agenda and pre-meeting materials, including the anticipated timetable for decisions, to focus and prepare participants. Attendees will be identified and agreed to by Consultant and the GCDWR Project Manager and invited at least 2 weeks in advance of each meeting. All meetings will be coordinated with the selected CMAR. Meeting results will be documented in meeting minutes along with tracking of all action items.

In addition, informal virtual coordination meetings are anticipated to be held on a weekly basis during Phases I, II, and III. Key discussions and/or decisions made in these meetings will be documented by the Consultant in a format acceptable to Gwinnett County and any action items will be tracked.

Deliverables: Meeting minutes and/or other documentation and tracking of action items identified, and results.

The required budget for the Project Management work is to be appropriately allocated across the project phases indicated below.

2.0 PHASE I: PRELIMINARY ENGINEERING

Phase I – Preliminary Engineering includes Site Selection and 30% Design as described in this section. The evaluation of two potential site locations for the biosolids facility and associated improvements (potential site locations (“A” and “B”) are depicted in Exhibit A). Consultant will evaluate existing equipment and facilities as part of preliminary design of the new biosolids dryer facility to determine the feasibility and constructability of the dewatering and thermal drying equipment and facilities at the two identified site locations.

The following describes the tasks required as part of the Site Selection (Task 2.1). This is followed by a description of tasks required to complete the 30% Design, which will occur after GCDWR finalizes selection of the site (Tasks 2.2 – 2.8).

2.1 Site Selection

Consultant will progress work to provide an adequate level of design (15-25%) to allow the selected CMAR to provide an AACE Class 3 level cost estimate for each alternative site location. The Consultant is expected to work closely with the selected CMAR in preparing these estimates. GCDWR will utilize the preliminary site selection (15-25%) design and cost information to select the alternative that best meets its maximum construction budget of \$85M and provides the best return on investment. This task will involve detailed coordination with GCDWR through meetings and workshops to plan the desired general improvements to the facilities as described below for the two potential locations.

At a minimum, the following items should be included to develop preliminary design criteria/layouts and aid in the selection of the site. Further development will be part of the 30% design for the selected site:

- A. Historical Data Analysis and Determination of Major Equipment and Facility Sizing.
- B. Determination of levels of redundancy for all Major Equipment.
- C. Site requirements including, but not limited to:
 - a. Structures to be removed/demolished.
 - b. Existing pipes and utilities to be relocated to accommodate construction of new facilities, which may include conceptual relocation plans. Exhibit A includes Existing Underground Utilities Map (record drawing information on existing pipes and utilities as a basis for planning).

- c. Grading and drainage requirements.
 - d. Consider roadway concepts and truck traffic routing plans.
 - e. Consider required stormwater management concepts, erosion and sedimentation control, and grading plans that will be needed to accommodate conditional permit approval.
 - f. Geotechnical subsurface conditions and likely building foundation requirements (use geotechnical report by Owner's Geotech provided in Exhibit C for this initial evaluation; supplemental geotechnical investigations are required during Phase II).
 - g. Consider potential subsurface pipe and utility conflicts that may interfere with construction at each location.
 - h. Flood elevations (taken from best available FEMA floodplain maps). Consider if a Flood Study will be needed.
 - i. Landscaping concepts, if applicable.
 - j. Buffer requirements, if required, to address environmental conditions and abutting land use.
 - k. Odor control and odor impact considerations.
 - l. Power considerations.
 - m. Arc flash considerations.
 - n. Building HVAC.
- D. Dewatering Facilities including but not limited to the following:
- a. Location A
 - New centrifuge feed pumps and piping appropriately sized to pump digested sludge from existing digested sludge storage tanks to new sludge holding tank(s) at new dewatering and dryer facility.
 - New digested sludge holding tank(s) adjacent to dryer facility including provisions to mix contents, isolate and clean tank(s), and drain tank(s).
 - New dewatering building which may be combined with new dryer building to include phased relocation of six existing Alfa-Laval dewatering centrifuges (4 active, 2 standby) and new dewatering polymer feed system.

- Provisions to direct discharge dewatered cake from centrifuges into truck loading or convey dewatered cake to new dewatered cake live-bottom receiving hopper for rotary drum system.
- Odor control for new sludge storage, dewatering, and truck loading facilities.
- New centrate lines from new dewatering to existing nutrient recovery system and existing centrate pump station with an acid wash system to periodically clean accumulated struvite from centrate lines.

b. Location B

- Use of six existing Alfa-Laval dewatering centrifuges and existing dewatering polymer feed system.
- Maintain existing provisions to direct load trucks with dewatered cake on west side of existing Dewatering Building.
- Replace existing dewatering conveyors to discharge dewatered cake to new dewatered cake live-bottom receiving hopper for transfer to new rotary drum dryer system.
- Pump or convey dewatered cake from new dewatered cake receiving hopper to a new receiving hopper in dryer facility or directly to dryer.

E. Dryer Facilities

- a. Integrated triple pass rotary drum dryer system including the following major equipment:
- Wet cake bin with live bottom
 - Wet cake pumps and piping to convey cake to a mixer.
 - Mixer to blend cake and dried recycle material.
 - Drum dryer (including furnace, drum, and fuel train)
 - Pre-separator and polycyclone for dried solids separation
 - Solids screener to classifier dried material

- Thermally dried product screw conveyors (discharge and recycle)
 - Thermally dried material bucket elevators (recycle and product)
 - Crusher to reduce size of large material.
 - Recycled material bin
 - Tray condenser and Venturi scrubber with exhaust fan to remove moisture and particulates from the main air stream.
 - Chemical scrubber/Demister to control ammonia, if necessary
 - Regenerative Thermal Oxidizer (RTO) to combust waste gas.
 - Dust explosion mitigation (blast suppression vents and chemical suppression bottles)
 - Dust management systems (wet scrubbers)
 - Air compressors and pneumatic transport system
 - Product storage silos
 - Dryer system instrumentation
 - Control Panel (PLC and HMI)
- b. Provisions to beneficially use excess biogas generated from the onsite anaerobic digestion process for the dryer system to reduce the facility's reliance on natural gas.
- c. Dryer facility building to potentially include dewatering based on selected location.
- F. Odor Control for dryer facilities.
- G. Plant Water: Provide plant water as needed for dewatering and dryer facility.
- H. Electrical and SCADA System Requirements: Provide electrical and SCADA system as needed for new and/or modified existing facilities. Connect new and/or modified existing facilities to existing plant-wide PLC-based SCADA system.

- I. Natural Gas: Evaluate the availability of digester gas versus natural gas to meet the dryer system's energy needs. Determine if the existing natural gas service to the site is adequate for this project.
- J. Air Permit: Preliminary analysis of operational requirements to maintain FWH WRC status as a minor source under Title V.
- K. Impact on Existing Facilities – Facility Operations and Access Requirements
 - a. For Location B, include provisions for continuous access during construction of the new facilities to the west side of Dewatering Building for dewatered cake truck loading, FOG receiving, nutrient recovery access, liquid oxygen deliveries, and bulk polymer deliveries (which may include temporary piping provisions).
 - b. Include provisions for maintaining plant operations during design, construction, start-up, and operation of the new/modified facilities.
 - c. Include provisions for required coordination, if needed, with other FWH WRC improvement projects being constructed during the same timeframe.
- L. Code Review: Summarize all Federal, State and Local Laws, Codes and Standards that will involve work to be performed as part of this project.

Consultant will plan and conduct five (5) interactive workshops with GCDWR and the CMAR to present/discuss options related to the following items for each potential site location:

1. Preliminary Dewatering Sizing and Concepts
2. Preliminary Dryer Sizing and Concepts
3. Preliminary Facility Layout and Concepts – Location A
4. Preliminary Facility Layout and Concepts – Location B
5. Site, Utility, and Maintenance of Plant Operations (MOPO) Requirements

Prior to each workshop, Consultant will prepare a technical memorandum (TM) on the subject matter, develop an agenda (including list of decisions needed), and develop PowerPoint presentations to facilitate the discussion. The Consultant should provide workshop materials to GCDWR and CMAR at least 3 workdays prior to the respective meeting date. The Consultant will provide meeting minutes to GCDWR and CMAR within 3 workdays after each meeting documenting key decisions made and any outstanding action items. Comments provided by GCDWR on TMs and other workshop materials will be addressed by Consultant in a Comment Log and those documents will be resubmitted to GCDWR and CMAR.

Using information gained through the above evaluations and workshops with GCDWR and CMAR, Consultant will prepare a Site Selection TM. The TM should

include a summary of above referenced workshops including, but not necessarily limited to:

- Advantages and disadvantages of each location (A and B).
- Design sizing and concepts for each location.
- Description of facilities and site requirements associated with each location.
- Listing of major equipment and system requirements associated with each location.
- Description of demolition and utility relocations associated with each location.
- Description of building type and architectural requirements associated with each location.
- Description of utility requirements for each location.
- Sequence of construction and maintenance of plant operations associated with each location.
- Major plans and sections of new or modified facilities associated with each site location.

An appendix should include the finalized version of all TMs developed. The Site Selection TM shall be developed with adequate detail to allow the CMAR to develop preliminary costs for each location. The Consultant shall arrange a meeting with GCDWR and CMAR to review Site Selection TM. Comments from GCDWR and CMAR shall be addressed in a Comment Log and a final TM issued by Consultant.

Deliverables: Technical Workshops with GCDWR, including TMs, agendas, PowerPoint presentations, and meeting minutes; Site Selection TM

GCDWR will utilize the information provided in the Site Selection TM and the CMAR Class 3 cost estimate to determine the final site location.

Following selection of the site location by GCDWR (Task 2.1), the necessary surveying, field investigations, and other tasks (Task 2.2 – 2.8) will be performed by Consultant to prepare a Design Development Report (DDR) and progress the design to 30% complete. Note that any updates to the Environmental Impact Document (EID), if needed, will be prepared by Owner's Advisor (refer to Exhibit D - Environmental Review and Planning Document which includes an assessment of Environmental Impacts). These tasks are described below.

During the progression of the design to 30%, Consultant shall maintain a Design Decision Log to be reviewed with GCDWR weekly. The Design Decision Log will be shared with the CMAR for the purpose of updating the project cost model.

2.2 Field Surveying

Perform field surveying of the areas impacted by construction of the proposed facilities. Consultant is to perform a survey, as necessary, to include horizontal and vertical control for the project sites, as required to mapping to a horizontal scale of 1"=40' with 1-foot contours. Consultant to perform an accurate as-built survey of the existing project site and facilities, including but not limited to, determining locations and elevations of finished floors, soil borings, locations, and elevations of existing roadways; visible utilities and storm drainage; and sufficient horizontal and vertical controls for construction. Reference horizontal controls to Georgia State Plane Coordinate System based on NAD 83 and vertical control to NAVD 88. Convert survey information to digital format for use in Autodesk or Bentley products.

Coordinate with the electric utility, natural gas utility, telephone and cable TV utilities, all other utilities not specifically listed, and GCDWR with respect to interference and avoidance of existing utilities. Subsurface Utility Evaluation (SUE) to locate pipes and utilities that may interfere with construction at selected location. Coordinate with CMAR to identify SUE Level recommended for design. CMAR will be responsible for the SUE work, including a Quality Level B survey to identify the horizontal location of the existing utilities and/or a Quality Level A locate to identify the horizontal and vertical location of the existing utilities where proposed infrastructure is to be installed which requires critical elevation control.

Locate any natural drainage features, streams, creeks, rivers, ponds, or lakes, areas of observed surface water ponding, limits of wretched vegetation and/or delineated wetlands (if applicable), and limits and elevation of 100-year floodplain and floodway within area of survey, if applicable.

Aerial photography where available through GCDWR's GIS Records Section will be made available. Available documentation of previous work at the site may be provided by GCDWR, where available. Reliance on the accuracy of this information is at the Consultant's risk. Consultant is responsible for verifying all information from historical documents of the site.

Deliverables: Survey base maps for use in design, survey data, utility location maps.

2.3 Major Equipment Selection

Assist GCDWR with major equipment selection. Prepare an equipment list with approved, selected equipment, manufacturers, and manufacturers' local sales representatives, allowing for equivalents. Update this list as needed throughout all phases of work.

Deliverables: Equipment List.

2.4 Subsurface Investigation

Review existing geotechnical subsurface investigation of the site previously performed by Owner's Geotech (refer to Exhibit C). Conduct additional geotechnical investigations necessary for the development of the detailed design of the structures required by the Project, including completing laboratory tests to define soil and rock properties for design and construction (to include gradation, Atterberg limits and moisture content). Summarize the structural design criteria for the proposed facilities based on results of all geotechnical investigations. Consultant will prepare a summary of recommended geotechnical design criteria for inclusion in the DDR.

Deliverables: Geotechnical Report; Summary of Recommended Design Criteria

2.5 Hazardous Materials Investigation

Upon identification of the existing facilities that will be modified or demolished, conduct a hazardous materials investigation to determine the presence of asbestos or lead based paint where construction will be performed for this project. Review existing investigation reports, if available. Collect required samples and conduct laboratory testing to determine if hazardous materials are present. Summarize the results of the Hazardous Materials Investigation and provide recommendations for demolition and remediation, as necessary.

Deliverables: Hazardous Materials Report.

2.6 Coordination with Construction Manager

The Consultant will coordinate closely with the CMAR who will develop construction cost estimates, perform constructability reviews, and help the Consultant develop initial construction sequencing plans to ensure Maintenance of Plant Operations (MOPO). This information will be incorporated by the Consultant into the DDR.

The CMAR may use the design deliverables produced by the Consultant to prepare early work packages to minimize construction conflicts and keep the project on schedule. Consultant will work closely with the CMAR to determine the appropriate level of design needed for development of individual work packages as noted below.

2.7 Design Development Report

The Consultant will prepare a DDR for the selected location. The DDR will serve as the guiding document resulting from the Preliminary Design for the detailed construction drawings. The DDR will meet the requirements set forth by Georgia Environmental Protection Division (EPD) for said document. The DDR will include design criteria summary (all disciplines), descriptive narrative, reliability and redundancy requirements, instrumentation and control strategies, equipment list allowing for approved equivalents, with preliminary sizing and selection of acceptable vendors, and code compliance summary, as well as the following information:

- Process Mechanical
 - Design criteria
 - Process narratives
 - Process flow diagram with flow and mass balance
 - Major equipment list with detailed data sheet
 - Code review and requirements
 - Final pump, piping, valve, etc. sizing.
 - Final equipment selections and product data sheets with catalog cuts
 - Equipment layout drawings
- Site/Civil
 - Final structure locations and elevations
 - Stormwater control concept
 - Preliminary site plan and grading plan
 - Geotechnical subsurface recommendations
- Structural
 - Design criteria, codes, and standards
 - Foundation design criteria
 - Description of proposed facilities, including materials of construction and structural systems
 - Description of modification to existing structures
 - Preliminary floor plans and elevations
- Architectural
 - Final architectural/structural concepts
 - Final floor plans and elevations
 - Confirmation of applicable codes
- HVAC/Plumbing/Fire Protection
 - Equipment sizing, selections, and data sheets
 - Concept drawings (fan and louver locations, air flows, equipment arrangement)
 - Control concepts
- Electrical
 - Preliminary load calculations
 - Analysis of existing electrical system's capacity to supply the new loads.
 - Analysis of existing standby power capacity versus new/existing loads
 - Power distribution concepts, including reliability and redundancy approach, one-line diagrams.

- Electrical distribution equipment locations (indoor/outdoor) and equipment to be powered out of each.
- Analysis of existing electrical duct banks in proximity to the proposed new facilities
- Hazardous locations defined.

- Instrumentation and Control
 - Preliminary P&IDs
 - I/O count and rack/panel locations (for 30%)
 - Preliminary instrument component list with setpoints and product data catalog cuts (for 30%)

- Other
 - Supplemental site surveys (as required)
 - Construction sequencing plan (prepared by CMAR; reviewed by Consultant)
 - Updated construction cost estimate (prepared by CMAR; reviewed by Consultant)
 - Constructability Review (prepared by CMAR; reviewed by Consultant)
 - Drawing and specification list

The DDR will capture the accepted conclusions and recommendations from the Site Selection TM in a comprehensive manner.

During development of the DDR, Consultant will arrange various meetings with GCDWR and the CMAR to discuss concepts and obtain input. The Consultant will arrange a meeting with GCDWR and CMAR to review the draft DDR. Comments from GCDWR and CMAR will be addressed in a Comment Log and a final DDR issued by Consultant. The final DDR will be submitted to the Georgia EPD for approval and is required to meet all regulatory and code requirements.

Consultant will provide design calculations from Phase I: Preliminary Engineering to GCDWR in an organized format.

Deliverables: DDR (draft and final); EPD approved DDR; Design Calculations; Design Decision Log

2.8 Environmental Impact Document

The EID was submitted by the Owner's Advisor on behalf of GCDWR to GAEPD in December 2022. Updates to the EID for the selected location, if needed, will be prepared by the Owner's Advisor.

Throughout Preliminary Engineering, Consultant will plan and attend monthly progress/coordination meetings with the CMAR, GCDWR, and Owner's Advisor.

3.0 PHASE II: DETAILED DESIGN

Phase II will be used to prepare the necessary documents for permitting and construction of the proposed improvements. The detailed design will be for the location and facilities selected during Phase I. Consultant will continue to coordinate with the CMAR, GCDWR, and Owner's Advisor during all phases of Engineering Design.

Consultant will provide engineering design for the Project. Design will encompass all required disciplines, including but not limited to, Process Mechanical, Hydraulic, Surveying, Geotechnical, Civil, Landscape, Architectural, Structural, Plumbing, HVAC, Fire Protection, Electrical, Instrumentation and Controls, and Pipeline Conveyance. The design will include all facilities/infrastructure and improvements described within this Scope of Services and as developed within the Phase I Technical Memoranda, and DDR.

3.1 Design Deliverables

Phase II will advance the design from 30% to 100%. It is anticipated that the Project will be designed and constructed in multiple (up to five) work packages. The Consultant will prepare 60, 90, and 100% submittals described below for the work packages. Work packages shall be as determined by GCDWR and the CMAR. Work packages may be released early.

During design, Consultant will develop specifications and drawings to describe the size and nature of the project, description of the materials to be utilized and other essentials as necessary for construction and cost analysis to be performed by the CMAR contractor as part of each GMP deliverable. Consultant shall maintain a 3D model to be provided at the design milestones for review.

In addition to detailed design, Consultant will perform the following tasks as required during procurement of each work package:

- Attend pre-bid meetings.
- Prepare responses to inquiries from bidders.
- Assist CMAR in preparation of addenda.
- Attend bid opening.
- Review bids and bidder references for completeness, balance of bid items and responsiveness. Prepare a tabulation of bid prices.
- Prepare a conformed set of contract documents including the issued addenda.
- Establish the communication protocol to detail communication to be used between GCDWR, CMAR, Resident Inspectors, and Consultant during the construction phase.

Throughout Detailed Design, Consultant will plan and attend biweekly progress/coordination meetings with the CMAR, GCDWR, and Owner's Advisor.

Consultant will also plan and attend coordination meetings with CMAR. Additional workshops with GCDWR may be held to discuss various topics that may arise over the course of the Project.

Consultant shall maintain a Design Decision Log to be reviewed with GCDWR at biweekly meetings. The Design Decision Log will be shared with the CMAR for purposes of updating the project cost model. In addition to the Design Decision Log, Consultant will maintain a record of design changes and update the CMAR at their coordination meetings.

3.2 60% Contract Documents

The 60% design will involve development of a set of contract documents to include construction plans, details, and specifications with respect to process mechanical, structural, site civil work, architectural, electrical systems, and I&C.

The contract plans will be prepared using the most current software versions of AutoCAD Civil 3D, AutoCAD Plant 3D, Revit (3D BIM software), and AutoCAD 2D. Drawings such as site civil plans will be developed using AutoCAD Civil 3D. P&IDs will be developed using AutoCAD Plant 3D. Revit will be used to generate 3D models of more complex facilities such as the internals of buildings and unit processes with extensive piping, valves and mechanisms. 2D sheet files will be created from the 3D models. Electrical one-line diagrams, panel schedules, and unit processes with simple internal mechanisms will be developed using AutoCAD 2D.

As part of the final design, Consultant will work in close collaboration with GCDWR and the CMAR to develop necessary construction documents to support the 60% construction documents.

The following deliverables have been established for 60% design:

- Drawings
 - General
 - Site/Civil, including Stormwater Management
 - Preliminary Landscape
 - Demolition
 - Utility Relocation
 - Mechanical
 - Structural
 - Architectural
 - Building Mechanical
 - HVAC
 - Electrical
 - Instrumentation and Control
- Equipment List, allowing for approved equivalents.
- Technical Specifications (Major Equipment Items)

- Updated Design Decision Log, including approvals and rejections of ideas and associated Change Management Log
- Updated design calculations – if software is used Consultant will provide access to Owner's Advisor and Owner. Specifically, codes, specifications, Standards, assumptions, safety factors, etc. will be provided.

The 60% submittal will include a PDF copy of the entire set and six (6) bound hard copies of specifications and half size (11" x 17") drawings. Consultant will also provide in-progress 3D Building Information Model (BIM) as part of the 60% submittal. A 60% submittal workshop will be held with GCDWR and the CMAR to review/discuss the 60% design.

A Comment Log will be prepared with responses to comments and revisions to be incorporated into the 90% design submittal.

3.3 90% Contract Documents

Consultant will further refine and develop the design to deliver 90% construction plans, details and specifications. The following deliverables have been established for 90% design:

- Fully-developed detailed construction drawings for all disciplines listed under 60% Drawings
- Complete Technical Specifications
- Bidding and Contractor Documents
- Four (4) complete sets of documents for CMAR to develop GMP.

The 90% submittal will include a PDF copy of the entire bid set and six (6) bound hard copies of specifications and half size (11" x 17") drawings. Consultant will also provide in-progress 3D Building Information Model (BIM) as part of the 90% submittal. A 90% submittal workshop will be held with GCDWR and the CMAR to review/discuss the 90% design.

Following 90% design review, permitting packages for all applicable entities will be developed and submitted to Gwinnett County Planning and Development and other agencies.

A Comment Log will be prepared with responses to comments and revisions will be incorporated into the 100% design submittal.

3.4 100% Final Documents

Upon receipt of all comments on the 90% deliverables including any review comments from permitting agencies, Consultant will revise the set and issue final, signed and sealed bid-ready (100% complete) documents.

Any changes from the 30% design will be documented by Consultant in a technical memorandum that summarizes what changed and why, along with the impacts the changes may have had on cost, schedule, constructability, maintenance of plant operations, operability, etc.

The 100% submittal will include a PDF copy of each work package bid set and six (6) bound hard copies of specifications and half size (11" x 17") drawings of each work package. Consultant will also provide final 3D Building Information Model (BIM) as part of the 100% submittal. A final submittal workshop will be held with GCDWR and the CMAR to review the 100% design submittal.

A Comment Log will be prepared with responses to comments. Consultant will document and address review comments (internal/CMAR/ GCDWR) on the final 100% signed/sealed drawings and specifications.

As part of the final deliverable, Consultant will provide GCDWR a copy of all design calculations in an organized format.

3.5 Design Requirements

Consultant shall routinely collaborate with GCDWR and its CMAR to develop a design that achieves GCDWR's desired goals and objectives for the project. Progress and model review meetings will be conducted at the 60%, 90%, and final design stages. Early work packages may proceed through detailed design stages to 90-100% prior to the complete project design. The construction documents will be consistent with the design criteria included in the EPD-approved DDR. In the event the construction documents differ substantially from the approved DDR, the Consultant will be required to revise the DDR and have it re-approved by EPD.

3.6 Design Drawing Preparation

Prepare the necessary layouts, plans, details, and notes for the construction of the proposed improvements. Prepare plans with sufficient detail as required by EPD and the Gwinnett County Department of Planning and Development. Include the required documents for each discipline of work required for this project, including but not limited to:

- A. Civil/Site: Complete site layouts showing locations of proposed structures, utilities, driveways, sidewalks, etc.; site grading; demolition of existing facilities; yard piping; storm water management systems; erosion and sedimentation control; site staging; and landscaping. Include pipe profiles for yard piping and storm water management piping. Provide the level of detail required for bidding and construction and coordinate designs with all other disciplines. As required for coordination with the CMAR, multiple civil/site plans may be required to accommodate early permitting to allow the construction to begin prior to final civil/site plan development.
- B. Process Mechanical: Plans, sections, elevations, and pipeline profiles for all proposed and modified treatment processes. Provide an overall Process Flow

Diagram through the entire solids treatment process, identifying existing facilities to remain in service and proposed facilities. Prepare a process control narrative describing each new or modified process and its control and monitoring requirements during start-up, operation, and shutdown. Prepare the required details for modification to existing facilities and installation of proposed equipment. Design proposed facilities suitable for multiple equipment manufacturers unless a pre-approved sole source product is selected by GCDWR. Base all process designs on the results and recommendations from the Preliminary Engineering Phase. Provide the level of detail required for bidding and construction and coordinate designs with all other disciplines.

- C. Structural: Develop the criteria for building foundations (based on the geotechnical report and supplemental investigations performed by Consultant), select structural system and determine appropriate design codes and structural loading. Perform structural engineering of all basins, buildings, and structures; perform structural engineering for pipe supports. Prepare calculations, plans, sections, elevations, and details for all proposed or modified structures including, but not limited to, buildings, tanks, channels, vaults, walls, slabs, and supports. Comply with all applicable design codes and standards. Provide the level of detail required for bidding and construction and coordinate designs with all other disciplines.
- D. Architectural: The Consultant will outline the plan for building style and roof and interior and exterior materials to coordinate/match existing site architecture. Prepare preliminary architectural drawings including floor plans, building sections and elevations for the new and modified facilities. Architectural design will prepare and present renderings, color swatches, and texture boards to GCDWR staff for all buildings. Design architecture of all buildings and structures, including: interior and exterior surface treatments; administrative area layout and function; each room for shelving, storage, furniture placement, etc.; all doors, stairs, and walkways; lighting, signage, and miscellaneous needed buildings on-site; Develop architectural renderings in concert with CMAR for review and approval by Owner before releasing CMAR. Prepare all required plans, sections, elevations, and details for building construction. Comply with all applicable design codes and standards including, but not limited to, the International Building Code with Georgia Amendments, NFPA 101 – Life Safety Code, and Americans with Disability Act (ADA). Provide the level of detail required for bidding and construction and coordinate designs with all other disciplines.
- E. Electrical: Establish power requirements for new systems and evaluate capacities of existing systems (utility and standby generators) to supply the new loads. Electrical design drawings will utilize standard electrical symbols, abbreviations, and details and will be coordinated with all other disciplines. Provide level of detail required for bidding and construction. Electrical engineering design will include one-line diagrams of the electrical system, including the modifications to existing equipment necessary for tie-in requirements; site plans showing the outdoor electrical equipment locations,

underground duct bank routes, and site lighting; power and signal plans for each building and process area; lighting (including emergency egress and exit illumination systems), receptacle, and grounding plans for each building and process area; panelboard schedules; conduit/wire schedules; duct bank schedules; control schematics including motor elementary control diagrams.

- F. Instrumentation and Control: Develop a plan and philosophy for the operation of the biosolids dryer facility. Describe the integration of the SCADA system with the instrumentation and control system for the new facilities. Consultant will maximize use of electronic controls, and integrate the new system with the upgraded, existing GCDWR SCADA system (recently upgraded under the FWHWRC DCS to PLC Project). Prepare Process and Instrumentation Diagrams (P&IDs) to show the proposed control system for all new processes within FWH WRC. Follow most current GCDWR guidelines and standards for SCADA. Use GCDWR symbols, abbreviations, and identifications. Evaluate instrumentation requirements and select instruments for each application, and compile an instrumentation schedule. Provide an outline and text of sufficient detail for a System Integrator to write the process control logic/code (e.g., PLC ladder logic code to control process). Provide an outline, loop descriptions and other text of sufficient detail for the system integrator to write the treatment process control logic/code. Provide the level of detail required for bidding and construction and coordinate designs with all other disciplines.
- G. Building Mechanical: Establish building mechanical design concepts for process and personnel areas per all applicable codes and standards including, but not limited to, the International Building Code with Georgia Amendments, NFPA 101 – Life Safety Code, and NFPA 820 – Standard for Fire Protection in Wastewater Treatment and Collection Facilities. Prepare all HVAC, plumbing, fire protection drawings, schematics, details, and schedules. Provide the level of detail required for bidding and construction and coordinate designs with all other disciplines.

3.7 Technical Specification Preparation

Provide technical specifications in accordance with CSI Div 01-50 format. Prepare both general specifications for common procedures, work, and equipment which may be used in construction of the facilities. Additionally, prepare individual specifications for equipment, instruments, devices, and procedures required for the proposed facilities.

Coordinate specifications between disciplines to ensure consistency and uniformity.

Deliverables: Technical Specifications at the 60%, 90%, and 100% stages. Provide final specifications to GCDWR in hard copy and electronic (searchable) format (MS Word and PDF).

3.8 Permitting

Consultant will maintain coordination with all permitting agencies during the design phase of this project. Consultant will perform the following services as needed:

- Attend virtual or in-person meetings to confirm regulatory requirements and present proposed improvements at the request of the permitting agencies.
- Prepare letters and design submittal packages to permitting agencies providing notification for the recommended improvements to be performed at FWH WRC.
- Coordinate with the regulatory agencies as required to obtain any permits for construction of the project.
- Address comments from the plan review processes and incorporate them into the contract documents.

Specific tasks include, but are not limited to, the following:

- A. Prepare for and attend meetings with EPD to obtain: Air Quality Control permits; NPDES Storm Water Permits; and Stream Buffer Variances, as applicable.
- B. Prepare and submit DDR.
- C. Provide assistance with NPDES compliance requirements. Provide assistance with Erosion and Sediment Control requirements. Obtain Army Corps of Engineers permit(s) (if applicable). Obtain Commercial Development Permit (CDP) and Building Permit in conformance with Gwinnett County Policies, Codes, and Regulations. Develop Storm Water Pollution Prevention Plan and prepare the Notice of Intent (NOI). Prepare and provide support for any permits listed in the Work Plans. Revise submittals as necessary and provide full support throughout the approval process.
- D. Coordinate all visits and communications with the EPD with the designated representative of the GCDWR. Hold up to three (3) meetings with the EPD and prepare the applications and submittals required for the new facility.
- E. Prepare and gain GCDWR approval of a Storm Water Pollution Prevention Plan (SWPPP).

Deliverables: NPDES Storm Water Permits and SWPPP. It is anticipated that through Consultant's assistance, GCDWR will have the necessary permits in place prior to Construction NTP.

3.9 Cost Estimating

Throughout design, Consultant will coordinate with the CMAR and GCDWR to develop a design that will not result in exceedance of GCDWR's construction budget. For the 60%, 90%, and 100% submittals, CMAR will provide an updated detailed cost estimate for construction of the Project in accordance with the criteria defined by

the Project Management Institute standards. Consultant will review cost estimates prepared by the CMAR, review the cost data included with the CMAR estimates submittals to identify any issues with pricing elements, and compare the CMAR estimates with the plans and specifications to verify all scope of work is included in the estimate. Consultant will work with the CMAR and GCDWR to resolve discrepancies in the CMAR cost estimates.

Deliverables: CMAR Construction Cost Estimates with back-up product and material quotes, when applicable.

3.10 Constructability, Value Engineering, and Safety Review

Consultant may facilitate constructability, value engineering, and safety reviews with GCDWR and CMAR as part of the 60% and 90% submittals that focus on the following:

- Ease with which the proposed facilities can be constructed at the selected site and integrated with existing facilities.
- Potential interferences/obstacles that could cause construction delays or difficulties while keeping existing facilities in service throughout construction and maintaining plant operations.
- Field conditions that need to be investigated further by the CMAR to assure compatibility with design and for observation of any missing elements.
- Value engineering ideas that may be implemented to reduce construction costs while meeting all Technical Requirements and GCDWR goals for the Project.
- Ensuring the safety of all GCDWR staff, construction workers, consultants, vendors, visitors, etc. during construction of the Project as well as operation of the new facilities.

Consultant will prepare a memorandum summarizing each of these reviews. Consultant will incorporate recommended (and approved by GCDWR) changes from these reviews into the design documents.

Deliverables: Documentation of constructability, value engineering, and safety reviews. Updates to design documents.

4.0 PHASE III: ENGINEERING SUPPORT DURING CONSTRUCTION

The following tasks will be provided by the Consultant during the construction of the FWH WRC Biosolids Dryer Project. Note that these services will be required for each GMP (construction) package. Tracking of items will include unique identifiers to clearly identify association with the item's construction package. Note that the term "Contractor" and "CMAR" are used interchangeably.

4.1 Construction Services

- A. Provide conformed contract documents including plans and specifications for each construction package. Conformance will be performed by incorporating all addenda into the Drawings and Specifications (using the software program(s) used to create them) with changes highlighted. Attaching written addenda to the Drawings and Specification documents is not acceptable.
- B. For each construction package, deliver ten (10) sets of full-sized drawings, ten (10) sets of half-size drawings, and ten (10) sets of specifications – five sets of each to CMAR and to GCDWR.
- C. Attend pre-construction conferences held by CMAR to address key contract elements, Contractor's construction schedule, coordination requirements, progress payment estimates, communications flow, record drawings, shop drawing submittals, etc.
- D. Organize identify, file, and distribute all written project correspondence including shop drawing submittals and disposition, requests for information (RFIs), change proposal requests (CPRs), change orders (Cos), etc.
- E. Prepare and maintain shop drawing submittal log and status. Review shop drawing and material submittals for conformance to the requirements of the Contract Documents.
- F. Prepare necessary technical documentation for CPRs and Cos to receive reasonable pricing from the Contractor. Review and negotiate CPRs and Cos with Contractor prior to recommendation to DWR to accept or reject.
- G. Review Contractor's pay requests and recommend payment by GCDWR.
- H. Monitor the Contractor's compliance with procedural requirements identified in the specifications for the project including obtaining permits, meeting submittal requirements, monitoring project schedules, etc.
- I. Coordinate with CMAR and conduct weekly construction progress meetings and special construction meetings, as needed. Respond to issues raised at the meetings. Prepare and distribute meeting minutes and pertinent logs (shop drawings, RFIs, CPRs, Cos, etc.).
- J. Interpretations and Clarifications. Consultant will act as initial interpreter of the technical requirements of the Contract Documents related to the acceptability of the work and make recommendations on all claims related to the technical requirements of the Contract Documents. Issue necessary interpretations and clarifications of the Contract Documents. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. The normal turnaround time for interpretations and clarifications will be a maximum of three (3) business days after the Consultant's receipt of the written interpretation/clarification request. Where a

longer turnaround time is required due to the size and complexity of the effort or the number of other interpretations/clarifications currently being reviewed by the Consultant, the Consultant will so notify the Contractor and the required turnaround time will be estimated in consultation with the Contractor.

- K. Shop Drawings. Review and approve (or take other appropriate action in respect of) Shop Drawings, samples, and other data which Contractor(s) are required to submit, for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. The normal turnaround time for reviewing shop drawings will be a maximum of five (5) business days after the Consultant's receipt of the submittal. Where a longer turnaround time is required due to the size and complexity of the effort or the number of other submittals currently being reviewed by the Consultant, the Consultant will so notify the Contractor and the required turnaround time will be estimated in consultation with the Contractor.
- L. Substitutes. Evaluate and determine the acceptability of substitute materials and equipment proposed by the Contractor. The normal turnaround time for the review of substitutes will be a maximum of 15 business days. This turnaround time may be extended with the permission of the Contractor based on the complexity of the effort and the number of other submittals currently being reviewed by the Consultant.
- M. Inspections and Tests. Consultant will receive and review certificates of inspections, tests and approvals required by laws, rules, regulations, ordinances, codes, orders, or Contract Documents. Consultant's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents.
- N. Contractor's Completion Documents. Consultant will receive and review operating and maintenance instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals which are to be assembled by Contractor in accordance with the Contract Documents and will transmit them to GCDWR with written comments.
- O. Substantial and Final Completion. Following notification by the Contractor that work has reached substantial completion and final completion stages, the Consultant will participate in site visits with GCDWR to review the completed work at each of these stages. During the site visits, the Consultant will notify the Contractor if any completed work was noted to be defective or otherwise not in substantial conformance with the Consultant's design concept. Obtain sign-off by operations and maintenance staff before equipment/process units are accepted.
- P. The Consultant is responsible for providing Resident Engineering and Resident Inspection services. Provide experienced, full-time on-site construction observation throughout the construction duration for each package. Consultant will monitor for compliance with Contract Documents and assist GCDWR and the Contractor in successful completion of the project. At a

minimum, one (1) on-site Construction Manager and two (2) resident inspectors will be provided. Assigned field staff will be experienced in the areas of work they are monitoring. The on-site Construction Manager will be considered Lead Staff.

- Q. In addition to Resident Engineering and Inspection services, the Consultant will conduct visits to the project site and observe construction while it is in progress. The Consultant will make the following three types of site visits:
- Periodic site visits, typically coinciding with the monthly progress meetings. The sole purpose of each site visit is to observe the general progress of the construction.
 - Predetermined site visits to review the work relevant to key components of the Consultant's design. The purpose of each visit is to provide GCDWR a greater degree of confidence that the completed work of the Contractor will conform to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by the Contractor. During such site visits and to the extent possible based on such periodic observations, the Consultant will notify GCDWR if any work, which was the subject of the site visit, was noted to be defective or otherwise not in substantial conformance with the design concept.
 - At the request of GCDWR, site visits to observe Contractor's work relevant to specific technical issues of concern. The purpose of these site visits will be to obtain the necessary information required to assist in the resolution of technical issues pertaining to the Consultant's design. During such site visits and to the extent possible based on such periodic observations, the Consultant will notify GCDWR if any work, which was the subject of the site visit, was noted to be defective or otherwise not in substantial conformance with the design concept.
- R. The Consultant will implement and coordinate with the Contractor the provision of Contractor Daily Reports, Excavation Plan and Endorsement (Dig Notice) submittals, Tie-In Coordination worksheets, Manufacturers Certificate of Proper Installation submittal, and Manufacturers Service Record report during the construction of the project.
- S. It is anticipated that multiple Special Inspections (as defined by the International Building Code and Gwinnett County Special Inspections Program) will be required during the construction phase of this project. The Consultant will serve as the Design Professional in Responsible Charge. The Consultant needs to be Registered as a Special Inspector with the Gwinnett County Department of Planning and Development. The Consultant will submit the Statement of Special Inspections and Final Report of Special Inspections documents to the Building Department as a part of the project's Building Permit application. The Consultant will perform all Special Inspections required to meet building code requirements.

- T. Consultant will coordinate with the CMAR subcontracted Construction Materials Testing (CMT) firm for performing required testing during construction, including, but not limited to, concrete and masonry testing, soils compaction testing, etc.

Deliverables: Inspection reports, minutes of meetings, RFIs, Cos, CPRs, recommendations, interpretations, test results, shop drawing reviews, substitution reviews, observation reports, and contractor pay recommendations.

4.2 Project Controls

The Consultant will be responsible for receiving, managing, tracking, and storing relevant documents between the Contractor, Owner's Advisor, and GCDWR. Relevant documents include routine written project correspondence, RFIs, change order requests, detailed shop drawings, materials and equipment submittals, construction inspection notes, construction progress meeting notes, and noncompliance reports.

Procore will be the cloud-based construction management software used to manage project documents, and share documents electronically between the Consultant, GCDWR, Contractor, and Owner's Advisor. The Consultant will transfer all documents to GCDWR at project completion.

4.3 Change Management

The Consultant will coordinate with GCDWR and the Contractor to obtain cost and detailed modifications to the scope of work for performing work not included in the Contract. The Consultant will review, evaluate, and make recommendations to GCDWR to accept or reject the Contractor's proposal. If the Contractor's proposal is approved by GCDWR as either a part of the contract's Owner-Directed Work or as new work, the Consultant will prepare and issue any necessary Work Change Directives and/or Change Orders to instruct the Contractor to proceed with this change in work.

As requested by GCDWR, the Consultant will review Claims submitted by the Contractor and make recommendations to GCDWR regarding the acceptability of the claims. If a Claim is determined to be of merit and approved by GCDWR as either a part of the contract allowance or as new work, the Consultant will prepare and issue any necessary Work Change Directives and/or Change Orders to instruct the Contractor to proceed with this change in work. If a claim is determined to be without merit, the Consultant will communicate this, along with the reasons, to the Contractor. The Consultant will assist GCDWR in discussions with the Contractor to resolve claims and change orders between the Contractor and GCDWR pertaining to acceptance of the work or interpretation of the requirements of the Contract Documents.

4.4 Operations and Maintenance

Work under the Operations and Maintenance Task is to assist GCDWR with the start-up and testing of the facilities, ensure suitable training is provided, and verify all

required data is included in the manufacturer's operation and maintenance manuals. Additionally, the Consultant will prepare updates to the existing FHW WRC electronic Operations and Maintenance Manual. Major services to be included under this task include, but are not limited to:

- A. Review the manufacturers' operation and maintenance manuals for accuracy and completeness.
- B. Assist with Start-up and Testing of the new facilities. Coordinate with the Contractor and GCDWR to successfully bring the new facilities on-line and maintain plant operability and stability. Consultant will assist the GCDWR operators with start-up and initial operation of each segment of the new facilities. Consultant will prepare reports documenting observations made during start-up and testing.
- C. Consultant will develop an electronic O&M manual for the for Work provided within the Contract utilizing Contractor-provided, Manufacturer-supplied O&M Manuals. GCDWR will incorporate the electronic O&M information into their existing facility electronic operations and maintenance system.
- D. Provide training sessions for Operating Staff for the new facilities. Training sessions will be required for multiple shifts.

Deliverables: Manufacturer-supplied Operations and Maintenance Manuals; electronic O&M content for all impacted equipment and/or mechanical processes; Training Presentations and Schedules; and Start-up and testing observation reports.

4.5 Asset Management

- A. Develop an Asset Registry for all fixed assets as defined by Gwinnett County's Fixed Asset Management Program. The registry should include: Asset Number – same number used in SCADA – if it does not exist in SCADA, the Consultant will assign a number (created by GCDWR through their CMMS), plans and specifications; Asset Name; Asset Information (e.g. Manufacturer, Vendor, Serial Number, Model Number, horsepower, capacity...); Installation Cost – (e.g. Labor, Overhead and Profit); Asset Cost; Initial Value of Asset – Equals Asset Cost plus Installation Cost; Date Asset Placed in Service; Estimated Life; Asset Replacement Cost – Future Value at the End of Useful Life; Warranty Information; and is this Critical Equipment (Yes/No) – which Consultant will be expected to get GCDWR approval on such assignment.
- B. Prepare and gain GCDWR approval of a master template from the CMMS database to populate. A sample of the FWH WRC template is available from GCDWR.
- C. Coordinate with the Contractor to generate an equipment list of all water and air pollution control machinery purchased for this project for which sales tax was paid to the State of Georgia. Conforming to the Sales Tax

Reimbursement rules and regulations of the State Department of Revenue, complete the necessary forms for submittal of all sales tax reimbursable items, prepare spreadsheets with backup documentation that meets the needs of the Department of Revenue for validation of sales tax reimbursement.

Deliverables: Asset Registry, Sales Tax documentation.

4.6 Record Drawings

- A. Assemble and consolidate all as-built information and conduct field verifications as appropriate. Provide elevation/location drawings for all pipe and major equipment.
- B. Prepare a set of reproducible record prints of Drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by Contractor(s) to Consultant.
- C. Create as-built/record 3-D BIM for all new and modified facilities. Models are to include all aspects of each facility and discipline including, but not limited to, Civil, Structural, Mechanical, Electrical, Architectural, etc. At a minimum, the BIM will include all features that are tracked in the Asset Management Registry.
- D. Provide Record Drawings in hard copy and electronic format. Hard copies to include one full sized set for Records, one full sized set for Operations and one half sized set for Project Manager. Electronic copies to be provided in native AutoCAD and PDF file format.
- E. Record drawings will be created using the original software platform. Electronic hyperlinks will be embedded in the drawings to all RFIs, submittals, etc. Attaching written copies of RFIs, submittals to the Drawings is not acceptable.

Deliverables: Record Drawings, BIM, hard copy and electronic format.

Additional information regarding the Engineering and Design Schedule and Project Budget and Funding follows.

5.0 ENGINEERING AND DESIGN SCHEDULE

It is anticipated that the Agreement may be awarded by the Gwinnett County Board of Commissioners by 3Q 2023, with execution of the Agreement and a Notice to Proceed with Phase I Services shortly thereafter. It is anticipated that the CMAR contract may be awarded by end of 4Q 2023.

The schedule below shows the number of months for each phase to be completed from the date of the Notice-to-Proceed (NTP).

PHASE	Engineering (months)	CMAR/GCDWR Review (months)	Cumulative Months from NTP
I – Preliminary Engineering	5	1	6
II – Detailed Design	8.5	1.5	16
III – Engineering Support During Construction	30-36	N/A	46-52

6.0 PROJECT BUDGET AND FUNDING

The cost for construction of the Project is budgeted at approximately \$85 million. Such budget does not include GCDWR’s other Project costs, including but not limited to professional advisory services, professional engineering design services, property or access rights, site investigations, environmental studies, certain governmental approvals, taxes, etc. GCDWR will use an American Rescue Plan Act (ARPA) grant and the proceeds of loans from the Clean Water State Revolving Fund, administered by the Georgia Environmental Finance Authority (GEFA), to provide the capital funding for the Project. Funding may be obtained from U.S. Department of Agriculture (USDA); Gwinnett County has applied for funding through the Fertilizer Expansion Grant Program.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AT RISK

Prepared By



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AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AT RISK

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AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AT RISK

This Agreement is by and between **Gwinnett County Department of Water Resources** (“Owner”) and **[Name of Construction Manager at Risk]** (“Construction Manager at Risk” or “CMAR”).

Terms used in this Agreement have the meanings stated herein and in the General Conditions and the Supplementary Conditions.

Owner and CMAR hereby agree as follows:

ARTICLE 1—THE PROJECT

1.01 The Project, of which the CMAR Services and the Work under the Contract Documents are a part, is generally described as follows:

**F. Wayne Hill Water Resources Center Biosolids Dryer
[GCDWR Project Number F-1411-03]**

ARTICLE 2—OWNER’S ADVISOR AND ENGINEER; OWNER’S PROJECT TEAM

2.01 The Owner has retained **Hazen and Sawyer** (Owner’s Advisor or OA) to act as Owner’s representative, assume all duties and responsibilities of advisor to Owner and construction contract administrator on behalf of Owner, and have the rights and authority assigned to Owner’s Advisor in the Contract.

2.02 The Owner has retained **[insert name of engineering firm]** (Engineer) to design the Project, to assume all duties and responsibilities of Engineer during the construction of the Project, and to have the rights and authority assigned to Engineer in the CMAR Contract.

ARTICLE 3—CMAR SERVICES

3.01 Scope of CMAR Services

- A. CMAR will perform the CMAR Services set forth in Exhibit A, Scope of CMAR Services, as authorized, and other specified CMAR Services as expressly set forth in a Contract Amendment. Services rendered by CMAR to meet its general construction and management obligations are not CMAR Services, and are not compensated as CMAR Services, unless expressly designated as such.
- B. CMAR Services are categorized in Exhibit A as Basic Preconstruction Services; Additional Preconstruction Services; Basic Procurement Services Additional Procurement Services; and Special Services.
- C. In Exhibit A and in scope of CMAR Services provisions in Contract Amendments, imperative sentences with respect to the performance of services are directives to CMAR, unless expressly indicated otherwise.

3.02 Basic Services, Additional Services, and Special Services

- A. Basic Services are CMAR Services (categorized as Preconstruction or Procurement) that are identified as Basic Services in Exhibit A.
- B. In addition to Basic Services, CMAR shall provide specific Additional Preconstruction Services and Additional Procurement Services within the scope set forth in Exhibit A, if Owner authorizes CMAR to do so. Owner or Owner's Advisor will authorize the specified Additional Services in a Contract Amendment. The Contract Amendment will describe the tasks to be performed, the compensation to be paid, the time for performance, the deliverables to be provided, and other applicable terms, if any. If a specific Additional Service has been priced during the CMAR selection process, such price will be binding on CMAR and Owner unless modified by mutual agreement.
- C. In addition to the services identified as Basic Services and Additional Services, after the Effective Date of the Contract the Owner and CMAR may identify Project-related services that were not contemplated at the time the Agreement was executed, are necessary to the Project, and should be added to the scope of CMAR Services. If Owner and CMAR mutually agree, a Contract Amendment will be issued that specifies the scope of such Special Services, the compensation to be paid, the time for performance, the deliverables to be provided, and other applicable terms. Any amount included in the Agreement for Special Services will serve as the Owner's contingency for Special Services, if authorized by the Owner.

3.03 Authorization to Provide CMAR Services

- A. CMAR is authorized by the execution of this Agreement to begin providing Basic Preconstruction Services set forth in Article 1 in Exhibit A, Scope of CMAR Services, as of the Effective Date of the Contract.
- B. CMAR shall provide Basic Procurement Services set forth in Article 3 in Exhibit A, Scope of CMAR Services, upon receipt of notice to commence such services from Owner or the Owner's Advisor, or in a Contract Amendment establishing the scope and compensation for Procurement Services.
- C. All other CMAR Services, including Additional Preconstruction Services Additional Procurement Services, and Special Services, if any, must be authorized by Owner or Owner's Advisor.

3.04 Compensation for Basic CMAR Services

- A. Basic Preconstruction Services—Owner will compensate CMAR for Basic Preconstruction Services, provided per Article 1, Exhibit A—Scope of Work for CMAR Services, the lump sum (stipulated price) for the Price for CMAR Basic Preconstruction Services shown in Exhibit B Table 1, Compensation for CMAR Services.
- B. Basic Procurement Services—Owner will compensate CMAR for CMAR Procurement Services, provided per Article 3, Exhibit A—Scope of Work for CMAR Services, the lump sum (stipulated price) for the Price for CMAR Basic Procurement Services shown in Exhibit B Table 1, Compensation for CMAR Services.
- C. The compensation amount for Basic Procurement Services will be determined in a Contract Amendment for Procurement Services based on the Billing Rates shown in Exhibit B—

Table 2, Compensation for CMAR Services. The scope and compensation for these services will be based on the Procurement Strategy Plan developed in accordance with Exhibit A—Scope of Work for CMAR Services, Paragraph 1.13.

3.05 Compensation for Additional CMAR Services

- A. For Additional Preconstruction Services and Additional Procurement Services, Owner will compensate CMAR for each hour earned at the Billing Rates shown in Exhibit B—Table 2, Compensation for CMAR Services.

3.06 Payment for CMAR Services

A. Preparation and Submittal of Invoices

1. CMAR will prepare and submit invoices for CMAR Services to Owner's Advisor on a monthly basis in a format acceptable to Owner's Advisor.
2. CMAR may not submit invoices and is not entitled to compensation for Additional Services or Special Services unless Owner has authorized such services through execution of a Contract Amendment.
3. CMAR will provide documentation acceptable to the Owner to allow Owner to verify CMAR's charges included in invoices.

B. Payments

1. Payment for CMAR Services compensated on a Lump Sum (stipulated price) basis:
 - a. The Lump Sum amount includes compensation for CMAR's services, and services of CMAR Subconsultants, if any. Appropriate amounts are to be incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses, and other cost.
 - b. The amount invoiced each billing period will be based on the CMAR's estimate of the percentage of the total CMAR Services completed during the billing period.
 - c. The compensation paid to CMAR for Basic Services will not exceed the Lump Sum amount unless duly authorized by a Contract Amendment.
2. The amounts paid to CMAR under this Article are deemed to include full compensation for CMAR's overhead and profit associated with such labor and expenses.

C. Time of Payment

1. Owner will make payments for CMAR Services within 60 days after receiving an approved invoice from the Owner's Advisor.
2. If Owner fails to make any payment due CMAR for CMAR Services within 60 days after receipt of CMAR's invoice, then:
 - a. Amounts due CMAR will be increased at the rate of 1.0% per month, or the maximum rate of interest permitted by law, if less, from said thirtieth day; and
 - b. CMAR may, after giving 7 days' written notice to Owner, suspend services under this Agreement until Owner has paid all amounts due for services, expenses, and other related charges in full. Owner waives any and all claims against CMAR for this suspension.

3. Owner may withhold only the contested portions of an invoice and must pay the undisputed portion of the invoice.
- D. Compensation for CMAR Services discussed in Article 3 is not compensation for the Work and is not included in the GMP. No retainage will be withheld from payments of CMAR Services; however, such payments are subject to the set-off provisions in General Conditions Article 15.

ARTICLE 4—COMPENSATION FOR PERFORMANCE AND COMPLETION OF THE WORK

- 4.01 Owner shall compensate CMAR for performance and completion of the Work in accordance with the Contract Documents. Payment for Work will consist of the following:
 - A. Payment for Construction Support Costs in accordance with Article 5, and as set forth in Exhibit B Table 1 lines 6-9;
 - B. Payment for Cost of the Work as provided in Article 6; and
 - C. Payment of a CMAR Fee as set forth in Article 7 and in Exhibit B Table 1.
- 4.02 This Agreement establishes a CMAR Contingency Allowance for use in paying for unforeseen costs as set forth in Article 8.
- 4.03 The amounts for CMAR's compensation summarized in Paragraph 4.01 are subject to additions and deletions as provided in the Contract, up to limitations established in the Guaranteed Maximum Price (GMP) as provided in Article 11.

ARTICLE 5—CONSTRUCTION SUPPORT COSTS

- 5.01 Construction Support Costs
 - A. Construction Support Costs (field overhead or "general conditions" costs) are those costs associated with and in support of construction that are not directly related to specific construction activities. Construction Support Costs are not compensable as Cost of the Work and must not be included by CMAR in proposed Work Authorizations submitted to the Owner for approval and issuance. Construction Support Costs include without limitation:
 1. CMAR project management costs, including project managers, superintendents, field engineering staff, and clerical support located at the Site;
 2. Management of Subcontractors and Suppliers;
 3. Management of delegated professional design services, if any;
 4. Costs associated with safety programs, including safety managers and safety representatives;
 5. Quality management not specifically designated to be covered in a Work Authorization;
 6. Costs associated with obtaining permits, or paying patent fees or royalties, if not specifically designated to be covered in a Work Authorization;

7. Costs for permit inspections, and other inspections required by Laws and Regulations not specifically designated to be covered in a Work Authorization;
 8. Compliance with Laws and Regulations;
 9. Taxes, other than those specifically designated to be covered in a Work Authorization;
 10. Contract administration costs, including costs for:
 - a. Meetings, reporting, notifications, and other communications and coordination,
 - b. Document management,
 - c. Submittals, record data, and other documentation,
 - d. Creating and maintaining Project schedules per Article 4 of the General Conditions,
 - e. Changes to the CMAR Contract per Article 11 of the General Conditions,
 - f. Applications for Payment per Article 15 of the General Conditions,
 - g. Maintenance of Record Documents, and
 - h. Other contract administration costs included in the Contract Documents;
 11. Performance, payment, and warranty bonds, if any, provided to cover the construction of the entire Project;
 12. General insurance costs, excluding Builder's Risk or other coverage that applies specifically to Work and specifically designated to be covered in a Work Authorization, and Worker's Compensation Insurance which is to be included in payroll cost per Paragraph 6.02.A.1;
 13. Costs associated with CMAR temporary facilities and temporary infrastructure at the Site;
 14. The cost of purchasing, renting, or furnishing small tools and hand tools. These are defined as any tool or equipment whose current price, if purchased new at retail would be less than \$500;
 15. Costs for site maintenance, storage of materials, waste disposal, environmental controls, management of water, protection of site and adjacent property, cleaning during construction and final cleaning;
 16. Costs associated with start-up and commissioning of the Work, including training of Owner's personnel, temporary operation of facilities by the CMAR; and performance acceptance testing, if any;
 17. Costs associated with substantial completion, partial utilization, and final completion; and
 18. Costs associated with general warranty, guarantees and correction of defective work during the Correction Period.
- B. The organization of the Work into Work Packages will not result in changes to the CMAR's compensation for Construction Support Costs.

5.02 Fixed Construction Support Costs

- A. Fixed Construction Support Costs are those costs which are not time sensitive and will not increase if the performance of the Work extends beyond the Construction Period designated for Substantial Completion of the Work described in Article 13. The amount for Fixed Construction Support Cost is shown in Exhibit B, Table 2–Basis of Compensation for Fixed Construction Support Costs.

5.03 Time-Sensitive Construction Support Costs

- A. Time-Sensitive Construction Support Costs are those costs which will increase if the performance of the Work extends beyond the Construction Period designated for Substantial Completion described in Article 13. The amount for Time-Sensitive Construction Support Costs based on the Construction Period is shown in Exhibit B, Table 3–Basis of Compensation for Time-Sensitive Construction Support Costs.
- B. The Construction Support Costs Extended Rate is determined by dividing the Time-Sensitive Construction Support Costs by the projected number of days in the Construction Period. CMAR will be entitled to additional compensation for Time-Sensitive Construction Support Costs at the Construction Support Extended Rate shown in Exhibit B, Table 3–Basis of Compensation for Time-Sensitive Construction Support Cost if the extended time is associated with a compensable delay under the provisions of the General Conditions.

5.04 Changes in Construction Support Costs

- A. Owner and CMAR acknowledge that the Construction Support Costs stipulated amounts set forth in this Agreement’s Exhibit B, Table 1, lines 7, 8, and 9 (Construction Support Costs Contract Amounts) and the Construction Support Costs Extended Rate (determined as set forth in Paragraph 5.03.B) are approximations of actual costs intended to liquidate and stipulate CMAR’s compensation for Construction Support Costs, encourage efficiency and cost control, and reduce Owner’s and CMAR’s administrative and accounting effort. The Construction Support Costs Contract Amounts and the Construction Support Costs Extended Rate will not be increased except in cases in which CMAR demonstrates:
1. An excessive and unanticipated increase in Construction Support Costs resulting from scope changes in the Work or other causes directly attributable to Owner; and
 2. Such increase in costs has not otherwise been compensated in a Work Authorization, Contract Amendment, or Change Order.

5.05 Compensation for Construction Support Costs

- A. Payments for Fixed Construction Support Costs will be made in equal monthly increments determined by dividing the Fixed Construction Support Costs Contract Amount by the projected number of months in the Construction Period. No payment will be made for Fixed Construction Support Costs in excess of the Fixed Construction Support Costs Contract Amount unless this Amount is adjusted in accordance with provisions in Paragraph 5.04.
- B. Payments for Time-Sensitive Construction Support Costs will be made in equal monthly increments determined by dividing the Time-Sensitive Construction Support Costs Contract Amount by the projected number of months in the Construction Period. No payment will be made for Time-Sensitive Construction Support Costs in excess of the Time-

Sensitive Construction Support Contract Amount unless this Amount is adjusted in accordance with provisions in Paragraph 5.04.

- C. Payments will be made for Time-Sensitive Construction Support Costs associated with compensable delays under the provisions of the General Conditions at the Construction Support Costs Extended Rate as described in Paragraph 5.03.B.

ARTICLE 6—COST OF THE WORK

6.01 Purposes for Determination of Cost of the Work

- A. The term Cost of the Work is defined in the General Conditions, Article 1, as the sum of eligible costs incurred by CMAR for the performance of the Work, as allowed by the Cost of the Work provisions set forth in the Agreement; such provisions are set forth in this Article 6. Cost of the Work is determined for each Work Authorization, subject to any limits described in this Article. The provisions of this Article are used for two distinct purposes:
 1. To determine Cost of the Work for purposes of CMAR's base compensation for construction under this Contract; or
 2. When needed to determine the value of a Change Proposal, Change Order, Claim, set-off, or other adjustment to the Guaranteed Maximum Price. When the value of any such adjustment is determined based on Cost of the Work, CMAR is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. For purposes of determining CMAR's base compensation, Cost of the Work applies only to Work that has been duly authorized in a Work Authorization.
- C. The Cost of the Work will include only those items identified in Paragraph 6.02.

6.02 Cost of the Work

- A. Payroll Cost—Payroll costs for employees in the direct employ of CMAR performing Work described in Work Authorizations, and excluding those efforts covered in Construction Support costs per Paragraph 5.01. Payroll costs will be based on actual amounts paid as indicated on Certified Payroll reports. Payroll costs are to include salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation insurance, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturdays, Sundays, or legal holidays, will be included in the above to the extent authorized by Owner.
- B. Incorporated Equipment and Material Cost—Cost of all materials and equipment furnished or incorporated in the Work, including costs for transportation and storage prior to delivery to the site. Cost for proper storage at the Site is to be included in Construction Support Cost per Paragraph 5.01. Cost for equipment is to include Suppliers' services for submittals, factory and field testing and inspections, installation checks, start-up assistance, and training, if any. All cash discounts accrue to CMAR unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials

and equipment will accrue to Owner, and CMAR shall make provisions so that they may be obtained.

- C. Consumable Equipment and Material Cost—Cost, including transportation and maintenance, of all materials, supplies, equipment, tools, and machinery at the Site, which are consumed in the performance of the Work, less market value of such items used but not consumed which remain the property of CMAR. In establishing costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. CMAR will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such items.
- D. Subcontractor Cost—Payments made by CMAR to Subcontractors for Work performed by Subcontractors. CMAR shall obtain competitive bids from subcontractors acceptable to Owner and CMAR and shall deliver such bids to Owner, which will then determine, with the advice of Owner’s Advisor, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor’s Cost of the Work and fee will be determined in the same manner as CMAR’s Cost of the Work and fee as provided in this Article 6.
- E. Construction Equipment Cost—Cost of providing construction equipment and machinery to construct the Work described in the Work Authorization.
 - 1. Include all the costs for transporting, loading, unloading, assembly, dismantling, and removal of the equipment and machinery with Consumable Equipment and Material Cost per Paragraph 6.02.C.
 - 2. Construction equipment and machinery cost will be billed at rates approved by the Owner’s Advisor as part of each Work Authorization.
 - a. All operating costs will include costs for fuel, maintenance, parts, and associated labor. Billing rates for equipment fueling and maintenance do not include payroll costs for equipment operators, which will be included in Payroll cost per Paragraph 6.02.A.
 - b. Costs for equipment and machinery owned by CMAR or a Subcontractor cannot exceed the rates shown for equipment in the EquipmentWatch Cost Recovery Rental Rate Blue Book, (<https://equipmentwatch.com/blue-book-cost-recovery>) An hourly rate will be computed by dividing the monthly rates by 176. These rates will include all operating costs per Paragraph 6.02.E.2.a.
 - c. Payment for rented equipment will be in accordance with rental agreements as to price, including any surcharge or special rates applicable to overtime use of the construction equipment or machinery, and all such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
 - d. No markup is allowed on equipment rented or leased from any company owned in total or in part by CMAR or a Subcontractor, or is owned by the same holding company or a company with a close legal affiliation to CMAR or Subcontractor, since markups are included in rental or lease rates.

- e. Equipment used for site maintenance is to be included in Construction Support Costs. Equipment used for multiple Work Authorizations must be billed on the basis of time worked on each Work Authorization.
 - 3. With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Guaranteed Maximum Price (changed Work), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.
- F. Supplemental Costs which consist of the following:
- 1. The proportion of necessary transportation, travel, and subsistence expenses of CMAR's employees incurred in the discharge of duties connected with the Work Authorization.
 - 2. Costs of special consultants including engineers, architects, testing laboratories, and surveyors, employed or retained for services specifically related to the Work Authorization and expressly excluding costs incurred by consultants performing CMAR Services.
 - 3. Sales, consumer, use, and other similar taxes related to the Work, and for which CMAR is liable, as imposed by Laws and Regulations.
 - 4. Deposits lost for causes other than 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.
 - 5. Royalty payments and fees for permits, patents, and licenses directly related to a Work Authorization.
 - 6. The cost of premiums for performance, payment, and warranty bonds obtained by CMAR as a requirement of a Work Authorization, in addition to the bonds purchased for the construction as a whole within the scope of Construction Support Costs per Paragraph 5.01.A.11. Final compensation for such premium costs will be based on reconciled costs at the conclusion of the Work.
 - 7. Cost for any Subcontractor bonds that must be required to protect Owner's and CMAR's interests in the event of a Subcontractor default associated with a Work Authorization. Final compensation for such premium costs will be based on reconciled costs at the conclusion of the Work.
 - 8. The cost of premiums for Builder's Risk insurance and other Work Authorization-specific insurance that CMAR is required by the Contract Documents to purchase and maintain, but not including costs of commercial general liability, automobile liability, and contractor's pollution liability insurance which are covered as Construction Support Costs per Article 5. The compensation for worker's compensation is included as part of payroll costs per Paragraph 6.01.A.1. Final compensation for such premium costs will be based on reconciled costs at the conclusion of the Work.

6.03 Specific Exclusions from Cost of the Work

- A. The following items are not included in the Cost of the Work. This express itemization does not confer Cost of the Work or compensable status to otherwise ineligible items not listed here. Cost for any items not included in the Cost of the Work are to be included in the CMAR Fee unless specifically itemized at Construction Support Costs described in Article 5.
1. Payroll costs and other compensation of CMAR's officers, executives, principals, general managers, project managers, superintendents, safety managers, safety representatives, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by CMAR, whether at the Site or in CMAR's principal or branch office for general administration of the Work. The payroll costs and other compensation excluded here are to be considered administrative costs covered by Construction Support Cost or the CMAR Fee.
 2. Expenses of CMAR's principal and branch offices.
 3. Any part of CMAR's capital expenses, including interest on CMAR's capital employed for the Work and charges against CMAR for delinquent payments.
 4. 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.
 5. Cost for the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property not paid from CMAR's Contingency per Article 8.
 6. Expenses incurred in preparing and advancing Claims.
 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 6.03.
 8. Costs recovered or reimbursed under other Construction Support Cost or Cost of the Work provisions.

6.04 Compensation for the Cost of the Work

- A. Compensation for the Cost of the Work is based on the amount earned for Work completed for each Work Authorization.

ARTICLE 7—CONSTRUCTION MANAGER AT RISK FEE

7.01 The CMAR Fee will be determined as follows:

- A. The CMAR Fee is a specified percentage of the Cost of the Work as shown in Exhibit B Table 1. No fee will be payable on the basis of costs itemized as excluded in Paragraph 6.03.

ARTICLE 8—CMAR CONTINGENCY ALLOWANCE

8.01 CMAR Contingency Allowance

- A. The CMAR Contingency Allowance funds, shown in Exhibit B Table 1—Estimated Guaranteed Maximum Price, are for the exclusive use of CMAR while executing the Work,

to reimburse CMAR for costs due to unforeseen causes, unintentional errors, or events which cannot specifically be anticipated at the time Work Authorizations are issued.

- B. The CMAR Contingency Allowance funds may be used by CMAR for costs sustained by either CMAR itself or a Subcontractor, at CMAR's discretion. The CMAR contingency funds may not be used for costs which are reimbursable or recoverable under other provisions of the Contract.
- C. Without excluding other possible uses of the CMAR Contingency Allowance, the following uses are expressly acknowledged as eligible uses of the CMAR Contingency Allowance funds:
 - 1. Losses and damages, and related expenses, caused by damage to the Work, not compensated by insurance or otherwise, sustained by CMAR or a Subcontractor in connection with the performance of the Work;
 - 2. Corrective work, regardless of fault if non-conformance is unintended;
 - 3. Subcontractor defaults;
 - 4. Overruns in Construction Support Costs;
 - 5. Builder's Risk deductibles;
 - 6. Verified excusable errors in estimates; or
 - 7. Non-compensable overtime and other acceleration costs.
- D. CMAR shall replenish the CMAR Contingency Allowance by restoring money withdrawn with money recovered (1) from bonds and insurance coverage payments for such expenditures, and (2) from defaulting Subcontractors or Suppliers.
- E. The CMAR Contingency Allowance will not be used to fund Owner-directed changes in the Work. Such changes will be administered through the contractual procedures established for changes in the scope of the Work, including expenditures from the Owner's Contingency Allowance, if any, Work Authorizations as modified by Change Order, and Contract Amendments or other modifications that impact the Guaranteed Maximum Price.
- F. The CMAR Contingency Allowance will not be used to recover the cost of items that are compensable as a Cost of the Work.
- G. The CMAR Fee does not apply to expenditures from the CMAR Contingency Allowance. CMAR will not be entitled to any additional overhead, profit, or other markup on any CMAR Contingency Allowance expenditure.
- H. The designated CMAR Contingency Allowance, as duly replenished, is the maximum amount available to CMAR to recover eligible costs under this Article; Owner will not increase the CMAR Contingency Allowance or otherwise reimburse CMAR for eligible costs incurred in excess of the CMAR Contingency Allowance.
- I. CMAR will submit applications for reimbursement from the CMAR Contingency Allowance to Owner's Advisor, in a format acceptable to Owner's Advisor, together with appropriate documentation. Payments from the CMAR Contingency Allowance will be recorded in the Application for Payment.

ARTICLE 9—WORK AUTHORIZATIONS

9.01 General Provisions Regarding Work Authorizations

- A. Work Authorizations will be based on Work Packages prepared by Owner’s Advisor and Engineer describing equipment and materials to be purchased for installation or Work to be performed in accordance with the approved Work Authorization.
- B. All Work to be provided by CMAR must be authorized by the issuance of a Work Authorization specifying or referencing the scope of Work to be conducted.
- C. Owner’s Advisor will issue each Work Authorization using the Work Authorization form provided by the Owner’s Advisor.
- D. The Work Authorization will indicate the compensation to which CMAR is entitled for providing the authorized Work.
- E. CMAR is not entitled to compensation for providing Work that Owner’s Advisor has not authorized.

9.02 First Work Authorization

- A. The first Work Authorization, authorizing the commencement of construction, will include, in addition to authorization for a specific Work Package, or multiple specific Work Packages, the authorization of expenditures by CMAR for Contract-specific (1) performance and payment bond premiums (2) Builder’s Risk premiums, if CMAR is required to purchase and maintain Builder’s Risk insurance, and (3) premiums for other specific insurance policies required by the Contract.

ARTICLE 10—PROCUREMENT OF SUBCONTRACTORS; CMAR SELF-PERFORMANCE OF AUTHORIZED WORK

10.01 Performance of the Authorized Work

- A. CMAR will solicit and receive competitive bids on the Work included in each Work Authorization, including the purchase of materials and equipment. CMAR will prepare bid packages supporting the Work Authorization and make opportunities available to Subcontractors and Suppliers in a way that will increase competition and allow bids by trade contractors or specialty entities. CMAR may prepare bid packages for Work the CMAR may wish to self-perform, so long as doing so will not limit bidding by competing bidders (prospective subcontractors).
- B. CMAR may bid on Work Packages, or portions thereof, if fully qualified to self-perform the subject Work, subject to the following limitations:
 - 1. CMAR ~~may not will~~ self-perform ~~more than [number]~~at least 25 percent of the total scope of Work under this Contract, as determined on a monetary basis. This percentage applies to the Contract as a whole and does not impose a limitation on specific Work Authorizations. CMAR may self-perform all of the Work in a single Work Authorization so long as the percentage of Work on the total scope of Work for the Contract is within these limitations.

- C. CMAR must submit its bids in advance of receiving other bids, and in the same manner that other bids are to be submitted. Bids are to be opened in the presence of the Owner's Advisor.
- D. CMAR will award the subcontract for the Work under the Work Authorization to the responsible bidder submitting the lowest responsive bid for that portion of the Work for which bids are received. CMAR may self-perform Work when CMAR is the low bidder.

ARTICLE 11—GUARANTEED MAXIMUM PRICE

- 11.01 Subject to the provisions of Article 4, CMAR guarantees that the maximum amount payable by Owner (Guaranteed Maximum Price, or GMP) for the sum of the amounts for Paragraphs 11.01.A through D that follow will be the binding GMP established by the process stated in Paragraphs 11.02 and 11.03.
- A. Construction Support Cost Amount (Article 5);
 - B. Cost of the Work (Article 6);
 - C. CMAR Fee (Article 7); and
 - D. CMAR's Contingency Allowance Amount (Article 8).
- 11.02 The Estimated GMP indicated in Exhibit B Table 1—Estimated Guaranteed Maximum Price is a preliminary figure as of the Effective Date of the Contract. The GMP will be revised as the design is continued and completed.
- 11.03 A binding GMP will be established at any time agreeable to Owner and CMAR, but not later than the following:
- A. If the Work is performed under Work Packages released and authorized concurrently for the complete Project, then the binding GMP will be established on the basis of Contract Documents that are 90% complete.
 - B. If the Work will be authorized over time, as the design for individual Work Packages is completed, in a series of incremental Work Authorizations (fast tracking or similar design/construction process) then the binding GMP will be developed in a series of incremental changes as the design for each Work Package reaches 90% completion, culminating, when all Work Packages have been authorized, in a binding GMP for the Contract.
- 11.04 Owner's Construction Budget
- A. Owner's Advisor will establish an updated Owner's Construction Budget (Budget) based on the CMAR's procurement strategy which identifies Work Packages used to construct the Work. Owner's Advisor, working with CMAR, will update this Budget with actual amounts for each line item as Work Authorization amounts identified in the updated Budget are determined.
 - B. Owner's Advisor will revise the Budget to incorporate Change Orders or authorized allocation of contingency funds which change the funds available for Budget line items. When amounts for all Work Authorizations have been determined and the binding GMP is established for the Contract, the Budget must correlate to GMP line items, and the Budget must equal the GMP.

- C. CMAR will identify variances between the budgeted amount and actual amounts as Work Authorization amounts are determined.
1. Positive variances are created when actual cost for a Work Authorization is less than the budgeted amount. Positive variances identify unused funds that can be used to offset negative variances.
 2. Negative variances are created when actual cost for a Work Authorization is more than the budgeted amount. Negative variances identify where additional funds are needed. Unused funds from positive variances can be used to offset these negative variances.
 3. Net variances for the Contract are used to determine the current status of the Owner's Construction Budget.
 - a. A net positive variance for the Contract represents a savings to the Owner. A final Contract Amendment will be issued at the completion of the Contract (Final Payment) to adjust the GMP to the actual amount of Contract costs.
 - b. A net negative variance for the Contract represents the amount for which the CMAR is at risk, and no additional compensation will be made to the CMAR.

11.05 Options for Costs Exceeding the Owner's Budget

- A. The Guaranteed Maximum Price resulting from the tabulation of cost for self-performed CMAR Work, bids for Work by Subcontractors and Suppliers, Construction Support Costs, CMAR Contingency Allowances and CMAR Fee cannot exceed the Owner's Construction Budget. The Owner may exercise any of the following options at the sole discretion of the Owner if the proposed Guaranteed Maximum Price exceeds the Owner's Construction Budget:
1. Approve an increase in the Owner's Construction Budget in writing.
 2. Authorize rebidding or renegotiation for some or all parts of the Project within a reasonable time without an increase in the Guaranteed Maximum Price.
 3. Cooperate in the revision of the scope of the Project to reduce the actual cost of construction to the Owner's Construction Budget.
 4. Abandon the Project, in whole or in part, and terminate this Contract in accordance with applicable termination for convenience provisions.
- B. If Owner selects the option described in Paragraph 11.05.A.1, CMAR shall proceed with performance of the Work, and provide CMAR Services as described in these Contract Documents without additional compensation for Procurement Services. Other fees and expenses related to the Cost of Work will be adjusted in accordance with the revised Cost of Work.
- C. If Owner selects the option described in Paragraph 11.05.A.2, Owner and CMAR shall proceed with rebidding or renegotiation of some or all parts of the Project. The OPT will work with CMAR to determine if rebidding or restructuring Work Packages is likely to lead to lower bid prices; if so determined, CMAR will rebid selected original Work Packages or restructured Work Packages identified as having the potential to reduce the overall cost of construction to the Owner's Construction Budget. CMAR will advise the OPT of the likely

impact to the schedule resulting from rebidding Work Packages. CMAR will provide CMAR Services for rebidding these Work Packages without additional compensation.

- D. If Owner selects the option described in Paragraph 11.05.A.3, CMAR shall assist the OPT in studies to revise the scope of the Project to bring the Project cost within the Owner's Construction Budget. CMAR will provide research and cost estimates to evaluate the potential cost savings of each proposed change in scope for Work Packages and advise the OPT of the likely impact to the schedule resulting from rebidding Work Packages and changes in Contract Times that will result from the changed Work Packages. CMAR will provide CMAR Services for consultation in modifying the Project scope and rebidding these Work Packages without additional compensation.
- E. CMAR shall revise the project schedule to incorporate delays caused by actions taken to bring the Project within the Owner's Construction Budget.

11.06 Conversion of Cost of Work to a Lump Sum Amount

- A. If Owner and CMAR mutually agree, compensation for all Work on the Project, or for any Work Authorization, may be converted to a lump sum (stipulated amount). If compensation for all Work on the Project is converted to a lump sum amount, this lump sum amount will include costs for Construction Support Cost, Cost of the Work, the CMAR Fee, and all other costs associated with the Contract, all as if bid as a lump sum amount. CMAR will no longer have access to CMAR Contingency Allowance funds and bears all risk associated with delivering the Work for the lump sum amount.
- B. If a Work Authorization is converted to a lump sum amount, this lump sum amount will include costs for Cost of the Work, the CMAR Fee, and all other costs associated with the Work Authorization, all as if bid as a lump sum amount; provided, however, that Construction Support Costs will continue to be compensated per Paragraph 5.05.
- C. The following will continue to apply for conversions to lump sum covered in Paragraphs B and C:
 - 1. The Cost of the Work provisions in Article 6 will continue to apply to pricing certain Change Orders and other similar matters, as set forth in Paragraph 6.01.A.2.
 - 2. Construction Support Costs Extended Rate provisions of Paragraph 5.04 will continue to apply for Change Orders.
 - 3. Owner's Contingency will continue to be available per Article 12.

ARTICLE 12—OWNER'S CONTINGENCY ALLOWANCE

12.01 Owner's Contingency Allowance

- A. Owner's Contingency Allowance is used at the sole discretion of the Owner to cover unforeseen costs, Owner-directed changes in the scope of the Work, or any other unanticipated change in the Contract Price. These funds can only be accessed by the CMAR when and to the specific extent authorized by the Owner.
- B. The Owner's Contingency Allowance is to be included in the Contract Amount awarded but is not part of the CMAR's GMP.

ARTICLE 13—PAYMENT PROCEDURES

13.01 Submittal and Processing of Payments

- A. Billing and payment for CMAR Services are addressed in Article 3. The provisions in this Article 13 pertain to billing and payment for the Work.
- B. CMAR shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will indicate the amount of the CMAR Fee then payable. Applications for Payment will be processed by Owner's Advisor as provided in the General Conditions.

13.02 Progress Payments; Retainage

- A. Owner shall make progress payments on the basis of CMAR's Applications for Payment as recommended by Owner's Advisor on or about the 5th day of each month during construction as provided in Article 13, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract.
- B. Progress payments on account of the Cost of the Work will be made for each Work Authorization.
 - 1. Prior to Substantial Completion, for each Work Authorization progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. 95 percent of the value of the Work completed, with the balance being retainage.
 - 1) If 50 percent or more of the Work under a Work Authorization has been completed, as determined by Owner's Advisor, and if the character and progress of the Work have been satisfactory to Owner, Owner's Advisor, and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner, Owner's Advisor, and Engineer, there will be no additional retainage; and
 - 2. Upon completion of the Work under a Work Authorization, including completion of all punch list items, Owner shall pay an amount sufficient to increase total payments to CMAR to 95 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Owner's Advisor's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

13.03 Final Payment

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Article 15 of the General Conditions.

13.04 Consent of Surety

- A. Owner will not make final payment or return or release retainage at Substantial Completion or any other time, unless CMAR submits written consent of the surety to such payment, return, or release.

13.05 Interest

- A. All amounts not paid when due will bear interest at the rate of **one-half** percent per ~~annum~~ **month**.

ARTICLE 14—DOCUMENTATION AND AUDIT

14.01 Documentation

- A. Whenever the Cost of the Work for any purpose is to be determined pursuant to this Contract, CMAR and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices.
- B. CMAR will provide documentation of all Costs of the Work with the Application for Payment as directed by the Owner's Advisor.

14.02 Audit

- A. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all CMAR's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and the CMAR Fee. CMAR shall preserve all such documents for a period of three years after the final payment by Owner. Subcontractors performing Work on a Cost of the Work basis will afford such access to Owner, and preserve such documents, to the same extent required of CMAR.

ARTICLE 15—CONTRACT TIMES

15.01 Contract Times—Dates

- A. The Work will be substantially complete on or before 12/18/2026, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before 1/31/2027.

15.02 Liquidated Damages

- A. CMAR and Owner recognize that all time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and CMAR agree that as liquidated damages for delay, but not as a penalty:
 1. Substantial Completion—CMAR shall pay Owner **\$1,000** for each **calendar** day that expires after the time, as duly adjusted pursuant to the Contract, specified above for Substantial Completion, until the Work is substantially complete.
 2. Completion of Remaining Work—After Substantial Completion, if CMAR shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, as duly adjusted pursuant to the Contract, for completion and readiness for final payment,

CMAR shall pay Owner \$1,000 for each calendar day that expires after such time until the Work is completed and ready for final payment.

3. Milestones CMAR shall pay Owner the amount specified in Paragraph 15.03 for each day that expires after the time, as duly adjusted pursuant to the Contract, specified for achievement of each Milestone, until that Milestone is achieved.
4. If Owner recovers liquidated damages for a delay in completion of the Project or a specified Milestone by CMAR, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages, if any, specified in this Agreement.

ARTICLE 16—CONTRACT DOCUMENTS

16.01 Contents

- A. The Contract Documents consist of all of the following:
 1. This Agreement.
 2. General Conditions.
 3. Supplementary Conditions.
 4. ~~General Requirements (Division 01 of the Specifications.)~~
 5. ~~Drawings and Specifications completed as of the Effective Date of the Contract: [itemize or incorporate list].~~
 6. Exhibits to this Agreement (enumerated as follows):
 - a. Exhibit A, Scope of CMAR's Services;
 - b. Exhibit B, Basis of Compensation;
 - c. Exhibit C, GEFA Supplemental General Conditions
 - d. Exhibit D, Insurance Requirements
 - e. Exhibit E, Payment, Performance, and Warranty Bonds
 - f. Exhibit F, Waiver of Liens and Bond Claims
 - g. Exhibit G, Consent of Surety to Final Payment
 7. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Contract Amendments;
 - b. Executed Work Authorizations, including any exhibits identified as Drawings, Specifications, or other Contract Documents;
 - c. Work Authorization Modifications:
 - 1) Work Change Directives;
 - 2) Change Orders; and

- 3) Field Orders;
 - d. Performance and Payment Bonds; and
 - e. Warranty Bonds, if any.
- B. There are no Contract Documents other than those listed above in this Article 16.
- C. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 17—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

17.01 CMAR's Representations

- A. To induce Owner to enter into this Contract, CMAR makes the following representations:
1. CMAR has examined and carefully studied the Contract Documents, including Addenda.
 2. CMAR has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 3. CMAR is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 4. CMAR has carefully studied the reports, if any, of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings, if any, of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
 5. CMAR has carefully studied the reports and drawings, if any, relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
 6. CMAR has considered the information known to CMAR itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Proposal Documents; with respect to the effect of such information, observations, on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by CMAR; and (c) CMAR's safety precautions and programs.
 7. Based on the information and observations referred to in the preceding paragraph, CMAR agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Guaranteed Maximum Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
 8. CMAR is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

9. CMAR has given Owner's Advisor written notice of all conflicts, errors, ambiguities, or discrepancies that CMAR has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Owner's Advisor is acceptable to CMAR.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. CMAR's entry into this Contract constitutes an incontrovertible representation by CMAR that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

17.02 CMAR's Certifications

- A. CMAR certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 17.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the proposal process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the Proposal process or the execution of the Contract to the detriment of Owner, (b) to establish proposal Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Proposers, with or without the knowledge of Owner, a purpose of which is to establish proposal prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the proposal process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and CMAR have signed this Agreement.

This Agreement will be effective on [indicate date on which Contract becomes effective], which is the Effective Date of the Contract.

Owner:

CMAR:

(typed or printed name of organization)

(typed or printed name of organization)

By: _____
(individual's signature)

By: _____
(individual's signature)

Date: _____
(date signed)

Date: _____
(date signed)

Name: _____
(typed or printed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

(If [Type of Entity] is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____
(individual's signature)

Attest: _____
(individual's signature)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

Address for giving notices:

Address for giving notices:

Designated Representative:

Designated Representative:

Name: _____
(typed or printed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

Address:

Address:

Phone: _____

Phone: _____

Email: _____

Email: _____

(If [Type of Entity] is a corporation, attach evidence of authority to sign. If [Type of Entity] is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

License No.: _____
(where applicable)

State: _____

EXHIBIT A—SCOPE OF CMAR SERVICES

ARTICLE 1—BASIC PRECONSTRUCTION SERVICES

1.01 Project Management

A. Participate in Project Meetings

1. Participate in Project kick-off meeting. Be prepared to discuss CMAR's team and organization's structure, assignments for responsibilities and ~~Teams~~ CMAR's plan for implementation of Preconstruction Services.
2. Participate in periodic meetings with Owner, Owner's Advisor, and Engineer (collectively, Owner's Project Team or OPT) to review progress, coordinate efforts, and discuss planned activities for the next period. It is anticipated that these progress meetings will occur ~~weekly or monthly as required~~.

- ##### B. Provide administration of Agreement for CMAR Preconstruction Services, including Applications for Payment, progress reporting, management of CMAR staff, schedule for services, and deliverables.

1.02 Preliminary Engineering

- ##### A. Provide support during Site Selection (RP003-23 IV. Scope of Services, 2.1 Site Selection) as detailed below.

1.03 ~~Review of Preliminary Design Report~~

- ##### A. ~~As a priority first task, review Engineer's Preliminary Design Report as soon as it is available.~~

1. ~~Coordinate with Consultant (RP003-23 IV. Scope of Services, 2.6 Coordination with Construction Manager).~~
2. ~~Attend five workshops (RP003-23 IV. Scope of Services, 2.1 Site Selection).~~
3. ~~Develop preliminary costs (Class 3 cost estimate) for two potential locations (RP003-23 IV. Scope of Services, 2.1 Site Selection).~~
4. ~~Participate in meetings during the development of the DDR (RP003-23 IV. Scope of Services, 2.7 Design Development Report).~~
5. Provide input and advice, according to the general requirements of Exhibit A Paragraph 1.03.D below, regarding the Preliminary Design Report's content concerning coordination of utilities work (both above-ground utilities and Underground Facilities), Underground Facilities Procedure, and mitigation of utilities conflicts, for Engineer's use in the Final Design Phase of Engineer's services.
6. Recommend strategies for the division of the Work under design into Work Packages, and for phased design and authorization of construction of such Work Packages (fast tracking). Work collaboratively with the OPT to finalize the number of Work Packages and their approximate scope, and the schedule for preparation, authorization, and completion of such Work Packages.

1.04 Design-Related Preconstruction Services (RP003-23 IV. Scope of Services, 3.0 PHASE II: DETAILED DESIGN)

1.05 ~~Design-Related Preconstruction Services~~

- A. Attend periodic design meetings to provide consultation on aspects of the design that will impact the budget, schedule, and quality of the completed Work.
- B. Advise, assist, and provide recommendations on all aspects of the planning and design of the Work. Consult with the OPT regarding Site use and improvements, and the selection of materials, building systems, and equipment.
- C. Provide recommendations: on construction feasibility; regarding actions designed to minimize adverse effects of labor or material shortages; on time requirements for procurement, installation, and construction completion; and on factors related to construction cost including estimates of alternative designs or materials, preliminary budgets, and possible opportunities for savings.
- D. Review in-progress design documents, including the documents variously described as preliminary design documents, preliminary design report, design development documents, and the interim final drafts of the Drawings and Specifications, and provide input and advice on constructability, materials and equipment selections, and availability. Provide timely suggestions for modifications to improve:
 1. Ability to bid the Work:
 - a. Identify Work elements that may be difficult to price as presented in the design documents. Provide suggestions to reduce risk and to obtain better pricing from Subcontractors and Suppliers.
 - b. Provide suggestions on Work Packages to improve biddability, however, Engineer will not subdivide work into Work Packages for specific trades.
 - c. Determine that specified products are readily available and notify Engineer if equal or substitute materials might be available.
 2. Constructability, including sequencing or coordination issues:
 - a. Adequacy of details for construction;
 - b. Potential conflicts during construction;
 - c. Feasibility of construction;
 - d. Construction sequencing;
 - e. Ability to coordinate among Subcontractors and Suppliers; and
 - f. Coordination between Contract Documents.
 3. Operability:
 - a. Ability to minimize disruptions to existing operations;
 - b. Ability to complete construction connections to existing facilities or utilities;
 - c. Modifications to facilitate initial start-up and/or performance testing; and

- d. Ability of Owner to operate/maintain the facility when completed.
 - 4. Possible use of patented, licensed, or copyrighted products.
 - 5. Requirements for Subcontractor and equipment and materials procurement.
 - 6. Completeness, consistency, and clarity.
- E. Subsurface conditions and Underground Facilities
- 1. Review information made available by Owner, **including but not limited to:**
 - a. Review information pertaining to subsurface or physical conditions at the Site. Inform Owner's Advisor of additional examinations, investigations, explorations, testing, or studies (Supplemental Investigations) of subsurface or physical conditions at the Site that CMAR concludes would be beneficial if conducted prior to commencement of construction. See General Conditions Paragraph 5.03.E.
 - b. Review information pertaining to Underground Facilities. Collaborate with the Engineer to improve the accuracy and completeness of information regarding Underground Facilities that Engineer incorporates into Work Authorizations in accordance with General Conditions Paragraph 5.05.
 - 2. Owner's Advisor will issue a Work Authorization for any necessary potholing, exploratory excavations, or other field investigations related to Paragraph E if necessary.
- F. Research potential substitutes, furnish data and prepare a Preconstruction Substitute Request prior to a Work Authorization requesting the Owner's Advisor to authorize the use of other items of equipment or material in accordance with General Conditions Paragraph 7.09.
- G. Provide review comments in writing using the processes or procedures prescribed by the Owner's Advisor. Verify that the Project design can be executed within the Owner's Construction Budget, within the allotted Contract Times, and with available labor, equipment, and materials.
- H. Report to Owner's Advisor and Engineer any elements of the design that appear to be in error or appear to require engineering review and possible resulting modification.
- I. The CMAR is not responsible for design of the Project. The CMAR does not control the project design or contents of the Contract Documents and does not assume responsibility or liability for the project design by performing these reviews. The CMAR's review of the project design and Contract Documents and providing recommendations are only advisory to the OPT.
- 1.06 Construction Management Plan and Implementation
- A. Provide and implement a written Construction Management Plan that incorporates the following elements:
- 1. CMAR's organization for the Construction Phase of the project, including assigned responsibilities and level of authority within Project management;
 - 2. Communication plan, including plans for distribution of documents, implementation of Action Item and Decision registers, frequency of reporting and project controls;

3. Document management plan that incorporates Communications Plan and contractual Electronic Data Protocols;
 4. Construction contract administration;
 5. Cost management;
 6. Time management;
 7. Quality management;
 8. Risk management;
 9. Safety management;
 10. Site management and environmental controls;
 11. Regulatory requirements and permits;
 12. Procurement Strategy Plan;
 13. DBE program compliance; and ~~{Diverse Business Program Implementation;}~~
 14. Start-up and commissioning program.
- B. Work with the OPT to incorporate requirements of the General Conditions and General Requirements (Division 01 of the Specifications) into the plan. Reference provisions in the General Conditions and General Requirements as appropriate. Prepare a draft plan and submit for review and comment by the OPT. Respond to comments and incorporate changes suggested by review comments as appropriate.
- 1.07 Construction Contract Administration
- A. Work with the OPT to incorporate requirements of the General Conditions and General Requirements into administration of the Contract. Review the Owner's Construction Management Plan and suggest changes as appropriate.
- B. Communications
1. Assist the Owner's Advisor with planning Project meetings, participate in these meetings and provide documentation as requested by the Owner's Advisor.
 2. Plan, schedule, and document meetings held with Subcontractors and Suppliers. Include the members of the OPT as appropriate.
- 1.08 Cost Management
- A. Provide a preliminary evaluation of the Owner's program and budget requirements to determine that CMAR will be able to construct the facilities described in that program within the Owner's Construction Budget (Budget) using conceptual estimating techniques. Discuss this initial review of the Budget with the OPT.
- B. Work with OA to update the Budget with supporting data for review by the OPT at the following intervals:
1. Completion of preliminary design documents by the Engineer and approval by the Owner.

2. Completion of design development documents by the Engineer and approval by the Owner.
 3. At appropriate intervals agreed to by the OPT and CMAR during the preparation of the Construction Documents to determine that changes to the design can be constructed within the Budget.
- C. Assist OA in preparing an updated line-item Budget based on the CMAR's proposed Procurement Strategy Plan prepared per Paragraph 1.13. This Budget is to include a line item for each anticipated Work Package, as well as line items for Construction Support Costs, the CMAR Fee, and CMAR Contingency Allowances and other costs, if any, that will be incorporated into the GMP for the Project.
 - D. Assess current construction market to determine risk associated with the Budget. As an example, volatility in the cost of selected materials or equipment may drive cost above the Budget. Identify areas where costs may be lower than original estimates and if cost savings may be used to balance the Budget. Report the cost of various design and construction alternatives to the Owner, including the CMAR's assumptions in preparing its analysis, a variance analysis between budget and preliminary Budgets, and recommendations for any adjustments to the Budget. Work with the OPT to consider costs relating to efficiency, usable life, maintenance, energy, and operation as part of the cost analysis.
 - E. Notify the Owner and the Owner's Advisor immediately if any estimated construction cost will cause the projected GMP to exceed the Budget. Make appropriate recommendations to the OPT if cost projections exceed the Budget.
 - F. Provide the Budget-related services set out in Paragraph 11.04 of the Agreement.

1.09 Time Management

- A. Provide a preliminary master schedule for the Contract. Incorporate the Owner's Advisor's preliminary schedule and the schedule for design into the preliminary master schedule. Include allowances for reasonable periods required for the review and approval of items by the OPT and for approvals of governmental authorities having jurisdiction over the Project. Prepare the preliminary master schedule in a way that the detailed construction schedule can be incorporated into the master schedule as the Project becomes better defined.
- B. Identify critical design Milestones that must be met to keep the Project on schedule. Coordinate and integrate the preliminary project schedule with the services and activities of the OPT and CMAR. Update the preliminary project schedule as design develops to indicate proposed activity sequences and durations, Milestone dates for receipt and approval of pertinent information, submittal of a GMP Proposal, preparation and processing of Shop Drawings and Samples, delivery of materials or equipment requiring long-lead time procurement, and the Owner's occupancy requirements.
- C. Make appropriate recommendations to the Owner and Owner's Advisor if preliminary project schedule updates indicate that previously approved schedules may not meet Contract Time requirements.

- D. Update master schedule monthly, at a minimum. Provide master schedule with more frequent updates as required to allow key milestones in the project to be maintained and to allow key milestones progress to be effectively tracked.
- E. Revise the master schedule after the GMP is established.

1.10 Quality Management

- A. Prepare CMAR's Quality Control Plan (CQCP) in accordance with the General Requirements.
 1. Describe the quality control organization and lines of authority. Quality control plan is to identify the quality control manager and other key individuals involved in CMAR's quality control effort. Provide the services of a dedicated quality control manager unless Owner's Advisor determines that quality control manager may combine quality control duties with other responsibilities. If quality control manager is to serve in other capacities, identify those other responsibilities and the percentage of time spent in each role. Describe the qualifications of the quality control manager (in resume format) to demonstrate experience with quality management activities and performance on successful projects.
 2. Provide the name and qualifications, in resume format, of other persons assigned a quality control function. Define the roles and responsibilities and authorities for each person and the types of Work or portions of the work for which each person is responsible.
 3. Describe CMAR's approach to managing quality during construction. Describe how CMAR will integrate quality control procedures into the execution of the Work, provide testing and inspection required to control the quality of the Work in progress and verification or acceptance testing as required by the Contract Documents and CQCP.
 4. Include a testing plan with details of tests to be provided. Designate the organization (Owner, Owner's Advisor, CMAR, or Testing Agency) responsible for each type of testing. Coordinate CQCP Testing Plan with testing to be provided by the Owner.
 5. Describe CMAR approach for managing defective Work, including notification and documentation procedures, development and implementation of corrective action plans and documentation that record corrective action has been successful in producing Work that complies with the Contract Documents.
 6. Describe the approach for scheduling, reviewing, certifying, and managing documentation provided by Subcontractors and Suppliers. Include the approach for managing the quality of submittals, documentation procedures, and process for tracking and keeping documentation up to date.

1.11 Risk Management

- A. Analyze construction risks to assess risk impact and develop appropriate risk management strategies to minimize associated costs.
- B. Identify additional information that will help with risk assessment.
- C. Provide recommendations for appropriate allocation of construction risks.

- D. Review possible impacts associated with the use of patented, licensed, or copyrighted products.
- E. Review legal requirements for subcontractor and equipment procurement for risk impacts.
- F. Suggest procurement strategies to minimize risk.

1.12 Safety Management

- A. Provide a project-specific Health and Safety Plan for the Contract to address the safety concerns associated with construction activities, including potential hazards, that complies with applicable Laws and Regulations. Write the manual with the ability to readily update the plan to incorporate needed revisions on a regular basis.
- B. The Health and Safety Plan is to include at least the following information:
 1. Background information identifying the CMAR, Project description, and location;
 2. Management accountability structure with authority to implement safety plans, stop work, or make other safety-related decisions;
 3. Role of safety representative (see General Conditions, Paragraph 7.16);
 4. Provide descriptions of qualifications and certifications related to the performance of safety representatives;
 5. Objectives of the Health and Safety Plan;
 6. Administration and enforcement of the Health and Safety Plan;
 7. Applicability of the Health and Safety Plan to various personnel categories, including the workforce, visitors, and members of the OPT;
 8. List of conditions at the Site that may pose a hazard to anyone, hazard types, and those potentially exposed;
 9. Procedures for first aid and medical attention;
 10. Emergency notifications procedures based on hazard type which specify the entity to be notified for each situation;
 11. Site access control requirements to prohibit unauthorized persons from entering the Site;
 12. Orientation and training requirements for workers, visitors, and members of the OPT;
 13. Hazard communications and awareness plan;
 14. Required safety certifications for each type of work;
 15. CMAR's safety training program and effort to create and maintain a culture of safety;
 16. CMAR's written safety guidelines for project-specific issues as defined by Laws and Regulations;
 17. Plan for conducting safety inspection and the audit frequency and schedule;

18. Process for conducting a Job Hazard Analysis for work activities and implementing countermeasures to ensure safety, including checklist specific the Project and type of work; and
19. Accident / incident reporting procedures including monthly reporting.

C. Incorporate Owner's site safety requirements as appropriate.

1.13 Site Management and Environmental Controls

- A. Develop a plan for managing the Site during construction. The plan should address, at a minimum, management of the following:
 1. Office space for CMAR, Subcontractors and if required by Contract, the OPT;
 2. Water, sanitation, electrical, internet, and other utilities for CMAR's and OPT's operations at the Site;
 3. Storage facilities, parking, and construction equipment storage and maintenance;
 4. Protection of existing structures, trees and other landscaping, buildings, utilities, and Underground Facilities;
 5. Site security, site safety, and emergency responses;
 6. Temporary roads, temporary signage, barricades, fencing, and other devices to manage traffic to and within the Site, including provisions for delivery of materials and equipment, and maintenance during construction;
 7. Environmental conditions including storm water management, pollution control, care of water, soil management, and other temporary controls and their removal when no longer required;
 8. Reference data and control points; and
 9. Cleaning during construction and containment and disposal of waste materials.
- B. Review plan with Owner's Advisor and Owner to identify potential conflicts with operating other facilities, on-going and anticipated construction by other entities. Revise if necessary.

1.14 Regulatory Requirements and Permits

- A. Review regulatory requirements and permits required for construction. Develop a written plan for meeting applicable Laws and Regulations and obtaining permits. List the permit requirements, entities responsible for obtaining permits, documentation required for permits and cost for obtaining and complying with these requirements.
- B. Incorporate the associated cost into the Cost of Work and inform the Owner so these can be incorporated into the Owner's Construction Budget, or the Owner's Construction Budget may be adjusted as required.
- C. Incorporate time for obtaining permits into the project schedule to ensure permits can be obtained and regulatory requirements met in time for the orderly progression of Work.

1.15 Procurement Strategy Plan

- A. Provide input to OPT regarding the current construction market, bidding climate, status of key Subcontractor and Supplier markets, and other local economic conditions.
- B. As the design develops, organize the Work into Work Packages that will (1) allow for phased construction that will shorten the overall completion schedule for the Work, (2) encourage price competition by prospective Subcontractors and Suppliers, and (3) enhance the quality and safety of the Work.
- C. Develop Subcontractor and Supplier interest in the Project consistent with state Laws and Regulations. Furnish the Owner's Advisor a list of possible Subcontractors and Suppliers, from whom competitive bids will be requested for each principal portion of the Work. Identify preferred providers based on CMAR's previous experience for quality of work, on-time delivery, and ability to complete work within bid amounts. Submission of this list is for information and discussion purposes only and not for prequalification. The review of this list will not require the OPT to investigate the qualifications of proposed Subcontractors and Suppliers, nor does it waive the right of Owner to later object to or reject any proposed Subcontractor or Supplier when bids are considered. CMAR may submit a Change Proposal for any increase in the Guaranteed Maximum Price if this change is made after the GMP has been established.
- D. Recommend to the OPT a schedule for procurement of long-lead time items required to meet the project schedule. Assist the OPT with the procurement of these long-lead items by obtaining competitive bids for these items under a separate Work Authorization.
- E. Identify critical elements of the Work that may require special procurement processes, such as prequalification of Subcontractors or Suppliers, requirement of certified or prequalified installers, or alternative contracting methods.
- F. Advise the Owner of market conditions, bid issues, design issues, or other factors which may have had an impact causing bid prices to be higher than estimated. Discuss opportunities for bringing the Project within budget with the Owner and the Owner's Advisor, in consultation with the Engineer to assist with deciding on how to proceed.

ARTICLE 2—ADDITIONAL PRECONSTRUCTION SERVICES2.01 ~~Disadvantaged~~ ~~verse~~ Business Enterprise (DBE) Program Implementation

- A. Identify potential contracting opportunities for DBE Subcontractors and Suppliers to meet the GEFA Project DBE participation goals.
- ~~B. Identify materials and equipment for which no opportunity for DBE participation exists to assist the Owner in developing realistic DBE participation goals based on available opportunities.~~
- C. Determine the eligible contract costs associated with each proposed Work Package.
- D. Promote opportunities for DBE firms to participate in submitting offers for subcontracts. Provide potential Subcontractors and Suppliers with a copy of Owner's DBE policy with bid documents. 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.

2.02 Value Engineering Studies

- A. Participate in Value Engineering reviews at the level appropriate for the projects at the completion of the first draft of the Final Design Phase documents (approximately 60% completion) to assist in identifying ways to improve value to the owner or reduce the cost for the project. Provide cost estimates to quantify potential cost savings to reduce the overall cost for the Project.
- B. Assist OA in conducting a workshop to identify potential changes which could reduce the cost of the Project or increase the value of the Project by more than the cost of the changes. Present selected alternatives for more detailed evaluation. The detailed evaluation will consider cost, ability to implement the changes, technical analysis, and the impact of changes on the Project. Ideas that pass the technical and economic analysis, and merit incorporation into the design of the project, will be presented, in a draft report, as a proposal to the OPT for consideration. Incorporate responses of the OPT in the final report.
- C. Review and comment on deliverables which include draft and final value engineering recommendation reports.

2.03 Start-Up and Commissioning Program

- A. Provide CMAR's organizational structure for start-up and commissioning. Identify the individuals from CMAR, Subcontractors and Suppliers actively involved in the process. Identify testing personnel required for start-up, including independent testing agencies. Work with Owner's Advisor to develop a table of roles and responsibilities for CMAR team and the OPT.
- B. Develop a written start-up and commissioning program consistent with the requirements of the Contract Documents. Write the plan in a way that will allow specific details to be added or information updated as equipment and materials are purchased and delivered.
- C. Identify all systems to be included in the start-up plan, each item of equipment involved with each system and the interface between each item of equipment and other operating equipment. Identify how each equipment component fits into operations of the completed facility.
- D. Identify control systems associated with operating the system or facility, and how each is used to start-up, operate, and shut down its associated system. Identify prerequisite conditions for start-up and testing for each system and facility. Identify conditions which would merit termination of start-up or testing procedures.
- E. Compile a list of all documents required for start-up, including Contract Documents, Shop Drawings, operations and maintenance manuals, verification of warranty information, lists of spare parts and their location, and contact information for manufacturer's representatives to be included in start-up readiness testing /verification and performance testing.
- F. Identify testing required for factory witness testing, start-up readiness verification, equipment and performance testing, and functional and performance testing.

- G. Provide a preliminary schedule for start-up and commissioning plans which can be updated as more detailed information is available. Incorporate this schedule in the master schedule and construction schedule for the Project.
- 2.04 Surveys and Drawings
- A. Provide field surveying required for the preparation of designs and drawings.
- ~~B. Provide Geographic Information System (GIS) mapping services or assistance with these services.~~
- ~~C. Prepare property, boundary, and right-of-way surveys; prepare easement and deed descriptions; conduct related title searches and examination of deed records.~~
- 2.05 Regulatory Agencies
- A. Assist OPT in preparing applications and supporting documents for government grants, loans, or planning advances, and providing data for detailed applications other than those described in Consultant Scope of Services (Exhibit RP003-23-E).
- B. Attend additional meetings with local, state, and federal agencies in excess of those described in Consultant Scope of Services (Exhibit RP003-23-E).
- 2.06 Additional Inspections and Quality Management
- A. Provide shop, mill, or laboratory inspections of materials and equipment, or field inspections of materials and equipment other than as required as Basic Services.
- ~~B. Unscheduled Post-Completion Inspections as required per Paragraph [include reference].~~
- 2.07 Studies, Reports, and Investigations
- A. Provide geotechnical investigations, studies, and reports.
- 2.08 Additional Copies of Documents
- A. Furnish additional sets of printed documents created by the CMAR.

ARTICLE 3—BASIC PROCUREMENT SERVICES

- 3.01 Project Management
- A. Participate in Project Meetings
1. Participate in kick-off meeting for Procurement Services. Be prepared to discuss changes in CMAR's team and organization structure for Procurement Services, assignments of responsibilities, and CMAR's plan for implementation of Procurement Services.
 2. Participate in periodic meetings with the OPT to review progress, coordinate efforts, and discuss planned activities related to procurement. It is anticipated that these progress meetings will occur weekly at times when procurement activities for Work Packages are underway.

- B. Provide administration of Agreement for CMAR Procurement Services, including Applications for Payment, progress reporting, management of CMAR staff, schedule for services, and deliverables.

3.02 Assembling Work Packages

- A. Assemble appropriate bid documents for distribution to prospective bidders for Work Packages in accordance with the procurement strategies defined in the Construction Management Plan and Procurement Strategy Plan (see Basic Preconstruction Services).

3.03 Advertise for Bids

- A. Publicly advertise each Work Package, soliciting bids from Subcontractors and Suppliers for each Work Package in accordance with the applicable provisions of Laws and Regulations.
- B. Maintain a list of all entities that have requested bid documents for each Work Package (planholders) until bids are received. Provide updates of the planholders as required by the Owner's Advisor.
- C. Encourage multiple Subcontractors and Suppliers to submit bids on the Work Package so a minimum of three bids are received for each Work Package.

3.04 Pre-Bid Conferences

- A. Conduct a pre-bid conference with prospective Subcontractor and Suppliers to familiarize them with:
 1. Bid opportunities for Work Packages;
 2. Special requirements of the Contract Documents;
 3. Prevailing wage requirements;
 4. Equal employment opportunity requirements; and
 5. Diverse Business Enterprise requirements, if any.
- B. Obtain responses from the Owner's Advisor, in consultation with the Engineer, to all questions at pre-bid conferences requiring a modification to the Contract Documents. Prepare a record of the discussions at the pre-bid conference to assist the Owner's Advisor and Engineer in preparing Addenda as appropriate. Review and comment on Addenda prepared by the Owner's Advisor in consultation with the Engineer to incorporate responses to questions raised during or as a result of the pre-bid conference.

3.05 Addenda

- A. Receive draft Addenda prepared by the Owner's Advisor in consultation with the Engineer. Review the draft Addenda for clarity, consistency, and coordination, and provide comments to Owner's Advisor and Engineer. By conducting such reviews and providing comments, CMAR, Owner, and Owner's Advisor does not assume responsibility or liability, in whole or in part, for all or any part of the Project design or the content of the Contract Documents.
- B. Distribute Addenda regarding any changes in the bid process or Contract Documents to all planholders. Require verification from planholders that Addenda have been received.

3.06 Opening Bids

- A. Open bids submitted by Subcontractors and Suppliers for all Work Packages at the time and location so indicated in the advertisement for bid or as altered by addendum sent to all plan holders.
- B. Where allowed by state Laws and Regulations, the CMAR may be able to self-perform portions of the Work. Require sealed bids for all Work Packages which the CMAR proposes to perform with its own resources. The CMAR must submit a sealed bid for any such Work Package to be opened at the same time and in the same manner that other bids for this Work are to be opened. The CMAR will be allowed to self-perform that Work for which the CMAR's bid demonstrates that it will provide the best value in terms of cost, schedule, and quality of Work.
- C. Review all bids submitted in the presence of the Owner and the Owner's Advisor in a way that does not disclose the contents of the bid during the selection process to any entity other than the OPT and CMAR.
- D. Compare bids received to the line-item budget prepared for the Project prior to the opening of bids. Resolve discrepancies or overlaps in bid packages to eliminate duplications or the omission of elements of the Work that are not included in Construction Support Costs. Discuss each bid received with the OPT and recommend which bid received will provide best value for the Owner.
- E. Evaluate any substitutions or alternate bids offered by bidders. Owner's Advisor, in consultation with the Engineer, will evaluate the substitutions or alternate bids to determine the technical merit and to determine that the modifications offered are consistent with the intent of the Contract Documents. The Owner, in consultation with the Owner's Advisor and Engineer, will determine if the substitution or alternate is acceptable.
- F. The Owner will adjust the Guaranteed Maximum Price (GMP) if the Owner requires the CMAR to contract with a Subcontractor or Supplier different from the entity submitting the bid on which the GMP is based. This adjustment will be made in the GMP or by Change Order if the GMP has already been established by a Work Authorization.
- G. In the case of the need to replace a Subcontractor or Supplier under the provisions of the General Conditions Paragraph 7.10.O, Owner may direct the CMAR to obtain competitive bids for this Work if the cost proposed by the CMAR or substitute Subcontractor or Supplier for this Work differs from the line-item estimate by more than 10 percent of the line-item amount. The CMAR will not be required to advertise this Work as required in Paragraph 3.03.
- H. Make all bids public after the award of contracts or not later than 7 days after the date of the final selection of bids or proposals.

ARTICLE 4—ADDITIONAL PROCUREMENT SERVICES

4.01 **Disadvantaged** Business Program Implementation

- A. Promote opportunities for DBE firms to participate in submitting offers for subcontracts. Provide potential Subcontractors and Suppliers with a copy of Owner's DBE policy with bid documents. 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.

- B. Notify Owner if a qualified DBE Subcontractor or Supplier submits a bid but has submitted a higher bid price than a qualified non-DBE Subcontractor or Supplier. Work with the Owner to determine if the subcontract is to be awarded to the higher priced DBE subcontractor. Adjust the GMP accordingly.

4.02 Prequalification of Bidders

- A. Prequalify bidders for the Project using the OPT's prequalification process. If the OPT does not have a prequalification process in place for this Project, CMAR will assist the OPT in developing and implementing a prequalification process. Any prequalification of bidders must also be in accordance with applicable state Laws and Regulations.

4.03 Additional Work Packages

- A. Providing additional effort to procure Work Packages in addition to the number of Work Packages stipulated in Paragraph 3.02.

4.04 Regulatory Agencies

- A. Preparing applications and supporting documents for government grants, loans, or planning advances, and providing data for detailed applications other than those described in Exhibit RP003-16 Exhibit E Consultant Scope of Services
- B. Attend additional meetings with local, state, and federal agencies in excess of those described in Exhibit RP003-16 Exhibit E Consultant Scope of Services.

4.05 Additional Copies of Documents

- A. Furnishing additional sets of printed documents.

ARTICLE 5—SPECIAL SERVICES

- 5.01 The scope of services for Special Services, if any, will be the scope set forth in the Contract Amendment(s) establishing and authorizing such Special Services.

Table 1—Estimated Contract Price

										Formulas				
Compensation for CMAR Services (See Table 2, Row 5)					1	\$	-	Preconstruction Services provided (Table 2) [Note1]						
Construction Support Costs														
Fixed Construction Support Costs (see Table 3, Row 1)					2	\$	-	Fixed Construction Support Costs (Table 3) [Note 2]						
Time Sensitive Construction Support Costs (see Table 4, Row 1)					3	\$	-	Time Sensitive Construction Costs (Table 4) [Note2]						
Total Construction Support Costs					4	\$	-			2 + 3				
Estimated Cost of the Work with CMAR Fee														
Estimated Cost of the Work					5					Require proposer to determine estimated cost of work possible based on their cost				
CMAR Fee	6		of Estimated Cost of Work		7	\$	-	CMAR Fee on Cost of Work provided as %		6 x 5				
Cost of the Work with CMAR Fee					8	\$	-			5 + 7				
CMAR Contingency Allowances														
CMAR Contingency Allowance	9		of	5	\$	-	Estimated Cost of the Work		10	\$	-	Contingency Allowance % filled out by CMAR		9 x 5
Total CMAR Contingency Allowances					11	\$	-							
Estimated Guaranteed Maximum Price (Total Construction Support Cost, Estimated Cost of Work with CMAR Fee and the Total CMAR and Other Contingency Allowances)					12	\$	-							4 + 8 + 10
Owner's Contingency Allowance					13	\$	1,000,000.00	Provided by Owner						
Total Amount of Contract Award (Total of Compensation for CMAR Services, Estimated Guaranteed Maximum Price, and Owner's Contingency Allowance)					14	\$	1,000,000.00	Not to Exceed \$85,000,000 Budget						1 + 11+ 12 Item 13 not to exceed \$85,000,000.
Contract Times														
CMAR estimates it will reach Project Substantial Completion in:				15	TBD			days						
CMAR estimates it will reach Final Completion in additional days:				16	TBD			days						
Estimated number of days in the Construction Period				17	TBD			days						

Note 1: See Exhibit A - CMAR Scope of Services of Agreement Between Owner and Construction Manager at Risk

Note 2: See Agreement Between Owner and Construction Manager at Risk, Article 5 - Construction Support Costs

Table 2—Compensation for CMAR Services

a	b	c	d	e	f	g	h
Task	Description	[Provider A] [Classification] \$ -	[Provider B] [Classification] \$ -	[Provider C] [Classification] \$ -	[Provider D] [Classification] \$ -	[Provider E] [Classification] \$ -	Amount
		Hours	Hours	Hours	Hours	Hours	
1.00 Preconstruction Basic Services							
1.01	Project Management						\$ -
1.02	Site Selection Assistance/ Review of Design Development Report						\$ -
1.03	Design Related Preconstruction Services						\$ -
1.04	Construction Management Plan and Implementation						\$ -
1.05	Construction Contract Administration						\$ -
1.06	Cost Management						\$ -
1.07	Time Management						\$ -
1.08	Quality Management						\$ -
1.09	Risk Management						\$ -
1.10	Safety Management						\$ -
1.11	Site Management and Environmental Controls						\$ -
1.12	Regulatory Requirements and Permits						\$ -
1.13	Procurement Strategy Plan						\$ -
1	Total Cost for CMAR Preconstruction Basic Services						\$ -
2.00 Preconstruction Additional Services							
2.01	Disadvantaged Business Enterprise Program Implementation						\$ -
2.02	Value Engineering Studies						\$ -
2.03	Start Up and Commissioning Program						\$ -
2.04	Surveys and Drawings						\$ -
2.05	Regulatory Agencies						\$ -
2.06	Additional Inspections and Quality Management						\$ -
2.07	Studies, Reports, and Investigations						\$ -
2	Total Cost for CMAR Preconstruction Additional Services						\$ -
3	Total Cost for CMAR Preconstruction Services						\$ -
3.00 Procurement Basic Services							
3.01	Project Management						\$ -
3.02	Assembling Work Packages						\$ -
3.03	Advertise for Bids						\$ -
3.04	Pre-bid Conferences						\$ -
3.05	Addenda						\$ -
3.06	Opening Bids						\$ -
3.07	Disadvantaged Business Program Implementation						\$ -
3.08	Prequalification of Bidders						\$ -
3.09	Additional Work Packages						\$ -
3.10	Regulatory Agencies						\$ -
4	Total Cost for CMAR Procurement Basic Services						\$ -
5	Total Cost for CMAR Services						\$ -

GEORGIA ENVIRONMENTAL FINANCE AUTHORITY

SUPPLEMENTAL GENERAL CONDITIONS

for

FEDERALLY ASSISTED STATE REVOLVING FUND CONSTRUCTION CONTRACTS

December 7, 2022

The following standard language must be incorporated into construction contract documents and in all solicitations for offers and bids for all construction contracts or subcontracts in excess of \$10,000 to be funded in whole or in part by the federally-assisted State Revolving Fund in the state of Georgia.

These Supplemental General Conditions shall not relieve the participants in this project of responsibility to meet any requirements of other portions of this construction contract or of other agencies, whether these other requirements are more or less stringent. The requirements in these Supplemental General Conditions must be satisfied for work to be funded with the State Revolving Fund.

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INSTRUCTIONS AND GENERAL REQUIREMENTS

It is the policy of the State Revolving Loan Fund (SRF) to promote a fair share of subcontract, materials, equipment, and service awards to small, minority, and women-owned businesses for equipment, supplies, construction, and services. Compliance with these contract provisions is required for project costs to be eligible for SRF funding. The fair share objective is a goal, not a quota. Failure on the part of the apparent successful bidder to submit required information to the loan recipient (Owner) may be considered by the Owner in evaluating whether the bidder is responsive to bid requirements.

THE PRIME CONTRACTOR MUST SUBMIT THE FOLLOWING ITEMS TO THE OWNER:

A. Before beginning the work of any contract:

- 1) **DBE Compliance Form and related documentation.** The Owner must submit this information to the Georgia Environmental Finance Authority (GEFA) to demonstrate compliance with Disadvantaged Business Enterprise (DBE) requirements. GEFA concurrence is recommended prior to award of the construction contract and is required prior to commencement of any SRF-funded construction. (Pages GEFA-4 and 5)
- 2) **Certification Regarding Equal Employment Opportunity.** This form is required for the Prime Contractor and for all subcontractors. The Prime Contractor form should be submitted with the DBE Compliance Form, and the subcontractor forms should be submitted as the subcontracts are executed. (Page GEFA-9)
- 3) **Certification Regarding Debarment, Suspension, and Other Responsible Matters.** This form is required for the Prime Contractor and for all subcontractors. The Prime Contractor form should be submitted with the DBE Compliance Form and the subcontractor forms should be submitted as the subcontracts are executed. (Page GEFA-10)

B. During the performance of the contract:

- 4) **Changes to Subcontractors Form.** If any changes, substitutions, or additions are proposed to the subcontractors included in previous GEFA concurrences, the Owner must submit this information to GEFA for prior concurrence for the affected subcontract work to be eligible for SRF funding. (Page GEFA-11)
- 5) **DBE Annual Report.** The Owner must submit this information to GEFA no later than October 20 of any year that the construction contract is active. (Page GEFA-12)
- 6) **Certified Payrolls.** These should be submitted to the Owner weekly for the Prime Contractor and all subcontractors. The Owner must maintain payroll records and make these available for inspection. Use U.S. Department of Labor form WH-347 or a similar form that contains all the information on the U.S. Department of Labor.

THE OWNER MUST SUBMIT INFORMATION FOR GEFA REVIEW AND CONCURRENCE TO:

Georgia Environmental Finance Authority
47 Trinity Ave SW
Fifth Floor
Atlanta, Georgia 30334
404-584-1000 (phone)
404-584-1069 (fax)
waterresources@gefa.ga.gov

DBE COMPLIANCE FORM

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ALL INFORMATION OUTLINED ON THIS FORM IS REQUIRED FOR DBE COMPLIANCE REVIEW. THE PROPOSED PRIME CONTRACTOR AND OWNER SHOULD ENSURE THAT THIS INFORMATION IS COMPLETE PRIOR TO SUBMITTAL.

Loan Recipient _____

SRF Loan Number _____

PRIME CONTRACTOR'S AND OWNER'S CERTIFICATIONS:

I certify that the information submitted on and with this form is true and accurate and that this firm has met and will continue to meet the conditions of this construction contract regarding DBE solicitation and utilization. I further certify that criteria used in selecting subcontractors and suppliers were applied equally to all potential participants and that EPA Forms 6100-2 and 6100-3 were distributed to all DBE subcontractors.

(Prime Contractor signature)

Date _____

(Printed name and title)

I certify that I have reviewed the information submitted on and with this form and that it meets the requirements of the Owner's State Revolving Fund loan contract.

(Signature of Owner or Owner's representative)

Date _____

(Printed name and title)

CONTACT INFORMATION

Owner contact _____

Owner phone number and email _____

Consulting Engineer contact _____

Consulting Engineer phone number and email _____

Proposed Prime Contractor _____

Prime Contractor contact _____

Prime Contractor phone number and email _____

Proposed total contract amount \$ _____

Proposed total MBE participation \$ _____ Percentage _____ Goal: 4.0 percent

Proposed total WBE participation \$ _____ Percentage _____ Goal: 4.0 percent

CONTINUED ON NEXT PAGE

- a. List of all committed and uncommitted subcontractors by trade, including company name, address, telephone number, contact person, dollar amount of subcontract, and DBE/MBE/WBE status.
- b. Indicate in writing if no solicitations were made because the Prime Contractor intends to use only its own forces to accomplish the work.
- c. Proof of certification by EPA, SBA, DOT (or by state, local, tribal, or private entities whose certification criteria match EPA criteria) for each subcontractor listed as a DBE, MBE, or WBE.
- d. Documentation of solicitation efforts for prospective DBE firms, such as fax confirmation sheets, copies of solicitation letters and emails, printout of online solicitations, printouts of online search results, and copies and affidavits of publication in newspapers or other publications. (see also, "Six Good Faith Efforts", page GEFA-7).
 - i. The Prime Contractor shall use the necessary resources to identify and directly solicit no less than three certified MBE firms and three certified WBE firms to bid in each expected subcontract trade or area. If a diligent and documented search of the recommended directories does not identify three potential certified MBE firms and three potential certified WBE firms, then the Prime Contractor shall post an advertisement in the Owner's local legal organ, the Owner's official website, a regional newspaper in a larger community in the proximity, the Prime Contractor's website, or some other appropriate resource.
 - ii. The Prime Contractor is encouraged to follow-up each written, fax, or email solicitation with at least one logged phone call.
 - iii. Whenever possible, post solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- e. Written justification for not selecting a certified DBE subcontractor that submitted a low bid for any subcontract area.
- f. Certification By Proposed Prime Contractor or Subcontractor Regarding Equal Employment Opportunity (GEFA-9)
- g. Certification By Proposed Prime or Subcontractor Regarding Debarment, Suspension, and Other Responsible Matters. (GEFA-10)

END OF DBE COMPLIANCE FORM



DBE COMPLIANCE CHECKLIST

THE PRIME CONTRACTOR MUST SUBMIT THE FOLLOWING ITEMS TO THE OWNER BEFORE THE WORK BEGINS:

Loan Recipient _____

SRF Loan Number _____

Include in Package Submittal

PRIME CONTRACTOR ONLY	TOTAL CONTRACT AMOUNT	
ALL SUBCONTRACTORS, INCLUDING DBE FIRMS	TRADE	AMOUNT
ALL SUBCONTRACTORS, INCLUDING DBE FIRMS	TRADE	AMOUNT
DBE SUBCONTRACTORS ONLY	TRADE	AMOUNT
DBE SUBCONTRACTORS ONLY	TRADE	AMOUNT
PRIME CONTRACTOR ONLY <i>(Not applicable if self-performing all work, with no subcontracting)</i>		

1. **DBE Compliance Form.** The Owner must sign and submit this information to the Georgia Environmental Finance Authority (GEFA) to demonstrate compliance with DBE requirements. GEFA concurrence is recommended prior to award of the construction contract and is required prior to commencement of any SRF-funded construction. (Pages GEFA-4 and 5)

2. **Certification Regarding Equal Employment Opportunity.** This form is required for the Prime Contractor and for all subcontractors. The Prime Contractor's form should be submitted with the DBE Compliance Form and the subcontractors' forms should be submitted as the subcontracts are executed. (Page GEFA-9)

3. **Certification Regarding Debarment, Suspension, and Other Responsible Matters.** This form is required for the Prime Contractor and for all subcontractors. The Prime Contractor's form should be submitted with the DBE Compliance Form and the subcontractors' forms should be submitted as the subcontracts are executed. (Page GEFA-10)

Uncommitted Trades

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Documentation of Good Faith Efforts

Newspaper ads	Internet Websites	Fax Confirmation	Copies of Solicitation Emails/letters	Copies of phone logs
PROOF OF CERTIFICATION FOR EACH SUBCONTRACTOR LISTED AS A DBE, MBE, OR WBE				

SIX GOOD FAITH EFFORTS

These good faith efforts are required methods to ensure that DBEs have the opportunity to compete for procurements funded by EPA financial assistance dollars. Such good faith efforts are described as follows:

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. This will include placing DBEs on solicitation lists and soliciting them whenever there are potential sources.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitation for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. This will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
5. Use the resources, services, and assistance of the U.S. Department of Transportation (DOT), U.S. Small Business Administration (SBA), and the Minority Business Development Agency of the U.S. Department of Commerce (MBDA).
6. If the Prime Contractor awards subcontracts, it must take the steps described in items (1) through (5) listed above.

Please note that DBEs, MBEs, and WBEs must be certified by EPA, SBA, or DOT (or by state, local, tribal, or private entities whose certification criteria match EPA's). DBEs must be certified to be counted toward the Prime Contractor's MBE/WBE goals. "Self-certified" DBE subcontractors will not be counted toward the Prime Contractor's MBE/WBE goals. Depending upon the certifying agency, a DBE may be classified as a DBE, a Minority Business Enterprise (MBE), or a Women's Business Enterprise (WBE).

The Prime Contractor must employ and document the **Six Good Faith Efforts** for all subcontracts, even if the Prime Contractor has achieved the fair share objectives.

The documentation of solicitations for the **Six Good Faith Efforts** must be detailed to allow for satisfactory review. Such documentation might include fax confirmation sheets, copies of solicitation letters/emails, printouts of the online solicitations, printouts of online search results, and affidavits of publication in newspapers or other publications. The Prime Contractor is encouraged to follow up each written, fax, or email solicitation with at least one logged phone call.

The Prime Contractor should attempt to identify and solicit DBEs in the geographic proximity of the project before soliciting those located farther away.

If a DBE subcontractor fails to complete work under the subcontract for any reason, the Prime Contractor must notify the Owner in writing prior to any termination and must employ the Six Good Faith Efforts described above if using a replacement subcontractor. Any proposed changes from the approved DBE subcontractor list must be reported to the Owner and to GEFA on the *Changes to Approved Subcontractors Form* (GEFA-14) prior to initiation of the action. EPA Forms Nos. 6100-3 and 6100-4 must also be submitted to GEFA for new DBE subcontracts.

RESOURCES FOR IDENTIFYING DBE SUBCONTRACTORS

RESOURCES FOR IDENTIFYING DBE SUBCONTRACTOR'S FOR DIRECT SOLICITATION:

Georgia Department of Transportation (GDOT)
Disadvantaged Business Enterprise Program
404-631-1972
<https://www.dot.ga.gov/GDOT/Pages/DBE.aspx>

City of Atlanta, Georgia Office of Contract Compliance
404-330-6010
<https://www.atlantaga.gov/government/mayor-s-office/executive-offices/office-of-contract-compliance>

DeKalb County, Georgia
Office of Purchasing and Contracting
404-371-4730
<http://dekalbbsbe.info/wordpress1/wp-content/uploads/2016/05/DeKalbCountyCertifiedVendorsListMay10-2016-Final2.pdf>

Fulton County, Georgia
Purchasing and Contract Compliance
404-612-5800

Metropolitan Atlanta Rapid Transit Authority (MARTA)
Disadvantaged Business Enterprise Program
404-848-4656

U.S. Environmental Protection Agency
http://www.epa.gov/osbp/dbe_team.htm

For more information about DBE compliance, contact:
waterresources@gefa.ga.gov

NOTES:

- (1) The Prime Contractor shall use the necessary resources to identify and directly solicit no less than three certified MBE firms and three WBE firms to bid in each expected subcontract area or trade.
- (2) If a diligent and documented search of the recommended directories does not identify three potential certified MBE firms and three potential certified WBE firms, then the Prime Contractor shall post an advertisement in the Owner's local legal organ, the Owner's official website, a regional newspaper in a larger community in the proximity, the Prime Contractor's website, or some other appropriate resource. Whenever possible, post solicitation for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (3) Expenditures to a DBE that acts merely as a broker or passive conduit of funds, without performing, managing, or supervising the work of its subcontract in a manner consistent with normal business practices may not be counted.
- (4) The Prime Contractor should attempt to identify and first solicit DBEs in the geographic proximity of the project before soliciting those located farther away.
- (5) Contact GEFA Project Managers at 404-584-1000 or waterresources@gefa.ga.gov for further assistance or resources.

CERTIFICATION BY PROPOSED PRIME CONTRACTOR OR SUBCONTRACTOR REGARDING EQUAL EMPLOYMENT OPPORTUNITY

Proposed Prime Contractor
Proposed Subcontractor

This certification is required pursuant to Executive Order 11246, Part II, Section 203 (b), (30 F.R. 12319-25), (as amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684; EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, EO 13672 of July 21, 2104, 79 FR 42971). Any bidder or prospective prime contractor, or any of the proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicated that the prime or subcontractor has not filed a compliance report due under applicable instruction, such contractor shall be required to submit a compliance report.

(1) Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.
 YES _____ NO _____

(2) Compliance Reports were required to be filed in connection with such contract or subcontract.
 YES _____ NO _____ (If YES, state what reports were filed and with what agency.)

(3) Bidder has filed all compliance reports due under applicable instructions, including SF-100 (EEO-1 Report).
 YES _____ NO _____ (If NO, please explain in detail.)

The information above is true and complete to the best of my knowledge and belief. (A willfully false statement is punishable by law – U.S. Code, Title 18, Section 1001.)

 PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE OF CONTRACTOR OR SUBCONTRACTOR

 SIGNATURE OF AUTHORIZED REPRESENTATIVE

 DATE

**CERTIFICATION BY PROPOSED PRIME CONTRACTOR OR SUBCONTRACTOR REGARDING
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBLE MATTERS**

Proposed Prime Contractor
Proposed Subcontractor

Under Executive Order 12549 individuals or organizations debarred from participation in federal assistance programs may not receive an assistance award under federal program or sub-agreement there under for \$25,000 or more. Accordingly, each recipient of a state loan or a contract (engineering or construction) awarded under a loan must complete the following certification (see 2 CFR §1532.220).

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause of default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. (A willfully false statement is punishable by law – U.S. Code, Title 18, Section 1001.)

PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE OF CONTRACTOR OR SUBCONTRACTOR

SIGNATURE OF AUTHORIZED REPRESENTATIVE

DATE

_____ I am unable to certify to the above statements. My explanation is as follows:

CHANGES TO APPROVED SUBCONTRACTORS FORM

Loan Recipient _____ SRF Loan Number _____

CERTIFICATIONS:

I certify that the information submitted on and with this form is true and accurate and that this firm has met and will continue to meet the conditions of this construction contract regarding DBE solicitation and utilization. I further certify that criteria used in selecting subcontractors and suppliers were applied equally to all potential participants.

 (Prime Contractor signature) Date _____

 (Printed name and title)

I certify that I have reviewed the information submitted on and with this form and that it meets the requirements of the Owner's State Revolving Fund loan contract.

 (Signature of Owner or Owner's representative) Date _____

 (Printed name and title)

GENERAL INFORMATION:

- 1) If an approved subcontractor is terminated or replaced, please identify this company and briefly state reason.

Subcontractor Name:	Trade
Reason Terminated or Replaced	

- 2) For new or additional subcontractors, list name, trade, address, telephone number, contact person, dollar amount of subcontract, and DBE status.

New Subcontractor Name and Contact Person	Trade
Address	Telephone Number
Dollar Amount	DBE Status

- 1) Attach proof of certification by EPA, SBA, DOT (or by state, local, tribal, or private entities whose certification criteria match EPA's) for each subcontractor listed as a DBE, MBE, or WBE.
- 2) Attach documentation of Six Good Faith Efforts solicitation effort for all new subcontracts.
- 3) Provide justification for not selecting any certified DBE subcontractor that submitted a low bid for any subcontract area.
- 4) For each subcontractor, attach certifications regarding Equal Employment Opportunity (GEFA-9) and certifications regarding Debarment, Suspension, and Other responsible Matters (GEFA-10)

DBE ANNUAL REPORT
FORM (5700-52A)

This form must be completed by recipients of federal financial assistance for procurement of supplies, equipment, construction, or services. SRF loan recipients are required to submit this report to GEFA by the 20th of October for the previous period of October 1 through September 30. Please submit a "negative" report even if \$0 is the amount paid to MBE/WBE subcontractors during the reporting period.

ANNUAL REPORT FORM (5700-52A)			
1. PRIME CONTRACTOR		2. REPORTING PERIOD (Complete date using current year.) Period Ending (September 30, _____)	
3. SUBMIT TO: Georgia Environmental Finance Authority Attention: DBE Compliance Coordinator 47 Trinity Ave SW Fifth Floor Atlanta, Georgia 30303 waterresources@gefa.ga.gov		4. LOAN RECIPIENT (Name, Address, and Telephone)	
5. LOAN RECIPIENT (OWNER) REPORTING CONTACT	PHONE:	6. TYPE OF FEDERAL FINANCIAL ASSISTANCE PROGRAM (Check one) CWSRF _____ DWSRF _____	7. SRF LOAN NUMBER
8. CONTRACTOR NAME AND TOTAL CONSTRUCTION CONTRACT AMOUNT		9. ACTUAL DOLLAR AMOUNT PAID TO MBE/WBE SUBCONTRACTORS THIS PERIOD \$ MBE _____ \$ WBE _____ NEGATIVE REPORT (\$0) _____	
10. RECIPIENT'S MBE/WBE GOALS MBE 4.0% WBE 4.0%		11. TOTAL DOLLARS SPENT THIS PERIOD MBE \$ _____ WBE \$ _____ NON MBE/WBE \$ _____ TOTAL \$ _____	
12. NAME AND TITLE OF AUTHORIZED REPRESENTATIVE OF LOAN RECIPIENT (OWNER).		13. SIGNATURE OF AUTHORIZED REPRESENTATIVE OF LOAN RECIPIENT.	14. DATE
MBE/WBE PAYMENTS MADE DURING PERIOD			
NAME AND ADDRESS of DBE (SUB)CONTRACTOR (indicate if MBE or WBE firm)		TOTAL DOLLAR AMOUNT PAID AND DATE PAID \$ _____ DATE _____	

SPECIAL PROVISIONS

- (a) The Prime Contractor is required to pay its subcontractors in accordance with the Georgia Prompt Payment Act (OCGA 13-11).
- (b) The Prime Contractor is required to insert the entirety of the Davis Bacon contract requirements into all subcontracts.
- (c) Sewer line and water line crossing of all roads and streets shall be done in accordance with the Georgia Department of Transportation (D.O.T.) Policies and Procedures and must comply with the Ga. D.O.T. Standard Specifications, Construction of Roads and Bridges, 1993 Edition.
- (d) Construction shall be carried out so as to prevent bypassing of wastewater flow and to prevent interruption of drinking water treatment during construction. EPD must receive written notification prior to any reduction in the level of treatment and must approve all temporary modifications to the treatment process prior to the activity.
- (e) Erosion and Sedimentation Control shall be accomplished in accordance with the Georgia Erosion and Sedimentation Control Act of 1975 as currently amended and NPDES General Permits (Storm Water from Construction Sites). See also epd.georgia.gov and gaswcc.georgia.gov for information regarding permits.
- (f) Use of Chemicals: All chemicals used during project construction or furnished for project operation, whether herbicide, pesticide, disinfectant, polymer reactant or of other classification, must show approval of either EPA or USDA. Use of all such chemicals and disposal of residues shall be in conformance with state and local regulations as appropriate.
- (g) It is the duty of the Prime Contractor, the Owner and the Engineer to ensure the construction of the project, including the letting of contracts in connection therewith, shall comply with all applicable laws and regulations and requirements of the United States of America or any agency thereof, the state of Georgia or any agency thereof, territorial, or any local government laws or political subdivision and ordinances to the extent that such requirements do not conflict with federal laws and this subchapter.
- (h) EPD, EPA, and GEFA shall have access to the site and the project work at all times.

BONDS

Bonding requirements for Contracts of \$100,000 or less are contained in the General Conditions. Bond requirements of contracts in excess of \$100,000 are:

1. Bid guarantee equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a certified check or bid bond submitted with the bid;
2. Performance bond equal to 100 percent of the contract price, and;
3. Payment bond equal to 100 percent of the contract price. Bonds must be obtained from companies holding Certificates of Authority as acceptable sureties, issued by the U.S. Treasury.

SPECIAL NOTICE TO BIDDERS

By the submission of this bid, each bidder acknowledges that he understands and agrees to be bound by the equal opportunity requirements of EPA regulations (40 CFR Part 8, particularly Section 8.4 (b)), which shall be applicable throughout the performance of work under any contract awarded pursuant to this solicitation. Each bidder agrees that if awarded a contract, it will similarly bind contractually each subcontractor. In implementation of the foregoing policies, each bidder further understands and agrees that if awarded a contract, it must engage in affirmative action directed at promoting and ensuring equal employment opportunity in the workforce used under the contract (and that it must require contractually the same effort of all subcontractors whose subcontracts exceed \$10,000.00). The bidder understands and agrees that "affirmative action" as used herein shall constitute a good faith effort to achieve and maintain minority employment in each trade in the on-site workforce used on the project.

EQUAL EMPLOYMENT OPPORTUNITY NOTICE

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL OPPORTUNITY (EXECUTIVE ORDER 11246)

1. The Offeror's or Bidder's attention is called to the Equal Opportunity Clause which is included in the nondiscrimination Provision and Labor Standards, EPA Form 5720-4 and the Standard Federal Equal Employment Opportunity (EEO) Construction Contract Specifications set forth herein.
2. The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority participation for each trade	4.0 percent
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Goals for female participation for each trade	4.0 percent
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These goals are applicable to all the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area.

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

3. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract.
4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical area where the contract is to be performed giving the state, county, and city, if any).

EEO Construction Contract Specifications

Executive Order 11246

<https://www.dol.gov/agencies/ofccp/executive-order-11246/as-amended>

Davis-Bacon and Related Acts

<https://www.dol.gov/agencies/whd/government-contracts/construction>

INSERT WAGE RATE DETERMINATION HERE

Wage Rates (for *Heavy Construction*) are state/county specific can be found at:

<http://www.dol.gov/whd/govcontracts/dbra.htm>

Sample Payroll Form (WH-347) is found at:

<http://www.dol.gov/whd/forms/wh347.pdf>

Labor Standards Interview Form (SF-1445) is found at:

<http://www.gsa.gov/portal/forms/download/115910>

Davis-Bacon (WH-1321) poster is found at:

<http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf> (*English*)

<http://www.dol.gov/whd/regs/compliance/posters/davispan.pdf> (*Spanish*)

Fair Labor Standards Act Minimum Wage poster is found at:

<http://www.dol.gov/whd/regs/compliance/posters/minwagebwp.pdf> (*English*)

<http://www.dol.gov/whd/regs/compliance/posters/minwagespbwP.pdf> (*Spanish*)

“EEO Is the Law” poster is found at:

https://www.eeoc.gov/sites/default/files/2022-10/22-088_EEOC_KnowYourRights_10_20.pdf

(*English*)

https://www.eeoc.gov/sites/default/files/2022-10/22-088_EEOC_KnowYourRightsSp_10_20.pdf

(*Spanish*)

OSHA poster is found at:

<https://www.osha.gov/sites/default/files/publications/osha3165.pdf>

(*English*)

<https://www.osha.gov/sites/default/files/publications/osha3167.pdf>

(*Spanish*)

CERTIFIED PAYROLL REVIEW CHECKLIST

(This is a recommended Certified Payroll Review Checklist for the Owner's use.)

CONTRACT ID City of CW/DWSRF#00 - 000	PRIME CONTRACTOR/SUBCONTRACTOR X Construction
GENERAL WAGE DECISION AND DATE (Insert number and date)	PAYROLL PERIOD ENDING

INSTRUCTIONS: This checklist is to be used in conjunction with projects requiring Davis-Bacon Wage Rates and compliance reviews. All certified payrolls are to be date stamped upon receipt from the prime contractor.

Payroll Information Checklist:

- _____ Prime Contractor's or subcontractor's name and address
- _____ Contract ID numbers (GEFA SRF No.)
- _____ Week ending.
- _____ Project location.

- _____ Employee ID or Last four digits of Social Security
 - _____ Number Social Security Number removed
 - _____ Employee's work classification
 - _____ Identification of OJTs, apprentices, and program levels (%) on payrolls.
 - _____ Verify that OJT and Apprentice Program documentation is in project files.

- _____ Daily and weekly employee hours worked in each job classification.
 - _____ Daily and weekly employee overtime (or premium) hours worked
 - _____ Total weekly hours worked on all jobs (prevailing and non-prevailing wage).
 - _____ Base rate shown for each employee, overtime (or premium) rate shown when worked.
 - _____ Verify correct wage rates are being paid.
 - _____ Verify overtime is being paid correctly (over 40 hrs/wk, and Time and a half)
 - _____ Week's gross wages
 - _____ Week's itemized deductions.
 - _____ Week's net wages paid

- _____ Compliance statement attached.
 - _____ Method of fringe benefit payment described by checking either box (4)(a) or (4)(b).
 - _____ Fringe benefit package information in file and updated as needed (if 4(a) is checked)
 - _____ Exceptions explanation for fringe benefit (4)(c).
 - _____ Signature.

Compliance Review Checklist (for field reviews):

- _____ Verify work classifications reported are consistent with the work performed.
- _____ Compare payrolls with wage rate interviews when conducted.
- _____ Compare number of employees and hours worked with project documentation.

REVIEWED BY:	DATE
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GEORGIA ENVIRONMENTAL FINANCE AUTHORITY

**AMERICAN IRON AND STEEL
SPECIAL CONDITIONS AND INFORMATION**

For

**FEDERALLY ASSISTED
STATE REVOLVING LOAN FUND
CONSTRUCTION CONTRACTS**

April 11, 2014

The following standard language must be incorporated into construction contract documents and in all solicitations for offers and bids for all construction contracts or subcontracts to be funded, in whole or in part, through the Federally-assisted State Revolving Fund in the State of Georgia for projects subject to the American Iron and Steel requirements.

These Special Conditions shall not relieve the participants in this project of responsibility to meet any requirements of other portions of this construction contract or of other agencies, whether these other requirements are more or less stringent. The requirements in these Special Conditions must be satisfied in order for work to be funded with the State Revolving Fund.

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GENERAL REQUIREMENTS

These Special Conditions are based on guidance provided by the United States Environmental Protection Agency (EPA). Public Law 113-76, the Consolidated Appropriations Act, 2014 (Act), includes an "American Iron and Steel" (AIS) requirement that requires State Revolving Loan Fund (SRF) assistance recipients to use iron and steel products that are produced in the United States for projects in this project. A copy of Section 436 of the Act is found in Appendix 3.

The products and materials subject to these requirements will be defined in Appendix 1 of these special conditions.

The Owner must maintain documentation of compliance with the AIS requirements. The documentation that the Owner maintains will be subject to review and audit by representatives of the state of Georgia, the EPA, the EPA Office of the Inspector General, and other federal authorities.

The Prime Contractor must provide certifications of compliance for all products subject to AIS requirements to the Owner prior to requesting payments for those products. The Owner or the Engineer may require certifications of compliance with submittals and shop drawings for these products as part of the submittal review process.

All manufacturing processes for a covered iron or steel product, as further defined in Appendix 1, must take place in the United States. If a covered product is taken out of the US for any part of the manufacturing process, it becomes foreign source material.

The EPA recommends the use of a step certification process to document the locations of the manufacturing processes involved with the production of steel and iron materials. A step certification is a process under which each handler (supplier, fabricator, manufacturer, processor, etc.) of the iron and steel products certifies that its step in the process was domestically performed. Each time a step in the manufacturing process takes place, the manufacturer delivers its work along with a certification of its origin. A certification should include the name of the manufacturer, the location of the manufacturing facility where the product or process took place (not its headquarters), a description of the product or item being delivered, and a signature by a manufacturer's responsible party. Attached in Appendix 2 is a sample step certification.

Alternatively, the final manufacturer that delivers the iron or steel product to the worksite, vendor, or contractor, may provide a certification asserting that all manufacturing processes for the product and for its iron and steel components occurred in the United States. The EPA states that additional documentation may be needed if the certification lacks important information and recommends step certification as the best practice. A sample final manufacturer certification is attached in Appendix 2.

The Prime Contractor may document that incidental and generally low cost components, as defined in Appendix 1, are compliant with AIS requirements under the De Minimis Waiver issued by the EPA. For these items, the Contractor must provide the Owner with documentation of costs for these items, including invoices, and a report of types and categories of materials to which the waiver is applied, the total cost of incidental components covered by the waiver for each category, and the calculations by which the total cost of materials incorporated into the project was determined. A sample De Minimis report is attached in Appendix 2.

Contractor, supplier, and manufacturer records are subject to review and audit by the EPA, its Inspector General, and other federal authorities.

Failure to comply with these requirements may delay, limit, or prevent the disbursement of SRF funds to the Owner. Violations of AIS requirements will require correction by the Contractor as determined by the Owner and Engineer, including replacement of deficient products with compliant products and compensation for costs and other damages that may result. Violations may also subject the Owner, the Contractor, and suppliers to other enforcement actions within the discretion of the EPA and other federal authorities.

The Act permits EPA to issue waivers for a case or category of cases in which EPA finds (1) that applying these requirements would be inconsistent with the public interest; (2) iron and steel products are not produced in the US in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron and steel products produced in the US will increase the cost of the overall project by more than 25 percent. The Contractor should notify the Owner and Engineer immediately if it finds that a waiver may be required.

By submitting a bid for this project and by executing this construction contract, the Contractor acknowledges to and for the benefit of the Owner and the state of Georgia that it understands that the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund or the Drinking Water State Revolving Fund and that Federal law authorizing these Funds contains provisions commonly known as "American Iron and Steel" that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Owner and the state of Georgia that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Owner or the state of Georgia. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner or the state of Georgia to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Owner or the state of Georgia resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the state of Georgia or any damages owed to the state of Georgia by the Owner). The Owner and the Contractor agree that the state of Georgia, as a lender to the Owner for the funding of its project, is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the state of Georgia.

For purposes of the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) projects that must comply with the AIS requirement, an iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the project:

Lined or unlined pipes or fittings;
Manhole Covers;
Municipal Castings (defined in more detail below);
Hydrants;
Tanks;
Flanges;
Pipe clamps and restraints;
Valves;
Structural steel (defined in more detail below);
Reinforced precast concrete (defined in more detail below); and
Construction materials (defined in more detail below).

Product primarily of iron or steel: The product must be made of greater than 50% iron or steel, measured by cost. If one of the listed products is not made primarily of iron or steel, United States (US) provenance is not required, except as required for reinforced precast concrete. If a product is composed of more than 50% iron or steel, but is not listed in Section 436 (a) (2) of the Act, it is not required to be produced in the US. Alternatively, the iron or steel in such a product can be sourced from outside the US.

Steel: An alloy that includes at least 50 percent iron and between 0.02 and 2 percent carbon and may include other elements. Other alloys of iron are not required to be produced in the US.

Produced in the United States: Production in the US of the iron or steel products used in the project requires that all manufacturing processes, including application of coatings, must take place in the United States, with the exception of metallurgical processes involving refinement of steel additives. All manufacturing processes includes processes such as melting, refining, forming, rolling, drawing, finishing, fabricating and coating. Further, if a domestic iron and steel product is taken out of the US for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement, and the material(s), if any, being applied as a coating are similarly not covered. Non-iron or steel components of an iron and steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-iron and steel components do not have to be of domestic origin.

Municipal Castings: Municipal castings are cast iron or steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and surface infrastructure. They are typically made of grey or ductile iron, or steel. Examples of municipal castings include access hatches, ballast screen, benches, bollards, cast bases, cast iron hinged hatches, cast iron riser rings, catch basin inlets, cleanout/monument boxes, construction covers and frames, curb and corner guards, curb openings, detectable warning plates, downspout shoes, drainage grates, frames & curb inlets, inlets, junction boxes, lampposts, manhole covers, rings & frames, risers, meter boxes, steel hinged hatches, steel riser rings, trash receptacles, tree grates, tree guards, trench grates, and valve boxes.

Structural Steel: Structural steel is rolled flanged shapes, having at least one dimension of their cross-section 3 inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. Such shapes are designated as wide-flange shapes, standard I-beams, channels, angles, tees and zeeks. Other shapes include H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.

Reinforced Precast Concrete: While reinforced precast concrete may not be at least 50% iron or steel, in this particular case, the reinforcing rebar must be produced in the US and meet the same standards as for any other iron or steel product. Additionally, the casting of the concrete product must take place in the US. The cement and other raw materials used in concrete production are not required to be of domestic origin. If the reinforced concrete is cast at the construction site, the reinforcing rebar is considered to be a construction material and must be produced in the US.

Construction Materials subject to AIS: Construction materials are those articles, materials, or supplies made primarily of iron and steel, that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment and systems. Some of these products may overlap with what is also considered “structural steel”. This includes, but is not limited to, the following products: welding rods, wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners (i.e., nuts and bolts), decking, grating, railings, stairs, access ramps, fire escapes, ladders, wall panels, dome structures, roofing, ductwork, surface drains, cable hanging systems, manhole steps, fencing and fence tubing, guardrails, doors, gates, and screens.

Construction Materials not subject to AIS: Mechanical and/or electrical components, equipment and systems are not considered construction materials. Mechanical equipment is typically that which has motorized parts and/or is powered by a motor. Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system.

The following examples, including their appurtenances necessary for their intended use and operation, are NOT considered construction materials: pumps, motors, gear reducers, drives, variable frequency drives (VFDs), mixers, blowers/aeration equipment, compressors, meters, electric/pneumatic/manual accessories used to operate valves (such as valve actuators), gates, motorized screens (such as traveling screens), sensors, controls, switches, supervisory control and data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, dewatering equipment, presses (including belt presses), conveyors, cranes, HVAC (excluding ductwork), water heaters, heat exchangers, generators, cabinetry and housings (such as electrical boxes/enclosures), lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, and analytical instrumentation.

Items temporarily used during construction, which are removed from the project site upon completion of the project, are not required to be made of U.S. Iron or Steel. For example, trench boxes or scaffolding are not considered construction materials subject to AIS requirements.

Incidental Components compliant with AIS under the De Minimis Waiver: This waiver permits the use of de minimis incidental components that may otherwise be prohibited under AIS. These de minimis items may cumulatively comprise no more than a total of 5 percent of the total cost of the materials used in and incorporated into the project. The cost of an individual item may not exceed 1 percent of the total cost of the materials used in and incorporated into the project.

These items are miscellaneous, generally low-cost components that are essential for, but incidental to, the construction and are permanently incorporated into the project. For many of these incidental components, the country of manufacture and the availability of alternatives are not always readily or reasonably identifiable prior to procurement in the normal course of business. For other incidental components, the country of manufacture may be known, but the miscellaneous character in conjunction with the low cost, individually and in total, as typically procured in bulk, mark them as properly incidental. Examples of incidental components include small washers, screws, fasteners (i.e., nuts and bolts), miscellaneous wire, corner bead, ancillary tube.

Examples of items that are not incidental and are not covered by the De Minimis Waiver include significant process fittings (i.e., tees, elbows, flanges, and brackets), distribution system fittings and valves, force main valves, pipes for sewer collection and/or water distribution, treatment and storage tanks, large structural support structures.

Items covered as compliant under this waiver must be documented in a report to the Owner to demonstrate that they are both incidental and that they fall within the cost allowances of this waiver. The costs of these items must be documented by invoices. The report must include a listing of types and categories of materials to which the waiver is applied, the total cost of incidental components covered by the Waiver for each category, and the calculations by which the total cost of materials incorporated into the project was determined.

Appendix 2 – Sample Certifications Step Certification

The following information is provided as a sample letter of step certification for American Iron and Steel compliance. Documentation must be provided on company letterhead. This is to be provided by each handler (supplier, fabricator, manufacturer, processor, etc.). Each time a step in the manufacturing process takes place, the handler delivers its work along with a certification of its origin.

Date

Company Name
Company Address
City, State Zip

Subject: American Iron and Steel Step Certification for Project (Insert project name and SRF number)

I, (company representative), certify that the (melting, bending, coating, galvanizing, cutting, etc.) process for (manufacturing or fabricating) the following products and/or materials shipped or provided for the subject project is in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

List of items, products and/or materials:

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

Appendix 2 – Sample Certifications Final manufacturer certification

The following information is provided as a sample letter of the final manufacturer to certify American Iron and Steel compliance for the entire manufacturing process. Documentation must be provided on company letterhead.

Date

Company Name
Company Address
City, State Zip

Subject: American Iron and Steel Certification for Project (Insert project name and SRF number)

I, (company representative), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the American Iron and Steel requirement of P.L. 113-76 and as mandated in EPA's State Revolving Fund Programs.

List of items, products and/or materials:

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

Appendix 2 – Sample Certifications Contractor De Minimis Report

Owner: (Owner Name)
 SRF Project No: (SRF Number)
 Project Description: (Contract title or brief description)
 Date: (Date of report)
 Submitted by (name & title): (Contractor representative)
 Company Name

**LIST OF MATERIALS
OR CATEGORIES OF MATERIALS
PERMANENTLY INCORPORATED
INTO THE PROJECT**

Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Total Permanent Materials	\$10,000.00

1 % of total material cost	\$100.00	Maximum cost for individual item waived
5 % of total material cost	\$500.00	Maximum cumulative cost for category waived

**LIST OF MATERIALS
OR CATEGORIES OF MATERIALS
COVERED BY
DE MINIMIS WAIVER**

	COST	COMPLIANT (Yes/No)
Category or Item	\$100.00	Yes
Category or Item	\$100.00	Yes
Category or Item	\$100.00	Yes
Category or Item	\$100.00	Yes
Category or Item	\$100.00	Yes
<u>Total De Minimis Items</u>	<u>\$500.00</u>	<u>Yes</u>

INVOICES ATTACHED FOR DE MINIMIS ITEMS.

The Act states:

Sec. 436 (a)(1) None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States.

(2) In this section, the term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the “Administrator”) finds that—

(1) applying subsection (a) would be inconsistent with the public interest;

(2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public on an informal basis a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet Web site of the Environmental Protection Agency.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

(e) The Administrator may retain up to 0.25 percent of the funds appropriated in this Act for the Clean and Drinking Water State Revolving Funds for carrying out the provisions described in subsection (a)(1) for management and oversight of the requirements of this section.

(f) This section does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that agency’s capacity to approve such plans and specifications prior to a project requesting bids, prior to the date of the enactment of this Act.

PROFESSIONAL SERVICES INSURANCE REQUIREMENTS

1. Statutory Workers' Compensation Insurance
 - (a) Employers Liability:
 - ✓ Bodily Injury by Accident - \$100,000 each accident
 - ✓ Bodily Injury by Disease - \$500,000 policy limit
 - ✓ Bodily Injury by Disease - \$100,000 each employee

2. Commercial General Liability Insurance
 - (a) \$1,000,000 limit of liability per occurrence for bodily injury and property damage
 - (b) The following additional coverage must apply:
 - ✓ 1986 (or later) ISO Commercial General Liability Form
 - ✓ Dedicated Limits per Project Site or Location (CG 25 03 or CG 25 04)
 - ✓ Additional Insured Endorsement (Form B CG 20 10 with a modification for completed operations or a separate endorsement covering Completed Operations)
 - ✓ Blanket Contractual Liability
 - ✓ Broad Form Property Damage
 - ✓ Severability of Interest
 - ✓ Underground, explosion, and collapse coverage
 - ✓ Personal Injury (deleting both contractual and employee exclusions)
 - ✓ Incidental Medical Malpractice
 - ✓ Hostile Fire Pollution Wording

3. Auto Liability Insurance
 - (a) \$500,000 limit of liability per occurrence for bodily injury and property damage
 - (b) Comprehensive form covering all owned, nonowned, leased, hired, and borrowed vehicles
 - (c) Additional Insured Endorsement
 - (d) Contractual Liability

4. Professional Liability Insurance - \$1,000,000 (project specific for the Gwinnett County project) limit of liability per claim/aggregate or a limit of \$1,000,000 per occurrence and \$2,000,000 aggregate or a claim/aggregate limit of \$3,000,000 per occurrence and \$3,000,000 aggregate.
 - ✓ Insurance company must be authorized to do business in the State of Georgia.
 - ✓ Dedicated Limits per Project Site or Location (CG 25 03 or CG 25 04 or some other form)

5. Gwinnett County Board of Commissioners (and any applicable Authority) should be shown as an additional insured on General Liability and Auto Liability policies.

6. The cancellation should provide 10 days notice for nonpayment and 30 days notice of cancellation.

7. Certificate Holder should read:
 - Gwinnett County Board of Commissioners
 - 75 Langley Drive
 - Lawrenceville, GA 30046-6935

8. Insurance Company, except Worker' Compensation carrier, must have an A.M. Best Rating of A-5 or higher. Certain Workers' Comp funds may be acceptable by the approval of the Insurance Unit. European markets including those based in London and domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the contractor's broker/agent can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A-5 or better.

9. Insurance Company should be licensed to do business by the Georgia Department of Insurance.
*See above note regarding Professional Liability
10. Certificates of Insurance, and any subsequent renewals, must reference specific bid/contract by project name and project/bid number.
11. The Contractor shall agree to provide complete certified copies of current insurance policy (ies) or a certified letter from the insurance company (ies) if requested by the County to verify the compliance with these insurance requirements.
12. All insurance coverages required to be provided by the Contractor will be primary over any insurance program carried by the County.
13. Contractor shall incorporate a copy of the insurance requirements as herein provided in each and every subcontract with each and every Subcontractor in any tier, and shall require each and every Subcontractor of any tier to comply with all such requirements. Contractor agrees that if for any reason Subcontractor fails to procure and maintain insurance as required, all such required Insurance shall be procured and maintained by Contractor at Contractor's expense.
14. No Contractor or Subcontractor shall commence any work of any kind under this Contract until all insurance requirements contained in this Contract have been complied with and until evidence of such compliance satisfactory to Gwinnett County as to form and content has been filed with Gwinnett County. **The Acord Certificate of Insurance or a preapproved substitute is the required form in all cases where reference is made to a Certificate of Insurance or an approved substitute.**
15. The Contractor shall agree to waive all rights of subrogation against the County, the Board of Commissioners, its officers, officials, employees, and volunteers from losses arising from work performed by the contractor for the County.
16. Special Form Contractors' Equipment and Contents Insurance covering owned, used, and leased equipment, tools, supplies, and contents required to perform the services called for in the Contract. The coverage must be on a replacement cost basis. The County will be included as a Loss Payee in this coverage for County owned equipment, tools, supplies, and contents.
17. The Contractor shall make available to the County, through its records or records of their insurer, information regarding a specific claim related to any County project. Any loss run information available from the contractor or their insurer relating to a County project will be made available to the county upon their request.
18. Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all Subcontractors of their liability provisions of the Contract.
19. The Contractor and all Subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, and any other laws that may apply to this Contract.
20. The Contractor shall at a minimum apply risk management practices accepted by the contractors' industry.

Surety Bonds (If Required)

All of the surety requirements will stay the same except the Surety Company must have the same rating as item 8 above.

MAJOR CONSTRUCTION INSURANCE REQUIREMENTS

1. Workers' Compensation Insurance:
 - (a) Worker's Compensation: Statutory Limit
 - (b) Employers Liability:
 - ✓ Bodily Injury by Accident-\$1,000,000 each accident
 - ✓ Bodily Injury by Disease -\$1,000,000 policy limit
 - ✓ Bodily Injury by Disease -\$1,000,000 each employee
 - (c) Waiver of Subrogation

2. Automobile Liability Insurance:
 - (a) \$1,000,000 limit of liability per occurrence for Bodily Injury and Property Damage
 - (b) Comprehensive form covering all owned, non-owned, leased, hired, and borrowed vehicles
 - (c) Additional Insured Endorsement
 - (d) Waiver of Subrogation in Favor of Gwinnett County

3. Commercial General Liability Insurance:
 - (a) \$2,000,000 limit of liability per occurrence for Bodily Injury and Property Damage
 - (b) \$2,000,000 limit of liability per occurrence for Personal Injury
 - (c) The following additional coverage in favor of Gwinnett County Board of Commissioners:
 - ✓ Current ISO Commercial General Liability Form
 - ✓ Dedicated Limits per Project Site with endorsements as proof with Certificates
 - ✓ Completed Operations coverage maintained through applicable statute of repose.
 - ✓ Additional Insured Endorsement for ongoing and completed operations (ISO endorsement CG 20 10 and CG 20 27
 - ✓ Blanket Contractual Liability
 - ✓ Broad Form Property Damage
 - ✓ Severability of Interest
 - ✓ Waiver of Subrogation
 - ✓ Personal Injury (Deleting both contractual and employee exclusions)
 - ✓ Incidental Medical Malpractice
 - ✓ Hostile Fire Pollution Wording (CG 21 65)

4. Umbrella Liability Insurance for General Contractor:
 - (a) \$23,000,000 limit of liability per Occurrence over General Liability, Auto Liability and Employer's Liability as applicable or similar combination of CGL and Umbrella that yields \$25,000,000 coverage
 - (b) The following additional coverage must apply:
 - ✓ Additional Insured Endorsement
 - ✓ Concurrency of Effective Dates with Primary
 - ✓ Blanket Contractual Liability
 - ✓ Care, Custody, and Control - Follow Form Primary
 - ✓ Completed Operations coverage maintained through statute of repose
 - ✓ Umbrella Policy must be as broad as the primary policy
 - ✓ Waiver of Subrogation

5. Umbrella Liability Insurance for Subcontractors:
 - (a) \$3,000,000 limit of liability per Occurrence or similar combination of CGL and Umbrella that yields \$5,000,000 coverage
 - (b) The following additional coverage must apply:
 - ✓ Additional Insured Endorsement
 - ✓ Concurrency of Effective Dates with Primary
 - ✓ Blanket Contractual Liability
 - ✓ Care, Custody, and Control - Follow Form Primary
 - ✓ Completed Operations coverage maintained through statute of repose

- ✓ Umbrella Policy must be as broad as the primary policy
 - ✓ Waiver of Subrogation
7. The cancellation should provide 10 days' notice to certificate holders for nonpayment and 30 days' notice to certificate holders of cancellation
 8. Certificate Holder should read:
Gwinnett County Board of Commissioners
75 Langley Drive
Lawrenceville, GA 30046-6935
 9. Insurance Company, except Workers' Compensation Funds, must have an A.M. Best Rating of A-12 or higher. Certain Workers' Comp Funds may be acceptable by the approval of the Insurance Unit. European markets including those based in London and domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the contractor's broker/agent can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A-12 or better.
 10. Insurance Company should be licensed or authorized to do business by the Georgia Department of Insurance.
 11. Gwinnett County Board of Commissioners must be shown as an additional insured on General Liability, Auto Liability, and Umbrella.
 12. If applicable, Aircraft and Watercraft Bodily Injury Liability and Property Damage Liability Insurance \$1,000,000 per person and occurrence, if Contractor uses owned or non-owned aircraft and watercraft in his/her operation.
 13. All insurance coverages required to be provided by the Contractor will be primary and noncontributory over any insurance program carried by the County.
 14. Contractor shall incorporate a copy of the insurance requirements as herein provided in each and every subcontract with each and every Subcontractor in any tier, and shall require each and every Subcontractor of any tier to comply with all such requirements. Contractor agrees that if for any reason Subcontractor fails to procure and maintain insurance as required, all such required Insurance shall be procured and maintained by Contractor at Contractor's expense.
 15. No Contractor or Subcontractor shall commence any work of any kind under this Contract until all insurance requirements contained in this Contract have been complied with and until evidence of such compliance satisfactory to Gwinnett County as to form and content has been filed with Gwinnett County. **The Acord Certificate of Insurance or a preapproved substitute is the required form in all cases where reference is made to a Certificate of Insurance or an approved substitute.**
 16. All Risk Contractor's Equipment Insurance covering owned, used, and leased equipment required to perform the services called for in the Contract.
 17. Builders Risk Insurance: The Contractor shall procure and maintain Builder's Risk Insurance which provides "All Risk" coverage including earthquake and flood, collapse, transit coverage, boiler and machinery including operational testing and startup, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, resultant damage from faulty workmanship or materials or errors in design. The policy shall cover foundations or underground pipes, tanks, or machinery. The limit of insurance will be the amount necessary to cover 100% of the work required under this contract on a replacement cost basis. The deductible shall not exceed \$500,000. Gwinnett County Board of Commissioners, Contractors and Subcontractors will be named as insured. The policy shall cover materials and equipment stored at the site or at another location that was agreed to in writing by Gwinnett County prior to be incorporated in the work. Permission is granted for complete or partial occupancy of the project by owner until completion.

18. The Contractor shall make available to the County, through its records or records of their insurer, information regarding a specific claim. Any loss run information available from the contractor or their insurer will be made available to the County upon their request.
20. Compliance by the Contractor and all Subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all Subcontractors of their liability provisions of the Contract.
19. The Contractor and all Subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, and any other laws that may apply to this Contract.
20. The Contractor shall at a minimum apply risk management practices accepted by the contractors' industry.
21. The Contractor shall agree to waive all rights of recovery against the County, the Board of Commissioners, its officers, officials, employees, and volunteers from losses arising from work performed by the contractor for the county and their insurance carriers shall waive all rights of subrogation for General Liability, Auto Liability, Workers Compensation and Excess/Umbrella Liability.

Surety Bonds (If Required)

All of the surety requirements will stay the same except the Surety Company must have the same rating as item 9 above.

BOND # _____

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____
(Corporation, Partnership or Individual)

hereinafter called Principal, and

(Name of Surety)

(Address of Surety)

a Corporation of the State of _____, and a surety authorized by law to do business in the State of Georgia, hereinafter called Surety, are held and firmly bound unto

Gwinnett County Board of Commissioners

(Name of Obligee)

75 Langley Drive, Lawrenceville, Georgia 30046

(Address of Obligee)

hereinafter called Obligee;

for the use and protection of all subcontractors and all persons supplying labor, services, skill, tools, machinery, materials and/or equipment in the prosecution of the work provided for in the contract hereinafter referred to in the full and just sum of _____

Dollars

(\$ _____) in lawful money of the United States, for the payment of which sum, will and truly to be made, the Principal and Surety bind themselves, their, and each of their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such, as whereas the Principal entered into a certain contract, hereto attached, with the Obligee.

NOW, THEREFORE THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall well, truly, and faithfully perform said Contract according to its terms, covenants, and conditions, and shall promptly pay all persons furnishing labor, materials services, skill, tools, machinery and/or equipment for use in the performance of said Contract, then this obligation shall be void; otherwise it shall remain in full force and effect.

ALL persons who have furnished labor, materials, services, skill, tools, machinery and/or equipment for use in the performance of said Contract shall have a direct right of action on this Bond, provided payment has not been made in full within ninety (90) days after the last day on which labor was performed, materials, services, skill, tools, machinery, and equipment furnished or the subcontract completed.

PROVIDED FURTHER, that said Surety to this Bond, for value received, hereby stipulates and agrees that no change, extension of time, alterations, or additions to the terms of the Contract or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alterations, or additions to the terms of the Contract or to the work to be performed thereunder.

PROVIDED, HOWEVER, that no suit or action shall be commenced hereunder by any person furnishing labor, materials, services, skill, tools, machinery, and/or equipment having a direct contractual relationship with a subcontractor, but no contractual relationship express or implied with the Principal:

Unless such person shall have given notice to the Principal within ninety (90) days after such person did, or performed the last of the work or labor, or furnished the last of the materials, services, skill, tools, machinery and/or equipment for which claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials, services, skill, tools, machinery and/or equipment were furnished, or for whom the work or labor was done or performed. Such a notice shall be served by mailing the same by registered mail, postage prepaid, in an envelope addressed to the Principal, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the State in which the aforesaid project is located, save that such service need not be made by a public officer, and a copy of such notice shall be delivered to the Obligee, to the person and at the address provided for in the Contract, within five (5) days of the mailing of the notice to the Principal.

PROVIDED, FURTHER, that any suit under this bond must be instituted before the expiration of one (1) year after the acceptance of the public works covered by the Contract by the proper authorities.

PROVIDED, FURTHER, that Principal and Surety agree and represent that this bond is executed pursuant to and in accordance with the applicable provisions of the Official Code of Georgia Annotated, as Amended, including, but not limited to, O.C.G.A. § 36-91-1 et seq., and is intended to be and shall be construed as a bond in compliance with the requirements thereof.

[Signatures Next Page]

ATTEST:

(Principal Secretary)

(SEAL)

(Witness as to Principal)

(Address)

ATTEST:

Resident or Nonresident Agent

(SEAL)

(Witness as to Surety)

(Address)

(Principal)

By: _____

(Address)

(Surety)

By: _____
(Attorney-in-Fact)

(Address)

BONDING AGENT CONTACT INFO

Print Name _____
Company Name _____
E-Mail _____
Phone _____

NOTE: If Contractor is Partnership, all partners should execute Bond. Surety Companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located.

Principal Secretary, Principal and Witness as to Principal signature lines must be signed by three different individuals. Additionally, Resident or Nonresident Agent, Witness as to Surety, and Attorney-in-fact must be signed by three different individuals.

BOND # _____

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____
(Corporation, Partnership or Individual)

hereinafter called Principal, and

(Name of Surety)

(Address of Surety)

a Corporation of the State of _____, and a surety authorized by law to do business in the State of Georgia, hereinafter called Surety, are held and firmly bound unto

Gwinnett County Board of Commissioners
(Name of Obligee)

75 Langley Drive, Lawrenceville, Georgia 30046
(Address of Obligee)

hereinafter referred to as Obligee, are held and firmly bound unto said Obligee and all persons doing work or furnishing skill, tools, machinery, supplies, or material under or for the purpose of the Contract hereinafter referred to, in the penal sum of

_____ Dollars

(\$ _____) in lawful money of the United States, for the payment of which sum will and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such, as whereas the Principal entered into a certain contract, hereto attached, with the Obligee.

NOW, THEREFORE THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall well, truly, fully and faithfully perform said contract according to its terms, covenants, conditions, and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Obligee, with or without notice to the Surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreement of any and all duly authorized modifications of said contract that may hereafter be made, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED FURTHER, that said Surety to this Bond, for value received, hereby stipulates and agrees that no change, extension of time, alterations, or additions to the terms of the Contract or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alterations, or additions to the terms of the Contract or to the work to be performed thereunder.

PROVIDED, FURTHER, that Principal and Surety agree and represent that this bond is executed pursuant to and in accordance with the applicable provisions of the Official Code of Georgia Annotated, as Amended, including, but not limited to, O.C.G.A. § 36-91-1 et seq., and is intended to be and shall be construed as a bond in compliance with the requirements thereof.

(Signatures Next Page)

ATTEST:

(Principal Secretary)

(SEAL)

(Witness as to Principal)

(Address)

ATTEST:

Resident or Nonresident Agent

(SEAL)

(Witness as to Surety)

(Address)

(Principal)

By: _____

(Address)

(Surety)

By: _____
(Attorney-in-Fact)

(Address)

BONDING AGENT CONTACT INFO

Print Name _____

Company Name _____

E-Mail _____

Phone _____

NOTE: If Contractor is Partnership, all partners should execute Bond. Surety Companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located.

Principal Secretary, Principal and Witness as to Principal signature lines must be signed by three different individuals. Additionally, Resident or Nonresident Agent, Witness as to Surety, and Attorney-in-fact must be signed by three different individuals.

Attachment B

Step I Forms



RP016-23- Construction Manager at Risk (CMAR) for the F. Wayne Hill Water Resources Center Biosolids Dryer Project

**CODE OF ETHICS AFFIDAVIT
(THIS FORM SHOULD BE FULLY COMPLETED AND RETURNED WITH
YOUR SUBMITTAL AND WILL BE REQUIRED PRIOR TO EVALUATION)**

In accordance with Section 54-33 of the Gwinnett County Code of Ordinances the undersigned bidder/proposer makes the following full and complete disclosure under oath, to the best of his/her knowledge, of the name(s) of all elected officials whom it employs or who have a direct or indirect pecuniary interest in or with the bidder/proposer, its affiliates or its subcontractors:

1. _____
(Company Submitting Bid/Proposal)

2. (Please check one box below)

No information to disclose *(complete only section 4 below)*

Disclosed information below *(complete section 3 & section 4 below)*

3. (if additional space is required, please attach list)

_____	_____
Gwinnett County Elected Official Name	Gwinnett County Elected Official Name
_____	_____
Gwinnett County Elected Official Name	Gwinnett County Elected Official Name

4. _____ Sworn to and subscribed before me this
BY: _____ day of _____, 20____
Authorized Officer or Agent Signature

Printed Name of Authorized Officer or Agent Notary Public

Title of Authorized Officer or Agent of Contractor

(seal)

Note: See Gwinnett County Code of Ethics Ordinance EO2011, Sec. 54-33. The ordinance will be available to view in its' entirety at www.gwinnettcountry.com

FAILURE TO SUBMIT THIS PAGE AS PART OF THE PROPOSAL DOCUMENT MAY RESULT IN REJECTION OF PROPOSAL.

REFERENCES

Gwinnett County requests a minimum of five (5) references where work of a similar size and scope has been completed within the last ten (10) years. Two of the references should be projects where work was completed within the last five (5) years.

Note: References should be customized for each project, rather than submitting the same set of references for every project bid. The references listed should be of similar size and scope of the project being bid on. Do not submit a project list in lieu of this form.

1. Name of Project _____ Contract Amount \$ _____
 Brief Description of Project _____
 _____ Start & Completion Dates _____
 Contact Person _____ Telephone _____
 E-Mail Address _____
 Company Name _____

2. Name of Project _____ Contract Amount \$ _____
 Brief Description of Project _____
 _____ Start & Completion Dates _____
 Contact Person _____ Telephone _____
 E-Mail Address _____
 Company Name _____

3. Name of Project _____ Contract Amount \$ _____
 Brief Description of Project _____
 _____ Start & Completion Dates _____
 Contact Person _____ Telephone _____
 E-Mail Address _____
 Company Name _____

Company Name _____

4. Name of Project _____ Contract Amount \$ _____
Brief Description of Project _____

Start & Completion Dates _____
Contact Person _____ Telephone _____
E-Mail Address _____
Company Name _____

5. Name of Project _____ Contract Amount \$ _____
Brief Description of Project _____

Start & Completion Dates _____
Contact Person _____ Telephone _____
E-Mail Address _____
Company Name _____

Company Name _____

Failure to return this page as part of your proposal document may result in rejection of proposal.

FIRM INFORMATION

Please include this page as part of the Step I proposal document.

The undersigned acknowledges receipt of the following addenda, listed by number and date appearing on each:

Addendum No. #	Date

Certification Of Non-Collusion in Proposal Preparation _____
(Signature) (Date)

The County requires that all who enter into a contract for the physical performance of services with the County must satisfy O.C.G.A. § 13-10-91 and Rule 300-10-1-.02, in all manner, and such are conditions of the contract. In compliance with the attached specifications, the undersigned offers and agrees, if this quote is accepted by the Board of Commissioners within one-hundred-twenty (120) days of the date of proposal opening, to furnish any or all of the items upon which prices are quoted, at the price set opposite each item, delivered to the designated point(s) within the time specified in the quote schedule. By submission of this proposal, I understand that Gwinnett County uses Electronic Payments for remittance of goods and services. Firms should select their preferred method of electronic payment upon notice of award. For more information on electronic payments, please refer to the [Electronic Payment](#) information in the instructions to proposers.

Legal Business Name _____
(If your company is an LLC, you must identify all principals to include addresses and phone numbers in your submittal)

Federal Tax ID _____
 Address _____

Does your company currently have a location within Gwinnett County? Yes No

Representative Signature _____

Print Authorized Representative's Name _____

Telephone Number _____ Fax Number _____

E-Mail Address _____

**REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS
UNDER FEDERAL AWARDS – APPENDIX II TO 2 CFR PART 200**

The following provisions are required and apply when federal funds are expended for any contract resulting from this procurement process.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Pursuant to Federal Rule (A) above, when federal funds are expended, Gwinnett County reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(B) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000).

Pursuant to Federal Rule (B) above, when federal funds are expended, Gwinnett County reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor, in the event vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. Gwinnett County also reserves the right to terminate the contract immediately, with written notice to vendor, for convenience, if Gwinnett County believes, in its sole discretion that it is in the best interest of Gwinnett County to do so. The vendor will be compensated for work performed and accepted and goods accepted by Gwinnett County as of the termination date if the contract is terminated for convenience of Gwinnett County. Any award under this procurement process is not exclusive and Gwinnett County reserves the right to purchase goods and services from other vendors when it is in the best interest of Gwinnett County.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60- 1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and

implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Pursuant to Federal Rule (C) above, when federal funds are expended by Gwinnett County on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

Does vendor agree to abide by the above?

YES _____ Initials of Authorized Representative of vendor

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146- 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The nonfederal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Pursuant to Federal Rule (D) above, when federal funds are expended by Gwinnett County, during the term of an award for all contracts and subgrants for construction or repair, the vendor will be in compliance with all applicable Davis-Bacon Act provisions.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the

standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Pursuant to Federal Rule (E) above, when federal funds are expended by Gwinnett County, the vendor certifies that during the term of an award for all contracts by Gwinnett County resulting from this procurement process, the vendor will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Pursuant to Federal Rule (F) above, when federal funds are expended by Gwinnett County, the vendor certifies that during the term of an award for all contracts by Gwinnett County resulting from this procurement process, the vendor agrees to comply with all applicable requirements as referenced in Federal Rule (F) above.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to Federal Rule (G) above, when federal funds are expended by Gwinnett County, the vendor certifies that during the term of an award for all contracts by Gwinnett County resulting from this procurement process, the vendor agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (H) above, when federal funds are expended by Gwinnett County, the vendor certifies that during the term of an award for all contracts by Gwinnett County resulting from this procurement process, the vendor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the nonfederal award.

Pursuant to Federal Rule (I) above, when federal funds are expended by Gwinnett, the vendor certifies that during the term and after the awarded term of an award for all contracts by Gwinnett County resulting from this procurement process, the vendor certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that:

(1) No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any

agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(J) The Buy America regulation at 49 C.F.R. § 661.13 requires notification of the Buy America requirements in a recipients' bid or request for proposal for federally funded contracts. Recipients can draw on the following language for inclusion in their federally funded procurements. Note that recipients are responsible for including the correct Buy America certification based on what they are acquiring. Recipients should not include both the rolling stock and steel, iron, or manufactured products certificates in the documents unless acquiring both in the same procurement. The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in federally funded projects are produced in the United States, unless a waiver has been granted by the funding agency or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

The [bidder or offeror] must submit to [Recipient] the appropriate Buy America certification below with its [bid or offer]. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

In accordance with 49 C.F.R. § 661.6, for the procurement of steel, iron or manufactured products, use the certifications below.

Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 C.F.R. part 661.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

(K) The Cargo Preference Act of 1954 at 46 U.S.C. § 55305 and 46 C.F.R. part 381 requirements applies to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels.

The contractor agrees to:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the funding recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(L) Huawei Technology Ban - Section 889 of the 2019 National Defense Authorization Act ("NDAA")

- 889(a)(1)(A): directs that agencies may not "procure or obtain . . . any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system." This limitation was implemented by an amendment to the Federal Acquisition Regulation ("FAR") published on August 13, 2019.
- 889(a)(1)(B) directs that agencies may not "enter into a contract (or extend or renew a contract) with an entity that uses any equipment, system, or services that uses covered telecommunications equipment or services as a substantial or essential component of any system." This limitation was implemented by an amendment to the FAR in July 2019, with an effective date of August 13, 2020.
 - Covered telecommunications equipment or services" falls into four categories:
 - Telecommunications equipment produced by Huawei Technologies Company, ZTE Corporation, or any subsidiary or affiliate of either.
 - When to be used for public safety, government facility security, security of critical infrastructure, or other national security purposes, "video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, . . . Dahua Technology Company" or any subsidiary or affiliate of the aforementioned.

- Telecommunications or video surveillance services provided by any of the aforementioned entities.
 - Telecommunications or video surveillance equipment produced by or provided by an entity the Secretary of Defense 'reasonably believes' to be an entity connected to the government of the People's Republic of China
- 889(a)(1)(B) directs that agencies may not "enter into a contract (or extend or renew a contract) with an entity that uses any equipment, system, or services that uses covered telecommunications equipment or services as a substantial or essential component of any system." This limitation was implemented by an amendment to the FAR in July 2019, with an effective date of August 13, 2020.

The Contractor agrees to participate in AGENCY's ban established in compliance with Section 889 of the 2019 National Defense Authorization Act.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

**RECORD RETENTION REQUIREMENTS FOR CONTRACTS PAID FOR WITH FEDERAL FUNDS – 2
CFR § 200.333**

When federal funds are expended for any contract resulting from this procurement process, the vendor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. The vendor further certifies that vendor will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

**CERTIFICATION OF COMPLIANCE WITH COMPLIANCE WITH EPA REGULATIONS APPLICABLE
TO GRANTS, SUBGRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS IN EXCESS OF
\$100,000 OF FEDERAL FUNDS**

When federal funds are expended for any contract resulting from this procurement process in excess of \$100,000, the vendor certifies that the vendor is in compliance with all applicable standards, orders, regulations, and/or requirements issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS

Vendor certifies that vendor is in compliance with all applicable provisions of the Buy America Act. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

CERTIFICATION OF NON-COLLUSION STATEMENT

Vendor certifies under penalty of perjury that its response to this procurement solicitation is in all respects bona fide, fair, and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or legal entity.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

Vendor agrees to comply with all federal, state, and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that vendor certifies compliance with all provisions, laws, acts, regulations, etc. as specifically noted above.

Vendor's Name/Company Name: _____

Address, City, State, and Zip Code: _____

Phone Number: _____ Fax Number: _____

Printed Name and Title of Authorized Representative: _____

Email Address: _____

Signature of Authorized Representative: _____

Date: _____ Federal Tax ID # _____

CAGE Code (5 Digits): _____ Expiration Date: _____

Attachment B

Step II Forms

Firm Information

Return with Step II Cost Proposal in a Separate Sealed Envelope.

Certification of non-collusion in Proposal Preparation _____

Signature

Date

In compliance with the attached specifications, the undersigned offers and agrees, if this quote is accepted by the Board of Commissioners within one hundred twenty (120) days of the date of proposal opening, to furnish any or all of the items upon which prices are quoted, at the price set opposite each item, delivered to the designated point(s) within the time specified in the quote schedule. By submission of this bid, I understand that Gwinnett County uses Electronic Payments for remittance of goods and services. Vendors should select their preferred method of electronic payment upon notice of award. For more information on electronic payments, please refer to the [Electronic Payment](#) information in the instructions to bidders.

Legal Business Name _____

(If your company is an LLC, you must identify all principals to include addresses and phone numbers in your submittal.)

Federal Tax I.D. _____

Address _____

Does your company currently have a location within Gwinnett County? Yes _____ No _____

Representative Signature _____

Print Authorized Representative's Name _____

Telephone Number _____ Fax Number _____

E-Mail Address _____

BONDING AND CONTRACT REQUIREMENTS**General Bond Requirements**

1. Bid Bonds - Amount of bond should be 5% of the base amount for preconstruction services and submitted with your bid. Gwinnett County form Attached. Failure to use Gwinnett County Bid Bond Form may result in bid being deemed non-responsive and automatic rejection may occur if other methods are not submitted, i.e. Cashier check, etc.
2. Performance Bond - (Supplied by successful Contractor) - Amount of bond should be 100% of contract amount for each phase. **(MUST USE COUNTY FORM)** While each construction phase will have its own Guaranteed Maximum Price (GMP), the multiple GMPs will be cumulative, and the bonding requirements will be increased as the overall contract sum increases. Samples of Increase Riders for the Performance Bond and Payment Bond are included in the Request for Proposal package.
3. Payment, Labor and Materials Bonds - (Supplied by successful contractor) - Amount of bond should be 100% of contract amount for each phase. **(MUST USE COUNTY FORM)**. While each construction phase will have its own Guaranteed Maximum Price (GMP), the multiple GMPs will be cumulative, and the bonding requirements will be increased as the overall contract sum increases. Samples of Increase Riders for the Performance Bond and Payment Bond are included in the Request for Proposal package.
4. Bonding company must be authorized to do business by the Georgia Insurance Department.
5. An original/certified copy of the Bonding company's Certificate of Authority or Power of Attorney must be attached to bond. The Certificate of Authority may be obtained from the Georgia Insurance Department.
6. Bonding company must have a minimum AM Best rating of A-10 or higher as stated in Insurance Requirements.
7. Bonding Company must be listed in the Department of the Treasury's publication of companies holding Certificates of Authority as acceptable surety on Federal Bonds and as acceptable reinsuring companies. (Dept. Circular 570; 1992 Revision).
8. After proposal opening, vendor has up to forty eight (48) hours to notify the Gwinnett County Purchasing Division of an obvious error made in calculation of proposal. Withdrawal of Bid Bond for this reason must be done in writing within the forty eight (48) hour period. Bid Bond may not be withdrawn otherwise.
9. The Payment Bond states that the "notice of claim" can be delivered "at any place where an office is regularly maintained". Please note that this document is a standard Gwinnett County form. Additional and more specific information can be provided to the selected Construction Manager once the identity of the surety is known.

RP016-23

Gwinnett County, Georgia

BID BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____
(Corporation, Partnership or Individual)

hereinafter called Principal, and

(Name of Surety)

(Address of Surety)

a Corporation of the State of _____, and a surety authorized by law to do business in the State of Georgia, hereinafter called Surety, are held and firmly bound unto

Gwinnett County Board of Commissioners
(Name of Obligee)

75 Langley Drive, Lawrenceville, Georgia 30046
(Address of Obligee)

Thereinafter referred to as Obligee: in the penal sum of _____ Dollars (\$) in lawful money of the United States, for the payment of which sum will and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

WHEREAS, the Principal is about to submit, or has submitted, to Gwinnett County, Georgia, a proposal for furnishing materials, labor, and equipment for:

WHEREAS, the Principal desires to file this Bond in accordance with law in lieu of a certified Bidder's check otherwise required to accompany this Proposal.

NOW, THEREFORE, the conditions of this obligation are such that if the proposal be accepted, the Principal shall within ten days after receipt of notification of the acceptance, execute a Contract in accordance with the Proposal and upon the terms, conditions, and prices set forth in the form and manner required by Gwinnett County, Georgia, and execute a sufficient and satisfactory Performance Bond and Payment Bond payable to Gwinnett County, Georgia, each in the amount of 100% of the total Contract Price, in form and with security satisfactory to said Gwinnett County, Georgia, and otherwise, to be and remain in full force and virtue in law, and the Surety shall, upon failure of the Principal to comply with any or all of the foregoing requirements within the time specified above, immediately pay to Gwinnett County, Georgia, upon demand, the amount hereof in good and lawful money of the United States of America, not as a penalty, but as liquidated damages.

RP016-23

Gwinnett County, Georgia

PROVIDED, FURTHER, that Principal and Surety agree and represent that this bond is executed pursuant to and in accordance with the applicable provisions of the Official Code of Georgia Annotated, as Amended, including, but not limited to, O.C.G.A. § 36-91-1 et seq., and is intended to be and shall be constructed as a bond in compliance with the requirements thereof.

Signed, sealed and dated this _____ day of _____, A.D., 20_____.

ATTEST:

_____ (Principal Secretary) (SEAL)	_____ (Principal) By: _____ _____ (Address)
--	---

 (Witness as to Principal)

 (Address)

ATTEST:	_____ (Surety) By: _____ (Attorney-in-Fact)
---------	--

_____ Resident or Nonresident Agent (SEAL)	_____ (Address)
--	--------------------

 (Witness as to Surety)

 (Address)

|

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

Prepared By



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National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1400 L. Street, N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

- A. Wherever used in the Proposal Documents or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and Paragraphs, and the titles of other documents or forms.
1. Addenda—Written or graphic instruments issued prior to the receipt of Proposals by the Owner which clarify, correct, or change the Proposal Documents or the proposed Contract Documents.
 2. Agreement—The written instrument, including its attached exhibits, executed by Owner and Construction Manager at Risk, that sets forth the Contract Price and Contract Times, identifies the Owner, Construction Manager at Risk, Owner's Advisor, and Engineer, and designates the specific items that are Contract Documents.
 3. Application for Payment—The document prepared by Construction Manager at Risk, in a form acceptable to Owner's Advisor, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. Change Order—A document which is signed by Construction Manager at Risk and Owner after the Effective Date of a governing Work Authorization and authorizes an addition, deletion, or revision in the authorized Work, an adjustment in the applicable incremental Guaranteed Maximum Price or Contract Times, or other revision to such Work Authorization.
 5. Change Proposal—A written request by Construction Manager at Risk, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Guaranteed Maximum Price or Contract Times; contesting a decision by Owner's Advisor, in consultation with Engineer, concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 6. Claim
 - a. A demand or assertion by Owner directly to Construction Manager at Risk, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting a decision rendered by Owner's Advisor, in consultation with Engineer, concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents, or regarding a Change Proposal; or seeking other relief with respect to the terms of the Contract.

- b. A demand or assertion by Construction Manager at Risk directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Owner's Advisor's decision, made in consultation with Engineer, regarding a Change Proposal.
 - c. A demand or assertion by Owner or Construction Manager at Risk, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.3, concerning disputes arising after Owner's Advisor has issued a recommendation of final payment.
 - d. A demand for money or services by a third party is not a Claim.
7. CMAR Contingency Allowance—An allowance used to reimburse CMAR for costs due to unforeseen causes, unintentional errors, or events which cannot specifically be anticipated at the time Work Authorizations are issued, as set forth in the Agreement, Article 8.
 8. CMAR Fee—The component of the Guaranteed Maximum Price that supplements the CMAR's compensation for the Cost of the Work, consisting of either a fixed fee (a stipulated price or lump sum amount) or a percentage of the Cost of the Work, as set forth in the Agreement.
 9. CMAR Services—Those specific planning, organizational, and advisory services to be performed or furnished by CMAR, consisting collectively of Preconstruction Services, Procurement Services, and any other services authorized by Owner's Advisor and expressly identified in such authorization as CMAR Services. CMAR Services are not part of the Work.
 10. Constituent of Concern—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
 11. Construction Manager at Risk (CMAR)—The entity that has entered into the Contract with Owner. Under the Contract the CMAR will provide CMAR Services and construct the Work set out in the Drawings and Specifications, as duly authorized, using the Construction Manager at Risk project delivery method.
 12. Construction Period—The period from the commencement of Work on the first Work Authorization until Substantial Completion of the Work. This is the number of days for which Construction Support Costs will be compensated.
 13. Construction Support Costs—See Agreement, Article 5.
 14. Contract—The entire and integrated written agreement between Owner and Construction Manager at Risk concerning the CMAR Services and the Work.
 15. Contract Amendment—A document signed by Owner and Construction Manager at Risk which modifies the terms and conditions of the Contract, including but not limited to modifications of the time or compensation provisions of the Agreement and the scope of CMAR Services. A Contract Amendment is not used to make changes in the Work or

to a Work Authorization, such changes properly being made in a Change Order or supplemental Work Authorization.

16. Contract Documents—Those items so designated in the Agreement, and which together comprise the Contract.
17. Contract Price—The money that Owner has agreed to pay Construction Manager at Risk for performance and completion of the CMAR Services and the Work, in accordance with the Contract Documents. The Contract Price may be subdivided into component parts based on authorized CMAR Services and Work Authorizations. The Contract Price includes the CMAR's compensation for CMAR Services, Construction Support Costs, Cost of the Work, the CMAR Fee, CMAR Contingency Allowances, and the Owner's Contingency Allowance.
18. Contract Times—The number of days or the dates by which Construction Manager at Risk shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work and all required services. The Contract Times may be subdivided into component parts based on Work Authorizations and authorized CMAR Services.
19. Contractor—The term "Contractor," if used in the Contract, means Construction Manager at Risk.
20. Cost of the Work—The sum of eligible costs incurred by CMAR for the performance of the Work, as allowed by the Cost of the Work provisions set forth in the Agreement. Cost of the Work as a defined term does not include Construction Support Costs.
21. Drawings—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Construction Manager at Risk.
22. Effective Date of the Contract—The date indicated in the Agreement, on which the Contract becomes effective.
23. Electronic Document—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
24. Electronic Means—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
25. Engineer—The individual or entity that has primary responsibility for preparing or furnishing the Drawings and Specifications and is named as Engineer in the Agreement.
26. Estimated Cost of the Work—An estimate of the Cost of the Work prepared by the Owner for use (a) during the CMAR selection process in evaluating Proposals submitted in response to the Request for Proposals and (b) during the early stages of the Contract in calculating an Estimated Guaranteed Maximum Price until the design has progressed

to the point where Owner and CMAR can mutually agree upon a Guaranteed Maximum Price.

27. Estimated Guaranteed Maximum Price—A preliminary Guaranteed Maximum Price calculated on the basis of the Estimated Cost of the Work. This is a non-binding price used on an interim basis for comparison or estimation of Owner’s Construction Budget until the design has progressed to the point that a Guaranteed Maximum Price for the Work is established, or a Guaranteed Maximum Price for a portion of the Work is established by issuance of a Work Authorization by the Owner’s Advisor.
28. Field Order—A written order issued by Owner’s Advisor which requires minor changes in the Work but does not change the Guaranteed Maximum Price or the Contract Times.
29. Final Completion—The point at which the Work is complete in accordance with the Contract Documents, items and documents required by the Contract Documents have been accepted by the Owner, all required services have been completed, and the Contract is ready for final payment.
30. Guaranteed Maximum Price (GMP)—The maximum amount to be paid by Owner to CMAR for the sum of the Construction Support Costs, plus Cost of the Work, plus the CMAR Fee, all as set forth in the Agreement.
31. Hazardous Environmental Condition—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
 - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
 - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
 - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
32. Laws and Regulations; Laws or Regulations—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
33. Liens—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
34. Milestone—A principal event in the performance of the Work that the Contract requires Construction Manager at Risk to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
35. Notice of Award—The written notice by Owner stating that Owner will enter into the Construction Manager at Risk contract with the selected Construction Manager at Risk.
36. Owner—The entity with which Construction Manager at Risk has contracted regarding the CMAR Services and the Work, and which has agreed to pay Construction Manager

at Risk for the performance of the CMAR Services and the Work, pursuant to the terms of the Contract.

37. Owner's Advisor (OA)—The individual or entity named as Owner's Advisor in the Agreement. The Owner's Advisor provides services to the Owner, as an advisor and representative.
38. Owner's Construction Budget (Budget)—The amount budgeted by the Owner to pay CMAR to perform and complete the Work in accordance with the Contract Documents. This amount includes compensation for Cost of the Work, the CMAR Fee, and Construction Support Costs, but does not include compensation for CMAR Services.
39. Owner's Project Team (OPT)—As used in this Contract, refers to Owner, Owner's Advisor and Engineer, collectively.
40. Preconstruction Services—Those planning, management, and support services to be performed or furnished by CMAR as set forth in the Scope of CMAR Preconstruction Services Exhibit to the Agreement. Preconstruction Services are separate and distinct from Procurement Services, and from the performance of the Work itself, and are a component of CMAR Services.
41. Preconstruction Services Price—The total amount to be paid to CMAR for the Preconstruction Services described in the Scope of CMAR Preconstruction Services Exhibit to the Agreement.
42. Procurement Services—Those services relating to assembling Work Packages and procurement of construction Subcontractors, Suppliers, and materials and equipment, to be performed or furnished by CMAR as set forth in the procurement-related provisions of the Scope of CMAR Services Exhibit to the Agreement. Procurement Services are separate and distinct from Preconstruction Services, and from the performance of the Work itself, and are a component of CMAR Services.
43. Procurement Services Price—The total amount to be paid to CMAR for providing the Procurement Services described in the Scope of CMAR Procurement Services Exhibit to the Agreement.
44. Progress Schedule—A schedule, prepared and maintained by Construction Manager at Risk, describing the sequence and duration of the activities comprising Construction Manager at Risk's plan to accomplish the Work within the Contract Times.
45. Project—The total undertaking to be accomplished for Owner by construction managers, engineers, contractors, advisors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the CMAR Services and the Work to be performed under the Contract are a part.
46. Samples—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
47. Schedule of Submittals—A schedule, prepared and maintained by Construction Manager at Risk, of required Submittals and the time requirements for review of the Submittals.

48. Shop Drawings—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Construction Manager at Risk and submitted by Construction Manager at Risk to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
49. Site—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Construction Manager at Risk.
50. Specifications—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
51. Subcontractor—An individual or entity having a direct contract with Construction Manager at Risk or with any other Subcontractor for the performance of a part of the Work.
52. Submittal—A written or graphic document, prepared by or for Construction Manager at Risk, which the Contract Documents require Construction Manager at Risk to submit to Owner's Advisor, or that is indicated as a Submittal in the Schedule of Submittals accepted by Owner's Advisor. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether approved or accepted by Owner's Advisor or Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
53. Substantial Completion—The time at which the Work, or a specified part thereof, has progressed to the point where, the Work, or the specified part thereof, is sufficiently complete, in accordance with the Contract Documents, so that the Work, or the specified part thereof, can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work.
54. Supplementary Conditions—The part of the Contract that amends or supplements these General Conditions.
55. Supplier—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Construction Manager at Risk or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Construction Manager at Risk or a Subcontractor.

56. Technical Data
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures, except Underground Facilities, or (2) Hazardous Environmental Conditions at the Site.
 - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Construction Manager at Risk.
 - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated in the Drawings.
57. Underground Facilities—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
58. Unit Price Work—Work to be paid for based on unit prices.
59. Work—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
60. Work Authorization—A document issued by Owner’s Advisor and signed by Owner and CMAR which identifies and defines new Work Packages and establishes the amount to be paid, times for completion, and any special or supplementary provisions applicable to the authorized Work.
61. Work Package—A specific portion of the Work developed by Engineer and Owner’s Advisor in collaboration with the CMAR and subsequently authorized by a Work Authorization.
62. Work Change Directive—A written directive issued by Owner’s Advisor to Construction Manager at Risk on or after the Effective Date of a governing Work Authorization, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Proposal Documents or Contract Documents, have the indicated meaning.
- B. Intent of Certain Terms or Adjectives—The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Owner’s Advisor or Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Owner’s Advisor or Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents, unless there is a specific statement indicating otherwise. The use of any such term or adjective is not intended to and will not be effective to assign to Owner’s Advisor or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. Day—The word “day” means a period of 24 hours measured from midnight to the next midnight.
- D. Defective—The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
1. does not conform to the Contract Documents;
 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 3. has been damaged prior to Owner’s Advisor’s recommendation of final payment unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.04 or Paragraph 15.05.
- E. Furnish, Install, Perform, Provide
1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site, or some other specified location ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for their intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for their intended use.
 4. If the Contract Documents establish an obligation of CMAR with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then CMAR shall furnish and install said services, materials, or equipment complete and ready for their intended use.

- F. Contract Price or Contract Times—References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 Delivery of Performance and Payment Bonds; Evidence of Insurance

- A. Performance and Payment Bonds—When CMAR delivers the signed counterparts of a Work Authorization to Owner, CMAR shall also deliver to Owner the performance bond and payment bond, if the Contract requires CMAR to furnish such bonds, or confirm that existing performance and payment bonds have been supplemented to account for the additional authorized Work.
- B. Evidence of CMAR’s Insurance—When CMAR delivers the signed counterparts of the Agreement to Owner, CMAR shall also deliver to Owner, with copies to each additional insured, as identified in the Contract, the certificates, endorsements, and other evidence of insurance required to be provided by CMAR in accordance with Article 6, except to the extent the Supplementary Conditions or Agreement expressly establish other dates for delivery of specific insurance policies.
- C. Evidence of Owner’s Insurance—After receipt of the signed counterparts of the Agreement and all required insurance documentation, Owner shall promptly deliver to CMAR, with copies to each additional insured, as identified in the Contract, the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 Copies of Documents

- A. Owner shall furnish to CMAR four printed copies of the Contract, including one fully signed counterpart of the Agreement, and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to CMAR for review. Owner may delegate the responsibilities under this provision to Owner’s Advisor.

2.03 Electronic Transmittals

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Owner’s Advisor, Engineer, and CMAR may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Owner’s Advisor, and CMAR shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-

term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

2.04 Construction Management

- A. In addition to providing CMAR Services, during the course of the Contract, and especially during the performance of the Work, CMAR will:
 - 1. Organize and manage the resources required for construction of the Work, commissioning, and correction of defective Work after Substantial Completion of the Work.
 - 2. Administer, coordinate, monitor, and report on construction progress and associated activities.
 - 3. Assist the Owner's Advisor in collecting, disseminating, and storing documents and information.
 - 4. Manage the Work to meet Contract goals and objectives.
 - 5. Recommend action to the Owner related to the management of the Work.
 - 6. Develop schedule and cost control systems to monitor and report on the progress of the overall Contract.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 Intent

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project, or part thereof, to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents, including any printed copies derived from such electronic versions, and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Owner's Advisor, in consultation with Engineer, will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and CMAR, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

- G. Nothing in the Contract Documents creates:
1. any contractual relationship between Owner, Owner's Advisor, or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
 2. any obligation on the part of Owner, Owner's Advisor, or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 Reference Standards

A. Standards, Specifications, Codes, Laws and Regulations

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of receipt of Proposals, except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, CMAR, Owner's Advisor, or Engineer from those set forth in the Contract Documents. No such provision or instruction will be effective to assign to Owner, Owner's Advisor, or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies

1. CMAR's Verification of Figures and Field Measurements—Before undertaking each part of the Work, CMAR shall carefully study the applicable Drawings and Specifications, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. CMAR shall promptly report in writing to Owner's Advisor any conflict, error, ambiguity, or discrepancy that CMAR discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Owner's Advisor, in consultation with Engineer, and, if appropriate, an amendment or supplement to the Contract is issued by Owner's Advisor pursuant to Paragraph 11.01.
2. CMAR's Review of Drawings and Specifications—If, while performing or providing CMAR Services, or during the performance of the Work, CMAR discovers any conflict, error, ambiguity, or discrepancy within the Drawings and Specifications, whether in draft or final form, or between such documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then CMAR shall promptly report it to Owner's Advisor in writing. CMAR shall not proceed with the Work affected thereby, except in an emergency as required by Paragraph 7.18, until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Owner's

Advisor, in consultation with Engineer, and, if appropriate, an amendment or supplement to the Contract is issued by Owner's Advisor pursuant to Paragraph 11.01.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Drawings and Specifications take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Drawings and Specifications and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier, whether or not specifically incorporated by reference as a Contract Document; or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work, unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation.

3.04 Interpretation of the Contract Documents

- A. During the performance of the Work and until final payment, CMAR and Owner shall submit to the Owner's Advisor in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation) or relating to the performance or acceptability of the Work under the Contract Documents, as soon as possible after such matters arise.
- B. Owner's Advisor will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, and if appropriate initiate a change to the Contract Documents. In determining its response, Owner's Advisor will consider CMAR's prior involvement and obligations with respect to reviewing and commenting on draft design documents during CMAR's provision of CMAR Services. Owner's Advisor's written clarification, interpretation, or decision (1) will be based, when applicable, on consultation with Engineer, and (2) will be final and binding on CMAR, unless CMAR appeals by submitting a Change Proposal, and on Owner, unless Owner appeals by filing a Claim.

3.05 Reuse of Documents

- A. CMAR and its Subcontractors and Suppliers shall not:
 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents, or copies of any thereof, prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes CMAR from retaining copies of the Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

- 4.01 Commencement of Contract Times; Notice to Proceed
- A. The Contract Times will commence to run on the Effective Date of the Contract, or as specified in Work Authorizations.
- 4.02 Starting the Work
- A. CMAR shall start to perform the Work promptly upon receipt of the first Work Authorization. No Work may be done at the Site prior to such authorization.
- 4.03 Reference Points
- A. Owner shall provide engineering surveys to establish reference points for construction. CMAR shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. CMAR shall report to Owner's Advisor whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and CMAR shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.
- 4.04 Progress Schedule
- A. CMAR shall adhere to the Progress Schedule established as part of Preconstruction Services, as it may be adjusted from time to time as provided below.
1. CMAR shall submit to Owner's Advisor for its information proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. CMAR shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and CMAR may otherwise agree in writing.
- 4.05 Delays in CMAR's Progress
- A. If Owner, Owner's Advisor, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then CMAR shall be entitled to an equitable adjustment in Guaranteed Maximum Price or Contract Times.
- B. CMAR shall not be entitled to an adjustment in Guaranteed Maximum Price or Contract Times for delay, disruption, or interference caused by or within the control of CMAR. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier will be deemed to be within the control of CMAR.
- C. If CMAR's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, CMAR, and those for which they are responsible, then CMAR shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be CMAR's sole and exclusive remedy for the delays, disruption, and interference described in this Paragraph. Causes of delay, disruption, or interference that

may give rise to an adjustment in Contract Times under this Paragraph include but are not limited to the following:

1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. Abnormal weather conditions;
 3. Acts or failures to act of third-party utility owners or other third-party entities, other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8; and
 4. Acts of war or terrorism.
- D. CMAR's entitlement to an adjustment of Contract Times or Guaranteed Maximum Price is limited as follows:
1. CMAR's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 2. CMAR shall not be entitled to an adjustment in Guaranteed Maximum Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of CMAR. Such a concurrent delay by CMAR shall not preclude an adjustment of Contract Times to which CMAR is otherwise entitled.
 3. Adjustments of Contract Times or Guaranteed Maximum Price are subject to the provisions of Article 11.
- E. Each CMAR request or Change Proposal seeking an increase in Contract Times or Guaranteed Maximum Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 4. The number of days' increase in Contract Times claimed because of each such cause of delay, disruption, or interference; and
 5. The impact on Guaranteed Maximum Price, in accordance with the provisions of Paragraph 11.07.
- CMAR shall also furnish such additional supporting documentation as Owner or Owner's Advisor may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with

reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.

- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 Availability of Lands

- A. Owner shall furnish the Site. Owner shall notify CMAR in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CMAR must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish CMAR with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. CMAR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 Use of Site and Other Areas

- A. Limitation on Use of Site and Other Areas
 1. CMAR shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that CMAR has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. CMAR shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for CMAR's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the CMAR or those for which CMAR is responsible.
 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the CMAR or those for which CMAR is responsible, CMAR shall (a) take immediate corrective or remedial action as required by Paragraph 7.18, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Owner's Advisor, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against

all costs, losses, and damages, including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Owner's Advisor, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, CMAR's performance of the Work, or because of other actions or conduct of the CMAR or those for which CMAR is responsible.

- B. Removal of Debris During Performance of the Work—During the progress of the Work the CMAR shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
- C. Cleaning—Prior to Substantial Completion of the Work CMAR shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work CMAR shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. Loading of Structures—CMAR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CMAR subject any part of the Work or adjacent structures or land to stresses or pressures that could damage said structures or decrease their durability.

5.03 Subsurface and Physical Conditions

- A. Reports and Drawings—The Supplementary Conditions identify:
 1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
 2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site, except Underground Facilities, that contain Technical Data; and
 3. Technical Data described in such reports and drawings.
- B. Underground Facilities—Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.
- C. Reliance by CMAR on Technical Data—CMAR may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then CMAR may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.55.b.
- D. Limitations of Other Data and Documents—Except for such reliance on Technical Data, CMAR may not rely upon or make any claim against Owner, Owner's Advisor, or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for CMAR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CMAR, and safety precautions and programs incident thereto;
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
 3. the contents of other Site-related documents made available to CMAR, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
 4. any CMAR interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.
- E. Confirmation of Site Conditions—As a part of Preconstruction Services CMAR will inform Owner if CMAR concludes that additional examination, investigation, exploration, testing, or study (Supplemental Investigations) of subsurface or physical conditions at the Site prior to commencement of construction would be advantageous, practical, and cost-effective, specifically identifying the nature and scope of any such recommended Supplemental Investigations. If Owner authorizes CMAR to conduct such Supplemental Investigations, through CMAR's own personnel or through a qualified consultant, or if Owner conducts such Supplemental Investigations, through Owner's Advisor, the Engineer, or a consultant, then CMAR will be entitled to rely on the results of the Supplemental Investigations, together with the Technical Data cited above, in planning and pricing construction at the Site.
- F. If Owner does not authorize any Supplemental Investigations of Site conditions, then CMAR will proceed with planning and pricing construction based on the Technical Data made available to it.
- G. CMAR will be bound by any additional knowledge regarding Site conditions that CMAR gains while providing Preconstruction services.

5.04 Differing Subsurface or Physical Conditions

- A. Notice by CMAR—If CMAR believes that any subsurface or physical condition that is uncovered or revealed at the Site:
1. is of such a nature as to establish that any Technical Data or Supplemental Investigations results on which CMAR is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
 2. is of such a nature as to require a change in the Drawings or Specifications;
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then CMAR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith, except in an emergency as required by Paragraph 7.18, notify Owner's Advisor in writing about such condition. CMAR shall not further disturb such condition or perform any Work in connection

therewith, except with respect to an emergency, until receipt of a written statement permitting CMAR to do so.

- B. Owner's Advisor's Review—After receipt of written notice as required by the preceding paragraph, Owner's Advisor, in consultation with Engineer, will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from CMAR; prepare recommendations to Owner regarding the CMAR's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Owner's Advisor's findings, conclusions, and recommendations.
- C. Owner's Statement to CMAR Regarding Site Condition—After receipt of Owner's response and instructions regarding Owner's Advisor's written findings, conclusions, and recommendations, Owner's Advisor will issue a written statement to CMAR regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and informing CMAR of Owner's Advisor's written findings, conclusions, and recommendations, as revised based on Owner's response and instructions.
- D. Early Resumption of Work—If at any time Owner's Advisor, in consultation with Engineer, determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Owner's Advisor's review or Owner's Advisor's issuance of its statement to CMAR, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then Owner's Advisor may instruct CMAR to resume such Work.
- E. Possible Price and Times Adjustments
 - 1. CMAR shall be entitled to an equitable adjustment in Guaranteed Maximum Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in CMAR's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Guaranteed Maximum Price will be subject to the provisions of Paragraph 13.02; and
 - c. CMAR's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
 - 2. CMAR shall not be entitled to any adjustment in the Guaranteed Maximum Price or Contract Times with respect to a subsurface or physical condition if:
 - a. CMAR knew of the existence of such condition at the time CMAR made a commitment to Owner with respect to Guaranteed Maximum Price and Contract Times through a Work Authorization;

- b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Proposal Documents or Contract Documents to be conducted by or for CMAR prior to CMAR's making such commitment;
 - c. The existence of such condition reasonably could have been discovered or revealed as a result of practical and cost-effective Supplemental Investigations, as defined in Paragraph 5.03.E, but CMAR did not recommend any such Supplemental Investigations to Owner; or
 - d. CMAR failed to give the written notice required by Paragraph 5.04.A.
- 3. If Owner and CMAR agree regarding CMAR's entitlement to and the amount or extent of any adjustment in the Guaranteed Maximum Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 - 4. CMAR may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Guaranteed Maximum Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to CMAR regarding the subsurface or physical condition in question.
- F. Underground Facilities; Hazardous Environmental Conditions—Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 Underground Facilities

- A. CMAR's Responsibilities—Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all the following is included in the Guaranteed Maximum Price, and CMAR shall have full responsibility for:
- 1. collaborating with Engineer during the design phase, as part of Preconstruction Services, to improve the accuracy and completeness of information regarding Underground Facilities that Engineer gathers and depicts in the final Contract Documents;
 - 2. complying with applicable state and local utility damage prevention Laws and Regulations;
 - 3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities prior to construction;
 - 4. coordination of the Work with the owners, including Owner, of such Underground Facilities, during construction; and
 - 5. the safety and protection of all existing Underground Facilities at the Site and repairing any damage thereto resulting from the Work.
- B. Notice by CMAR—If CMAR believes that an Underground Facility that is uncovered or revealed at the Site during construction was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then CMAR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or

performing any Work in connection therewith, except in an emergency as required by Paragraph 7.18, notify Owner and Owner's Advisor in writing regarding such Underground Facility.

C. Owner's Advisor's Review

1. Owner's Advisor will:

- a. promptly review the Underground Facility in consultation with Engineer, and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
- b. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner, and if necessary, issue any preliminary instructions to CMAR regarding the CMAR's resumption of Work in connection with the Underground Facility in question;
- c. obtain any pertinent cost or schedule information from CMAR; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
- d. advise Owner and Engineer in writing of Owner's Advisor's findings, conclusions, and recommendations.

During such time, CMAR shall be responsible for the safety and protection of such Underground Facility.

D. Owner's Advisor's Statement to CMAR Regarding Underground Facility—After receipt of Owner's response to and recommendations regarding Owner's Advisor's written findings, conclusions, and recommendations, Owner's Advisor will issue a written statement to CMAR regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and informing CMAR of Owner's Advisor's written findings, conclusions, and recommendations, as revised based on Owner's response and instructions.

E. Early Resumption of Work—If at any time Owner's Advisor, in consultation with Engineer, determines that Work in connection with the Underground Facility may resume prior to completion of Owner's Advisor's review or Owner's Advisor's issuance of its statement to CMAR, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then Owner's Advisor may instruct CMAR to resume such Work.

F. Possible Price and Times Adjustments

1. CMAR shall be entitled to an equitable adjustment in the Guaranteed Maximum Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in CMAR's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. With respect to Work that is paid for on a unit price basis, any adjustment in Guaranteed Maximum Price will be subject to the provisions of Paragraph 13.02;

- b. CMAR's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
 - c. CMAR gave the notice required in Paragraph 5.05.B.
2. If Owner and CMAR agree regarding CMAR's entitlement to and the amount or extent of any adjustment in the Guaranteed Maximum Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 3. CMAR may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Guaranteed Maximum Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to CMAR regarding the Underground Facility in question.
 4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE Manual 38, Standard Guideline for Investigating and Documenting Existing Utilities, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, CMAR's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 Hazardous Environmental Conditions at Site

- A. Reports and Drawings—The Supplementary Conditions identify:
 1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
 2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
 3. Technical Data described in such reports and drawings.
- B. Reliance by CMAR on Technical Data Authorized—CMAR may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then CMAR may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.55.b. Except for such reliance on Technical Data, CMAR may not rely upon or make any claim against Owner, Owner's Advisor, or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
 1. the completeness of such reports and drawings for CMAR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CMAR, and safety precautions and programs incident thereto;
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. any CMAR interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

- C. CMAR shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. CMAR shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by CMAR, Subcontractors, Suppliers, or anyone else for whom CMAR is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If CMAR encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if CMAR or anyone for whom CMAR is responsible creates a Hazardous Environmental Condition, then CMAR shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby, except in an emergency as required by Paragraph 7.18; and (3) notify Owner, Owner's Advisor, and Engineer, and promptly thereafter confirm such notice in writing. Owner shall promptly consult with Owner's Advisor and Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Owner's Advisor and Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide CMAR with the written notice required by Paragraph 5.06.E. If CMAR or anyone for whom CMAR is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition and impose a set-off against payments to account for the associated costs.
- F. CMAR shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to CMAR either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and CMAR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Guaranteed Maximum Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by CMAR, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, CMAR may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, CMAR does not agree to resume such Work based on a reasonable belief it is unsafe or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless CMAR, Subcontractors, Owner's Advisor, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of

them, from and against all claims, costs, losses, and damages, including but not limited to all fees and charges of construction managers, engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs, arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by CMAR or by anyone for whom CMAR is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- J. To the fullest extent permitted by Laws and Regulations, CMAR shall indemnify and hold harmless Owner, Owner's Advisor, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages, including but not limited to all fees and charges of construction managers engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by CMAR or by anyone for whom CMAR is responsible, or to a Hazardous Environmental Condition created by CMAR or by anyone for whom CMAR is responsible. Nothing in this Paragraph 5.06.J obligates CMAR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6—BONDS AND INSURANCE

6.01 Performance, Payment, and Other Bonds

- A. No later than the execution of the first Work Authorization the CMAR shall furnish a performance bond and a payment bond, each in an amount at least equal to the Guaranteed Maximum Price, as security for the faithful performance and payment of CMAR's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment on the Contract becomes due or until completion of the correction period for the Contract specified in Paragraph 15.09, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract. The premium costs of such bonds are:
 - 1. included in Construction Support Cost if purchased for the Work based on the Estimated Guaranteed Maximum Price established with the Agreement; or
 - 2. a reimbursable Cost of the Work if the bonds are purchased with the first Work Authorization and increased as subsequent Work Authorizations are approved.
- B. CMAR shall also furnish such other bonds, if any, as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Contract Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding

Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570, as amended and supplemented by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- D. CMAR shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by CMAR is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then CMAR shall promptly notify Owner and Owner’s Advisor in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. If CMAR has failed to obtain a required bond, Owner may exclude the CMAR from the Site and exercise Owner’s termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to CMAR from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, CMAR shall provide a copy of the payment bond to such person or entity.
- I. Performance Bonds required of certain Subcontractors and Suppliers—see Paragraph 7.10.O.

6.02 Insurance—General Provisions

- A. Owner and CMAR shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or CMAR shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract must have an A.M. Best Financial Strength Rating of A-12 or better, and an A.M. Best Financial Size Category of VII or larger.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not adequate to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. CMAR shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that CMAR has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, CMAR shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-

insured retentions, if allowed, and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, CMAR, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

- E. Owner shall deliver to CMAR, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract, if any. Upon request by CMAR or any other insured, Owner shall also provide other evidence of such required insurance, if any, including but not limited to copies of policies, documentation of applicable self-insured retentions, if allowed, and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or CMAR to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or CMAR to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain, and maintain such insurance.
- G. In addition to the liability insurance required to be provided by CMAR, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by CMAR, and CMAR cannot rely upon Owner's liability policies for any of CMAR's obligations to the Owner, Owner's Advisor, Engineer, or third parties.
- H. CMAR shall require:
 - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner, Owner's Advisor and Engineer, and any other individuals or entities identified in the Supplementary Conditions as additional insureds on CMAR's liability policies, on each Subcontractor's commercial general liability policy; and
 - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any cancellation of the required coverage.
- J. If CMAR has failed to obtain and maintain required insurance, CMAR's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs, including but not limited to the cost of purchasing necessary insurance coverage, and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect, but is in no way obligated, to obtain equivalent

insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect CMAR or CMAR's interests. CMAR is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that CMAR deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on CMAR's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder must provide a copy of the notice to Owner's Advisor and each other insured.

6.03 CMAR's Insurance

- A. Required Insurance—CMAR shall purchase and maintain worker's compensation, commercial general liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. General Provisions—The policies of insurance required by this Paragraph 6.03 as supplemented must:
 - 1. include at least the specific coverages required;
 - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
 - 3. remain in effect at least until the Work is complete, as set forth in Paragraph 15.07.D, and longer if expressly required elsewhere in this Contract, and at all times thereafter when CMAR may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
 - 4. apply with respect to the performance of the Work, whether such performance is by CMAR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
 - 5. include all necessary endorsements to support the stated requirements.
- C. Additional Insureds—The CMAR's commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
 - 1. include and list as additional insureds Owner, Owner's Advisor, and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 - 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;

3. afford primary coverage to these additional insureds for all claims covered thereby, including as applicable those arising from both ongoing and completed operations;
4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by CMAR's acts or omissions, or the acts and omissions of those working on CMAR's behalf, in the performance of CMAR's operations.

6.04 Builder's Risk and Other Property Insurance

- A. **Builder's Risk**—Unless otherwise provided in the Supplementary Conditions, beginning at the commencement of construction CMAR shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost, subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations. The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.

For purposes of the builder's risk and other required property insurance, "commencement of construction" first occurs when materials are in the course of delivery to the Site or an off-site storage location required to be insured if transit coverage is required, or if transit coverage is not required, when materials are delivered to the Site, or an off-site storage location required to be insured.

- B. **Property Insurance for Facilities of Owner Where Work Will Occur**—Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.07.D.
- C. **Property Insurance for Substantially Complete Facilities**—Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.07.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. **Partial Occupancy or Use by Owner**—If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.05, then Owner, directly, if it is the purchaser of the builder's risk policy, or through CMAR, will provide advance notice of such occupancy or use to the builder's risk insurer and obtain coverage or an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. **Insurance of Other Property; Additional Insurance**—If the express insurance provisions of the Contract do not require or address the insurance of a property Item or interest, then the entity or individual owning such property Item will be responsible for insuring it. If CMAR

elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, CMAR may do so at its expense.

6.05 Property Losses; Subrogation

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04, or an installation floater policy if authorized by the Supplementary Conditions, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Owner's Advisor, Engineer, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.
1. Owner and CMAR waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Owner's Advisor, Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
 2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or CMAR as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.05, after Substantial Completion pursuant to Paragraph 15.04, or after final payment pursuant to Paragraph 15.07, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against CMAR, Subcontractors, Owner's Advisor, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
- C. Owner waives all rights against CMAR, Subcontractors, Owner's Advisor, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.

- D. CMAR shall assure that each subcontract contains provisions whereby the Subcontractor waives all rights against Owner, CMAR, Owner's Advisor, Engineer, all individuals or entities identified in the Supplementary Conditions as insureds, their consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 Receipt and Application of Property Insurance Proceeds

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured will act as fiduciary for the other insureds and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 must maintain such proceeds in a segregated account and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, CMAR shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—CMAR'S RESPONSIBILITIES

7.01 CMAR's Means and Methods of Construction

- A. CMAR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or CMAR determines, that professional engineering or other design services are needed to carry out CMAR's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then CMAR shall cause such services to be provided by a properly licensed design professional, at CMAR's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner, Owner's Advisor, nor Engineer has any responsibility with respect to (1) CMAR's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by CMAR, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 Supervision and Superintendence

- A. CMAR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.

- B. At all times during the progress of the Work, CMAR shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Owner's Advisor except under extraordinary circumstances.

7.03 CMAR Services—Key Personnel and Subconsultants

- A. CMAR will provide the services of the key individuals identified in the Agreement for CMAR Services (Preconstruction Services and Procurement Services) for the duration of the time required to provide these services. CMAR may substitute other individuals for the key individuals identified in the Agreement or for individuals previously approved only upon good cause and with the written consent of the Owner. Subject to the foregoing, not providing the individuals proposed may be the grounds for termination of this Contract.
- B. CMAR may provide CMAR Services through one or more subconsultants under contract to CMAR provided, however, that CMAR remains responsible to the Owner for all duties and obligations of the CMAR under this Contract, and in rendering services any such subconsultant must comply with all applicable terms and conditions of the Contract Documents. If the Agreement identifies a specific subconsultant, CMAR will provide the services of such subconsultant for the duration of the time required to complete the subcontracted tasks. CMAR may substitute other subconsultants for the subconsultants identified in the Agreement or previously approved only with the written consent of the Owner. Subject to the foregoing, not providing the subconsultants proposed may be the grounds for termination of this Contract.

7.04 Quality of CMAR Services

- A. The Owner's Advisor, with the concurrence of Owner and Engineer, has the right to reject or disapprove any substandard portion of the CMAR Services. Owner's Advisor will provide written notice stating the reason for the rejection or disapproval. CMAR will revise the services in question to address the inadequacies identified by Owner's Advisor.
- B. CMAR acknowledges that any review or approval of CMAR Services by the Owner or Owner's Advisor does not relieve CMAR of its responsibility to properly and timely perform such services.

7.05 Continuation or Termination of CMAR Services

- A. Owner may terminate this Contract for Owner's convenience at the completion of Preconstruction Services if Owner determines that doing so is in Owner's best interest. Owner is not obligated to cite a reason for such a termination, but in making its determination Owner may wish to consider factors such as the quality of the CMAR Services, facts that indicate that the Project cannot be constructed for a cost within the Owner's budget, and changes in key personnel.
- B. The Owner may terminate the Contract for Owner's convenience at the end of Procurement Services if Owner determines that doing so is in Owner's best interest. Owner is not obligated to cite a reason for such a termination, but in making its determination Owner may wish to consider factors such as whether CMAR is unable to offer a Guaranteed Maximum Price within the Owner's Construction Budget, or whether it will be advantageous to bid out the Work as a whole on a stipulated price basis.

7.06 Labor; Working Hours

- A. CMAR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. CMAR shall maintain good discipline and order at the Site.
- B. CMAR shall provide or furnish:
 - 1. Construction-related services as described in Division 00 and Division 01 of the Contract Documents;
 - 2. Post-construction services as described in Division 00 and Division 01 of the Contract Documents; and
 - 3. All other construction-related and post-construction services described in the Contract Documents.
- C. CMAR shall be fully responsible to Owner, Owner's Advisor, and Engineer for all acts and omissions of CMAR's employees; of subconsultants, Suppliers, and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the CMAR Services or the Work, just as CMAR is responsible for CMAR's own acts and omissions.
- D. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. CMAR will not perform Work on a Saturday, Sunday, or legal holiday. CMAR may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.07 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, CMAR shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Owner's Advisor, the CMAR shall furnish satisfactory evidence, including reports of required tests, as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.
- D. CMAR will be fully responsible for the quality and effectiveness (1) of all services performed or provided by CMAR, including but not limited to CMAR Services and general services in support of construction, and (2) of the deliverables and documentation associated with all such services.

7.08 “Or Equals”

- A. CMAR’s Request; Governing Criteria—Whenever an Item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Guaranteed Maximum Price has been based upon CMAR furnishing such Item as specified. The specification or description of such an Item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” Item is permitted, CMAR may request that Owner’s Advisor authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
1. If Owner’s Advisor, in consultation with Engineer, determines that an Item of equipment or material proposed by CMAR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Owner’s Advisor will deem it an “or equal” item. For the purposes of this paragraph, a proposed Item of equipment or material will be considered functionally equal to an Item so named if:
 - a. in the exercise of reasonable judgment Owner’s Advisor, in consultation with Engineer, determines that the proposed item:
 - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to Owner.
 - b. CMAR certifies that if the proposed Item is approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) the Item will conform substantially to the detailed requirements of the Item named in the Contract Documents.
- B. CMAR’s Expense—CMAR shall provide all data in support of any proposed “or equal” Item at CMAR’s expense.
- C. Owner’s Advisor’s Evaluation and Determination—Owner’s Advisor, in consultation with Engineer, will be allowed a reasonable time to evaluate each “or-equal” request. Owner’s Advisor may require CMAR to furnish additional data about the proposed “or-equal” item. Owner’s Advisor, in consultation with Engineer, will be the sole judge of acceptability. No “or-equal” Item will be ordered, furnished, installed, or utilized until Owner’s Advisor’s review is complete and Owner’s Advisor, in consultation with Engineer, has determined that the proposed Item is equal, which will be evidenced by an approved Shop Drawing or other written communication. Owner’s Advisor will advise CMAR in writing of any negative determination.

- D. Effect of Owner's Advisor's Determination—Neither approval nor denial of an “or-equal” request will result in any change in Guaranteed Maximum Price. The Owner's Advisor's denial of an “or-equal” request will be final and binding and may not be reversed through an appeal under any provision of the Contract.
- E. Treatment as a Substitution Request—If Owner's Advisor determines that an Item of equipment or material proposed by CMAR does not qualify as an “or-equal” item, CMAR may request that Owner's Advisor consider the Item a proposed substitute pursuant to Paragraph 7.09.

7.09 Substitutes

- A. CMAR's Request; Governing Criteria—Unless the specification or description of an Item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, CMAR may request that Owner's Advisor authorize the use of other items of equipment or material under the circumstances described below.
- B. To the extent possible such requests must be made as part of Preconstruction Services, before the completion of the applicable portion of the design, the Procurement of Subcontractors, construction pricing, and execution of the governing Work Authorization (Preconstruction Substitute Requests). Preconstruction Substitute Requests are further addressed in Paragraph 7.09.E below; substitute requests made after the applicable Work Authorization are addressed in Paragraph 7.09.F.
- C. The following provisions apply to all substitute requests:
 - 1. CMAR shall submit adequate information as provided below to allow Owner's Advisor, in consultation with Engineer, to determine if the Item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Owner's Advisor will not accept requests for review of proposed substitute items of equipment or material from anyone other than CMAR.
 - 2. The requirements for review by Owner's Advisor, in consultation with Engineer, will be as set forth in Paragraph 7.09.D, as supplemented by the Specifications, and as Owner's Advisor may decide is appropriate under the circumstances.
 - 3. CMAR shall make written application to Owner's Advisor for review of a proposed substitute Item of equipment or material that CMAR seeks to furnish or use. The application:
 - a. will certify that the proposed substitute Item will:
 - 1) adequately perform the functions and achieve the results called for by the general design;
 - 2) be similar in substance to the Item specified; and
 - 3) be suited to the same use as the Item specified.

- b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute Item will necessitate a change in Contract Times;
 - 2) whether use of the proposed substitute Item in the Work will require a change in any of the Contract Documents, or in the provisions of any other direct contract with Owner for other work on the Project, to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute Item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute Item from the Item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. will contain, to the extent applicable, an itemized estimate of all costs, anticipated price impacts, or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Guaranteed Maximum Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- D. Owner's Advisor's Evaluation and Determination—Owner's Advisor, in consultation with Engineer, will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Owner's Advisor may require CMAR to furnish additional data about the proposed substitute item. Owner's Advisor, in consultation with Engineer, will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Owner's Advisor's review is complete and Owner's Advisor determines that the proposed Item is an acceptable substitute.
- E. Preconstruction Substitute Requests—CMAR will research potential substitutes, furnish data, and prepare a Preconstruction Substitute Request as compensable Basic Preconstruction Services. CMAR will not be responsible for costs incurred by Owner, Owner's Advisor, or Engineer in response to a Preconstruction Substitute Request. If such a request is approved, CMAR will not be required to issue a special guarantee with respect to the substitute's inclusion in the final design.
- F. For substitute requests made after a Work Authorization, or in an untimely manner such that the substitution cannot be made part of the final design on which binding construction pricing is based, the following apply:
- 1. Owner's Advisor's determination will be evidenced by a Field Order, or a proposed Change Order issued by the Owner's Advisor accounting for the substitute itself and all related impacts, including changes in Guaranteed Maximum Price or Contract Times. Owner's Advisor will advise CMAR in writing of any negative determination.
 - 2. Special Guarantee —Owner's Advisor may require CMAR to furnish at CMAR's expense a special performance guarantee or other surety with respect to the substitute.
 - 3. Reimbursement of Review Cost—Owner's Advisor and Engineer will record their costs in evaluating the substitute proposed or submitted by CMAR. Whether or not Owner's Advisor approves a substitute so proposed or submitted by CMAR, CMAR shall

reimburse Owner for the reasonable charges of Owner's Advisor and Engineer for evaluating each such proposed substitute. CMAR shall also reimburse Owner for the reasonable charges of Owner's Advisor and Engineer for making changes in the Contract Documents, or in the provisions of any other direct contract with Owner resulting from the acceptance of each proposed substitute.

4. CMAR's Expense—CMAR shall provide all data in support of any proposed substitute at CMAR's expense.
5. Effect of Owner's Advisor's Determination—If Owner's Advisor approves the substitute request, CMAR shall execute a Change Order and proceed with the substitute. The Owner's Advisor's denial of a substitution request will be final and binding and may not be reversed through an appeal under any provision of the Contract. CMAR may challenge the scope of reimbursement costs imposed under Paragraph 7.09.F.3, by timely submittal of a Change Proposal.

7.10 Concerning Subcontractors and Suppliers

- A. CMAR may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The CMAR's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve CMAR's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. CMAR shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. As a general matter, CMAR shall retain Subcontractors and Suppliers for Work Packages through the procurement process described in the Agreement, including but not limited to the Procurement Strategy Plan and Exhibit A Article 3 of the Agreement. If there is a conflict between such provisions of the Agreement and this paragraph, the provisions of the Agreement will govern.
- D. Subsequent to the submittal of CMAR's Proposal or final negotiation of the terms of the Contract, Owner may not require CMAR to retain any Subcontractor or Supplier against which CMAR has reasonable objection to furnish or perform any of the Work.
- E. Prior to entry into any binding subcontract or purchase order, CMAR shall submit to Owner the identity of the proposed Subcontractor or Supplier, unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the CMAR selection process, the Subcontractor and Supplier procurement process, or otherwise. Such proposed Subcontractor or Supplier will be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- F. Owner may require the replacement of a Subcontractor or Supplier. Owner also may require CMAR to retain specific replacements; provided, however, that Owner may not require a replacement to which CMAR has a reasonable objection. If CMAR has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, through the Subcontractor and Supplier procurement process or otherwise, and Owner has accepted it, either in writing or by failing to make written objection thereto, then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of

substantive, reasonable objection after due investigation. CMAR shall submit an acceptable replacement for the rejected Subcontractor or Supplier.

- G. If Owner requires the replacement of any Subcontractor or Supplier retained by CMAR to perform any part of the Work, then CMAR shall be entitled to an adjustment in Guaranteed Maximum Price or Contract Times, with respect to the replacement; and CMAR shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- H. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- I. On a monthly basis, CMAR shall submit to Owner's Advisor a complete list of all Subcontractors and Suppliers having a direct contract with CMAR, and of all other Subcontractors and Suppliers known to CMAR at the time of submittal.
- J. CMAR shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- K. The divisions and sections of the Specifications and the identifications of any Drawings do not control CMAR in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- L. All Work performed for CMAR by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner, Owner's Advisor, and Engineer.
- M. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to CMAR for Work performed for CMAR by the Subcontractor or Supplier.
- N. CMAR shall restrict all Subcontractors and Suppliers from communicating with Owner's Advisor or Owner, except through CMAR or in case of an emergency, or as otherwise expressly allowed in this Contract.
- O. CMAR will perform or undertake the responsibilities of any Subcontractor or Supplier that defaults, fails to perform, declares bankruptcy, or meets any of the other requirements for termination for cause listed as applying to the CMAR as described in Paragraph 16.02 of the General Conditions.
 - 1. If, for a specific Subcontractor or Supplier, CMAR determines that CMAR would not reasonably be able to self-perform the Subcontractor's work or meet the Supplier's obligations in the event of the Subcontractor or Supplier default, then CMAR may require a subcontract/supplier performance bond, the costs of which will be reimbursed as a Cost of the Work under the Subcontract costs category (Paragraph 6.02, Agreement). Before requiring such a bond, CMAR will consult with Owner's Advisor and consider whether other protective measures are feasible and more cost-effective.
 - 2. If Owner requires that CMAR enter into a subcontract with a Subcontractor to which the CMAR has reasonable objections, CMAR may require subcontract performance and payment bonds, the costs of which will be reimbursed as a Cost of the Work under the Subcontract costs category (Paragraph 6.02, Agreement).

7.11 Patent Fees and Royalties

- A. CMAR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner, Owner's Advisor, or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, then the existence of such rights will be disclosed in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless CMAR, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages, including but not limited to all fees and charges of construction managers, engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs, arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, CMAR shall indemnify and hold harmless Owner, Owner's Advisor, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages, including but not limited to all fees and charges of construction managers, engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.12 Permits

- A. Unless otherwise provided in the Contract Documents, CMAR shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist CMAR, when necessary, in obtaining such permits and licenses. CMAR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of CMAR's Proposal. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.13 Taxes

- A. CMAR shall pay all sales, consumer, use, and other similar taxes required to be paid by CMAR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.14 Laws and Regulations

- A. CMAR shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of CMAR Services or the Work. Neither Owner, Owner's

Advisor, nor Engineer will be responsible for monitoring CMAR's compliance with Laws or Regulations.

- B. If CMAR performs any CMAR Services or Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, CMAR shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner, Owner's Advisor, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages, including but not limited to all fees and charges of construction managers, engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or relating to such CMAR Services, Work, or other action.
- C. It is not CMAR's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve CMAR of its obligations under Paragraph 3.03.
- D. Owner or CMAR may give written notice to the other party of any changes after the Effective Date of the Contract in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and CMAR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Guaranteed Maximum Price or Contract Times resulting from such changes, then within 30 days of such written notice CMAR may submit a Change Proposal, or Owner may initiate a Claim.

7.15 Record Documents

- A. CMAR shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, Contract Amendments, Work Packages, Work Authorizations, written interpretations and clarifications, and approved Shop Drawings. CMAR shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Owner's Advisor and Engineer for reference. Upon completion of the Work, CMAR shall deliver these record documents to Owner's Advisor.

7.16 Safety and Protection

- A. CMAR shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. CMAR shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. CMAR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.16.C.2 or 7.16.C.3 caused, directly or indirectly, in whole or in part, by CMAR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, will be remedied by CMAR at its expense, except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner, Owner's Advisor, or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CMAR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them.
 - E. CMAR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
 - F. CMAR shall notify Owner's Advisor; Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities, if the identity of such owners is known to CMAR; and other contractors and utility owners performing work at or adjacent to the Site, in writing, when CMAR knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
 - G. CMAR shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
 - H. CMAR shall inform Owner, Owner's Advisor, and Engineer of the specific requirements of CMAR's safety program with which Owner's, Owner's Advisor's, and Engineer's employees and representatives must comply while at the Site.
 - I. CMAR's duties and responsibilities for safety and protection will continue until all the Work is completed, Owner's Advisor has issued a written notice to Owner and CMAR in accordance with Paragraph 15.07.C that the Work is acceptable, and CMAR has left the Site, except as otherwise expressly provided in connection with Substantial Completion.
 - J. CMAR's duties and responsibilities for safety and protection will resume whenever CMAR or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.17 Hazard Communication Programs

- A. CMAR shall be responsible for coordinating any exchange of safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.18 Emergencies

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, CMAR is obligated to act to prevent damage, injury, or loss. CMAR shall give Owner's Advisor prompt written notice if CMAR believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency or are required as a result of CMAR's response to an emergency. If Owner's Advisor, in consultation with Engineer, determines that a change in the Contract Documents is required because of an emergency or CMAR's response, a Work Change Directive or Change Order will be issued.

7.19 Submittals

A. Shop Drawing and Sample Requirements

1. Before submitting a Shop Drawing or Sample, CMAR shall:
 - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determine and verify:
 - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
 - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - 3) all information relative to CMAR's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
 - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
2. Each Shop Drawing or Sample must bear a stamp or specific written certification that CMAR has satisfied CMAR's obligations under the Contract Documents with respect to CMAR's review of that Submittal, and that CMAR approves the Submittal.
3. With each Shop Drawing or Sample, CMAR shall give Owner's Advisor specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

- B. Submittal Procedures for Shop Drawings and Samples—CMAR shall label and submit Shop Drawings and Samples to Owner’s Advisor for review by Engineer in accordance with the accepted Schedule of Submittals.
1. Shop Drawings
 - a. CMAR shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show the services, materials, and equipment CMAR proposes to provide, and to enable the information to be reviewed for the limited purposes required by Paragraph 7.19.D.
 2. Samples
 - a. CMAR shall submit the number of Samples required in the Specifications.
 - b. CMAR shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Owner’s Advisor may require to enable Engineer to review the Sample for the limited purposes required by Paragraph 7.19.D.
- C. Proceeding without Engineer’s Approval—Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, Owner will not pay for related Work, including equipment or materials, until Engineer approves the Shop Drawing or Sample. If CMAR proceeds without such approval, CMAR will bear the full risk of all resulting delays, costs, and losses, including but not limited to removal, corrective, purchase, and installation costs, if such approval is not granted.
- D. Engineer’s Review of Shop Drawings and Samples
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer’s review will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer’s review and approval, if any, will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
 3. Engineer’s review and approval, if any, of a separate Item as such will not indicate approval of the assembly in which the Item functions.
 4. Engineer’s review and approval, if any, of a Shop Drawing or Sample will not relieve CMAR from responsibility for any variation from the requirements of the Contract Documents unless CMAR has complied with the requirements of Paragraph 7.19.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Owner’s Advisor, in consultation with Engineer, will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval, if any, of a Shop Drawing or Sample will not relieve CMAR from responsibility for complying with the requirements of Paragraphs 7.19.A and B.
 6. Engineer's review and approval, if any, of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Guaranteed Maximum Price, unless such changes are included in a Change Order.
 7. Neither receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such Item becoming a Contract Document.
 8. CMAR shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.19.D.4.
- E. Resubmittal Procedures for Shop Drawings and Samples
1. CMAR shall make required corrections and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. CMAR shall direct specific attention in writing to revisions other than the corrections called for on previous Submittals.
 2. CMAR shall furnish required Shop Drawing and Sample submittals with adequate information and accuracy to obtain required approval of an Item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and CMAR shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due CMAR to secure reimbursement for such charges.
 3. If CMAR requests a change of a previously approved Shop Drawing or Sample, CMAR shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due CMAR to secure reimbursement for such charges, unless the need for such change is beyond the control of CMAR.
- F. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs
1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
 - a. CMAR shall submit all such Submittals to Owner's Advisor in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
 - b. A timely review will be made of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
 - c. Review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

- d. If any such Submittal is not accepted, CMAR shall confer with Owner's Advisor regarding the reason for the non-acceptance and resubmit an acceptable document.
- 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 4.04, 7.19, and 15.02.
- G. Owner-delegated Designs–Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.22.

7.20 CMAR's General Warranty and Guarantee

- A. CMAR warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Owner's Advisor and Engineer are entitled to rely on CMAR's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.09. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.20 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.09:
 - 1. Owner shall give CMAR written notice of any defective Work within 60 days of the discovery that such Work is defective; and
 - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. CMAR's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, or improper modification, maintenance, or operation, by persons other than CMAR, Subcontractors, Suppliers, or any other individual or entity for whom CMAR is responsible; or
 - 2. normal wear and tear under normal usage.
- D. CMAR shall perform or provide CMAR Services in accordance with the Contract Documents and good construction management practice.
- E. CMAR's obligation to perform and complete the CMAR Services and the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of CMAR Services or Work that is not in accordance with the Contract Documents, a release of CMAR's obligation to perform the CMAR Services or Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.20:
 - 1. Observations by Owner's Advisor or Engineer;
 - 2. Recommendation by Owner's Advisor or payment by Owner of any progress or final payment;
 - 3. The acceptance of CMAR Services without objection;
 - 4. The issuance of a certificate of Substantial Completion by Owner's Advisor or any payment related thereto by Owner;

5. Use or occupancy of the Work or any part thereof by Owner;
 6. Any review and approval of a Shop Drawing or Sample submittal;
 7. The issuance of a notice of acceptability by Owner's Advisor;
 8. The end of the correction period established in Paragraph 15.09;
 9. Any inspection, test, or approval by others; or
 10. Any correction of defective Work by Owner.
- F. If the Contract requires CMAR to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to CMAR's performance obligations to Owner for the Work described in the assigned contract.

7.21 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of CMAR under the Contract or otherwise, CMAR shall indemnify and hold harmless Owner, Owner's Advisor, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments, including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs, arising from third-party claims or actions relating to or resulting from the performance or furnishing of CMAR Services or the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property, other than the Work itself, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of CMAR, any Subcontractor, any Supplier, subconsultant, or any individual or entity directly or indirectly employed by any of them to perform any of the CMAR Services or Work, or anyone for whose acts any of them may be liable.
- B. In claims against Owner, Owner's Advisor, or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any CMAR employee, or the survivor or personal representative of such employee, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.21.A will not be limited by a limitation on the amount or type of damages, compensation, or benefits payable by or for CMAR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.22 Delegation of Professional Design Services

- A. Owner may require CMAR to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that CMAR must furnish to Owner's Advisor with respect to the Owner-delegated design.
- B. CMAR shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications,

certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.

- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by CMAR, a Subcontractor, or others for submittal to Owner's Advisor, then such Shop Drawing or other Submittal must bear the written approval of CMAR's design professional when submitted by CMAR to Owner's Advisor.
- D. Owner, Owner's Advisor, and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by CMAR under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.22, Engineer's review, approval, and determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by CMAR pursuant to an Owner-delegated design will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.22;
 - 2. Confirming that CMAR, through its design professionals, has used the performance and design criteria specified in the Contract Documents; and
 - 3. Establishing that the design furnished by CMAR is consistent with the design concept expressed in the Contract Documents.
- F. CMAR shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. CMAR is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 Other Work

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give CMAR written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to CMAR.
- C. CMAR shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.

- D. CMAR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CMAR shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that CMAR may cut or alter others' work with the written consent of Owner's Advisor and the others whose work will be affected.
- E. If the proper execution or results of any part of CMAR's Work depends upon work performed by others, CMAR shall inspect such other work and promptly report to Owner's Advisor in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CMAR's Work. CMAR's failure to so report will constitute an acceptance of such other work as fit and proper for integration with CMAR's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this Article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by CMAR is governed by the provisions of Paragraph 4.05.C.3.

8.02 Coordination

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to CMAR prior to the start of any such other work:
 - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 Legal Relationships

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of CMAR or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then CMAR shall be entitled to an equitable adjustment in the Guaranteed Maximum Price or the Contract Times. CMAR must submit any Change Proposal seeking an equitable adjustment in the Guaranteed Maximum Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will consider information, if any regarding such other work that was provided to CMAR in the Contract Documents prior to the submittal of the Proposal or the final negotiation of the terms of the Contract, and any remedies available to CMAR under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable

adjustment in Guaranteed Maximum Price will be conditioned on CMAR assigning to Owner all CMAR's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. CMAR's entitlement to an adjustment of the Contract Times or Guaranteed Maximum Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

- B. CMAR shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
 - 1. If CMAR fails to take such measures, and as a result, damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due CMAR, and assign to such other contractor or utility owner the Owner's contractual rights against CMAR with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
 - 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, CMAR shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of CMAR's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due CMAR.
- C. If CMAR damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through CMAR's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of CMAR's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against CMAR, Owner, Owner's Advisor, or Engineer, then CMAR shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner, Owner's Advisor, and Engineer, and their officers, directors, members, partners, employees, agents, consultants and subcontractors from and against any such claims, and against all costs, losses, and damages, including but not limited to all fees and charges of construction managers, engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 Communications to CMAR

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to CMAR through Owner's Advisor.

9.02 Replacement of Owner's Advisor or Engineer

- A. Owner may at its discretion appoint a replacement for Owner's Advisor, provided CMAR makes no reasonable objection to the replacement. The replacement's status under the Contract Documents will be that of the former Owner's Advisor.

- B. Owner may at its discretion appoint an engineer to replace Engineer, provided CMAR makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.
- 9.03 Furnish Data
- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.
- 9.04 Pay CMAR
- A. Owner shall make payments to CMAR when they are due as provided in the Agreement.
- 9.05 Lands and Easements; Reports, Tests, and Drawings
- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
 - B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
 - C. Article 5 refers to Owner's identifying and making available to CMAR copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.
- 9.06 Insurance
- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.
- 9.07 Change Orders
- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.
- 9.08 Inspections, Tests, and Approvals
- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.
- 9.09 Owner's Tasks in Support of CMAR Services
- A. Owner shall provide CMAR with all criteria and full information as to Owner's requirements for the Project including drafts of proposed Contract Documents, general schedules and completion requirements, reports, surveys, permits, record documents from related previous projects, and other information as required for CMAR to provide services. Owner shall be responsible for, and CMAR may rely upon, the accuracy and completeness of all such criteria and information, and of any other programs, instructions, data, and other information furnished by Owner to CMAR pursuant to this Agreement. CMAR may use such criteria and information in performing or furnishing CMAR Services.
 - B. Owner shall provide reasonable assistance to CMAR in securing the release of documents and information held by private entities and by public agencies as needed to provide services required by this Agreement.
 - C. Owner shall arrange for safe access to and make all provisions for CMAR to enter upon public and private property as required for CMAR to perform services.

- D. Owner shall review documents presented by CMAR, make decisions, and carry out Owner's other responsibilities in a timely manner so as not to delay the CMAR's performance of its services.
- E. Owner shall provide the services of attorneys, insurance consultants, financial advisors, and other professional advisors or consultants required for the Project, but not provided by the CMAR.
 - 1. Advise CMAR of the identity and scope of services of any independent consultant, designer, contractor, or other construction manager employed by Owner to perform or furnish services in regard to the Project, including cost estimating, project peer reviews, value engineering, and constructability reviews.
 - 2. Define and set forth the duties, responsibilities, and limitations of authority of these other parties as they relate to the duties, responsibilities, and authority of CMAR.
- F. Owner is not responsible for discovering deficiencies in the CMAR's Services. CMAR will correct any deficiencies without additional compensation, except to the extent this corrective action is directly attributable to deficiencies in Owner-furnished information.

9.10 Limitations on Owner's Responsibilities

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, CMAR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CMAR to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for CMAR's failure to perform the Work in accordance with the Contract Documents.

9.11 Undisclosed Hazardous Environmental Condition

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.12 Evidence of Financial Arrangements

- A. Upon request of CMAR, Owner shall furnish CMAR reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract, including obligations under proposed changes in the Work.

9.13 Safety Programs

- A. While at the Site, Owner's employees and representatives will comply with the specific applicable requirements of CMAR's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to CMAR.

ARTICLE 10—STATUS OF OWNER'S ADVISOR AND ENGINEER DURING CONSTRUCTION

10.01 Owner's Advisor

- A. Owner's Advisor will be Owner's representative during the construction period.
- B. The general duties, responsibilities, and the limitations of authority of Owner's Advisor and Engineer during construction are set forth below.

10.02 Visits to Site

- A. Owner's Advisor will either be based at the Site or make visits to the Site on a regular basis. Owner's Advisor will observe the Work; check the quality, quantity, and progress of the Work; implement Owner's quality assurance program; and administer the Contract as Owner's representative.
- B. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of CMAR's executed Work. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer will report to Owner's Advisor regarding information obtained during such Site visits and observations.
- C. Owner's Advisor's and Engineer's visits and observations are subject to all the limitations on Owner's Advisor's and Engineer's authority and responsibility set forth in Paragraph 10.05. Particularly, but without limitation, during or as a result of Owner's Advisor's and Engineer's visits or observations of CMAR's Work, neither Owner's Advisor nor Engineer will supervise, direct, control, or have authority over or be responsible for CMAR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CMAR to comply with Laws and Regulations applicable to the performance of the Work.

10.03 Determinations for Unit Price Work

- A. Owner's Advisor will determine the actual quantities and classifications of Unit Price Work performed or furnished by CMAR as set forth in Paragraph 13.02.

10.04 Decisions on Requirements of Contract Documents and Acceptability of Work; Exercise of Authority

- A. Owner's Advisor will render decisions regarding the requirements of the Contract Documents, and judge the quality and acceptability of the Work, pursuant to the specific procedures set forth herein for interpretations, Change Proposals, Applications for Payment, and acceptance of the Work.
 - 1. Before rendering such decisions or judgments, and before exercising its authority with respect to differing subsurface or physical conditions, Underground Facilities, "or equal" and substitute requests, emergencies, Field Orders, and similar matters, Owner's Advisor will consult with Engineer as to all matters in question involving (a) the design, as set forth in the Drawings, Specifications, or otherwise, (b) the quality or acceptability of the Work under the Contract Documents, or (c) other engineering matters.
 - 2. With respect to such matters, Owner's Advisor's decisions and judgments as rendered will be in accord with Engineer's professional analysis, opinions, recommendations, and conclusions.
- B. In rendering such decisions and judgments, exercising such authority, or providing professional analysis, opinions, recommendations, or conclusions underlying such decisions and judgments, neither Owner's Advisor nor Engineer will show partiality to Owner or CMAR, and neither Owner's Advisor nor Engineer will be liable to Owner, CMAR, or others in

connection with any proceedings, interpretations, analysis, opinions, recommendations, conclusions, decisions, or judgments conducted or rendered in good faith.

- C. Owner's Advisor may at any time request that CMAR furnish proposed changes to Guaranteed Maximum Price and Contract Times that would result from specified proposed changes to the Contract Documents.

10.05 Limitations on Owner's Advisor's and Engineer's Authority and Responsibilities

- A. Neither Owner's Advisor's nor Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Owner's Advisor or Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Owner's Advisor or Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Owner's Advisor or Engineer to CMAR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Neither Owner's Advisor nor Engineer will supervise, direct, control, or have authority over or be responsible for CMAR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CMAR to comply with Laws and Regulations applicable to the performance of the Work. Neither Owner's Advisor nor Engineer will be responsible for CMAR's failure to perform the Work in accordance with the Contract Documents.
- C. Neither Owner's Advisor nor Engineer will be responsible for the acts or omissions of CMAR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Owner's Advisor's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by CMAR under Paragraph 15.07.A, will only be to determine generally that their content complies with the requirements of the Contract Documents, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

10.06 Compliance with Safety Program

- A. While at the Site, Owner's Advisor's and Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and CMAR's safety programs of which Owner's Advisor and Engineer have been informed.

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 Amending and Supplementing the Contract

- A. The Contract may be amended or supplemented by a Contract Amendment, Work Authorization, Change Order, Work Change Directive, or Field Order.
- B. A Work Authorization, as more fully defined in Paragraph 1.01, is used to authorize specified Work, and establish related compensation. Change Orders, Work Change Directives, and Field Orders are used to modify a Work Authorization, including but not limited to

modifications of the authorized Work and changes to the Guaranteed Maximum Price and Contract Times associated with the Work Authorization.

If a modification under a Work Authorization includes a change in the Guaranteed Maximum Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.

- C. A Contract Amendment, as more fully defined in Paragraph 1.01, is used for general contract modification purposes.
- D. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design, as set forth in the Drawings, Specifications, or otherwise, or (3) other engineering matters, must be supported by Engineer's recommendation. Owner and CMAR may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 Change Orders

- A. With respect to a governing Work Authorization, Owner and CMAR shall execute appropriate Change Orders covering:
 - 1. Changes in Guaranteed Maximum Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work performed in accordance with a Work Change Directive;
 - 2. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design, as set forth in the Drawings, Specifications, or otherwise, or other engineering matters; and
 - 3. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Paragraph 13.02.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or CMAR refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.
- C. Owner and CMAR will enter into either a Change Order, if related to a specific Work Authorization, or a Contract Amendment with respect to the following:
 - 1. Changes in Guaranteed Maximum Price resulting from an Owner set-off, unless CMAR has duly contested such set-off;
 - 2. Changes that embody the substance of any final and binding results under Article 12, Claims; Paragraph 13.01, final adjustments resulting from allowances; and similar provisions.

11.03 Work Change Directives

- A. A Work Change Directive will not change the Guaranteed Maximum Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented

by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Guaranteed Maximum Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Guaranteed Maximum Price.

- B. If Owner has issued a Work Change Directive and:
 1. CMAR believes that an adjustment in Contract Times or Guaranteed Maximum Price is necessary, then CMAR shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
 2. Owner believes that an adjustment in Contract Times or Guaranteed Maximum Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 Field Orders

- A. Owner's Advisor, in consultation with Engineer, may authorize minor changes in the Work if the changes do not involve an adjustment in the Guaranteed Maximum Price or the Contract Times. Such changes will be accomplished by a Field Order and will be binding on Owner and on CMAR, which shall perform the Work involved promptly.
- B. If CMAR believes that a Field Order justifies an adjustment in the Guaranteed Maximum Price or Contract Times, then before proceeding with the Work at issue, CMAR shall submit a Change Proposal as provided herein.

11.05 Owner-Authorized Changes in the Work

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design, as set forth in the Drawings, Specifications, or otherwise, or other engineering matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and CMAR have agreed as to the effect, if any, of the changes on Contract Times or Guaranteed Maximum Price; or by a Work Change Directive. Upon receipt of any such document, CMAR shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates CMAR to undertake work that CMAR reasonably concludes cannot be performed in a manner consistent with CMAR's safety obligations under the Contract Documents or Laws and Regulations.

11.06 Unauthorized Changes in the Work

- A. CMAR shall not be entitled to an increase in the Guaranteed Maximum Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.18 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 Change of Contract Price

- A. The Contract Price may be changed by a Work Authorization, Change Order, or Contract Amendment. Any Change Proposal for an adjustment in the Guaranteed Maximum Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Guaranteed Maximum Price with respect to the Work will be determined as follows:
 - 1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved;
 - 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum; or
 - 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work determined in accordance with the Cost of the Work provisions in the Agreement, plus the CMAR Fee, applied proportionally, for overhead and profit determined in accordance with the terms in the Agreement.

11.08 Change of Contract Times

- A. The Contract Times may be changed by a Work Authorization, Change Order, or Contract Amendment. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 Change Proposals

- A. Purpose and Content—CMAR shall submit a Change Proposal to Owner's Advisor to request an adjustment in the Contract Times or Guaranteed Maximum Price; contest a decision by Owner's Advisor concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Guaranteed Maximum Price, or other proposed relief; identify any governing Work Authorization; indicate CMAR's recommendation for the correct means of amending the Contract (Work Authorization, Change Order, or Contract Amendment) if the proposed change is accepted; and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.
- B. Determination of Changes in Guaranteed Maximum Price for Work—If a Change Order under a Work Authorization entails a change in Guaranteed Maximum Price, then:
 - 1. The change will include the applicable increase or decrease in Cost of the Work, pursuant to the provisions Article 6 of the Agreement.
 - 2. The CMAR Fee for changes will be those agreed to Article 7 of the Agreement.

3. If there is a Guaranteed Maximum Price, it will increase or decrease in an amount equal to the increase or decrease in the Cost of the Work and CMAR Fee, as duly determined.
 4. The amount of any increases or decreases in the CMAR Fee, or in Guaranteed Maximum Price, will be set forth in the applicable Change Order.
- C. Change Proposal Procedures
1. Submittal—CMAR shall submit each Change Proposal to Owner’s Advisor within 30 days after the start of the event giving rise thereto, or after such decision.
 2. Supporting Data—The CMAR shall submit supporting data, including the proposed change in Guaranteed Maximum Price or Contract Time, if any, to the Owner’s Advisor within 15 days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
 - b. Change Proposals related to a change of Guaranteed Maximum Price based on Cost of the Work must include full and detailed account of eligible costs, such as materials incorporated into the Work, labor and equipment used for the subject Work, and Subcontract costs.

The supporting data must be accompanied by a written statement that the supporting data is accurate and complete, and that any requested time or price adjustment is the entire adjustment to which CMAR believes it is entitled as a result of said event.
 3. Owner’s Advisor’s Initial Review—Owner’s Advisor, in consultation with Engineer, will advise Owner regarding the Change Proposal and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Owner’s Advisor concludes that additional supporting data is needed before conducting a full review and deciding regarding the Change Proposal, then Owner’s Advisor may request that CMAR submit such additional supporting data by a date specified by Owner’s Advisor, prior to Owner’s Advisor beginning its full review of the Change Proposal.
 4. Owner’s Advisor’s Full Review and Action on the Change Proposal—Upon receipt of CMAR’s supporting data, including any additional data requested by Owner’s Advisor, Owner’s Advisor, in consultation with Engineer, will conduct a full review of each Change Proposal and, within 30 days after such receipt of the CMAR’s supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and CMAR. If Owner’s Advisor does not act on the Change Proposal within 30 days, then either Owner or CMAR may at any time thereafter submit a letter to the other party indicating that as a result of Owner’s Advisor’s inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
 5. Binding Decision—Owner’s Advisor’s decision is final and binding upon Owner and CMAR, unless Owner or CMAR appeals the decision by filing a Claim under Article 12.
- D. Post-Completion—CMAR shall not submit any Change Proposals after Owner’s Advisor issues a written recommendation of final payment pursuant to Paragraph 15.07.B.

11.10 Notification to Surety

- A. CMAR shall notify the performance and payment bond surety of the issuance of each Work Authorization and confirm that the bonds have been adjusted to reflect the changes in Guaranteed Maximum Price and Contract Times.
- B. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents, including, but not limited to, Guaranteed Maximum Price or Contract Times, the giving of any such notice will be CMAR's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12—CLAIMS

12.01 Claims

- A. Claims Process—The following disputes between Owner and CMAR are subject to the Claims process set forth in this article:
 - 1. Appeals by Owner or CMAR of Owner's Advisor's decisions regarding Change Proposals;
 - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
 - 3. Subject to the waiver provisions of Paragraph 15.08, any dispute arising after Owner's Advisor has issued a written recommendation of final payment pursuant to Paragraph 15.07.B.
- B. Submittal of Claim—The party submitting a Claim shall deliver it directly to the other party to the Contract promptly, but in no event later than 30 days after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Owner's Advisor and Engineer, for their information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by CMAR seeking an increase in the Contract Times or Contract Price, CMAR shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of CMAR's knowledge and belief the amount of time or money requested accurately reflects the full amount to which CMAR is entitled.
- C. Review and Resolution—The party receiving a Claim shall review it thoroughly and consider its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Owner's Advisor and Engineer.
- D. Mediation
 - 1. At any time after initiation of a Claim, Owner and CMAR may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
 - 2. If Owner and CMAR agree to mediation, then after 60 days from such agreement, either Owner or CMAR may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the

mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and CMAR shall each pay one-half of the mediator's fees and costs.
- E. Partial Approval—If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. Denial of Claim—If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not act on the Claim within 90 days, then either Owner or CMAR may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. Final and Binding Results—If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13—ALLOWANCES; UNIT PRICE WORK

13.01 Allowances

- A. The CMAR Contingency Allowance (Agreement, Article 8) and Owner's Contingency Allowance (Agreement, Article 12) are governed by the applicable provisions of the Agreement.
- B. CMAR confirms that it has included the CMAR Contingency Allowance in the Guaranteed Maximum Price and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Owner's Advisor.
- C. CMAR confirms that it has included the Owner's Contingency Allowance in the Contract Price and that use of Owner's Contingency Allowance is subject to the provisions of Article 12 in the Agreement.
- D. Cash Allowances—CMAR agrees that:
 1. the cash allowances include the cost to CMAR, less any applicable trade discounts, of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 2. CMAR's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Guaranteed Maximum Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.

- E. Prior to final payment, an appropriate Change Order will be issued as recommended by Owner's Advisor to reflect actual amounts due CMAR for Work covered by allowances, and the Guaranteed Maximum Price will be correspondingly adjusted.

13.02 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Guaranteed Maximum Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified Item of Unit Price Work times the estimated quantity of each Item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Proposals and determining an Estimated Guaranteed Maximum Price. Payments to CMAR for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by CMAR to be adequate to cover CMAR's overhead and profit for each separately identified item.
- D. Owner's Advisor will determine the actual quantities and classifications of Unit Price Work performed or furnished by CMAR. Owner's Advisor will review with CMAR the Owner's Advisor's preliminary determinations on such matters before rendering a written decision thereon, by recommendation of an Application for Payment or otherwise. Owner's Advisor's written decision thereon will be final and binding except as modified by Owner's Advisor to reflect changed factual conditions or more accurate data upon Owner and CMAR, and the final adjustment of Guaranteed Maximum Price will be set forth in a Change Order, subject to the provisions of the following Paragraph.
- E. Adjustments in Unit Price
 1. CMAR or Owner shall be entitled to an adjustment in the unit price with respect to an Item of Unit Price Work if:
 - a. the quantity of the Item of Unit Price Work performed by CMAR differs materially and significantly from the estimated quantity of such Item indicated in the Agreement; and
 - b. CMAR's unit costs to perform the Item of Unit Price Work have changed materially and significantly as a result of the quantity change.
 2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in CMAR's costs to perform such other Work, such that the resulting overall change in Guaranteed Maximum Price is equitable to Owner and CMAR.
 3. Adjusted unit prices will apply to all units of that item.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

14.01 Access to Work

- A. Owner, Owner's Advisor, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. CMAR shall provide them with proper and safe conditions for such access and

advise them of CMAR's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 Tests, Inspections, and Approvals

- A. CMAR shall give Owner's Advisor timely notice of readiness of the Work, or specific parts thereof, for all required inspections and tests and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except those costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work, or part thereof, specifically to be inspected, tested, or approved by an employee or other representative of such public body, CMAR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Owner's Advisor the required certificates of inspection or approval.
- D. CMAR shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to CMAR's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Owner's Advisor.

- E. If the Contract Documents require the Work, or part thereof, to be accepted by Owner, Owner's Advisor, Engineer, or another designated individual or entity, then CMAR shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work, or the work of others that is to be inspected, tested, or approved is covered by CMAR without written concurrence of Owner's Advisor, CMAR shall, if requested by Owner's Advisor, uncover such Work for observation. Such uncovering will be at CMAR's expense unless CMAR has given Owner's Advisor timely notice of CMAR's intention to cover the same and Owner's Advisor had not acted with reasonable promptness in response to such notice.

14.03 Defective Work

- A. CMAR's Obligation—It is CMAR's obligation to assure that the Work is not defective.
- B. Owner's Advisor's Authority—Owner's Advisor has the authority to determine, in consultation with Engineer, whether Work is defective, and to reject defective Work.
- C. Notice of Defects—Prompt written notice of all defective Work of which Owner, Owner's Advisor, or Engineer has actual knowledge will be given to CMAR.
- D. Correction, or Removal and Replacement—Promptly after receipt of written notice of defective Work, CMAR shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Owner's Advisor has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. Preservation of Warranties—When correcting defective Work, CMAR shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. Costs and Damages—In addition to its correction, removal, and replacement obligations with respect to defective Work, CMAR shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and CMAR are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 Acceptance of Defective Work

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so. If such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles and will not endanger public safety. CMAR shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work; such costs to be approved by Owner's Advisor as to reasonableness, and for the diminished value of the Work to the extent not otherwise paid by CMAR. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Guaranteed Maximum Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, CMAR shall pay an appropriate amount to Owner.

14.05 Uncovering Work

- A. Owner's Advisor has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Owner's Advisor, then CMAR shall, if requested by Owner's Advisor, uncover such Work for Owner's Advisor's or Engineer's observation, and then replace the covering, all at CMAR's expense.

- C. If Engineer or Owner's Advisor considers it necessary or advisable that covered Work be observed by Owner's Advisor or Engineer, or inspected or tested by others, then Owner's Advisor will so advise CMAR, and CMAR shall uncover, expose, or otherwise make available for observation, inspection, or testing as Owner's Advisor may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, CMAR shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction, including but not limited to all costs of repair or replacement of work of others, and pending CMAR's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. If the uncovered Work is not found to be defective, CMAR shall be allowed an increase in the Guaranteed Maximum Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then CMAR may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 Owner May Stop the Work

- A. If the Work is defective, or CMAR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order CMAR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of CMAR, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 Owner May Correct Defective Work

- A. If CMAR fails within a reasonable time after written notice from Owner's Advisor to correct defective Work, or to remove and replace defective Work as required by Owner's Advisor, then Owner may, after 7 days' written notice to CMAR, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude CMAR from all or part of the Site, take possession of all or part of the Work and suspend CMAR's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid CMAR but which are stored elsewhere. CMAR shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, Owner's Advisor, Engineer, and their consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against CMAR as set-offs against payments due under Article 15. Such claims, costs, losses, and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CMAR's defective Work.

- D. CMAR shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15—PAYMENTS TO CMAR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 Payment for CMAR Services

- A. The basis and procedures for payment for CMAR Services are set forth in the Agreement, Article 3. The provisions of this Article 15 pertain to payment for performance and furnishing of the Work, unless noted otherwise.

15.02 Progress Payments

A. Basis for Progress Payments

1. CMAR will, at least 10 days prior to applying for Payment, prepare and submit for approval by Owner's Advisor a schedule allocating portions of the Guaranteed Maximum Price to various portions of the Work, as determined by the applicable Work Authorizations.
2. The Schedule of Values will serve as the basis for progress payments and will be incorporated by Owner's Advisor into an Application for Payment form. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.02. Progress payments for cost-based Work will be based on Cost of the Work completed by CMAR during the pay period.

B. Applications for Payments

1. At least 20 days before the date established in the Agreement for each progress payment, but not more often than once a month, CMAR shall submit to Owner's Advisor for review an Application for Payment filled out and signed by CMAR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by CMAR for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
3. Beginning with the second Application for Payment, each Application must include an affidavit of CMAR stating that all previous progress payments received by CMAR have been applied to discharge CMAR's legitimate obligations associated with prior Applications for Payment.

4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- C. Review of Applications
1. Owner's Advisor will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to CMAR indicating in writing Owner's Advisor's reasons for refusing to recommend payment. In the latter case, CMAR may make the necessary corrections and resubmit the Application.
 2. Owner's Advisor's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner's Advisor to Owner, based on Owner's Advisor's (a) observations of the executed Work, (b) consultations with Engineer, and (c) review of the Application for Payment and the accompanying data and schedules, that to the best of Owner's Advisor's knowledge, information, and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.02, and any other qualifications stated in the recommendation; and
 - c. the conditions precedent to CMAR's being entitled to such payment appear to have been fulfilled in so far as it is Owner's Advisor's responsibility to observe the Work.
 3. By recommending any such payment Owner's Advisor will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Owner's Advisor in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle CMAR to be paid additionally by Owner or entitle Owner to withhold payment to CMAR.
 4. Neither Owner's Advisor's review of CMAR's Work for the purposes of recommending payments nor Owner's Advisor's recommendation of any payment, including final payment, will impose responsibility on Owner's Advisor:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - c. for CMAR's failure to comply with Laws and Regulations applicable to CMAR's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes CMAR has used the money paid by Owner; or

- e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
 5. Owner's Advisor may refuse to recommend the whole or any part of any payment if, in Owner's Advisor's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.02.C.2.
 6. Owner's Advisor will recommend reductions in payment (set-offs) necessary in Owner's Advisor's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Guaranteed Maximum Price has been reduced by Change Orders or other Contract modifications;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which CMAR is responsible; or
 - e. Owner's Advisor has actual knowledge of the occurrence of any of the events that would constitute a default by CMAR and therefore justify termination for cause under the Contract Documents.
- D. Payment Becomes Due
1. Ten days after Owner's Advisor's presentation of the Application for Payment to Owner with Owner's Advisor's recommendation, the amount recommended, subject to any Owner set-offs, will become due, and when due will be paid by Owner to CMAR.
- E. Reductions in Payment by Owner
1. In addition to any reductions in payment (set-offs) recommended by Owner's Advisor, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. Claims have been made against Owner based on CMAR's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from CMAR's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. CMAR has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. CMAR has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which CMAR is responsible;
 - e. Owner has incurred extra charges for advisory services or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests, and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;

- g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. The Guaranteed Maximum Price has been reduced by Change Orders or other Contract modifications;
 - i. An event has occurred that would constitute a default by CMAR and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of CMAR's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where CMAR has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - l. Claims have been made or costs have been incurred arising from CMAR Services; or
 - m. Other items entitle Owner to a set-off against the amount recommended.
- 2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Owner's Advisor, Owner will give CMAR immediate written notice, with a copy to Owner's Advisor, stating the reasons for such action and the specific amount of the reduction, and promptly pay CMAR any amount remaining after deduction of the amount so withheld. Owner shall promptly pay CMAR the amount so withheld, or any adjustment thereto agreed to by Owner and CMAR, if CMAR remedies the reasons for such action. The reduction imposed will be binding on CMAR unless it duly submits a Change Proposal contesting the reduction.
 - 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.02.D.1 and subject to interest as provided in the Agreement.
- F. Where the Contract Price is based on the Cost of Work, if Owner determines that progress payments made to date substantially exceed the actual progress of the Work, as measured by reference to the Schedule of Values, or present a potential conflict with the Guaranteed Maximum Price, then Owner may require that CMAR prepare and submit a plan for the remaining anticipated Applications for Payment that will bring payments and progress into closer alignment and take into account the Guaranteed Maximum Price, if any, through reductions in billings, increases in retainage, or other equitable measures. Owner will review the plan, discuss any necessary modifications, and implement the plan as modified for all remaining Applications for Payment.

15.03 CMAR's Warranty of Title

- A. CMAR warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.04 Substantial Completion

- A. When CMAR considers the entire Work ready for its intended use CMAR shall notify Owner's Advisor in writing that the entire Work is substantially complete and request that Owner's

Advisor issue a certificate of Substantial Completion. CMAR shall at the same time submit to Owner's Advisor CMAR's proposed punch list of items to be completed or corrected before final payment.

- B. Promptly after CMAR's notification, Owner, CMAR, Owner's Advisor, and Engineer will inspect the Work to determine the status of completion. If the Work is not determined to be substantially complete, Owner's Advisor will notify CMAR in writing, giving the reasons for the determination.
- C. If the Work is deemed substantially complete, Owner's Advisor will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Owner's Advisor will attach to the certificate the Owner's Advisor's proposed punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Owner's Advisor as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Owner's Advisor, in consultation with Engineer, concludes that the Work is not substantially complete, Owner's Advisor will, within 14 days after submission of the preliminary certificate to Owner, notify CMAR in writing that the Work is not substantially complete, stating the reasons for the conclusion. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Owner's Advisor, in consultation with Engineer, concludes that the Work is substantially complete, then Owner's Advisor will, within said 14 days, execute and deliver to Owner and CMAR a final certificate of Substantial Completion, with a revised punch list of items to be completed or corrected, reflecting such changes from the preliminary certificate as Owner's Advisor believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and CMAR will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and CMAR agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the CMAR shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases CMAR may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude CMAR from the Site after the date of Substantial Completion subject to allowing CMAR reasonable access to remove its property and complete or correct items on the punch list.

15.05 Partial Use or Occupancy; Completion of Authorized Work

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Owner's Advisor, Engineer, and CMAR agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its

intended purpose without significant interference with CMAR's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that CMAR permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when CMAR agrees that such part of the Work is substantially complete, CMAR, Owner, Owner's Advisor and Engineer will follow the procedures of Paragraph 15.04.A through 15.04.E for that part of the Work.
 2. At any time, CMAR may notify Owner and Owner's Advisor in writing that CMAR considers any such part of the Work substantially complete and request Owner's Advisor to issue a certificate of Substantial Completion for that part of the Work.
 3. Within a reasonable time after either such request, Owner, CMAR, Owner's Advisor and Engineer will inspect that part of the Work to determine its status of completion. If Owner's Advisor, in consultation with Engineer, does not consider that part of the Work to be substantially complete, Owner's Advisor will notify Owner and CMAR in writing, giving the reasons for its determination. If Owner's Advisor, in consultation with the Engineer, considers that part of the Work to be substantially complete, then for that part of the Work the provisions of Paragraph 15.04 will apply with respect to certification of Substantial Completion, the Division of responsibility, and access.
 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.
 5. Neither the organization of the Work into Work Packages, nor the authorization of specified parts of the Work in a Work Authorization, establishes (a) that such packages or parts of the Work have been identified in the Contract Documents or otherwise as a part of the Work that Owner may use or occupy upon completion, or (b) that any such Work constitutes a separately functioning and usable part of the Work that upon completion can be used by Owner for its intended purpose without significant interference with CMAR's performance of the remainder of the Work. The determination of whether any part of the Work qualifies for partial use or occupancy under this Paragraph 15.05 will be made on the merits without reference to Work Packages or Work Authorizations.
- B. Substantial Completion of Authorized Work
1. When CMAR considers the entire Work authorized under a specific Work Authorization is ready for its intended use, CMAR shall notify Owner's Advisor in writing that such authorized Work is substantially complete and request that Owner's Advisor issue a certificate of Substantial Completion applicable solely to such authorized Work. CMAR shall at the same time submit to Owner's Advisor the CMAR's proposed punch list of items to be completed or corrected before such authorized Work is deemed complete.
 2. CMAR, Owner, Owner's Advisor, and Engineer will follow the procedures of Paragraphs 15.04.A, B, C, E, and F for such authorized Work. The terms of Paragraph 15.04.D are not applicable to the determination of Substantial Completion of the Work authorized under a Work Authorization.

3. Until Substantial Completion of the entire Work under this Contract under Paragraph 15.04, such authorized Work will not be eligible for Owner's use or occupancy, unless otherwise eligible for partial use or occupancy under Paragraph 15.05.A; the determination of a date of Substantial Completion for such authorized Work will not mark the commencement of the contractual correction period and applicable warranties required by the Contract for such authorized Work; and the authorized Work will remain the responsibility of CMAR.

15.06 Final Inspection

- A. Upon written notice from CMAR that the entire Work or an agreed portion thereof is complete, Owner's Advisor will promptly make a final inspection with Owner, Engineer, and CMAR and will notify CMAR in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. CMAR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.07 Final Payment

A. Application for Final Payment

1. After Owner's Advisor, in consultation with Engineer, determines that CMAR has (a) satisfactorily completed all corrections identified during the final inspection, (b) has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents, as provided in Paragraph 7.15, and other documents, and (c) completed performance of all services required by the Contract, CMAR may make application for final payment.
2. The final Application for Payment must be accompanied, except as previously delivered by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects or will so pass upon final payment;
 - d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective releases or waivers, satisfactory to Owner, of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.07.A.2 and as approved by Owner, CMAR may furnish receipts or releases in full and an affidavit of CMAR that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CMAR may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at

its option may issue joint checks payable to CMAR and specified Subcontractors and Suppliers.

- B. Owner's Advisor's Review of Final Application and Recommendation of Payment—If, on the basis of Owner's Advisor's observation of the Work during construction and final inspection, consultation with Engineer regarding completion, and review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Owner's Advisor is satisfied that CMAR has completed the Work and fulfilled CMAR's other obligations under the Contract, Owner's Advisor will, within 10 days after receipt of the final Application for Payment, indicate in writing Owner's Advisor's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Owner's Advisor's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Owner's Advisor will return the Application for Payment to CMAR, indicating in writing the reasons for refusing to recommend final payment, in which case CMAR shall make the necessary corrections and complete the Work and all remaining services, and resubmit the Application for Payment.
- C. Notice of Acceptability of the Work—In support of its recommendation of payment of the final Application for Payment, Owner's Advisor, with Engineer's express approval, will also give written notice to Owner and CMAR that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.08.
- D. Completion of Work—The Work is complete, subject to surviving obligations, when it is ready for final payment as established by the Owner's Advisor's written recommendation of final payment and issuance of Notice of Acceptability of the Work.
- E. Final Payment Becomes Due—Upon receipt from Owner's Advisor of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Owner's Advisor for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to CMAR within 30 days of Owner's receipt of the final Application for Payment from Owner's Advisor.

15.08 Waiver of Claims

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by CMAR, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.
- B. The acceptance of final payment by CMAR will constitute a waiver by CMAR of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim or appealed under the provisions of Article 17.

15.09 Correction Period

- A. Scheduled Correction Period Inspection—Within one month before the end of the Contract's correction period, CMAR will participate in an inspection of the Work with the Owner, Owner's Advisor, and Engineer to ascertain whether any portion of the Work or the repair of

any damage to the Site or adjacent areas is defective and therefore subject to correction by CMAR.

- B. If within one year after the date of Substantial Completion, or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents, Owner gives CMAR written notice that any Work has been found to be defective, whether as a result of the scheduled correction period inspection or otherwise, or that CMAR's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect CMAR shall promptly, without cost to Owner and in accordance with Owner's written instructions:
1. return to the Site with Owner, Owner's Advisor and Engineer to inspect any apparent or discovered defects in the Work, or unrepaired damage to the Site or adjacent areas;
 2. consult with Owner's Advisor and Engineer regarding recommendations as to replacement or correction of such defective Work, or the repair of any damage;
 3. correct the defective repairs to the Site or such adjacent areas;
 4. correct such defective Work;
 5. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
 6. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- C. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.20.B.
- D. If, after receipt of a notice of defect within 60 days and within the correction period, CMAR does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. CMAR shall pay all costs, losses, and damages, including but not limited to all fees and charges of construction managers, engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or relating to such correction or repair or such removal and replacement, including but not limited to all costs of repair or replacement of work of others. CMAR's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- E. In special circumstances where a particular Item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that Item may start to run from an earlier date if so provided in the Specifications.
- F. Where defective Work, and damage to other Work resulting therefrom, has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- G. CMAR's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16—SUSPENSION AND TERMINATION

16.01 Owner May Suspend CMAR Services or Work

- A. At any time and without cause, Owner may suspend the CMAR Services or the Work, or any portion thereof, for a period of not more than 90 consecutive days by written notice to CMAR and Owner's Advisor. Such notice will fix the date on which CMAR Services or Work will be resumed. CMAR shall resume the CMAR Services or Work on the date so fixed. CMAR shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. With respect to a suspension of the Work, any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 Owner May Terminate for Cause

- A. The occurrence of any one or more of the following events will constitute a default by CMAR and justify termination for cause:
1. CMAR's persistent failure to perform the Work in accordance with the Contract Documents, including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule;
 2. Failure of CMAR to perform or otherwise to comply with a material term of the Contract Documents;
 3. CMAR's disregard of Laws or Regulations of any public body having jurisdiction; or
 4. CMAR's repeated disregard of the authority of Owner, Owner's Advisor or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving CMAR and any surety 10 days' written notice that Owner is considering a declaration that CMAR is in default and termination of the Contract, Owner may proceed to:
1. declare CMAR to be in default, and give CMAR, and any surety, written notice that the Contract is terminated; and
 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude CMAR from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid CMAR but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if CMAR within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, CMAR shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and

damages, including but not limited to all fees and charges of Owner's Advisors, engineers, architects, attorneys, and other professionals, sustained by Owner, such excess will be paid to CMAR. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, CMAR shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Owner's Advisor as to their reasonableness and, when so approved by Owner's Advisor, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where CMAR's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against CMAR then existing or which may thereafter accrue, or any rights or remedies of Owner against CMAR or any surety under any payment bond or performance bond. Any retention or payment of money due CMAR by Owner will not release CMAR from liability.
- G. If and to the extent that CMAR has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 Owner May Terminate for Convenience

- A. Upon 7 days' written notice to CMAR and Owner's Advisor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, CMAR shall be paid for without duplication of any items:
 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. CMAR shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 CMAR May Stop Work or Terminate

- A. If, through no act or fault of CMAR, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Owner's Advisor fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay CMAR any sum finally determined to be due, then CMAR may, upon 7 days' written notice to Owner and Owner's Advisor, and provided Owner or Owner's Advisor do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Owner's Advisor has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay CMAR any sum finally determined to be due, CMAR may, 7 days after written notice to Owner and Owner's Advisor, stop the Work

until payment is made of all such amounts due CMAR, including interest thereon. The provisions of this paragraph are not intended to preclude CMAR from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CMAR's stopping the Work as permitted by this paragraph.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 Methods and Procedures

- A. Disputes Subject to Final Resolution—The following disputed matters are subject to final resolution under the provisions of this article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
 - 2. Disputes between Owner and CMAR concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. Final Resolution of Disputes—For any dispute subject to resolution under this article, Owner or CMAR may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18—MISCELLANEOUS

18.01 Giving Notice

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Owner's Advisor, CMAR, or Engineer when required, it will be deemed to have been validly given only if delivered:
 - 1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
 - 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 - 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 Computation of Times

- A. When any period is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 Cumulative Remedies

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 Limitation of Damages

- A. With respect to Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner, Owner's Advisor, nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to CMAR for any claims, costs, losses, or damages sustained by CMAR on or in connection with any other project or anticipated project.

18.05 No Waiver

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

18.06 Survival of Obligations

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of CMAR.

18.07 Controlling Law

- A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 Assignment of Contract

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent, except to the extent that the effect of this restriction may be limited by law, and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 Successors and Assigns

- A. Owner and CMAR each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 Headings

- A. Article and Paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

Prepared By



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SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

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SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

These Supplementary Conditions amend or supplement EJCDC® CMAR-700, Standard General Conditions of the Construction Manager at Risk Contract (2023, with Gwinnett County DWR Modifications **06-29-23**). The General Conditions remain in full force and effect except as amended.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix “SC” added: for example, “Paragraph SC-4.05” references modifications to General Conditions Paragraph 4.05.

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

SC-1.01 *Definitions*

SC-1.01.A.25 Add the following sentence to end of paragraph:

- A. Consultant referenced in RP003-23 and RP016-23 is equivalent to the Engineer defined herein.

SC-1.01.A.29 Add the following sentence to end of paragraph:

- A. Owner designates the Director of the Gwinnett County Department of Water Resources, or their designee, to exercise all Owner authority identified in these contract Documents, except that of approval and execution of change orders.

SC-1.01.A.37 Add the following sentence to the end of paragraph:

- A. Owner’s Agent reference in RP003-23 is equivalent to the Owner’s Advisor defined herein.

ARTICLE 2—PRELIMINARY MATTERS

SC-2.02 *Copies of Documents*

SC-2.02 Delete Paragraph 2.02.A in its entirety and insert the following in its place:

- A. Owner will furnish to Contractor printed or hard copies of the Contract Documents and the executed Contract Agreement upon request at the cost of reproduction. Electronic copies will also be provided upon request.

ARTICLE 3—CONTRACT DOCUMENTS—INTENT, REQUIREMENTS, REUSE

SC-3.01 Delete Paragraph 3.01.C in its entirety.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

SC-4.05 *Delays in CMAR’s Progress*

SC-4.05.C.2 Add the following paragraphs to the end of Paragraph 4.05.C.2:

- a. If the basis exists for an extension of time in accordance with Paragraphs 4.05.A and 4.05.C.2 of the General Conditions, an extension of time on the basis of weather may be granted only for the number of Weather Delay Days in excess of the number of days listed as the Standard Baseline for that month.
- b. The Owner has reviewed weather data available from the National Oceanic and Atmospheric Administration (NOAA) and determined a Standard Baseline of average climatic range for Gwinnett County, Georgia. Standard Baseline is as follows:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
14	14	10	7	6	3	4	2	2	3	5	9

- c. Standard Baseline shall be regarded as the normal and anticipatable number of calendar days for each month during which construction activity shall be expected to be prevented and/or suspended by cause of adverse weather. Suspension of construction activity for the number of days each month, as listed in the Standard Baseline, is included in the Work and is not eligible for extension of Contract Time.
- d. Adverse weather is defined as the occurrence of one or more of the following conditions, which prevents exterior construction activity or access to the site within twenty-four (24) hours:
 - 1) Precipitation (rain, snow, or ice) in excess of one-tenth of an inch (0.10”) liquid measure,
 - 2) Temperatures which do not rise above 32 degrees F by 10:00 a.m., local time,
 - 3) Temperatures which do not rise above that specified for the day’s construction activity by 10:00 a.m., local time, if any is specified,
 - 4) Sustained wind in excess of twenty-five (25) m.p.h.
 - 5) Standing snow in excess of one inch (1.00”).
- e. Adverse weather may include, if appropriate, “dry-out” or “mud” days:
 - 1) For rain days above the Standard Baseline
 - 2) Only if there is a hindrance to site access or site work, such as excavation, backfill, and footings; and
 - 3) At a rate no greater than one (1) make-up day for each day, or consecutive days, of rain beyond the Standard Baseline that total one inch (1.00”) or more, liquid measure, unless specifically recommended otherwise by the Engineer.
- f. A Weather Delay Day may be counted if adverse weather prevents work on the project for fifty percent (50%) or more of the Contractor’s scheduled work day, including a weekend day(s), if Contractor has approved, scheduled construction activity that day.

- g. Contractor shall take into account that certain construction activities are more affected by adverse weather and seasonal conditions than other activities, and that “dry-out” or “mud” days are not eligible to be counted as Weather Delay Day until the Standard Baseline is exceeded. Hence, Contractor should allow for an appropriate number of additional days associated with the Standard Baseline days in which such applicable construction activities are expected to be prevented and suspended. If the project includes construction of a building, no extension will be made for days of adverse weather occurring after building is “dried in”.
- h. Submit daily jobsite logs showing which, and to what extent, construction activities have been affected by weather on a monthly basis.
- i. To support claim for time extension, submit actual weather data obtained from nearest NOAA weather station, or other independently verified source approved by Owner’s representative at beginning of the project.
- j. Standard Baseline data provided in Paragraph 12.03.C.2, when documenting actual delays due to adverse weather in excess of the average climatic range.
- k. Organize claim and documentation to facilitate evaluation on a basis of calendar month periods, and submit in accordance with the procedures for Claims established in Articles 4.05 and 12.01 of the General Conditions.
- l. If an extension of the Contract Times is appropriate, it shall be implemented in accordance with the provisions of Articles 9.07, 11.01, 11.02, and 11.08 of the General Conditions.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

SC-5.03 Subsurface and Physical Conditions

SC-5.03 Add the following new paragraphs immediately after Paragraph 5.03.D:

- E. The following report of explorations and tests of subsurface conditions at or adjacent to the Site.
 - 1. Report dated January 2023, prepared by WSP USA Environment & Infrastructure Inc., entitled “Report of Preliminary Geotechnical Exploration, FWHWRC Biosolids Dryer Project.” The “technical data” contained in such report is geotechnical data. The observations and recommendations may be used as a qualitative reference.

SC-5.06 Hazardous Environmental Conditions

SC-5.06 Add the following new paragraphs immediately after Paragraph 5.06.A.3:

- 4. The following report is known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site.
 - a. Report dated December 2022, prepared by Hazen and Sawyer, PC, entitled “F. Wayne Hill Water Resources Center Biosolids Dryer Project Environmental Review and Planning Document.”

ARTICLE 6—BONDS AND INSURANCE**SC-6.01** *Performance, Payment, and Other Bonds*

Add the following paragraphs immediately after Paragraph 6.01.C:

1. Required Performance Bond Form—The performance bond that CMAR furnishes will be in the form of EJCDC® C-610, Performance Bond (2018).
2. Required Payment Bond Form—The payment bond that CMAR furnishes will be in the form of EJCDC® C-615, Payment Bond (2018).
3. Required Warranty Bond Form – The warranty bond that CMAR furnishes will be in the form of EJCDC® C-612, Payment Bond (2018).

Add the following paragraphs immediately after Paragraph 6.01.B:

1. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.09.A of the General Conditions is hereby revised to be 2 years after Substantial Completion.
2. After Substantial Completion, CMAR shall furnish a warranty bond issued in the form of EJCDC® C-612, Warranty Bond (2018). The warranty bond must be in a bond amount of 5 percent of the final Contract Price. The warranty bond period will extend to a date 2 years after Substantial Completion of the Work. CMAR shall deliver the fully executed warranty bond to Owner prior to or with the final application for payment.
3. The warranty bond must be issued by the same surety that issues the performance bond required under Paragraph 6.01.A of the General Conditions.

6.03 *CMAR's Insurance*

SC-6.03 Supplement Paragraph 6.03 with the following provisions after Paragraph 6.03.C:

- D. The limits of liability for the insurance required by 6.03 of the General Conditions shall provide coverage specified in the Owner's Insurance Requirements, included in this RPO16-23, or greater where required by Laws and Regulations.

6.04 *Builder's Risk and Other Property Insurance*

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions:

- F. Builder's Risk Requirements—The builder's risk insurance must:
 1. be written on a builder's risk "all risk" policy form that at a minimum includes insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment stored and in transit, and must not exclude the coverage of the following perils: fire; windstorm; hail; flood; earthquake, volcanic activity, and other earth movement; lightning; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; and water damage, other than that caused by flood.

- a. Such policy will include an exception that results in coverage for ensuing losses from physical damage or loss with respect to any defective workmanship, methods, design, or materials exclusions.
 - b. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake, volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance will be provided through other insurance policies acceptable to Owner and CMAR.
2. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
 3. cover expenses incurred in the repair or replacement of any insured property, including but not limited to fees and charges of contractors, owners representatives, engineers, and architects.
 4. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site, but not including property stored at the premises of a manufacturer or Supplier.
 5. extend to cover damage or loss to insured property while in transit.
 6. allow for the waiver of the insurer's subrogation rights, as set forth in this Contract.
 7. allow for partial occupancy or use by Owner by endorsement, and without cancellation or lapse of coverage.
 8. include performance/hot testing and start-up, if applicable.
 9. be maintained in effect until the Work is complete, as set forth in Paragraph 15.07.D of the General Conditions, or until written confirmation of Owner's procurement of property insurance following Substantial Completion, whichever occurs first.
 10. include as named insureds the Owner, Owner's Advisor, CMAR, Subcontractors of every tier, and any other individuals or entities required by this Contract to be insured under such builder's risk policy. For purposes of Paragraphs 6.04, 6.05, and 6.06 of the General Conditions, and this and all other corresponding Supplementary Conditions, the parties required to be insured will be referred to collectively as "insureds."
 11. The party responsible for purchasing and maintaining the builder's risk insurance is responsible for insurable losses in excess of the coverage limits. To avoid such losses, such responsible party will:

- a. from time to time as needed during the term of the Contract, increase the builder's risk policy limits to adequate levels based on estimated replacement value, as a reimbursable expense.

ARTICLE 7—CMAR'S RESPONSIBILITIES

7.06 *Labor; Working Hours*

SC-7.06 Add the following new subparagraph immediately after Paragraph 7.06.D:

"1. Regular working hours will be 7:00 AM to 5:00 PM."

B. Amend the first and second sentences of Paragraph 7.03.C to state "...all Work at the Site must be performed during the hours between 7:00 AM to 5:00 PM, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday without the written approval of the F. Wayne Hill WRC Superintendent."

C. Add the following new paragraphs immediately after Paragraph 7.06.D:

"E. CMAR shall be responsible for the cost of any overtime pay or other expense incurred by the Owner for OA's or Engineer's services, including but not limited to, construction observation services, occasioned by the performance of Work on Saturday, Sunday, any legal holiday, or as overtime on any regular work day. If CMAR is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under Article 15.

F. Owner's legal holidays are New Year's Day, Martin Luther King Jr. Day, Presidents Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, and Christmas Day."

7.13 *Taxes*

SC-7.13 Add a new paragraph immediately after Paragraph 7.13.A:

"B. Owner is exempt from payment of sales and compensating use taxes of the State of Georgia and of cities and counties thereof on all materials to be incorporated into the Work.

1. Owner will furnish the required certificates of tax exemption to CMAR for use in the purchase of supplies and materials to be incorporated into the Work.
2. Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by CMAR, or to supplies or materials not incorporated into the Work.

7.16 *Safety and Protection*

SC 7.16 Delete the second sentence of Paragraph 7.16.G.

SC 7.16K Add a new paragraph immediately after Paragraph 7.16J:

"K. Contractor's Plan for Safety Precautions and Programs

1. Before any Work at the site is started, Contractor shall have prepared Contractor's written plan for Project-specific safety precautions and programs, complete with respect to procedures and actions that the Contractor intends Contractor and all

others as provided in Paragraphs 7.16.A and 7.16.B, to follow in order for Contractor and all others to comply with all applicable Laws and Regulations. Contractor's plan for safety precautions and programs shall have been approved and endorsed by Contractor's designated safety representative required in Paragraph 7.16.B.

2. Contractor shall revise Contractor's plan for safety precautions and programs at appropriate times to reflect changes in construction conditions, the Work, Contractor's means, methods, techniques, sequences and procedures of construction, and the requirements of paragraph 14.01.A. Contractor shall disseminate the original plan and revisions to all others indicated in Paragraphs 7.16 and 7.16.B.
3. Contractor's plan for safety precautions and programs will not require more stringent safety requirements, training or other qualifications for all others, including those specified in Paragraph 14.01.A and their employees, than Contractor sets forth for comparable activity and responsibility of Contractor, Subcontractors, and Suppliers and their respective employees."

ARTICLE 15—PAYMENTS TO CMAR; SET OFFS; COMPLETION; CORRECTION PERIOD

15.02 *Progress Payments*

SC-15.02.B.2 Following this Paragraph add the following:

- a. "Other documentation" shall be accepted only if a written price quote from the vendor is submitted with the Application for Payment and the bill of sale and/or invoice stating that the actual amount paid by the Contractor is submitted within 30 days of the Application for Payment.

15.04 *Substantial Completion*

SC-15.04 Add the following new Paragraph 15.04.B:

"If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by OA and Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, will be paid by CMAR to Owner. If CMAR does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under this Article 15."

15.09 *Correction Period*

SC-15.09 Add the following new Paragraph 15.09.H:

- H. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.09.A of the General Conditions is hereby revised to be the number of years set forth in SC-6.01.B.1.

ARTICLE 18—MISCELLANEOUS

SC-18.09 After 18.09 add the following:

SC-17.10 *Delinquent Contractors*

- A. The Owner shall not pay any claim, debt, demand or account whatsoever to any person firm or corporation who is in arrears to the Owner for taxes. The Owner shall be entitled to a counterclaim and offset for any such debt in the amount of taxes in arrears, and no assignment or transfer of such debt after the taxes become due shall affect the right of the Owner to offset any taxes owed against said debt.

**GWINNETT COUNTY
DEPARTMENT OF FINANCIAL SERVICES – PURCHASING DIVISION
GENERAL INSTRUCTIONS FOR VENDORS, TERMS AND CONDITIONS**

*****ATTENTION*****

FAILURE TO RETURN THE FOLLOWING DOCUMENTS MAY RESULT IN SUBMITTAL BEING DEEMED NON-RESPONSIVE AND AUTOMATIC REJECTION. THE COUNTY SHALL BE THE SOLE DETERMINANT OF TECHNICALITY VS. NON-RESPONSIVE SUBMITTAL:

1. FAILURE TO USE COUNTY QUOTE/BID/FEE SCHEDULE.
2. FAILURE TO RETURN OR ACKNOWLEDGE APPLICABLE COMPLIANCE/SPECIFICATION SHEETS.
3. FAILURE TO RETURN OR ACKNOWLEDGE APPLICABLE ADDENDA.
4. FAILURE TO PROVIDE INFORMATION ON ALTERNATES OR EQUIVALENTS.
5. FAILURE TO PROVIDE BID BOND, WHEN REQUIRED, WILL RESULT IN SUBMITTAL BEING DEEMED NON-RESPONSIVE AND AUTOMATIC REJECTION. BID BONDS ARE NOT REQUIRED ON ALL SOLICITATIONS. BOND REQUIREMENTS ARE CLEARLY STATED ON THE INVITATION PAGE. IF CLARIFICATION IS NEEDED, CONTACT THE PURCHASING ASSOCIATE LISTED IN THE INVITATION. **IF BONDS ARE REQUIRED, FORMS WILL BE PROVIDED IN THIS SOLICITATION DOCUMENT.**
6. FAILURE TO PROVIDE CONTRACTOR AFFIDAVIT AND AGREEMENT, WHEN REQUIRED, MAY RESULT IN SUBMITTAL BEING DEEMED NON-RESPONSIVE AND REJECTED. THE CONTRACTOR AFFIDAVIT AND AGREEMENT IS NOT REQUIRED ON ALL SOLICITATIONS. IF CLARIFICATION IS NEEDED, CONTACT THE PURCHASING ASSOCIATE LISTED IN THE INVITATION.
7. FAILURE TO PROVIDE AN ETHICS AFFIDAVIT WHEN REQUIRED, MAY RESULT IN SUBMITTAL BEING DEEMED NON-RESPONSIVE AND REJECTED. THE ETHICS AFFIDAVIT IS REQUIRED ON ALL FORMAL SOLICITATIONS OVER \$100,000.00. IF CLARIFICATION IS NEEDED, CONTACT THE PURCHASING ASSOCIATE LISTED IN THE INVITATION.

I. PREPARATION OF SUBMITTAL

- A. Each vendor shall examine the drawings, specifications, schedule, and all instructions. Failure to do so will be at the vendor's risk, as the vendor will be held accountable for their submittal.
- B. Each vendor shall furnish all information required by the solicitation form or document. Each vendor shall sign the submittal and print or type his or her name on the quote/bid/fee schedule. The person signing the submittal should initial erasures or other changes. An authorized agent of the vendor must sign the submittal.
- C. Fee schedule pricing should have only two decimal places unless otherwise stated. In the event of a calculation error in total price, the unit pricing prevails.
- D. Except for solicitations for the sale of real property, individuals, firms, and businesses seeking an award of a Gwinnett County contract may not initiate or continue any verbal or written communications regarding a solicitation with any County officer, elected official, employee, or other County representative other than the Purchasing Associate named in the solicitation between the date of the issuance of the solicitation and the date of the final award. The Purchasing Director will review violations. If determined that such communication has compromised the competitive process, the offer submitted by the individual, firm or business may be disqualified from consideration for award. Solicitations for the sale of real property may allow for verbal or written communications with the appropriate Gwinnett County representative.
- E. Sample contracts (if pertinent) are attached. These do NOT have to be filled out with the submittal but are contained for informational purposes only. If awarded, the successful vendor(s) will be required to execute these documents prior to County execution.
- F. Effective July 1, 2013 and in accordance with the Georgia Illegal Immigration Reform Enhancements for 2013, an original signed, notarized and fully completed Contractor Affidavit and Agreement should be included with vendor's submittal, if the solicitation is for the physical performance of services for all labor or service contract(s) that exceed \$2,499.99 (except for services performed by an individual who is licensed pursuant to Title 26, Title 43, or the State Bar of Georgia). Failure to provide the Contractor Affidavit and Agreement with your submittal may result in being deemed non-responsive and automatic rejection.

II. DELIVERY

- A. Each vendor should state time of proposed delivery of goods or services.
- B. Words such as "immediate," "as soon as possible," etc. should not be used. The known earliest date or the minimum number of calendar days required after receipt of order (delivery A.R.O.) should be stated. If calendar days are used, include Saturday, Sunday, and holidays in the number.

III. EXPLANATION TO VENDORS

Any explanation desired by a vendor regarding the meaning or interpretation of the solicitation, drawings, specifications, etc. must be requested by the question cutoff deadline stated in the solicitation for a reply to reach all vendors before the deadline of the solicitation. Any information given to a prospective vendor concerning a solicitation will be furnished to all prospective vendors as an addendum to the solicitation if such information is necessary or if the lack of such information would be prejudicial to uninformed vendors. The written solicitation documents

supersede any verbal or written communications between the parties. Receipt of addenda should be acknowledged in the submittal. **It is the vendor's responsibility to ensure they have all applicable addenda prior to their submittal.** This may be accomplished by contacting the assigned Purchasing Associate prior to the submittal or visiting the Gwinnett County website.

IV. SUBMISSION OF FORMAL OFFERS/SUBMITTALS

- A. Formal bid and proposal submittals shall be enclosed in a sealed package or envelope, addressed to the Gwinnett County Purchasing Division with the name of the vendor, the date and hour of opening and the solicitation number on the face of the package or envelope. Facsimile or emailed submittals will not be considered. Any addenda should be enclosed in the sealed envelopes as well.
- B. ADD/DEDUCT: Add or deduct amounts indicated on the outside of the envelope are allowed and will be applied to the lump sum amount. Amount shall be clearly stated and should be initialed by an authorized representative.
- C. Samples of items, when required, must be submitted within the time specified and, unless otherwise specified by the County, at no expense to the County. Unless otherwise specified, samples will be returned at the vendor's request and expense, if items are not destroyed by testing.
- D. Items offered must meet required specifications and must be of a quality that will adequately serve the use and purpose for which intended.
- E. Full identification of each item submitted, including brand name, model, catalog number, etc. must be furnished to identify exactly what the vendor is offering. Manufacturer's literature may be furnished but vendor should not submit excessive marketing material.
- F. The vendor must certify that items to be furnished are new and that the quality has not deteriorated to impair its usefulness.
- G. Unsigned submittals will not be considered except in cases where it is enclosed with other documents that have been signed. The County will determine acceptability in these cases.
- H. Gwinnett County is exempt from federal excise tax and Georgia sales tax regarding goods and services purchased directly by Gwinnett County. Vendors are responsible for federal excise tax and sales tax, including taxes for materials incorporated in county construction projects. Vendors should contact the State of Georgia Sales Tax Division for additional information. Agreements were there is a cost-plus mark-up, mark-up will not be paid on taxes.
- I. Information submitted by a vendor in the solicitation process shall be subject to disclosure after the public opening in accordance with the Georgia Open Records Act.

V. WITHDRAWAL DUE TO ERRORS

Vendors must give Gwinnett County Purchasing Division written notice within two (2) business days of completion of the opening stating that they wish to withdraw their submittal without penalty for an obvious clerical or calculation error. Submittal may be withdrawn from consideration if the

price was substantially lower than the other submittals due solely to a mistake therein, provided pricing was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake and was due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of the submittal. The unintentional arithmetic error or omission can be clearly proven through inspection of the original work papers, documents, and materials used in preparing the submittal sought to be withdrawn. The vendor's original work papers shall be the sole acceptable evidence of error and mistake if a vendor elects to withdraw their submittal. If a quote or bid submittal is withdrawn under the authority of this provision, the lowest remaining responsive offer shall be deemed to be low bid.

No vendor who is permitted to withdraw their submittal shall, for compensation, supply any material or labor or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid or proposal was submitted.

Vendors who fail to request withdrawal by the required forty-eight (48) hours may automatically forfeit bid bond if a bond was required. Bid may not be withdrawn otherwise.

Withdrawal is not automatically granted and will be allowed solely at Gwinnett County's discretion.

VI. TESTING AND INSPECTION

Since tests may require several days for completion, the County reserves the right to use a portion of any supplies before the results of the tests are determined. Cost of inspections and tests of any item that fails to meet the specifications, shall be borne by the vendor.

VII. F.O.B. POINT

Unless otherwise stated in the request for invitation and any resulting contract, or unless qualified by the vendor, items shall be shipped F.O.B. Destination, Freight Prepaid and Allowed. The seller shall retain title for the risk of transportation, including the filing for loss or damages. The invoice covering the items is not payable until items are delivered and the contract of carriage has been completed. Unless the F.O.B. clause states otherwise, the seller assumes transportation and related charges either by payment or allowance.

VIII. PATENT INDEMNITY

The vendor guarantees to hold the County, its agents, officers, or employees harmless from liability of any nature or kind for use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, articles or appliances furnished or used in the performance of the contract, for which the vendor is not the patentee, assignee, or licensee.

IX. BID BONDS AND PAYMENT AND PERFORMANCE BONDS (IF REQUIRED, FORMS WILL BE PROVIDED IN THIS DOCUMENT)

A five percent (5%) bid bond, a one hundred percent (100%) performance bond, and a one hundred percent (100%) payment bond must be furnished to Gwinnett County for any solicitation as required in the solicitation package or document. **Failure to submit a bid bond with the proper rating will result in submittal being deemed non-responsive.** Bonding company must be authorized to do business in Georgia by the Georgia Insurance Commission, listed in the Department of the Treasury's publication of companies holding certificates of authority as acceptable surety on Federal bonds and as acceptable reinsuring companies, and have an A.M. Best rating as stated in the insurance requirement of the solicitation. **The bid bond, payment bond, and performance bond must have the proper A.M. Best rating as stated in the solicitation document.**

X. DISCOUNTS

- A. Time payment discounts may be considered in arriving at net prices and in award of solicitations. Offers of discounts for payment within ten (10) days following the end of the month are preferred.
- B. In connection with any discount offered, time will be computed from the date of delivery and acceptance at destination, or from the date correct invoice or voucher is received, whichever is the later date. Payment is deemed to be made for the purpose of earning the discount on the date of the County check.

XI. AWARD

- A. Award will be made to either the highest scoring firm (for proposals) or the lowest responsive and responsible vendor (for quotes/bids). The quality of the articles to be supplied, their conformity with the specifications, their suitability to the requirements of the County, and the delivery terms will be taken into consideration in making the award. The County may make such investigations as it deems necessary to determine the ability of the vendor to perform, and the vendor shall furnish to the County all such information and data for this purpose as the County may request. The County reserves the right to reject any submittal if the evidence submitted by, or investigation of such vendor fails to satisfy the County that such vendor is properly qualified to carry out the obligations of the contract.
 - B. The County reserves the right to reject or accept any or all offers and to waive technicalities, informalities and minor irregularities in the submittals received.
 - C. The County reserves the right to make an award as deemed in its best interest, which may include awarding to a single vendor or multiple vendors; or to award the whole solicitation agreement, only part of the agreement, or none of the agreement, based on its sole discretion of its best interest.
- D. In the event of proposal scores rounded to the nearest whole number result in a tie score, the award will be based on lowest cost.
- E. If proposal negotiations with the highest ranked firm are unsuccessful, the County may then negotiate with the second ranked firm and so on until a satisfactory agreement has been reached.

XII. DELIVERY FAILURES

Failure of a vendor to deliver within the time specified or within reasonable time as interpreted by the Purchasing Director, or failure to make replacement of rejected articles/services when so requested, immediately or as directed by the Purchasing Director, shall constitute authority for the Purchasing Director to purchase in the open market articles/services of comparable grade to replace the articles/services rejected or not delivered. On all such purchases, the vendor shall reimburse the County within a reasonable time specified by the Purchasing Director for any expense incurred in excess of the contract prices, or the County shall have the right to deduct such amount from monies owed the defaulting vendor. Alternatively, the County may penalize the vendor one percent (1%) per day for a period of up to ten (10) days for each day that delivery or replacement is late. Should public necessity demand it, the County reserves the right to use or

consume articles/services delivered which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Director.

XIII. COUNTY FURNISHED PROPERTY

No material, labor or facilities will be furnished by the County unless so provided in the solicitation package.

XIV. REJECTION OF SUBMITTALS

Failure to observe any of the instructions or conditions in this solicitation package may constitute grounds for rejection.

XV. CONTRACT

Each submittal is received with the understanding that the acceptance in writing by the County of the offer to furnish any or all the commodities or services described therein shall constitute a contract between the vendor and the County which shall bind the vendor on his part to furnish and deliver the articles quoted at the prices stated in accordance with the conditions of said accepted submittal. The County, on its part, may order from such vendor, except for cause beyond reasonable control, and to pay for, at the agreed prices, all articles specified and delivered.

Upon receipt of a solicitation package containing a Gwinnett County "Sample Contract" as part of the requirements, it is understood that the vendor has reviewed the documents with the understanding that Gwinnett County requires that all agreements between the parties must be entered into via this document. If any exceptions are taken to any part, each must be stated in detail and submitted as part of the vendor's submittal. If no exceptions are stated, it is assumed that the vendor fully agrees to the provisions contained in the "Sample Contract" in its entirety.

Any Consultant as defined in O.C.G.A. §36-80-28 that is engaged to develop or draft specifications/requirements or serve in a consultative role during the procurement process for any County procurement method, by entering into such an arrangement or executing a contract, the consultant agrees to abide by the current state law and: 1) Avoid any appearance of impropriety and shall follow all policies and procedures of the County, 2) Disclose to the County any material transaction or relationship pursuant to §36-80-28, that is considered a conflict of interest, any involvement in litigation or other dispute, relationship, or financial interest not disclosed in the ethics affidavit, and 3) Acknowledge that any violation or threatened violation of the agreement may cause irreparable injury to the County, entitling the County to seek injunctive relief in addition to all other legal remedies.

When the vendor has performed in accordance with the provisions of this agreement, Gwinnett County shall pay to the vendor, within thirty (30) days of receipt of any department approved payment request and based upon work completed or service provided pursuant to the contract, the sum so requested, less the retainage stated in this agreement, if any. If Gwinnett County fails to pay the vendor within sixty (60) days of receipt of a pay request based upon work completed or service provided pursuant to the contract, the County shall pay the vendor interest at the rate of ½% per month or pro rata fraction thereof, beginning the sixty-first (61st) day following receipt of pay requests. The vendor's acceptance of progress payments or final payment shall release all claims for interest on said payment.

The parties agree that this Contract shall be governed and construed in accordance with the laws of the State of Georgia.

XVI. NON-COLLUSION

Vendor declares that the submittal is not made in connection with any other vendor's submittal for the same commodity or commodities, and that the submittal is bona fide and is in all respects fair and without collusion or fraud. An affidavit of non-collusion shall be executed by each vendor. Collusion and fraud in submittal preparation shall be reported to the State of Georgia Attorney General and the United States Justice Department.

XVII. DEFAULT

The contract may be canceled or annulled by the Purchasing Director in whole or in part by written notice of default to the vendor upon non-performance or violation of contract terms. An award may be made to the next low responsive and responsible vendor, or the next highest scoring responsive and responsible proposer, or articles specified may be purchased on the open market similar to those so terminated. In either event, the defaulting vendor (or their surety) shall be liable to the County for costs to the County in excess of the defaulted contract prices; provided, however, that the vendor shall continue the performance of this contract to the extent not terminated under the provisions of this clause. Failure of the vendor to deliver materials or services within the time stipulated on their offer, unless extended in writing by the Purchasing Director, shall constitute contract default.

XVIII. TERMINATION FOR CAUSE

The County may terminate this agreement for cause upon ten days prior written notice to the vendor of the vendor's default in the performance of any term of this agreement. Such termination shall be without prejudice to any of the County's rights or remedies by law.

XIX. TERMINATION FOR CONVENIENCE

The County may terminate this agreement for its convenience at any time upon 30 days written notice to the vendor. In the event of the County's termination of this agreement for convenience, the vendor will be paid for those services actually performed. Partially completed performance of the agreement will be compensated based upon a signed statement of completion to be submitted by the vendor, which shall itemize each element of performance.

XX. SUBSTITUTIONS

Vendors offering substitutions or who are deviating from the attached specifications shall list such deviations on a separate sheet to be submitted with their offer. The absence of such a substitution list shall indicate that the vendor has taken no exception to the specifications contained herein.

XXI. INELIGIBLE VENDORS

The County may choose not to accept the offer by an individual, firm, or business who is in default on the payment of taxes, licenses, or other monies owed to the County. Additionally, vendors or persons placed on an Ineligible Source List for reasons listed in Part 6, Section II of the Gwinnett County Purchasing Ordinance shall not be eligible to provide any commodities or services to the County during the period such person remains on the Ineligible Source List.

XXII. PENDING LITIGATION

An individual, firm, or business that has litigation pending against the County, or anyone representing a firm or business in litigation against the County, not arising out of the procurement process, will be disqualified.

XXIII. OCCUPATION TAX CERTIFICATE

Each successful vendor must have a valid Gwinnett County occupation tax certificate if the vendor maintains an office within the unincorporated area of Gwinnett County. Incorporated, out of County, and out of State vendors are required to have any and all certificates necessary to do business in any town, County or municipality in the State of Georgia, or as otherwise required by County ordinance or resolution. Vendors may be required to provide evidence of valid certificates. Out of State vendors are required to have a certificate in the Georgia jurisdiction where they receive the most revenue.

XXIV. PURCHASING POLICY AND REVIEW COMMITTEE

The Purchasing Policy & Review Committee has been established to review purchasing procedures and make recommendations for changes; resolve problems regarding the purchasing process; make recommendations for standardization of commodities, schedule buying, qualified products list, annual contracts, supplier performance (Ineligible Source List), and other problems or requirements related to purchasing. The Purchasing Policy & Review Committee has authority to place vendors on the Ineligible Source List for reasons listed in Part 6, Section II of the Gwinnett County Purchasing Ordinance, for a period not to exceed three (3) years.

XXV. AMERICANS WITH DISABILITIES ACT

All vendors for Gwinnett County are required to comply with all applicable sections of the Americans with Disabilities Act (ADA) as an equal opportunity employer. In compliance with the Americans with Disabilities Act (ADA), Gwinnett County provides reasonable accommodations to permit a qualified applicant with a disability to enjoy the privileges of employment equal to those employees without disabilities. Disabled individuals must satisfy job requirements for education background, employment experience, and must be able to perform those tasks that are essential to the job with or without reasonable accommodations. Any requests for the reasonable accommodations required by individuals to fully participate in any open meeting, program or activity of Gwinnett County should be directed to the ADA Coordinator, 75 Langley Drive, Lawrenceville, Georgia 30046, 770-822-8165.

XXVI. ALTERATIONS OF SOLICITATION AND ASSOCIATED DOCUMENTS

Alterations of County documents are strictly prohibited and will result in automatic disqualification of the vendor's solicitation response. If there are "exceptions" or comments to any of the solicitation requirements or other language, then the firm may make notes to those areas, but may not materially alter any document language.

XXVII. TAX LIABILITY

Local and state governmental entities must notify vendors of their use tax liability on public works projects. Under Georgia law, private vendors are responsible for paying a use tax equal to the sales tax rate on material and equipment purchased under a governmental exemption that is incorporated into a government construction project: excluding material and equipment provided for the installation, repair, or expansion of a public water, gas, or sewer system when the property is installed for general distribution purposes. To the extent the tangible personal property maintains its character (for example, the installation of a kitchen stove), it remains tax-exempt. However, if the installation incorporates the tangible personal property into realty (for example, the installation of sheetrock), it becomes taxable to the private vendor. See O.C.G.A. §48-8-3(2) and O.C.G.A. §48-8-63.

XXVIII. STATE AND FEDERAL LAW REGARDING WORKER VERIFICATION

Effective July 1, 2013 State Law requires that all who enter into a contract for the physical

performance of services for all labor or service contract(s) that exceed \$2,499.99 (except for services performed by an individual who is licensed pursuant to Title 26, Title 43, or the State Bar of Georgia) and that all who enter into a contract for public works as defined by O.C.G.A. §36-91-2(12) for the County, must satisfy the Illegal Immigration Reform Enhancements for 2013 in conjunction with the Federal Immigration Reform and Control Act (IRCA) of 1986, in all manner, and such are conditions of the contract.

The Purchasing Division Director with the assistance of the Internal Audit Division shall be authorized to conduct random audits of a vendor's or subcontractors' compliance with the Illegal Immigration Reform Enhancements for 2013 and the rules and regulations of the Georgia Department of Labor. The vendor and subcontractors shall retain all documents and records of its compliance for a period of five (5) years following completion of the contract or shall abide by the current time requirements at the time of the contract. This requirement shall apply to all contracts for all public works, labor or service contracts that exceed \$2,499.99 except for services performed by an individual who is licensed pursuant to Title 26, Title 43, or the State Bar of Georgia.

Whenever it appears that a vendor's or subcontractor's records are not sufficient to verify the work eligibility of any individual in the employment of such vendor or subcontractor, the Purchasing Director shall report same to the Department of Homeland Security and may result in termination of the contract if it is determined at any time during the work that the vendor or subcontractor is no longer in compliance with worker verification.

By submitting an offer to the County, vendor agrees that, in the event the vendor employs or contracts with any subcontractor(s) in connection with the covered contract, the vendor will secure from the subcontractor(s) such subcontractor(s)' indication of the employee-number category applicable to the subcontractor, as well as attestation(s) from such subcontractor(s) that they follow the Illegal Immigration Reform Enhancements for 2013 in conjunction with all federal requirements. Original signed, notarized Subcontractor Affidavits and Agreements must be maintained by the vendor awarded the contract.

A vendor's or subcontractor's failure to participate in the federal work authorization program as defined above shall be subject to termination of the contract. A vendor's failure to follow Gwinnett County's instruction to terminate a subcontractor that is not participating in the federal work authorization program may be subject to termination of the contract.

XXIX. SOLID WASTE ORDINANCE

No individual, partnership, corporation, or other entity shall engage in solid waste handling except in such a manner as to conform to and comply with the current Gwinnett County Solid Waste Ordinance and all other applicable local, state and federal legislation, rules, regulation, and orders.

XXX. GENERAL CONTRACTORS LICENSE

Effective July 1, 2008: **All General Contractors must have a current valid license from the State Licensing Board for Residential and General Contractors, unless specifically exempted from holding such license pursuant to Georgia law (O.C.G.A. §43-41-17).**

XXXI. PRODUCTS MANUFACTURED IN GEORGIA

When contracting for or purchasing supplies, materials, equipment, or agricultural products that exceeds \$100,000.00, excluding beverages for immediate consumption, Gwinnett County shall give preference as far as may be reasonable and practicable to such supplies, materials, equipment, and agricultural products as may be manufactured or produced in this state. Such preference shall not sacrifice quality. Gwinnett County Board of Commissioners shall consider, among other factors, information submitted by the vendor which may include the vendor's estimate of the multiplier effect on gross state domestic product and the effect on public revenues of the state

and the effect on public revenues of political subdivisions resulting from acceptance of an offer to sell Georgia manufactured or produced goods as opposed to out-of-state manufactured or produced goods. Any such estimates shall be in writing. **(O.C.G.A. §36-84-1)**.

XXXII. INDEMNIFICATION

To the fullest extent permitted by law, the vendor shall, at his sole cost and expense, indemnify, defend, satisfy all judgments, and hold harmless the County, its commissioners, officers, agents, and employees from and against all claims, damages, actions, judgments, costs, penalties, liabilities, losses and expenses, including, but not limited to, attorney's fees arising out of or resulting from the performance of the work, provided that any such claim, damage, action, judgment, cost, penalty, liability, loss or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by the negligent acts, errors by any act or omission of the vendor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless whether such claim is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any of the rights or obligations of indemnity which would otherwise exist as to any party or person described in this agreement. In any and all claims against the County, its commissioners, officers, agents, and employees by any employee of the vendor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation contained herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the vendor or any subcontractor under Worker's Compensation Acts, disability benefit acts, or other employee benefit acts.

Vendor shall also indemnify, hold harmless, insure, and defend the County for damages, losses, or expenses to the extent caused by or resulting from the negligence, recklessness, or intentionally wrongful conduct of the vendor or other persons employed or utilized by the vendor in the performance of a contract that utilizes survey services.

XXXIII. CODE OF ETHICS

Vendors shall disclose under oath the name of all elected officials whom it employs or who have a direct or indirect pecuniary interest in the business entity, its affiliates, or its subcontractors. (This shall not apply to informal purchases as defined by the Purchasing Ordinance.) The vendor shall execute a Code of Ethics affidavit. Failure to submit the affidavit during the procurement process shall render the offer non-responsive.

Any business entity holding a contract with Gwinnett County that after execution of the contract or issuance of the purchase order employs, subcontracts with, or transfers a direct or indirect pecuniary interest in the business entity to an elected official shall within five (5) days disclose such fact in writing under oath to the Clerk of the Board of Commissioners. Failure to comply, or vendors submitting false information or omitting material information shall be referred to the Purchasing Policy & Review Committee for action pursuant to the Purchasing Ordinance or to the District Attorney for possible criminal prosecution. Note: See Gwinnett County Code of Ethics Ordinance EO2011, Sec. 54-33. The ordinance is available to view in its entirety at www.gwinnettcountry.com.

XXXIV. ELECTRONIC PAYMENT

Vendors accepting procurements should select one of Gwinnett County's electronic payment

options.

- A. A vendor may select ePayables payment process which allows acceptance of Gwinnett County's virtual credit card as payment for outstanding invoices. The authorized vendor representative must send an email to: vendorelectronicpayment@gwinnettcountry.com and indicate the desire to enroll in Gwinnett County's virtual credit card payment process.
- B. A vendor may select Direct Deposit payment process and the payment will be deposited directly into an account at their designated financial institution. To securely enroll in Direct Deposit, either access your online [Vendor Login and Registration](#) on the County's web site and update the requested information on the Direct Deposit tab or mail a [Direct Deposit Authorization Agreement](#) form.

The County will send a Payment Advice notification via email for both payment types. For more information about Electronic Payments, please visit the Gwinnett County Treasury Division page or click here -> [Gwinnett County Electronic Payments](#).

DIRECTIONS TO GJAC BUILDING FROM I-85

Take I-85 to Georgia Highway 316 (Lawrenceville/Athens exit). Exit Highway 120 (Lawrenceville/Duluth exit) and turn right. At seventh traffic light, turn right onto Langley Drive. Cross Highway 29 through the traffic light and proceed through the roundabout. Visitors can either proceed to the front parking area on the left or to the parking deck behind the building. Click [here](#) for additional information about parking. The Purchasing Division is located on the second floor, West Wing.