

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 **The City of Lee's Summit, Missouri** ("Owner") and **David E. Ross Construction Co** ("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:

Jacomo Pump Stations and Force mains
Project Number: P-299

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

- 2.01 [Intentionally Deleted]
- 2.02 The Owner has retained **HDR Engineering, Inc** (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, Phase 1 Preconstruction 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. [Intentionally Deleted]
 - 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 [Intentionally Deleted]
- 3.03 Authorization to Provide CMAR Services
- A. CMAR is authorized by the execution of this Agreement to begin providing Preconstruction Services set forth in Exhibit A, Phase I Preconstruction Scope of CMAR Services, as of the Effective Date of the Contract.
 - B. [Intentionally Deleted]

- C. All other CMAR Services, including Additional Preconstruction Services, Additional Procurement Services, and Special Services, if any, must be authorized by Owner.
- 3.04 Compensation for Basic CMAR Services
- A. [Intentionally Deleted]
 - B. Preconstruction Services—Owner will compensate CMAR for Basic Preconstruction Services, provided per Exhibit A—Phase I Preconstruction Scope of CMAR Services, for each hour earned at the Billing Rates. Such compensation is subject to the not-to-exceed limit shown for Price for CMAR Basic Preconstruction Services.
 - C. [Intentionally Deleted]
 - D. [Intentionally Deleted]
 - E. [Intentionally Deleted]
- 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.
- 3.06 Compensation for Special Services
- A. Owner will compensate CMAR for Special Services pursuant to the specific compensation terms in the Contract Amendment establishing and authorizing such Special Services.
- 3.07 Payment for CMAR Services
- A. Preparation and Submittal of Invoices
 - 1. CMAR will prepare and submit invoices for CMAR Services to Owner on a monthly basis in a format acceptable to Owner.
 - 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. [Intentionally Deleted]
 - 2. Payment for CMAR Services compensated using Hourly Billing Rate basis:
 - a. Owner shall pay CMAR an amount equal to the cumulative hours charged to the Project by CMAR's personnel times Hourly Billing Rates for each applicable Classification.
 - b. Hourly Billing Rates include all of the following—salaries and wages paid to personnel in each billing classification; the cost of customary and statutory benefits; general and administrative overhead; non-project operating costs; and operating margin or profit.
 - c. Hourly Billing Rates are to include all expenses related to providing CMAR Services including the following categories:

- 1) Transportation and subsistence;
 - 2) Technology charges and data charges associated with the use of computers and tablets;
 - 3) Printing and reproduction of documents;
 - 4) Health and safety related equipment and training; and
 - 5) Special equipment used for CMAR Services.
3. 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 **[30]** days after receiving an approved invoice from the Engineer.
 2. If Owner fails to make any payment due CMAR for CMAR Services within 30 days after receipt of CMAR's invoice, then:
 - a. Amounts due CMAR will be increased at the rate of 1.5% 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.
 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;
 - 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.

- 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 \$1000;
 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 startup 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.

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.
- 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 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 (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 Engineer, 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 Engineer 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 . 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 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, in a format acceptable to Owner, together with appropriate documentation. Payments from the CMAR Contingency Allowance will be recorded in the Application for Payment.
- J. Any unused CMAR Contingency remaining at Substantial Completion of the Project shall be treated as Savings.
- K. Unused CMAR Contingency on Work remaining at Final Completion of the Work shall be treated as Savings.

ARTICLE 9—WORK AUTHORIZATIONS

9.01 General Provisions Regarding Work Authorizations

- A. Work Authorizations will be based on Work Packages prepared by Owner 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 will issue each Work Authorization using the Work Authorization form provided by the Owner.
- 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 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
 - 1. [Intentionally Deleted]
 - 2. [Intentionally Deleted]
 - 3. [Intentionally Deleted]
 - 4. [Intentionally Deleted]
- 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.
- 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 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. [Intentionally Deleted]
- B. Owner will revise the Budget to incorporate Change Orders or authorized allocation of Owner's 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. [Intentionally Deleted]

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 Owner's Project Team (Owner and Engineer, 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 A and B:
 - 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.

11.07 Savings

- A. Where a GMP has been selected by the Parties in accordance with this Article, if the sum of the actual Cost of the Work and the CMAR'S Fee is less than the GMP, as such GMP may have been adjusted over the course of the Project, the net positive difference ("savings") shall be shared as follows: 0% to CMAR and 100% to the Owner. In such event, savings shall be calculated and paid as part of the Final Payment under Article 13.03 and Paragraph 15.07 of the General Conditions, with the understanding that to the extent the CMAR incurs costs after Final Completion that would have been payable to the CMAR as a Cost of the Work, the Parties shall recalculate the savings considering the costs so incurred, and the CMAR shall be paid by the Owner accordingly. Unless otherwise agreed to in writing by the Owner and the CMAR, unused CMAR Contingency remaining at Final Completion of the Work shall be disbursed in accordance with Article 8.

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 Owner-directed changes in the scope of the Work. 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 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 on or about the **15th** 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) [Intentionally Deleted]
 - b. **95** percent of cost of materials and equipment not incorporated in the Work, with the balance being retainage.
 - 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 **100** percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.02.E of the General Conditions, and less **125** percent of Engineer’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 as specified by Missouri State Statute, RSMo 8.960.

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.

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 [Intentionally Deleted]

15.02 Contract Times—Days

- A. The Work will be substantially complete within **[number]** days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within **[number]** days after the date when the Contract Times commence to run.
- B. The number of days in which the Work will be substantially complete, and in which the Work will be completed and ready for final payment, will be set out in a Contract Amendment and comply with provisions of Article 15. Completion dates for specified portions of the Work, if applicable, may be set out in Work Authorizations or Change Orders.

15.03 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 \$[number] for each 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 \$[number] for each 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 15.05 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.

B. [Intentionally Deleted]

15.04 Special Damages

- A. CMAR shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of CMAR's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for construction management, engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 15.02 for Substantial Completion, as duly adjusted pursuant to the Contract, until the Work is substantially complete.
- B. After CMAR achieves Substantial Completion, if CMAR shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, CMAR shall reimburse Owner for the actual costs reasonably incurred by Owner for construction management, engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 15.02 for Work to be completed and ready for final payment, as duly adjusted pursuant to the Contract, until the Work is completed and ready for final payment.
- C. The special damages imposed in this Paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

15.05 Milestones and Associated Damages

- A. Work required to be complete Project Milestone(s) will be included in separate Work Authorization(s).
- B. [Intentionally Deleted]
- C. [Intentionally Deleted]

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, Phase 1 Preconstruction Scope of CMAR Services;
 - b. State of Missouri Public Works Requirements – City and State required provisions for wage rates and prevailing wage – **TO BE ADDED BY ADDENDUM**
 - 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 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 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.
- B. CMAR certifies that neither it nor its principals are presently debarred or suspended by any Federal Department or agency, including listing in the U.S. General Services Administration's List of Parties Excluded from Federal Procurement or Non-Procurement programs; or if the amount of this contract is equal to or in excess of one hundred thousand dollars (\$100,000), that neither it nor its principals nor its subcontractors receiving sub-awards equal to the amount of this contract is presently disbarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal Department, agency or provision of law. If the Subcontractor is unable to certify any of the statements in this certification, Subcontractor must provide an explanation accordingly.
- C. CMAR certifies that all on-site employees have completed the standard OSHA Construction Safety Program, as required and outlined in Section 292.675 RSMo.
- D. Pursuant to Section 34.600, RSMo., and to the fullest extent permitted by law, CMAR certifies that it is not engaged in a boycott of Israel as of the Effective Date of this Agreement, and agrees for the duration of this Agreement to not engage in a boycott of Israel.
- E. Pursuant to Section 285.530, RSMo. and to the fullest extent permitted by law, CMAR must (1) provide by sworn affidavit affirmation that it does not knowingly employ any person who is an unauthorized alien and (2) provide documentation affirming its enrollment and participation in a federal work authorization program with respect to the employees working in connection with this contract. The required documentation affirming enrollment must be from the federal work authorization program provider. Letter from respondent reciting compliance is not sufficient. When applicable, solicitations shall require the signed and notarized Work Authorization Affidavit and the electronic signature page from the E-Verify program prior to the issuance of a 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)

By: _____
(individual's signature)

Date: _____
(date signed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Attest: _____
(individual's signature)

Title: _____
(typed or printed)

Address for giving notices:

Designated Representative:

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Address:

Phone: _____

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.)

(typed or printed name of organization)

By: _____
(individual's signature)

Date: _____
(date signed)

Name: _____
(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)

Title: _____
(typed or printed)

Address for giving notices:

Designated Representative:

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Address:

Phone: _____

Email: _____

License No.: _____
(where applicable)

State: _____

Exhibit A

Phase I Preconstruction Scope of CMAR Services

Phase I Preconstruction Scope of CMAR Services

The City of Lee's Summit (Owner) has elected to contract with a construction manager at-risk (CMAR) to utilize a collaborative delivery method for Jacomo Pump Stations (Project). The CMAR will engage in the Project at the 30% Design stage. The goal is to create a Project Team which will include City of Lee's Summit (Owner), the Design Engineer, and CMAR to work seamlessly to successfully design and construct the proposed Project.

The purpose of this coordinated approach is to identify and mitigate risks, increase efficiency in the Project schedule and sequencing, enhance constructability and cost estimating, streamline Project execution, and maintain adequate operations during construction while also maintaining quality and cost control throughout the process.

Project History and Need for Project:

The Owner is coordinating the development of an approximately 1,100 acre tract of land that is located in the Jacomo watershed. The Site Location is generally bounded by Woods Chapel Road to the north, I-470 to the west, Colbern Road to the south, and Lake Jacomo/Fleming Park to the east. In preparation of the development of this site, the Owner has elected to construct two new wastewater pump stations to pump wastewater generated throughout the development to a neighboring sewer shed.

Project Elements:

The project elements determined by the Design Engineer and Owner are detailed in the attached Basis of Design Report (BODR) and the 30% Design Drawings. The Design Improvements include but are not limited to the following:

Todd George Pump Station:

- ~5 MGD Pump Station – 3 firm / 1 standby configuration.
- Control Building (24'x14')
- Natural gas back-up generator
- 16" Forcemain that is ~5,000 linear feet.
- Excess Flow Holding Basin (1.4 million gallons)
- On-site sewer interceptor

Strother Road Pump Station:

- ~2.5 MGD Pump Station – 2 firm / 1 standby configuration.
- Control Building (24'x14')
- Natural gas back-up generator
- 12" Forcemain that is ~11,000 linear feet.
- Excess Flow Holding Basin (0.7 million gallons)
- On-site sewer interceptor

Section 1—Project Management

CMAR will:

1. Participate in a Project kick-off meeting.
2. Within fourteen (14) days of the Notice to Proceed (NTP), provide a Draft Project Management Plan (PMP) that describes the CMARs approach to preconstruction services. Owner will provide review comments to CMAR within seven (7) days of receipt of the draft PMP. The CMAR will submit the FINAL PMP within seven (7) days of receipt of comments from Owner. The format and level of detail for all documents, tools, and processes utilized shall be acceptable to the Owner. The plan will specifically address:
 - a. Team organization
 - b. Communication protocols, document management and control, decision process, and dispute resolution matrix including:
 - i. Draft procedures for the tracking, review, and approval of submittals, shop drawings, pay requests, etc.
 - ii. Draft procedures for management of shop drawing preparation for permanent equipment and materials to be incorporated into the Project.
 - iii. Approach for approval process and who has the authority to approve and make decisions for the Owner, the Design Engineer, and the CMAR.
 - c. Proposed Cost Model format and organization. The agreed-upon Cost Model format and organization will be used as the basis for the Baseline Cost Model, interim updates, updates at each design milestone, and the Construction Price Proposal
 - d. Preconstruction schedule
 - e. Proposed schedule format and structure
 - f. Proposed format and process for risk management (e.g., format of risk register, process, etc.) including approach to managing and tracking contingency and allowance usage on the Project. This includes regular updates on levels of

contingency and allowances remaining as well as the process and approvals required for using contingency or allowances

- g. Proposed format and structure for four (4) shared project logs maintained by the CMAR throughout the design. Each log shall be updated and included with the monthly progress report and at each design milestone. The process shall outline how the Owner and Design Engineer provide input, review, and comment. The logs are as follows:

- i. *Design Evolution Log* – The purpose of this log is to document and track design evolution items, including value engineering proposals, constructability reviews, coordination comments, and other design-related input that may influence the project's scope, cost, or schedule.
- ii. *Cost and Schedule Trend Log* – The purpose of this log is to track project cost and schedule and changes to each as the design evolves. The log shall include the baseline cost, revised cost(s) as changes occur, and a summary of the causes of changes in cost and schedule over time.
- iii. *Action Item Log* – The purpose of this log is to track all project decisions, information requests, deliverables, and change events, including potential and approved change orders. The log shall include responsible parties, due dates, and current status for each action item.
- iv. *Risk Register* – The purpose of the Risk Register is to identify, assess, and manage project risks across all phases, including but not limited to design, procurement/market conditions, permitting, interfaces, safety, startup, and commissioning. As a minimum, the log shall include the risk(s), potential mitigation action(s), responsible party/allocation of the risk, probability of risk occurrence, severity of risk occurrence, and, for items for which risk is allocated to the CMAR, the calculation and justification for contingency and any components of risk management in the projects costs(s), if applicable.

- h. BIM/technology standards and processes for collaborating
- i. Table of contents for:
- Procurement Plan
 - Site Logistics Plan
 - Safety Plan

- Quality Management Plan
3. Participate in weekly or as agreed:
 - a. Project check in meetings between Owner, CMAR and Engineer to review actions and schedule, 0.5 hr per meeting or as agreed. Select meetings may include Developer's Engineer or Representative.
 - b. Design discipline meetings between Owner, CMAR, and Engineer to review design progress and input needs from the CMAR, 1.0 hr per meeting or as agreed. Select meetings may include Developer's Engineer or Representative.
 4. Participate in monthly or as agreed:
 - a. Monthly project progress meetings between the management personnel of Owner, CMAR, and Engineer. Owner and CMAR to agree on monthly progress meeting agenda and content during the kickoff meeting. Select meetings may include Developer's Engineer or Representative.
 - b. Risk review workshop(s) covering the development of the risk register and approach to managing risk for the project
 5. Submit monthly invoices; report planned versus actual progress monthly.

Deliverables:

- Project Kick-Off Meeting Agenda, PDF format.
- Project Kick-Off Meeting Minutes, PDF format.
- Draft PMP, PDF format (plus native format for Project Logs).
- Final PMP, PDF format (plus native format for Project Logs).
- Monthly Invoices, PDF format.

Section 2—Design Support

CMAR will:

1. Consult with, advise, and provide recommendations to Owner and the Design Engineer on all aspects of the planning, design, and proposed construction.
2. Participate in onboarding workshop(s) led by Design Engineers to review current state of design deliverables. Assume 1 workshop at 30% design and participation by CMAR major subcontractors (if part of the CMAR team) as appropriate to review the following:
 - a. Project overview
 - b. Discipline-by-discipline review
 - c. Linear Project components
 - d. Preliminary Project sequencing/schedule, including major constraints
 - e. Procurement items, assessment of long lead item(s)

- f. Known constructability issues, including major operational interface requirements
 - g. Existing risk register
 - h. Existing cost estimate(s)
- 3. Review the 30% design documents within 30 days after receipt of the Notice to Proceed and review the 60% design documents within 45 days of the design package being issued to the CMAR. Provide a comprehensive and consolidated set of written review comments (comments may be identified and discussed during weekly meetings and will be consolidated by the CMAR prior to completion of the review timeline above).
 - a. Identify any perceived issues, improvements, or similar that, in addition to other concepts affecting delivery of the project, may affect construction and constructability, safety, quality, cost, schedule, maintenance of traffic, and engagement with public. In the form of alternatives or value engineering, include/identify any potential cost- and schedule-saving concepts.
 - i. Results are to be presented in a format (report, sketches, drawings, Bluebeam markup, PowerPoint presentation, etc.) that allows for Owner and the Design Engineer to readily evaluate proposed alternatives based on their potential Project cost and time savings. Supporting information shall be provided sufficiently in advance of meetings requiring Owner's decision that Owner, with the Engineer, is able to make a review of the proposed result(s).
 - b. Provide list of additional design details needed to complete the Project per the Owner's schedule requirements.
 - c. Provide information on material availability, long-lead material procurement needs, and recommendations on equipment and/or packaging to advance construction. Discuss any anticipated supply chain issues.
 - d. Make recommendations regarding the division of the work to facilitate bids and proposals, if required, for the major elements of the work.
 - e. Advise the Owner regarding ways to gain efficiency in Project delivery.
 - f. 30% review comments must address and provide guidance for all "CMAR Collaboration Points" identified in the Basis of Design Report by the Design Engineer.
- 4. Identify, plan, and perform field investigations necessary to validate existing site conditions, identify additional design details, if needed, to carry out construction. These activities shall include:
 - a. Utility potholing and verification
 - b. As-built investigations and assessment of existing conditions

- c. Surveying and topographic verification as needed for construction, including constructability reviews
 - d. Other items as determined by the CMAR.
 - e. CMAR shall coordinate with the Owner and Design Engineer to plan and schedule these activities to minimize disruption to ongoing operations and ensure safety and data accuracy.
5. Coordinate with Developer Engineer, as needed, to support design and to coordinate this work with the overall development area work. The CMAR shall actively participate in coordination activities necessary to deliver the project in conjunction with the overall development area, including but not limited to scheduling, cost, access, utilities, infrastructure, road crossings, shared amenities, and phasing requirement.
6. Due to ongoing supply chain challenges and extended lead times for materials and equipment, an Early Release Package could be developed for major equipment such as pipe, generator, pumps, variable frequency drives, and transformers. The package would be based on the 60% Design Submittal and coordinated with the Integrated CPM Schedule. Prior to the 60 % Design the CMAR shall provide recommendations on potential Early Release Packages items to address supply chain challenges and extended lead times for materials and equipment. Within ten (10) business days following the 60% Design Submittal, the CMAR, Owner, and Design Consultant will conduct a workshop to confirm the scope, technical basis, procurement approach, and schedule for the Early Release Package. Following the workshop, the CMAR will proceed in accordance with the Owner's written authorization.
7. Provide final review, confirming incorporation of prior comments, at 90% and 100% design milestones. Compile comments, if any, in a tabular format acceptable to the Owner.
8. Any change(s) to the design presented by the CMAR at the 90% or 100% design milestone will require a consolidated log that includes all qualitative and quantitative (cost benefit analysis) assessment(s), provided by the CMAR to the Owner, indicating the benefit(s) of the change(s) to the Owner. The Owner will review and respond with acceptance or rejection of the change(s) within fourteen (14) days of receipt of the log from the CMAR.

Deliverables:

- 30% Review Comments, in format of choice: excel, PDF formats acceptable.
- 60% Review Comments, in format of choice: excel, PDF formats acceptable.
- 90% Review Comments, in format of choice: excel, PDF formats acceptable.
- 100% Review Comments, in format of choice: excel, PDF formats acceptable.

Section 3—Cost Model

CMAR contractor will develop and maintain the Project Cost Model using industry standard cost estimating software.

1. Within 30 days after receipt of the Notice to Proceed, develop and submit a Baseline Project Cost Model based on the 30% design documents. The Baseline Project Cost Model shall identify all Project tasks and develop a preliminary work breakdown structure (WBS) needed to complete the Project and estimate the costs, duration, and sequence of tasks to the Project Team. Include the following with Baseline Project Cost Model submission:
 - a. Draft Site Logistics Plan
 - b. Draft Construction Management Plan
 - c. Draft Construction Emergency Response Plan
 - d. Draft Safety Management Plan
 - e. Draft Quality Management Plan
 - f. Draft Environmental Management Plan detailing programs for a stormwater pollution prevention plan and handling other environmental issues (dust, on-site chemicals and fuel, etc.) if required to comply with permits and regulations applicable to the Project
 - g. Draft Subcontractor Management Plan
2. After submission of the Baseline Project Cost Model, hold a review workshop with Owner and Design Engineer to review CMAR's observations and recommendations. Attendees include at a minimum: Project Manager, Preconstruction Manager, Lead Estimator, and Construction Manager, along with any other necessary personnel.
3. Develop and submit an updated Project Cost Model at 60%, 90% and 100% design milestone for formal evaluation and review by Owner and the Design Engineer. Each submission shall include updated Plans as listed above, if needed.
4. After each formal Project Cost Model submission, work with the Owner to review and reconcile comments and identify and update Project risk allocations and contingency usage.

Deliverables:

- Baseline Project Cost Model, format to be mutually agreed
- 60% Project Cost Model, format to match Baseline Project Cost Model
- 90% Project Cost Model, format to match Baseline Project Cost Model
- 100% Project Cost Model, format to match Baseline Project Cost Model

Section 4—Schedule

CMAR will:

1. Within 30 days after receipt of the notice to proceed, develop and submit a Baseline Critical Path Method (CPM) Schedule. Incorporate permit application submittals, issuance, and compliance into baseline schedule. Identify all critical path activities, including long-lead equipment procurement items, if any, and provide recommendations to Owner and the Design Engineer to optimize schedule and prevent or minimize Project delivery impacts, including consideration of early Work packages, if required by the Project schedule. CMAR shall demonstrate and justify basis for all early Work or phased construction price proposals.
 - a. CMAR shall identify major decision points by the Owner, if required, in order for the CMAR to achieve the submitted schedule.
2. Submit updated CPM Schedule at 60%, 90% and 100% milestones for formal evaluation and review by Owner.

Deliverables:

- Baseline CPM Schedule, in PDF format.
- 60% CPM Schedule, in PDF format.
- 90% CPM Schedule, in PDF format
- 100% CPM Schedule, in PDF format

Section 5—Procurement Plan

CMAR will:

1. Within 15 days of NTP, submit Draft Procurement and Buyout Plan, addressing the following:
 - a. Describe approach for packaging the Work and identify Work that the CMAR intends to self-perform. Identify and recommend which Work, if any, should be procured through value-based competitive selections, in lieu of low-bid selection.
 - b. Describe approach for procurement of project materials, including any long lead items.
 - c. Describe necessary input and decision points for the Owner including factory inspection(s) and spare parts
 - d. All procurement procedures shall be in compliance with Owner procurement rules as defined in the contract.
2. Submit updated Procurement and Buyout Plan at 60%, 90%, and 100% milestones.

3. Actively "premarket" the Project with local trade subcontractors, equipment vendors, and material suppliers to increase awareness and interest in submitting competitive bids and quotes. Execute prequalification activities where appropriate.

Deliverables:

- Draft Procurement and Buyout Plan in format of choice, PDF format, with supporting Excel files provided as needed.
- Updated Procurement and Buyout Plan in format of choice, 60%, PDF format, with supporting Excel files provided as needed.
- If required, updated Procurement and Buyout Plan in format of choice, 90%, PDF format, with supporting Excel files provided as needed.
- If required, updated Procurement and Buyout Plan in format of choice, 100%, PDF format, with supporting Excel files provided as needed.

EXHIBIT B – [INTENTIONALLY DELETED]

Exhibit B

**EJCDC® CMAR-525, Agreement between Owner and Construction Manager at Risk.
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