SECOND AMENDMENT TO CONSTRUCTION MANAGER AT RISK CONTRACT NO. 2023-17.005 FOR CONSTRUCTION SERVICES CONTRACT PHASE II

This *Second Amendment to Construction Manager at Risk Contract No. 2023-17.005* for *Construction Services Contract Phase II, Work Assignment #2024-24FM* ("Second Amendment"), is made and entered into by and between the City of North Port, Florida, a municipal corporation of the State of Florida ("City") and Willis A. Smith Construction, Inc., a Florida for profit, registered to do business in the State of Florida, whose principal place of business is 5001 Lakewood Ranch Boulevard, Sarasota, FL 34240 ("CMAR").

RECITALS

WHEREAS, the City has divided the CMAR services into two phases: (1) Phase I: CMAR for Preconstruction Services, and (2) Phase II: CMAR for Construction Services; and

WHEREAS, on or around May 23, 2023, the parties entered into Construction Manager at Risk Contract No. 2023-17.005 for phase one construction manager at risk for preconstruction services related to City of North Port projects (the "Original Contract"); and

WHEREAS, the preconstruction services generally include design support, coordination, project scheduling, design and equipment evaluation and recommendations, project scheduling and costs, and the guaranteed maximum price process; and

WHEREAS, the parties mutually desire to amend the Original Contract to provide for phase two construction manager at risk services for construction services; and

WHEREAS, the construction services generally include managing, subcontracting, and completing the construction within a certain time and at a certain cost and the guaranteed maximum price; and

WHEREAS, this Second Amendment for Work Assignment #2024-24FM includes the CMAR services for the repairs associated with the Hurricane Ian damages, identified in the Halliwell Construction Services damage report dated November 14, 2022, and identified in the Rostan damage report titled Fire Station 85; and

WHEREAS, the CMAR has reviewed the services to be provided under this Second Amendment and is qualified, willing, and able to provide and perform these services in accordance with the terms of this Second Amendment; and

WHEREAS, the construction phase, as authorized, must encompass all services contemplated by the RFP, and must be authorized solely by written amendment to the Original Contract.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree that the Original Contract is amended as follows, with all other terms in the Original Contract remaining unchanged and in full force and effect:

1. EFFECT OF AMENDMENT/EFFECTIVE DATE

A. The parties ratify the terms and conditions of the Original Contract not inconsistent with this Second Amendment, all of which are incorporated by reference as if set forth fully herein. This Second Amendment modifies the sections of the Original Contract as identified herein. Where a section of the Original Contract is not identified, the terms as they appear in the Original Contract remain and apply.

B. All references to this "Contract" in the Original Contract and this Second Amendment mean and include both the Original Contract and this Second Amendment.

C. This Second Amendment is effective as of the date the last party approves or executes it, as applicable, (the "Effective Date") and will continue as otherwise provided in this Contract.

2. ORIGINAL CONTRACT – SECTION XIX. SUPPLEMENTAL DOCUMENTS

Section XIX. – Supplemental Documents of the Original Contract is amended to add the following supplemental documents for this Second Amendment:

Exhibit D	Preconstruction Work Assignment #2024-24FM Exhibit A Preconstruction Scope Exhibit B Preconstruction Fee Schedule and Proposal Exhibit C Preconstruction Schedule
Exhibit E	Phase II Scope of Services
Exhibit F	Phase II Project Schedule
Exhibit G	Phase II Fee Schedule –GMP Proposal and Summary
Exhibit H	Phase II List of Construction Documents
Exhibit I	Phase II Key Personnel
Exhibit J	Phase II Clarifications and Exclusions

The following Attachments are supplemental documents as attached and incorporated fully as part of this Contract.

_X__ATTACHMENT 1.1 – GENERAL INSURANCE

_X__ ATTACHMENT 1.2 – PROFESSIONAL LIABILITY INSURANCE

___ ATTACHMENT 1.3 – ENVIRONMENTAL AND POLLUTION LIABILITY INSURANCE

___ ATTACHMENT 1.4 – BUILDER'S RISK

___ ATTACHMENT 2.1 – GENERAL INDEMNITY, DEFENSE, AND RELEASE

_X_ ATTACHMENT 2.2 – CONSTRUCTION RELATED SERVICES INDEMNITY, DEFENSE, & RELEASE

_X_ ATTACHMENT 3 – FEMA PROVISIONS

___ ATTACHMENT 4 – DAVIS BACON ACT – MINIMUM WAGE RATE

___ ATTACHMENT 5 – CERTIFICATION REGARDING LOBBYING

___ ATTACHMENT 6 – NON-COLLUSIVE AFFIDAVIT

___ ATTACHMENT 7 – CONFLICT OF INTEREST FORM

___ ATTACHMENT 8 – PUBLIC ENTITY CRIME INFORMATION

___ ATTACHMENT 9 – DRUG-FREE WORKPLACE FORM

___ ATTACHMENT 10 – SWORN STATEMENT: THE FLORIDA TRENCH SAFETY ACT

___ ATTACHMENT 11 – SCRUTINIZED COMPANY CERTIFICATION FORM

___ ATTACHMENT 12 – VENDOR'S CERTIFICATION FOR E-VERIFY SYSTEM

__ ATTACHMENT 13 – PERFORMANCE AND PAYMENT BOND REQUIREMENTS

__ ATTACHMENT 14 – PERFORMANCE AND PAYMENT BOND

_X_ ATTACHMENT 15 – CERTIFICATION REGARDING DEBARMENT, AND SUSPENSION

_X_ ATTACHMENT 16 – CONTRACT CHANGES

_X_ ATTACHMENT 17 – SANCTIONS AND PENALTIES

_X_ ATTACHMENT 18 – TERMINATION FOR CONVENIENCE

IN WITNESS WHEREOF, the parties have executed this Second Amendment as follows.

(This space intentionally left blank; signature pages follow)

CONSTRUCTION MANAGER AT RISK
WILLIS A. SMITH CONSTRUCTION, INC.

By: _____
Name: Brett Raymaker
Title: V.P.

ACKNOWLEDGEMENT

STATE OF Florida
COUNTY OF Sarasota

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this 13 day of June 2024, by Brett Raymaker (name), as Vice President (title) for Willis A. Smith Construction, Inc (entity).

_____
Notary Public

X Personally Known OR ___ Produced Identification
Type of Identification Produced _____

LAURAL MICHELLE POSENAU
Notary Public - State of Florida
Commission # HH 076457
My Comm. Expires Apr 21, 2025
Bonded through National Notary Assn.

Approved by the City Commission of the City of North Port, Florida on _____, 2024.

CITY OF NORTH PORT, FLORIDA

_____
A. JEROME FLETCHER II, ICMA-CM, MPA
CITY MANAGER

ATTEST

_____
HEATHER FAUST, MMC
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS

_____
AMBER L. SLAYTON, B.C.S.
CITY ATTORNEY

EXHIBIT D TO SECOND AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.005

WORK ASSIGNMENT #2024-24FM

City of North Port
PURCHASING
Office: 941.429.7170
Fax: 941.429.7173
Email: purchasing@northportfl.gov

WORK ASSIGNMENT

CONSULTANT	Willis A. Smith Construction, Inc.
CONTINUING CONTRACT NO. & TITLE	Construction Manager at Risk No. 2023-17.005

THIS WORK ASSIGNMENT

WORK ASSIGNMENT #	2024-24FM
SHORT TITLE	Hurricane Ian Damage Repairs - Fire Station 85
DATE SUBMITTED	1/19/2024
AMOUNT (LUMP SUM)	$4,048.00
SCHEDULED COMPLETION	GMP 30 days from date of PO

CONTRACT AND BUDGET OVERVIEW FOR FISCAL YEAR 20 24

DEPARTMENT

TOTAL OF PREVIOUS ASSIGNMENTS	$5,000.00
THIS WORK ASSIGNMENT	$4,048.00
TOTAL WORK ASSIGNMENTS	$9,048.00
ACCOUNT NO/PROJECT NO	110-2222-522.46-04 / IAN22

All work assignments require City Manager approval. In presenting this work assignment, it is understood that:

1. All associated supporting documentation and justification for this work assignment is attached hereto.
2. Unless specified herein, work does not involve watercraft, boat piers and/or other activities requiring additional workers compensation endorsements.
3. Contact or involvement with hazardous materials is not anticipated, should hazardous materials be encountered, the City shall be informed.
4. THIS WORK ASSIGNMENT SHALL NOT EXCEED $500,000 & ANY RESULTING CONSTRCUTION SHALL NOT EXCEED $4,000,000 PER FLORIDA STATUTE 287.055 AS AMENDED.

SUBMITTED BY:

CONSULTANT	**DATE** 1/22/24

APPROVED BY:

Scott Titus Digitally signed by Scott Titus Date: 2024.02.07 10:05:37 -05'00'		Heidi B. Hallas Digitally signed by Heidi B. Hallas Date: 2024.02.26 15:38:24 -05'00'	
DEPARTMENT DIRECTOR	**DATE**	**BUDGET ADMINISTRATOR**	**DATE**
Ginny Duyn Digitally signed by Ginny Duyn Date: 2024.02.13 10:42:17 -05'00'		Irina Kukharenko Digitally signed by Irina Kukharenko Date: 2024.02.27 14:45:18 -05'00'	
PURCHASING	**DATE**	**FINANCE DIRECTOR**	**DATE**
N/A			2/27/24
ASSISTANT CITY MANAGER	**DATE**	**CITY MANAGER**	**DATE**

December 2023

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EXHIBIT D TO SECOND AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.005

Exhibit A – Work Assignment 2024-24FM

WORK ASSIGNMENT SCOPE
HURRICANE IAN DAMAGE REPAIRS – FIRE STATION 85

Scope:

Work associated with establishing a GMP must include remaining damages, identified in the Halliwell Construction Services damage report, dated 11/14/2022 and the damage assessment from Rostan titled Fire Station 85. Additional damages or scope of work not identified in the attached reports will be negotiated at the time of discovery and may or may not be included in the resulting GMP.

EXHIBIT D TO SECOND AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.005

Exhibit B – Work Assignment 2024-24FM

PRECONSTRUCTION FEE SCHEDULE AND PROPOSAL

PRECONSTRUCTION FEE SCHEDULE

Fixed Fee for services described in the Scope of Services:	$4,048.00
Owner's Contingency (not-to-exceed Amount), if authorized:	$0.00
TOTAL CONTRACT NOT-TO-EXCEED AMOUNT	**$4,048.00**

Notes:

1. Additional services must be authorized in writing by the City prior to performing any such services.
2. Invoicing for services rendered must be monthly.

EXHIBIT D TO SECOND AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.005

Exhibit B – Work Assignment 2024-24FM

PRECONSTRUCTION FEE SCHEDULE AND PROPOSAL

PRECONSTRUCTION PROPOSAL

WILLIS SMITH CONSTRUCTION

Fire Station 85 - FEMA WORK
City of North Port

Preconstruction Services Proposal
November 27, 2023

Line Item	Duration (Weeks)	Avg. Hours/Week	Total Hours	Cost/Hour	Total
Direct Labor Costs - Site Visit					
Project Executive	1	2	2	159	318
Project Manager	1	2	2	119	238
SUBTOTAL					$556
Direct Labor Costs - Bidding and GMP					
Project Executive	4	1	4	159	636
Project Manager	4	6	24	119	2,856
SUBTOTAL					$3,492
TOTAL Preconstruction Services					$4,048

EXHIBIT D TO SECOND AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.005

Exhibit C – Work Assignment 2024-24FM

PRECONSTRUCTION SCHEDULE

Description	Estimated Calendar Days from Notice to Proceed Completion
Provide a GMP	30 Days

EXHIBIT E TO SECOND AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.005

PHASE II SCOPE OF SERVICES

This Exhibit contains a list of provisions applicable to the Construction Phase and will supplement the other provisions of this Contract which will remain in effect during the project. This list is not exclusive and is subject to modification as mutually agreed.

1. Project Description:

Fire Station 85, located at 1308 Biscayne Blvd. suffered wind and water damage as a result of Hurricane Ian. Lighting fixtures, siding, gutter/downspout, fascia/drip edge, fencing and landscaping/irrigation will be repaired/replaced as necessary, in addition to minor repairs to other facility support systems.

The Construction Manager at Risk will be responsible for pulling permits, subcontractor coordination, delivery of warranties and site clean-up.

2. Additional Definitions:

A. Cost. Any cost associated with completing the project including cost of work as defined in this Contract, general conditions, insurance, and bonds.

B. Cost of Work. Any cost directly associated with the subcontractor work or CMAR Fee, excluding general conditions, insurances, or bonds.

C. CMAR's Contingency. A sum of money included in the GMP to cover costs and expenses of the CMAR incurred as a result of unforeseen or unanticipated events or circumstances that would normally be expected to be encountered in the construction of the Project.

D. Owner's Contingency. A sum of money included in the GMP which may be expended for the Project only with the prior written authorization of the Administrative Agent.

E. Milestone. A principal event or Work item, specified in the Construction Documents related to an intermediate completion date or time prior to Substantial Completion of all the Work.

F. Notice to Proceed. A written notice given by the City to the CMAR fixing the date on which the Project Schedule will commence to run, and on which date the Contractor will start to perform the Work under this Contract. The Notice to Proceed (NTP) will fix the dates of milestones, where applicable, Substantial Completion, and Final Completion of this Contract, based on the stipulated Project Schedule.

G. Shop Drawings. All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for the CMAR and submitted by the CMAR to illustrate some portion of the Work.

H. Site. The location identified in the Construction Documents where the work is to be performed along with such additional lands as may be identified by the City for purposes such as staging areas or material storage.

I. Underground Facilities. All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other facilities or attachments, and encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone, or other communications, cable television, water, wastewater, reuse water, storm water, other liquids or chemicals, or traffic or other control systems.

3. Licenses

The CMAR must be licensed throughout the term of this Contract to do business as a Certified General Contractor with the State of Florida.

4. Notice to Proceed

The services to be rendered by the CMAR will commence upon the CMAR's receipt of the written Notice to Proceed from the Administrative Agent. Within five (5) calendar days after issuance of the Notice to Proceed, the CMAR must deliver to the Administrative Agent a detailed Project Schedule. This Project Schedule must also include the calendar dates for the delivery or completion of all documents reports, or other data, as required by this Contract.

5. Concealed or Unknown Conditions

If the CMAR encounters conditions at the Site which are: (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Construction Documents; or (2) unanticipated physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Construction Documents, then the CMAR must promptly provide notice to the Administrative Agent and Design Consultant before conditions are disturbed and within five (5) days after first observance of the conditions.

6. CMAR Contingency

A. It is understood that the CMAR may include a contingency line item within the GMP. The CMAR may transfer amounts among the CMAR's contingency and other line items in the GMP, only as authorized by a Field Change Order (FCO) as defined in this Contract, which will not be unreasonably withheld, as pricing becomes more certain, and to cover cost overruns. If the scope of the CMAR Contingency expenditure is consistent with the schedule of values (Cost of Work) in this Contract, then FCO will be authorized. Each monthly report and application for payment must contain a CMAR's Contingency report including any item that the CMAR has requested to charge to the CMAR's Contingency.

(1) General Conditions Staffing is a fixed line item within the GMP. The CMAR's Contingency must not be utilized for increasing General Conditions staffing.

(2) It is understood that the Owner's Contingency line item is within the GMP and may be transferred into line items at the City's sole discretion and approval, subject to the CMAR's rights and responsibilities defined herein. Each monthly report and application for payment must contain an Owner's Contingency report including any item that the City has authorized to change into the work.

7. CMAR Staff

The CMAR must maintain an adequate and competent construction management staff and may associate with other qualified firms for the purpose of rendering services, without additional cost to the City and upon prior approval by the Administrative Agent.

8. Lines of Authority

A. The CMAR will establish and maintain lines of authority for its personnel and must provide this information to the Administrative Agent and all other affected parties such as the code inspectors of the governmental authority having jurisdiction, the Trade Contractors and the Design Consultant, to provide general direction of the work and progress of the Project and Trade Contractors.

B. The CMAR must provide the Administrative Agent and all Trade Contractors with bid package definitions for the construction of the Project, containing beginning and finishing dates, their respective responsibilities for performance and the relationships of their work with respect to Trade Contractors and suppliers. The CMAR must also continue to provide current scheduling information and provide direction and coordination regarding Milestones, beginning and finishing dates, responsibilities for performance and the relationships of the CMAR's work to the work of its Trade Contractors and suppliers to enable them to perform their respective tasks so that the construction progresses in a smooth and efficient manner in conformance with the overall Project Schedule.

9. Project Schedule

A. The CMAR must submit an updated Project Schedule with each month's pay application. Project Schedule updates do not become incorporated into this Contract until approved in writing by the Administrative Agent. The CMAR, at its discretion, or as requested by the Administrative Agent, may submit Project Schedule updates for consideration more frequently than monthly. Additionally, upon identifying an event with the potential to impact the Project Schedule as described herein, the CMAR must prepare an updated Project Schedule reflecting the possible impact(s) and must submit the updated Project Schedule to the Administrative Agent for consideration within ten (10) days of the identification of the event.

B. The Project Schedule must include all major sequences of the construction work, material supplies, long lead procurement, Design Consultant's approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements. The CMAR will hold job-site meetings at least bi-weekly with the Project Team and once each week with the Trade Contractors and the Design Consultant as needed, or more frequently as required by work

progress, to review progress, discuss problems and their solutions, and coordinate future work with all Trade Contractors.

C. Upon acceptance and written approval by the Administrative Agent of an update Project Schedule, all prior approved Project Schedules will be deemed superseded and will not provide a basis for any claims of delay made by the CMAR.

10. Project Management Information System

A. Notwithstanding anything contained herein, it is expressly understood that the CMAR must establish and maintain, for the duration of the Project, project controls systems, including without limitation, estimating, scheduling, purchasing, cost reporting, and project engineering systems.

B. Documents and files produced by computer systems and databases used by the CMAR during the performance of this Contract will be in a format acceptable to the City and compatible with existing City systems. Current City standards for software are available from the Administrative Agent.

C. After the Notice To Proceed is delivered by the Administrative Agent, the CMAR must implement and utilize throughout the life of this Contract a project management information system (PMIS). Notwithstanding the foregoing, the Administrative Agent may modify and/or reduce the CMAR's PMIS reporting requirements specified below.

(1) The reports, documents and data to be provided will represent an assessment of the current status of the Project and of the work remaining to be accomplished and must provide a basis for identifying variances and problems and for making management decisions. An executive summary report will be furnished to the Administrative Agent along with the monthly pay request. A copy of the executive summary report will be furnished to the Design Consultant at the same time.

(2) If requested by the Administrative Agent, the CMAR will conduct a workshop for participant designated by the Administrative Agent as required to provide instruction related to the use and role of the PMIS.

(3) The PMIS must, at a minimum, include the following Monthly Narrative Reporting:

(a) Weekly Schedule Control;
(b) Cost Control and Estimating;
(c) Project Accounting;
(d) Accounting and Payment;
(e) Action Reports; and
(f) Critical Issues – Look Ahead.

D. Narrative Reporting

(1) The CMAR must prepare written reports as described below.

(2) No other PMIS Narrative Reports will be required, however, additional types of reports may be requested and required by the Administrative Agent. All reports must be in pdf format.

(3) The Monthly Narrative Report must include the following:

(4) The Monthly Narrative Report must include the following:

(a) Monthly Summary – generally provides an overview of current issues and pending decisions, future developments and expected achievements and any problems or delays including code violations found by the permitting authority.

(b) Monthly Cost Narrative – describes the current construction cost estimate status of the Project. Specific attention to amendment and Change Order status (which will also include amount, reason for change, and responsibility), claim status or potential claims will be addressed in detail.

(c) Monthly Scheduling Narrative – summarizes the status of the overall Project Schedule. This report must include an analysis of the various components of the Project Schedule, a description of the critical path and other analyses as necessary to compare planned performance with actual performance. The report must be submitted using a scheduling software system and digital program format acceptable to the Administrative Agent.

(d) Monthly Accounting Narrative – describes the current cost and payment status of the entire Project. This report must relate current encumbrances and expenditures to the budget allocations.

(e) Monthly Construction Progress Report – summarizes the work of the various Trade Contractors during Construction Phase Services. This report must include information from the weekly job-site meetings as applicable such as General Conditions, long-lead supplies, current deliveries, safety and labor relations programs, permits, construction problems and recommendations and plans for the succeeding month.

(5) Unless otherwise directed by the Administrative Agent, CMAR must submit the monthly report outlines electronically with other applicable reports by the 15th day of each month and must be current through the end of the preceding month.

11. CMAR's Key Personnel

A. The CMAR must ensure that the key personnel identified in Exhibit I - Key Personnel, will remain assigned to the project in their designated roles for the duration of the Project. Changes to the personnel identified in Exhibit I may be made subject to the written approval of the Administrative Agent.

B. The CMAR must ensure that all key personnel, support personnel and other agents are fully qualified and capable to perform their assigned tasks. At the direction of the Administrative Agent, the City may require the CMAR to remove personnel assigned at any level for the performance of work.

C. The timely performance and completion of the required services are vitally important. The CMAR must assign a Project Manager acceptable to the Administrative Agent, together with such other personnel as are necessary to assure faithful prosecution and timely delivery of services pursuant to the requirements of this Contract.

12. Solicitation of Bids (Post-GMP)

CMAR must obtain bids from all Trade Contractors necessary to successful prosecute the Work. If changes to the Project or other unforeseen circumstances require additional bids to be obtained, CMAR must adhere to the following processes:

A. The CMAR must prepare invitations for bids (or Requests for Proposal, when applicable) for the Project or any portions or phases thereof, unless otherwise directed by the Administrative Agent.

B. As part of such preparation, the CMAR will review the specifications and drawings prepared by the Design Consultant. CMAR must promptly provide written notice of any ambiguities, discrepancies, conflicts, language lacking clarity, overly restrictive requirements, and any other defects in the specifications or in the drawings known (or which should be known). The CMAR must, prior to release of the bid packages, receive confirmation from the Design Consultant that the plans and specifications are fully coordinated and must so certify to the Administrative Agent.

C. For each separate bid package and/or phase of the work, the CMAR may conduct a pre-bid conference with prospective bidders, the Design Consultant and the Administrative Agent. If questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the CMAR must transmit these to the Design Consultant and upon receiving written clarification or correction ~~in writing~~ must prepare an addendum to the bidding document and issue same to all the prospective bidders.

D. CMAR must keep costs as low as possible through aggressive use of competitive bidding procedures for all work. The CMAR will direct a well-coordinated procedure for all bid packages and, unless otherwise directed by the Administrative Agent, will obtain a minimum of three verbal quotations which accurately reflect current market pricing for all packages with an estimated value over $5,000 and under $25,000, and a minimum of three (3) written quotations which accurately reflect current market pricing for those packages with an estimated value to exceed $100,000, CMAR must, unless otherwise directed by the Administrative Agent, advertise in a newspaper of general circulation published in Sarasota and Charlotte Counties, not later than five (5) business days preceding the advertised bid due date for the specified procurement, as well as advertise in electronic media customarily used in the industry, unless otherwise directed by the Administrative Agent.

E. CMAR will assist the Design Consultant to ensure that completed bid documents used in conjunction with contract formats establish binding obligations for full performance through lump sum and unit pricing bidding within the framework of the GMP.

13. General Conditions

A. General Conditions Items will be deemed to mean provision of facilities or performance of work by the CMAR for items that do not lend themselves readily to inclusion in the permanent work of the Trade Contracts. General Conditions Items may include but are not limited to the following:

1. Temporary Facilities
Temporary offices / field offices
Sheds
Toilets, Rental Toilets
Storage
Protection
First aid and facilities
Signage, project sign
2. Temporary Utilities
Temporary Light & Power, including utility hook-up / disconnect fees
Utilities costs during construction (sanitary, sewer, electrical) including on-site trailers
Utility hook – up / disconnect Fees
Temporary Heat
Temporary Plumbing
Temporary Electrical
3. Hoist Facilities
Material Hoists
Personnel Hoists
Temporary Elevators
Scissor Lifts
Special Construction for Hoist
Safety and protection for Hoist
4. Protection and Safety
Safety Labor
Safety Materials
Fire Extinguishers
Site Fencing, barricades and safety signage
Protect Finish Work
Traffic Control
Flagmen
Protect Existing Elements
5. Cleaning

Cleaning Labor
Cleaning Materials and Equipment
Front-end Loader / Forklift
Trash Chute and Dumpsters
Rubbish Removal
Final Cleaning
Site Cleaning
6. Field Office
Laborers (related to CMAR's work)
Carpenters (related to CMAR's work)
Layout crews
Computer Systems, printers, faxes, etc.
Office Equipment & Furniture and supplies
Drawing reproduction (including bid document and specification reproduction for bidding)
Vehicles
7. Miscellaneous / General Expenses
Existing conditions surveys
Preconstruction Damage Surveys
Office Supplies
Postage & Shipping & Deliveries
Express Mail / Messenger Services
Expediting
Scheduling
Travel and Expenses
Photography and Video
Surveying
Jobsite Signs
Job Radios and Chargers
Misc. Tools and Equipment
Travel
Printing, scanning, copying, postage, paper and drawing reproduction
Blueprint / Photostat
Phone Charges
Weather Protection
Pumping
Pest Control
Ceremonies
Alcohol and Drug Testing
Progress Photos
8. Contract Closeout
Warranties administration
Punch list activities and administration

All other items necessary to properly close out the work
9. Taxes and Other
Sales and Use tax for General Condition Items

14. CMAR Fees and Cost of Work for the Project

A. The price for staffing will be included in the General Conditions. The staffing must be listed as a separate line item in the GMP, and that line item is included within the line items for the General Conditions Items. Costs for staffing include salaries and wages paid for labor in the direct employ of the CMAR under this Contract, payroll taxes, payroll insurance and fringe benefits as may be payable. The CMAR will not be permitted to utilize or transfer CMAR's or Owner's Contingency funds for the payment of any staffing costs without written approval of the Administrative Agent.

B. The Cost of the Work consists of all costs necessary incurred by the CMAR in the proper performance of the Work. Such costs must be rates not higher than the standard paid at the time of the Project except with prior consent of the Administrative Agent. Cost of the Work includes, but is not limited to, the items below, all of which are included in the GMP (unless otherwise determined by the Administrative Agent, as stated above.)

Cost of the Work Items:

(1) Payments made or obligated to be made for the costs of all materials, supplies and equipment incorporated in the Project including cost of transportation and storage thereof.

(2) Payments due to Trade Contractors from the CMAR or payments made or obligated to be made by the CMAR to Trade Contractors for the work performed pursuant to Trade Contracts under this Contract.

(3) Payments made or obligated to be made for the transportation and maintenance of all materials, equipment and supplies except those provided for in the General Conditions.

(4) Rental charges for all necessary machinery and equipment used at the site of the Project, whether rented from the CMAR or others, including installation repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, which are used in the support of a Trade Contractor's or the CMAR's own forces in the performance of the work, must be consistent with prevailing rates in the area for similar items.

(5) The charges of premiums for all insurance and bonds that the CMAR is required to procure by this Contract, and any required increases in insurance and bond costs except those provided for in the General Conditions.

(6) Sales, use, gross receipts or similar taxes imposed by ay governmental authority and for which the CMAR is liable.

(7) Costs for clean-up, trash, waste and debris control and removal from the site.

(8) Costs of all reproduction used for information purposes required by the City to directly benefit the Project.

(9) Costs for security systems for the Project, as required and approved by the Administrative Agent.

(10) Costs for efficient logistical control of the site, including horizontal and vertical transportation of materials and personnel. Also costs for adequate storage and parking space, excepting those provided for in the General Conditions.

(11) Costs for temporary facilities, including temporary power and sanitary facilities.

(12) Costs for testing of materials and equipment and inspection of the work.

(13) Costs for updating as-built documentation / Record Drawings.

Costs incurred in repairing or correcting damaged or nonconforming Work executed by Trade Contractors, but only to the extent that the cost of repair or correction is not recoverable by CMAR from applicable insurance or responsible Trade Contractors within a commercially reasonable period of time.

(14)Discounts, rebates and refunds must be in accordance with this Contract.

15. Accounting Records

The CMAR must keep full and detailed accounting records and exercise such controls as may be necessary for proper financial management under this Contract. The Administrative Agent will be afforded full access to the CMAR's records, books, correspondence, instructions, drawings, receipts, Trade Contracts, subcontracts, purchase order, vouchers, memoranda and other data relating to the project on an "open book" basis, and the CMAR must preserve these for a period of ten (10) fiscal years after final payment, or for such longer period as may be required by law. Trade Contractors and subcontractors will have the same obligations to maintain books and records and to permit audits. If any inspection of the CMAR's or any Trade Contractor's or subcontractor's books and records or other documents reveals an overcharge, the CMAR must pay to the City, or the City, at its election, may take a credit against future payments due to the CMAR, an amount equal to the overage. If, after the final accounting of the Project, the net total of all overcharges and undercharges is greater than $50,000 in the aggregate, the CMAR must also pay all auditing expenses incurred by the City in determining the existence and amount of the overage, not to exceed $25,000.

16. Bonds

Prior to approval of this Second Amendment, CMAR must provide to the City a surety's letter of intent to issue a Performance and Payment Bond. Within ten (10) days of the effective date of this Second Amendment, the bonds must be delivered to the City fully executed by the CMAR and a surety company authorized to do business in the State of Florida, in an amount no less than the GMP, which bond must be conditioned upon the successful completion of all work, labor, services, and materials to be provided and furnished, and the payment of all subcontractors, materialmen, and laborers. The

City will only accept a Performance and Payment bond from a surety with an A.M. Best rating of "A-" (Excellent) or better. The bond will be subject to the approval of the City In accordance with Florida Statutes Section 255.05, the City may not make a payment to the CMAR until the CMAR has provided the City a certified copy of the recorded bond.

17. Quality Control / Quality Assurance

A. The CMAR must develop and maintain a written quality control/quality assurance program, acceptable to the Administrative Agent to ensure that the quality specified in the Construction Documents is reflected in the actual construction of the Project. The CMAR must supervise the work of all Trade Contractors providing instructions to each when their work does not conform to the requirements of the plans and specifications, and it must continue to exert its influence and control over each Trade Contractor to ensure that correction is made in a timely manner to not affect the efficient progress of the work. Should disagreement occur between the CMAR and Design Consultant over acceptability of work and conformance with the requirements of the specifications and plans, the Administrative Agent will be the final judge of performance and acceptability.

B. The CMAR will receive copies of all claims or reports issued by the Design Consultant or its sub-consultants relative to the performance or acceptability of work.

C. The CMAR will be responsible and accountable for the quality control of the work.

18. Trade Contractor Interfacing

The CMAR must:

A. Enter into contracts with the Trade Contractors, subject to approval by the Administrative Agent.

B. Be the single point of contact between the Administrative Agent and Trade Contractors for the Project.

C. Negotiate all Change Orders, requests for proposed Change Orders and requests for proposal with all affected Trade Contractors.

D. Review the costs of those proposals and advise the Administrative Agent of their validity and reasonableness, acting in the City's best interest, prior to requesting approval of each Change Order. Subject to the terms of this Contract, before any work is begun on any Change Order, a written authorization from the Administrative Agent must be issued. When health and safety are threatened; the CMAR must act immediately to remove the threat to health and safety.

E. Carefully review and check all shop drawings and forward the same to the Design Consultant for review and action. The Design Consultant will transmit shop drawings back to the CMAR within fourteen calendar days, unless otherwise directed by the Administrative Agent, and the CMAR must issue the shop drawings to the affected Trade Contractor for fabrication or revision. Maintain a control system to promote expeditious handling of shop drawings.

F. Request the Design Consultant to make interpretations of the drawings or specifications requested of it by the Trade Contractors and maintain a control system to promote timely response.

G. Advise the Administrative Agent and the Design Consultant when timely response is required or has not been provided on any of the above, so as not to impact the Project Schedule. The Administrative Agent will affect a timely response from the Design Consultant in written form when necessary.

19. Permitting

A. The CMAR must secure all necessary permits not otherwise required to be secured and obtained by the Design Consultant and must ensure that all Trade Contractor permits are obtained in a timely manner from the governmental authority having jurisdiction and including all necessary utility connection permits, the cost of which will be paid by the City. Any impact fees, permit fees and any costs associated with either will be paid by the City.

B. The CMAR must obtain all applicable building permits related to site development and utilization.

20. Audio-Visual Pre-Construction Record

Prior to commencing the Work, the CMAR must have a continuous color audio-visual record in digital video format taken at and around the Project Site, and along the length of the proposed Work, to serve as a record of pre-construction conditions. No construction will begin prior to review and acceptance of the digital videos covering the Work area(s) by the City. The City will have the authority to reject all or any portion of the audio-visual recordings and order that it be redone at no additional charge. The CMAR must promptly reschedule the re-recording of unacceptable coverage after being notified. The City will designate those areas, if any, to be omitted from or added to the audio-visual coverage. The audio-visual recordings must not be made more than thirty days prior to construction start. All audio-visual recordings and written records related to the recordings will become property of the City. Submittals of pre- and post-construction digital video recordings will be as specified in the Construction Documents.

21. Work Hours

A. Regular work hours are defined s up to ten (10) hours per day, Monday through Friday, beginning no earlier than 7:00 a.m. and ending by 7:00 p.m., excluding Saturdays, Sundays and holidays.

B. Requests for approval by the City to work other than regular working hours must be submitted to the City at least 48 hours prior to any proposed weekend work or scheduled extended workweek hours.

C. Unforeseen but necessary unscheduled work outside of allowed work hours on weekdays will be permitted provided that two hours' notice is provided to the City. Maintenance and cleanup may be performed during hours other than regular working hours.

22. Protection and Restoration of Public and Private Property

A. The CMAR must take all necessary precautions to prevent damage to public and private property. Any damage to public or private property, direct or indirect, by or on account of any act, omission, neglect, or misconduct in the execution of the Work on the part of the CMAR or its subcontractors or agents, must be restored by CMAR, at CMAR's expense. The damaged property must be restored to its original or better condition to that which existed before the damage was done, or the CMAR must make good the damage in another manner acceptable to the City.

B. Should any claim be made by any third party because of omission, neglect, or misconduct in the execution of the Work on the part of the CMAR, or its subcontractors or agent, the CMAR must promptly settle with such third party by negotiation or otherwise resolve the claim.

C. Along the location of the Work, all sidewalks, streets, driveways, mailboxes, walks, lawns, landscaped areas, bushes, trees, shrubbery, irrigation systems and other above and below ground physical features must be protected by the CMAR from damage due to the Work, and where disturbed or damaged, promptly restored to their original or better condition by use of similar or comparable materials. Fences, walls, and other features removed by the CMAR must be replaced as soon as conditions permit. All grassed areas which have been damaged by the CMAR must be re-graded and sided or seeded and mulches as directed by the City.

D. Trees close to the Work must be boxed or otherwise protected against injury. The CMAR must trim all branches and roots that are liable to damage because of the CMAR's operations, but in no case will any tree be cut or removed without prior notification of the City. All injuries to bark, trunk, limbs and roots of trees must be repaired by dressing, cutting, and painting according to approved methods, using only approved tools and materials. The CMAR must abide by the City's tree regulations, as amended from time to time.

E. The protection, removal, replacement, and restoration of existing physical features along the line of Work must be a part of the Work under this Contract. Final Completion will not be provided, and final payment will not be made until all public and private property has been restored to the satisfaction of the City.

F. In case of failure on the part of the CMAR to promptly restore damaged property, or make good such damage or injury, the City may, after providing seven days written notice to the CMAR, proceed to repair, rebuild or otherwise restore such property and the cost thereof will be deducted from any monies due or which may become due the CMAR under this Contract.

23. Protection of Historic and Archeological Resources

A. If historic or archeological resources are encountered during the CMAR's operations, the CMAR must notify the City immediately, stop work in the area until directed to restart, and proceed as directed below.

B. The CMAR must comply with the permit requirements for Historic Preservation.

C. According to Florida Statutes Chapter 872, it is unlawful to disturb, vandalize, or damage a human burial.

D. If historic or archeological resources are encountered, the CMAR must move to another area of the Work until the issue is resolved.

24. Inspection and Examination of the Work

A. The City and authorized designees will have free access to the Work of the CMAR at any time for purposes of inspection and testing and will be reasonable assisted by the CMAR in conducting such inspections and testing of the Work performed and the nature of same. Such assistance of the CMAR will, if necessary, include the uncovering, testing or removal of portions of finished Work. If a portion of the Work has been covered that the Design Consultant has not specifically requested to examine prior to it being covered, the Design Consultant may request to see such work and it must be uncovered by the CMAR. If such work is in accordance with the Construction Documents, cost of uncovering and replacement will by appropriate FCO, be at the City's expense. If such work is not in accordance with the Construction Documents, such cost of correction will be at the CMAR's expense unless the condition was caused by the City.

B. The City will not supervise, direct, control, or have authority over or be responsible for the CMAR's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of the CMAR to comply with laws and regulations applicable to the performance of the Work.

C. All materials and equipment will be subject to inspection, examination and testing by the City at any time during manufacture, and at places where manufacturing of the materials and equipment are taking place. The City may reject defective materials and equipment during manufacture or before or after they have been incorporated into the Work. If the CMAR fails to replace defective Work or rejected materials and equipment, the City may replace such materials and equipment or correct such defective Work and charge the cost thereof to the CMAR.

D. No final inspection, acceptance of Work, materials or equipment or final or interim acceptance of same by the City or certification of the Design Consultant will relieve the obligation of the CMAR to the City to do the Work in a good, workmanlike manner, and to furnish proper, specified equipment and materials, and to perform properly all terms and any obligations of this Contract.

25. Right to Reject Defective Work

A. The City has the authority to reject Work, which is defective, or will not produce a completed Work that conforms to the Construction Documents or that will prejudice the integrity of the design concept of the complete Work as a functioning whole as indicated by the Construction Documents. The City has authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

B. The City will promptly notify the CMAR of all known or discovered defective work.

26. Project Signage

A. General: The CMAR must furnish and install project signage as follows:

(1) Project Signs: One 60" X 36" sign with content provided by the City.

(2) Construction Notice Signs: Minimum 2' X 3' signs, as required for public safety, temporary wayfinding and information purposes. These signs may be relocated from time to time as dictated by the phasing of the Work.

(3) Limits of Construction Fencing: Banner-type fabric screens, with content approved by the Administrative Agent, designed to cover construction fencing and screen construction activities from public view.

B. Sign Locations:

(1) Project signs must be placed at the locations designated by the City.

(2) All signs must comply with applicable FDOT and local land development regulations.

(3) Signs must be placed at a position that will not obstruct pedestrian or vehicular traffic.

(4) Signs must be placed at a location that will not create a hazard.

C. Project Sign Construction:

(1) The project sign(s) must be constructed of wood or other substantial material (example: plywood sheet with 4" X 4" supports and 2" X 4" cross brasses).

(2) The sign face dimensions must allow 4' of clearance provided from the bottom of the sign face to the ground.

(3) Upon completion of the Project, the CMAR will remove and dispose of the sign(s) and supports and restore the site to the satisfaction of the City.

(4) All project signage described herein or required by the Construction Documents must be included in the GMP.

27. General Responsibilities

The CMAR will have general responsibility for the following functions, and unless specifically provided otherwise, the costs for performing these tasks must be included in the GMP:

A. Maintain either a hardbound or electronic Daily Construction Diary describing events and conditions on the Site. The Diary must be maintained and available to the City and Design Consultant upon request.

B. Maintain a roster of companies on the Project with names and telephone numbers of key personnel and provide a method of identifying workers on site.

C. Establish procedures to ensure compliance with federal and state immigration laws (if any) applicable to employment of non-US citizens.

D. Establish and enforce job rules governing dress, parking, clean-up, use of facilities and worker discipline.

E. Provide reasonable labor relations management for a harmonious, productive Project.

F. Provide a general safety program for the Project to meet OSHA requirements, including any corresponding safety and health requirements established by state and local authorities.

G. Monitor compliance for Trade Contractors without relieving them of responsibilities to perform work in accordance with the CMAR's Environment, Health and Safety (EH&S) Program. The CMAR may, with the permission of the Administrative Agent, delegate responsibility for safety implementation and safety functions including the obligations contained in this contract to Trade Contractors performing construction work who are responsible for directly creating, controlling and correcting conditions at the work site. The Project must conform to the CMAR Global Minimum Requirements for EH&S Program, if applicable.

H. Provide for engineering layout of the entire Project to ensure dimensional and elevation controls. Such engineering layout will be done from control axis and established benchmarks by a professional surveyor approved by the Administrative Agent.

I. Provide for first aid services for the Project to the extent appropriate.

J. Arrange for temporary fire protection during construction.

K. Provide on-site office that supports the efforts of the CMAR and the Project administrative activities of the Administrative Agent.

L. Timely communicate the Project construction schedule with neighboring affected parties including information regarding traffic impacts and construction noise.

M. Maintain, stay current with, and review all environmental studies, reports and documents relating to the Site, issued by any governmental agency and/or its consultants and any Project Team member.

N. Administrative Services – the CMAR must provide job-site administrative functions during construction to ensure proper documentation, including but not limited to the following activities, and unless specifically provided otherwise, the costs for performing these tasks must be included in the GMP:

(1) Job Meetings – Regularly held progress and coordination meetings.

(2) Material and Equipment Expediting – Provide staff to closely monitor material and equipment deliveries, critically important checking and follow-up procedures on supplier commitments of all Trade Contractors.

(3) Payments to Trade contractors – Develop and implement a procedure for review, processing and payment of applications by Trade Contractors for progress and final payments.

(4) Document Interpretation – Refer to the Design Consultant all questions for interpretation of the documents prepared by the Design Consultant.

(5) Prior to Final Completion – All required guarantees, affidavits, releases, bonds and waivers, operation manuals, record drawings and maintenance books must be transmitted to the Administrative Agent via the Design Consultant.

(6) Final Completion of each Phase – Monitor the Trade Contractors' performance on the completion of the Project and provide notice to the Project Team that the work is ready for final inspection after the completion of the punch list.

(7) Startup – Prior to Substantial Completion of each Phase, conduct with the City's personnel a direct checkout of utilities operation of systems, and equipment for readiness and assist in their initial start-up and testing by the Trade Contractors.

O. Record Drawings – The CMAR must monitor the progress of its Trade Contractors on marked-up field prints at the completion of each phase of the Project, which must be sent to the Design Consultant for review prior to preparation of the final as-built record drawings on AutoCAD files by the Design Consultant. Field mark-up of the as-built drawings will be a direct cost item as part of the GMP. Updating record drawings will be a condition precedent to the monthly payments of the CMAR and the Trade Contractors. The Administrative Agent and the Design Consultant will monitor the status of the updated drawings. The CMAR will write this requirement for record drawings into the Trade Contracts.

P. Physical Testing – The CMAR must contract with an independent qualified third party to perform physical testing (vertical construction components and subsurface items), according to industry standards applicable to the Project. The CMAR will schedule and coordinate all appropriate testing.

Q. Administrative Records – The CMAR will maintain on a current basis, files and records including, but not limited to those set forth below, and, unless specifically provided otherwise, the costs for performing these tasks are included in the GMP:

(1) Amendments or purchase orders
(2) Shop drawing submittal / approval logs
(3) Equipment purchase / delivery logs
(4) Construction drawings and specifications with addenda
(5) Warranties and guarantees
(6) Correspondence
(7) CMAR contingency

(8) Other material project related information

R. Cost accounting – The CMAR will maintain on a current basis, files and records to include, but not limited to, those items set forth below. Such files and records will be maintained at the jobsite. The Project records must be available at reasonable times or on an as-needed basis to the Administrative Agent and the Design Consultant for reference or review.

(1) Trade contracts
(2) Labor costs, if applicable
(3) Material costs
(4) Equipment costs
(5) Cost proposal requests
(6) Force account records
(7) Payment request records (and invoices)
(8) Cost estimates
(9) Bulletin quotations
(10) Insurance certificates and bonds
(11) Amendments
(12) Purchase orders
(13) Material purchase delivery logs
(14) Bid / Award information
(15) Bid analysis and negotiations
(16) CMAR contingency report with copy of approved FCO.

S. The CMAR must provide consultation and project management of facilitate occupancy and provide transitional services to get the work, as completed by the Trade Contractors, in such conditions as will satisfy operational requirements.

T. The CMAR must require the Trade Contractors to provide operational training on equipment to be used in the Project.

U. The CMAR must conduct the preliminary punch list inspection and supervise the Trade Contractors in the completion of all punch list work prior to notifying the Design Consultant to perform its punch list work.

V. The CMAR must catalog operational and maintenance requirements of equipment to be operated by the City's maintenance personnel and convey these to the Administrative Agent in such a manner as to promote their usability.

W. At all times, the CMAR must provide the Design Consultant and the Administrative Agent easy and safe access to the Project construction Site(s) wherever it is in preparation and progress so Design Consultant and Administrative Agent may perform their functions. CMAR must confine operations at the site to areas permitted by law, ordinances, permits and the Construction Documents and not unreasonably encumber the Site with any materials or equipment. CMAR must always conform to the City's requirements for protection of plant, materials, equipment, and noise levels. CMAR must keep driveways and entrances serving the Sites clear and available

to the City and emergency vehicles at all times and must not use these areas for parking or storage of materials.

28. Warranty

A. The CMAR must secure required guarantees and warranties and assemble and deliver them to the Administrative Agent in a manner that will facilitate their maximum enforcement and ensure their meaningful implementation.

B. Where any work performed by Trade Contractors under contract with the CMAR, the CMAR and the Trade contractors respectively must warrant that all materials furnished under the contract will be of good quality and new unless otherwise required or permitted by the Construction Documents that the work will be free from defects not inherent to the quality required or permitted, and that the Work will conform to the requirements of the Construction Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

C. The CMAR further agrees to have all Work found by the City to be defective in material or workmanship and not in conformance with the Construction Documents corrected by the appropriate Trade contractor for a period of one year form the date of Final Completion of the Project or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the specifications The CMAR must collect and deliver to the Administrative Agent any written warranties given by others as required by the Construction Documents. Also, the CMAR must conduct, jointly with the Administrative Agent and the Design Consultant, a warranty inspection nine months after the date of Final Completion of the Project and corrective action must promptly be accomplished by the CMAR. The management of all warranty work must be included in the GMP.

D. Where warranty items are complete and final within one phase, warranty periods will begin at final completion of that phase.

29. Administration Responsibilities of the City

A. The Administrative Agent will conduct periodic review of the work of the CMAR necessary for the completion of the CMAR's services during the Project.

B. The City's approval will be required for Change Order's to the extent set forth in this Contract. For all other changes, the Administrative Agent and the CMAR must agree in writing to the change through an FCO.

30. Trade Contracts

A. The CMAR will request and receive proposals from Trade Contractors and suppliers and will award those contracts after the Administrative Agent and the CMAR have reviewed each proposal, unless otherwise directed by the Administrative Agent.

B. All Trade Contracts and supply contracts will be between the CMAR and the Trade Contractors and suppliers. The form of the Trade Contracts, including the general conditions, must be reasonably satisfactory to the City. Approval of a Trade Contract must not be unreasonably withheld by the Administrative Agent.

C. The CMAR must include in all contracts with Trade Contractors a lower-tier subcontractors (lower-tier subcontractors being defined as sub- or sub-subcontractors, sub-or sub-consultants, or professionals hired by a Trade Contractor employed by the CMAR, for work on the Project) the following:

(1) "The Trade Contractor [or lower-tier subcontractor] must indemnify and hold harmless the City, its officers and employees from liabilities, damages, losses, and costs, including but not limited to reasonable attorney's fees to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Trade Contractor [or lower-tier subcontractor] and persons employed or utilized by the Trade Contractor [or lower-tier subcontractor] in the performance of this Contract."

D. By an appropriate written Trade Contract, the CMAR must require each Trade Contractor to be bound to the CMAR by the terms of this Contract, to the extent of the work to be performed by the Trade Contractor, and to assume toward the CMAR all the obligations and responsibilities which the CMAR by this Contract assumes toward the City. The Trade Contracts must preserve and protect the rights of the City with respect to the work to be performed by the Trade Contractor so that the contracting thereof will not prejudice such rights. The CMAR must require each Trade Contractor to enter into similar contracts with its trade subcontractors.

E. Nothing contained in this Contract or any or all CMAR's contracts with its Trade Contractors or lower-tier subcontractors will create any contractual obligations on behalf of the City and any third party. However, the parties understand and agree that the City is the intended third-party beneficiary of all CMAR's Trade Contracts and subcontracts. CMAR must require that all its contracts with its Trade Contractors or lower-tier subcontractors expressly provide for the City to be intended third-party beneficiaries of such contracts to enable City to maintain a cause of action directly against such Trade Contractors or lower-tier subcontractors as necessary for any negligence, recklessness, or intentional wrongful misconduct related to this Project. CMAR must provide evidence of such contractual provisions to City upon request, and CMAR agrees not to modify such provisions.

F. It will be the responsibility of the CMAR to have the appropriate Trade Contractor remove and replace any work or materials found to be defective, without additional cost to the City. If the Design Consultant, the City or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not otherwise included in this contract, the Design Consultant will upon written authorization from the Administrative Agent, instruct the CMAR to make arrangements for such additional testing, inspection or approval by an entity acceptable to the City, and the CMAR must give timely notice to the Design Consultant of when and where tests and inspections are to be made so that the Design Consultant may be present for such procedures. Such costs will be at the CMAR's expense where work or materials are found to be defective or not in compliance with the Construction Documents and/or requirements of authorities having jurisdiction.

31. Substantial Completion and Occupancy

A. Substantial Completion is the point in the progress of the Work, when the Project or designated portion thereof is sufficiently complete in accordance with this Contract so that the City can fully occupy and fully utilize the Project for its intended use with all certificates of occupancy obtained, if applicable

(1) The City and the CMAR acknowledge that the Project may be constructed in phases, where each "phase" is a generally isolated scope that together constitutes all the Work. Unless otherwise authorized by the Administrative Agent, the CMAR must provide for Substantial Completion at each phase.

B. The Substantial Completion date for each project phase will be as set forth in Exhibit F. The CMAR must notify the Design Consultant when the Project is ready for Substantial Completion inspection of each project phase. The Design Consultant and the Administrative Agent must inspect the Project jointly to ascertain if the Project is substantially complete. If the entire Project or Project Phase is determined to be substantial complete by the Design Consultant and the Administrative Agent, the CMAR must prepare a Certificate of Substantial Completion to be executed by the Administrative Agent. At the time of the Substantial Completion inspection for the Project, the CMAR must provide to the Administrative Agent a listing of Project deficiencies which must be remedied before attaining Final Completion. The Administrative Agent will promptly review this listing and provide comments as to the completeness of the listing. Concurrently, the CMAR must take action to remedy the deficiencies noted in this listing and as amended by the comments of the Administrative Agent. The CMAR will have thirty calendar days from the date of issuance of the final list of deficiencies (punch list) to remedy the deficiencies and obtain Final Completion (or Final Acceptance for intermediate phases) in accordance with Florida Statutes Section 218.735. At the end of the thirty (30) day period, the Administrative Agent must conduct a final inspection of the Project or Project phase and ascertain if the deficiencies have been remedied and that the Project or Project Phase has achieved Final Completion or Final Acceptance as applicable.

C. The services to be provided under this Contract will be in accordance with the Project Schedule.

D. CMAR must obtain all certificates of occupancy prior to Substantial Completion and in a timely manner in accordance with the Project Schedule.

E. The City reserves the right to occupy and to place and install equipment in completed areas of the site, before Substantial Completion and before Final Completion, provided such occupancy does not unreasonably interfere with completion of the Work. Such placement of equipment and partial occupancy will not constitute acceptance of incomplete portions of the Work, nor will it relieve the CMAR of its responsibility for completion of the work in accordance with this Contract.

32. Liquidated Damages

The parties agree that time is of the essence in the work provided for herein and that a precise determination of actual damages which would be incurred by the City for delay in the completion of

the work provided would be difficult to ascertain. Accordingly, the Parties agree that the liquidated damages for those items of damage not otherwise provided for by this Contract, for each and every day that the time consumed in completing the work provided for in the Construction Documents exceeds the time(s) allowed therefore, must be the amount(s) stated below per day, including Saturdays, Sundays, and legal holidays. The Parties specifically agree that the liquated damages provided for herein do not constitute a penalty. Furthermore, since the additional cost of inspection and supervision arising from a delay is not difficult to ascertain, it is agreed that the CMAR must pay, in addition to the liquidated dames provided for herein, all expenses for inspection and supervision occasioned by the failure of the CMAR to complete the work within the time(s) fixed for completion herein. The amount of liquidated damages together with the additional costs for inspection and supervision occasioned by the CMAR's delay will be deducted and retained out of the monies payable to the CMAR. If not so deducted, the CMAR and sureties for the CMAR will be liable. The amount of liquidated damages to be assessed for each calendar day that substantial Completion is delayed beyond the required date of Substantial Completion will be **Four Hundred Dollars ($400.00) per day.** The amount of liquidated damages to be assessed for each calendar day that Final Completion is delayed beyond the required date of Final Completion will be **One Hundred Dollars ($100.00) per day.**

33. Changes in the Project

A. CMAR acknowledges and expressly agrees that the City, upon the direction of the Administrative Agent, may, without notice to the CMAR's surety company, if any, make changes in the Work, including additions, deletions or modifications to the Work or the Project schedule thereof. City and CMAR acknowledge and agree that the volume and/or extent of changes in the Work ordered is expected to be substantial and that CMAR may make claims for additional compensation when and only if changes in the Work will substantially and materially increase Cost of Work, and not solely on processing the number or extent of such changes, but subject in all instances to the provisions and limitations contained in this Contract.

(1) Except in an emergency endangering life or property, no changes in the Work will be performed by the CMAR unless a properly executed FCO or Contract amendment is received by the CMAR.

(a) Change Orders

i. The Administrative Agent may approve a change to the Project. Such changes to the Project may consist of changes within the general scope of this Contract consisting of additions, deletions, delays not attributable to the CMAR or other revisions that do not result in an increase to the GMP.

ii. The CMAR will not be entitled to a price adjustment due to the costs for review of any documents necessitated by a change to the Project or to the GMP, regardless of the reason for the change, including but not limited to amendments to this Contract.

iii. For changes initiated by the City the CMAR will receive a directive for change, will make recommendations to the Administrative Agent regarding the requested change and must provide a price within fourteen calendar days or sooner if practicable, to

the City for the items delineated in the request for change. Should the Administrative Agent so direct the CMAR to proceed in the preparation of a Change Order, the CMAR must do so utilizing documents prepared by the Design Consultant.

(2) A Change Order is a written order to the CMAR at the direction of the Administrative Agent and signed by the City and CMAR, issued after the execution of this Contract, authorizing a change in the Project requirements, Construction Documents and/or the GMP, the CMAR's fee and/or Project Schedule. Each adjustment associated with the change.

(3) The Cost of Work portion of a Change Order will be determined in one or more of the following ways:

(a) By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Design Consultant and the Administrative Agent.

(b) By unit prices stated in this Contract or subsequently agreed upon.

(c) If a lump sum or unit price cannot be agreed upon, the CMAR, provided it receives a written order approved and signed by the City, must promptly proceed with the work involved. The cost of such change will be determined on the basis of the actual cost and savings of those performing the work attributed to the change. The CMAR must keep and present, in such form as the Administrative Agent may prescribe, an itemized accounting together with appropriate data supporting the increase in the cost of the Project.

(d) The amount of a decrease in the GMP to be allowed for any deletion or change that results in a net decrease in cost will be the amount of the actual net decrease plus the corresponding CMAR Fee. This provision is not applicable to reductions for savings or City Direct Purchases.

(4) Field Change Order (FCO)/Contract amendment

(a) A Change Order will either be an FCO or a Contract amendment, depending on whether the GMP stipulated in this Contract will be exceeded or not.

i. An FCO will be issued for changes within the general scope of the Work that will not exceed the GMP. Once the FCO is signed by the City and the CMAR, the CMAR must promptly proceed with the Work involved.

ii. A Contract amendment will be issued for changes in the Scope of Work or any change that will increase the GMP. The City, with the CMAR's input, will determine the extent of adjustment to GMP and Project Schedule and will prepare the Contract Amendment. The Contract Amendment must be signed by the CMAR and approved by the City of North Port.

(b) The Change Order will include a detailed description of the Work to be performed, and any adjustments in the GMP or Project Schedule or both, which are agreed to by the

parties. The Change Order may also include supporting data detailing the costs associated with the change in the Work.

(5) All Change Orders will clearly indicate their impact, if any, on the date of Substantial Completion of the Project, as indicated in the Project Schedule. If the Change Order is not anticipated to impact the date of Substantial Completion, the Change Order must so state.

34. Design Consultant-Initiated Changes

Without superseding the CMAR's rights, the Design Consultant will have authority to recommend minor changes in the Project not involving an adjustment in the GMP or an extension of the Substantial Completion date and not inconsistent with the intent of the Construction Documents. Documentation of changes must be determined by the Project Team and displayed weekly in the Project Management Information Service (PMIS). Such minor changes must be affected by written order approved by the Administrative Agent and the CMAR prior to the commencement of work. If CMAR disagrees with the assessment as a minor change, it must pursue its rights as otherwise provided in this Contract.

35. Payments to CMAR

A. Schedule of Values – Prior to the first Application for Payment, the CMAR must submit for review and acceptance by the Administrative Agent, a Schedule of Values that includes quantities and prices for all lump sum bid items, which when added together equal the lump sum contract price for each such item bid and subdivides the lump sum items into component parts in sufficient detail to serve as the basis for the review and approval of progress payments during performance of the work. The Schedule of Values must be coordinated with the Construction Schedule and be broken down into sufficient detail to allow for the analysis of monthly pay applications.

(1) Progress Payments – Must be made as set forth in this Contract.

(2) Retainage – Retainage will be withheld on the Cost of Work line item from each monthly payment request, in an amount of 5% of the line item. The City has no obligation to further reduce the retainage but may do so, provided however, that the Work has proceeded to the satisfaction of the City. The CMAR must request all remaining retainage in the final payment after Final Completion of the Work.

36. Times for Payment

A. The City will pay or cause to be paid to the CMAR that portion of the GMP, properly allocable to services, labor, materials and equipment already incorporated or to be incorporated in the work that has been satisfactorily performed in accordance with the requirements of the Construction Documents.

(1) The CMAR must process each Trade Contractor payment within seven (7) working days upon receipt of payment form the City out of the amount paid to the CMAR for the Trade Contractor's work, the amount to which the Trade Contractor is entitled, reflecting the

percentage actually retained, if any, from payments to the CMAR for such Trade Contractor's work.

(2) The CMAR's and Trade Contractor's notices, claims and lien waivers are to be submitted with the current month's application for payment and no additional payments will be made by the City without lien waivers for the preceding month's application for payment, unless the surety consents to payment as provided by law.

(3) The City will not have any obligations to pay or to see to the payment of any monies to any Trade Contractors except as may otherwise be required by law.

(4) No certificates for a progress payment, nor any progress payment, will constitute an acceptance of any work not in accordance with the Construction Documents. Such payments will not constitute acceptance that the work was performed in accordance with this Contract requirements.

B. Payments Withheld:

(1) The City may decline to accept requests for payment to such extent as may be necessary, in its opinion, to protect the City from loss because of:

(a) Work not performed strictly in accordance with this Contract requirements, including defective work not remedied after notice and an opportunity to cure,

(b) Failure of the CMAR to make payments properly to Trade Contractors or for labor, materials or equipment in accordance with subcontracts,

(c) Property damage to the City or third party, due to act or omission of the CMAR not otherwise covered by CMAR's insurance.

(d) Reasonable evidence that the work will not be completed within the Project schedule; or

(e) Persistent failure to carry out the Work in accordance with the Construction Documents.

(2) When the above conditions are remedied, payment will be made for amounts withheld because of them, with appropriate withholding for any losses incurred.

(a) Payments for Materials and Equipment – Payments will be made for materials and equipment not yet incorporated in the Work but delivered and suitably stored at the site or another location subject to prior approval and acceptance by the Administrative Agent on each occasion. The CMAR must cause material stored off-site to be stored in a bonded warehouse or other facility approved by the City with the consent of the surety and provide such documentation as may be required by the Administrative Agent to prove unconditional ownership of such material, including but not limited to, bills of sale and fully executed Uniform Commercial Code forms. Payments will not be made for deposit or pre-payment for materials and equipment not yet delivered or stored as described above unless approved in advance by the City and with the consent of the surety.

(b) Final Payment – Upon acceptance of Final Completion of the Project by the Administrative Agent, CMAR must submit a final invoice for payment of the outstanding balance of the amount earned by the CMAR under the GMP. Upon acceptance of the final invoice by City the City will pay the invoice amount as set forth above. Final Completion will not be approved unless the CMAR has completed all punch-list items, furnished to the Administrative Agent all warranty documents, operating manuals, as-builts, and attic stock and otherwise complied in all respects with the Construction Documents Project Close-Out requirements.

(c) Debts Paid – Before issuance of final payment for the Project, the Administrative Agent will require satisfactory evidence, including but not limited to releases of all liens, that all the CMAR's payrolls materials bills and other indebtedness connected with the Project have been paid or otherwise satisfied, unless the surety consents to final payment. The Administrative Agent will have the right to verify such payments at any time. The City reserves the right to audit all records from the participants in Project without limitation. All financial and project records for the Project must be maintained for a period of ten (10) years after issuance of final payment for the Project or such longer time as required by law.

(d) Payment as Waiver – The acceptance of final payment for the Project will constitute a waiver of all claims for compensation and fees by the CMAR except those previously made in writing and unsettled.

(e) Discounts – All discounts, rebates and refunds must accrue to the City and the Project to the extent the cost of the Project item is paid directly by the City. All trade discounts rebates and refunds and all returns from sale of surplus materials and equipment must be credited to the City and the Project. The CMAR must make reasonable efforts to notify the Administrative Agent of the availability of cash discounts or other discounts, rebates and refunds.

(f) Costs in Excess of CMAR's Estimates – If bids or proposals for the Project are received that exceed the CMAR's cumulative estimated budget of the Project, the CMAR must nevertheless complete the Project in accordance with the Construction Documents and will not be entitled to any increase in the GMP.

37. Safety and Protection

A. Safety Precautions and Programs – The CMAR must ensure that each of the Trade Contractors implement safety programs for the safety of persons and property and for compliance with all federal, state and local statutes, rules, regulations and order applicable to the conduct of the Work.

B. Safety of Persons and Property

(1) Until acceptance of Final Completion of the Project by the City, the CMAR will have the charge of care and must take precaution against injury or damage to any part thereof by the action

of the elements or from any other cause whether from the execution or from the non-execution of the Work. The CMAR will rebuild, repair, restore, and make good all injuries or damages to any portion of the Work by any of the above causes before acceptance of Final Completion and bear the expense thereof except for damage to the Work due to causes beyond the control of and without the fault or negligence of the CMAR, including but not restricted to acts of God such as earthquake, tidal wave, tornado, hurricane, or other cataclysmic phenomenon of nature, or acts of the public enemy or of governmental authorities. In case of suspension of work from any cause, the CMAR is responsible for the Project will take precautions necessary to prevent damage to the Project, provide for normal drainage, and will erect necessary temporary structures, signs or other facilities at the CMAR's expense as a Cost of the Work within the GMP. During such suspension of work, the CMAR must properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedlings, and sodding furnished under this Contract, and must take adequate measures to protect new tree growth and other important growth against injury.

(2) The CMAR must enforce all reasonable precautions for safety and must provide all reasonable protection thereof to prevent damage injury or loss to:

(a) All employees or Trade Contractors on the Project and all other persons who may be affected thereby.

(b) All the work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the CMAR or any Trade Contractor.

(c) Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement during construction.

(3) The CMAR must cause to be erected and must maintain, as required by existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying the Administrative Agent and users of adjacent utilities.

(4) The CMAR must provide all pedestrian and vehicular barriers, gates and boundaries to effectively segregate construction operations from portions of the site not under construction and must provide on-site flagmen to direct safe conduct when and where construction vehicles or activities temporarily interact with the public.

(5) The CMAR will be responsible for and must promptly remedy all damage or loss to any property caused in whole or in part by the CMAR, any Trade Contractor or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

(6) The CMAR must designate a responsible member of its organization, as approved by the Administrative Agent, whose duty will be the prevention of accidents on the site.

(7) The CMAR must not knowingly load or permit any part of the Work to be loaded to endanger the structural integrity of the Work.

C. Emergencies

In any emergency affecting the safety of persons or property, the CMAR must act in its discretion to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the CMAR on account of emergency work will be determined as provided herein for changes in the work.

38. Drawings and Specifications

A. Generally, the Specifications describe work which cannot be readily indicated on the Drawings and indicate types of qualities and locations for the installation of various materials and equipment required for the Work. It is not intended that the Specifications will mention every item of Work which can be adequately shown on the Drawings, nor is it intended that the Drawings show all items of Work described or required by the Specifications even if they are of such nature that they could have been shorn thereon. All material or labor for Work which is shown on the Specifications and Drawings or is reasonably inferable there from as being part of the Work must be provided by CMAR and included in the GMP whether or not such material or labor are expressly covered in the Drawings and Specifications.

B. By execution of this Contract, CMAR represents and covenants that:

(1) CMAR has visited the Site, become familiar with local and all special conditions under which the Work is to be performed and based on information provided by the City and public utilities and other available information, understands what is required to enable CMAR to coordinate the Work with the efforts of the City and public utilities performing work in the vicinity of the Site; and

(2) CMAR has checked with all public utilities having facilities at or near the Site, and understand based on information provided by the public utilities what is required to not interrupt utility services to other buildings in the vicinity of the Site; and

(3) Without assuming the obligations of the Design Consultant, CMAR has carefully examined the Drawings and Specifications prepared to date, and will carefully examine modifications of, and additions to, the Drawings and Specifications throughout the Project. Any change to the GMP must follow procedures set for in this Contract, subject to the provisions of and limitations contained in this Contract. Other than as provided in this Contract, but subject in all instances to the provisions of and limitations contained in this Contract, the CMAR will not be entitled to extra or additional compensation for performance of Work to deliver the Project as contemplated by the Construction Documents.

C. Any difference noted between the requirements of the Drawings and the Specifications, or any differences noted within the Drawings themselves or within the Specifications themselves, must be referred to the Design Consultant by the CMAR. The Design Consultant/City will determine which provisions will apply.

D. The CMAR will be responsible for the removal of man-made obstructions, utilities and natural underground obstructions to the extent identified in the Construction Documents, or to reasonably be expected considering the nature of the Site and their historical and current use.

E. CMAR will be responsible for all structural excavation to the extent required for installation of grade beams, slab on grade, stone, subbase, and the like. If any material additional excavation is required due to the existence of unsuitable soil conditions as determined by the Design Consultant, and such soil conditions could not have been identified by the CMAR, then CMAR, with the approval of the Administrative Agent, may be entitled to claim an adjustment to the Project Schedule and/or GMP, subject in all instances to the provisions of and limitations in this Contract. CMAR may claim such adjustment only if the CMAR has used commercially reasonable efforts to mitigate or take other appropriate actions to address the conditions and avoid any additional delay or cost.

39. Temporary Facilities

A. CMAR must provide a minimum of one 10 X 24 office trailer for the purpose of managing the Project which will be referred to as the Project office trailer. The Project office trailer will include all necessary items for proper Project administration to successfully manage the Project. The Project office trailer will be subdivided into two spaces, an office area for the superintendent and a meeting space with a table and chairs to accommodate eight persons. CMAR must maintain the Project office trailer, including janitorial services, and pay for all necessary services for heating and/or air conditioning.

B. The Project office trailer must have a high-speed internet connection for use of supervisory personnel as well as the Design Consultant (if needed).

C. The Project office trailer must be provided with proper tie downs meeting current code requirements.

D. Whether a Project office trailer is to be required will be determined on a project-by-project basis.

40. Delay and Force Majeure

A. Extension of Time

(1) The CMAR must diligently expedite the Work and achieve Substantial Completion for each phase of the work within the Project Schedule together with completion of portions of the Work designated in the Project Schedule as Milestone items not later than the dates established for such Milestone items.

(2) The Project Schedule will be extended for such time as the City will determine if CMAR is delayed in the Work's critical path as defined in the most recent approved Project Schedule if CMAR is unable to mitigate despite its best efforts, at any time in the progress of the Work for any of the following reasons, to the extent that such delays are not caused by CMAR:

(a) Delays caused by an "Force Majeure Event," as such term is defined below; or

(b) Delays caused solely by City or Design Consultant; or

(c) Delays caused by the failure of the City to issue approvals or make material decisions as may be required under the CMAR within 10 days, after written request from CMAR accompanied by all documents and other information necessary for making the decision: or

(d) Delays caused by Scope Changes; or

(e) Delays authorized by the City pending a decision concerning a disputed item and which, in City's reasonable discretion, will justify a delay in the performance of the Work; or

(f) By any other cause which City may in its sole discretion determines justified delay; or

(g) Delays caused by exercise of City's right to suspend the work.

(3) If the CMAR should be delayed at any time in the progress of the Work by any negligent act or omission by the City or its employees, by any contractor employed by the City, by changes ordered in the Project, by fire, unusual delay in transportation, unavoidable casualties, by delay authorized by the City pending arbitration, or by any cause which the City determines justifies the delay, then the time of completion may be reasonable extended by the City.

(a) No extension of time will be made unless the CMAR provides written notification to the City within ten (10) calendar days of the event or incident causing the delay, and as otherwise provided by this contract. The CMAR must demonstrate in its notice the impact on the critical path of the Project Schedule to justify the extension of time. Reasonable extensions of time, as determined by the City, will be granted to the CMAR for time lost due to rainfall to the extent such rainfall exceeds the average for Sarasota County for the applicable period, based on US Weather Bureau statistics for the preceding ten (10) years.

(4) The term "Force Majeure Event' will have the meaning set forth in this Contract. The CMAR must resume activities related to the Project as soon as possible after the conclusion of the Force Majeure Event.

(5) Any delay claimed under this Section will be reduced by the portion of any such delay caused by any act or omission of the CMAR, its Trade Contractors or lower-tier subcontractors, or anyone for whom the CMAR is responsible. Any delay under this Section must only be such period of time as the delay continues after CMAR has given written notice of such delay and its claimed reason therefore to City and Design Consultant.

(6) CMAR must notify the Administrative Agent promptly of any event or occurrence which may require a modification to the Project Schedule or any component or segment thereof.

41. Substitutions

A. When more than one manufacturer's products or processes are specified for an item of Work, any one thereof is acceptable and the choice is left to the CMAR, unless otherwise directed by the Administrative Agent. When a singular service process, product, material, equipment or method of construction is required by the Construction Documents, the one specified must be used. However, if in the judgment of the CMAR one of the conditions enumerated below exists with respect to any item specified, CMAR may offer for Administrative Agent's consideration a substitute product or process which completely fulfills the requirements of the Construction Documents. Substitutions will only be considered if the CMAR submits a written request to Design Consultant and only under the following circumstances:

(1) When the specified product(s) or process(s) is/are discontinued or otherwise not available from the manufacturer or supplier.

(2) When, in the judgment of CMAR, the specified product(s) or process(s) will not produce the desired results.

(3) When such substitution, in the opinion of Design Consultant or the Administrative Agent, is otherwise in the best interest of the City.

(a) Design Consultant will make recommendations to the Administrative Agent regarding Substitutions offered by CMAR. Substitutions that are accepted are the responsibility of the CMAR and must be affected through the issuance of a Change Order. A recommendation by Design Consultant or approval by the Administrative Agent will not make City responsible for any Substitution.

(b) Procedure for Substitutions – Requests for Substitutions of products or processes must be written and will be accompanied by evidence that the proposed Substitution: (1) is equal in quality and serviceability to the specified item; (2) will not entail changes in details and construction of related work; (3) will be acceptable in consideration of the required design and artistic effect; and (4) will not involve additional costs to City, unless the Substitution is for a specified product or process which is discontinued or is otherwise unavailable from the manufacturer and has written approval from the Administrative Agent. The increase or decrease in the Cost of the Work resulting from such proposed Substitution must be described in an accompanying request for a Change Order. CMAR will furnish with its request such drawings, specifications, samples, performance data and other information as may be required to assist Design Consultant in making its recommendation. Submission by CMAR of a request for a Substitution will constitute a representation by CMAR that is has a good faith belief that the proposed Substitution meets the foregoing requirements. Construction Manger must provide written cost benefit analysis as requested by the Administrative Agent.

i. If a Substitution is approved, the Cost of Work related to such item will be increased or decreased and adjusted by Change Order as specified herein.

ii. If a deductive Change Order, the GMP will be reduced correspondingly.

42. Testing

A. Testing

(1) CMAR will engage the services of an independent testing agency to verify compliance with required physical characteristics or to monitor the CMAR's Quality Control Program (as described herein). The testing agency must verify CMAR's compliance with the Construction Documents and applicable legal and regulatory requirements and record its observations and submit reports. CMAR must, at no cost or expense to the City:

(a) Notify Administrative Agent and Design Consultant at least one (1) day before installing Work to be tested for work identified at the preconstruction conferences.

(b) Furnish incidental labor and facilities at the site necessary to facilitate City's testing.

(c) Furnish samples and access to all materials and component parts of the Work as required for testing.

(d) Furnish storage facilities for material test samples.

(e) Furnish full and ample means of assistance for monitoring CMAR's testing and CMAR's quality control program.

(f) In all other ways cooperate and facilitate the coordination and expeditious completion of the tests undertaken at City's direction.

B. Project Schedule must include sufficient durations to allow testing activities and review of testing agency reports.

C. In addition to the testing services described above and at the direction of the City, CMAR will engage the services of a second independent testing agency selected by the City. The second independent testing agency must be compensated from the Owner's Contingency and must provide sample testing as necessary to verify the accuracy of all testing previously conducted by CMAR as described above. The second independent testing agency must produce a report of its findings which must be provided to the Administrative Agent.

D. CMAR will not be relieved of CMAR's obligations to perform or cause performance of the Work in accordance with the Construction Documents by reason of any errors or omissions contained in any test performed by or for City, notwithstanding that such tests and the results thereof may have been delivered to CMAR and that CMAR may have relied upon the correctness of such tests. The fact that City has provided to CMAR any such tests or the results thereof, will not relieve CMAR of the obligation to provide all testing necessary to assure CMAR that the Work performed by CMAR complies in all respects with the requirements of the Construction Documents and applicable legal and regulatory requirements. CMAR must coordinate the activities of all entities conducting tests and must cooperate fully with such agencies to facilitate all tests and inspections.

E. If CMAR or Trade Contractor performs any tests or engages any testing agency, other than at the direction of the City, any costs incurred will be the sole responsibility of the CMAR and copies of all written reports and summaries of any oral reports must be submitted promptly to City and Design Consultant.

EXHIBIT F TO SECOND AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.005

PHASE II PROJECT SCHEDULE

Description of Milestone	Calendar Days from Notice to Proceed to Completion of Milestone
Substantial Completion (135 Days)	November 27, 2024
Final Completion (30 days)	December 27, 2024

- **Schedule assumes:**
  - **Contract Amendment Award of July 9, 2024**
  - **Notice to Proceed / PO issued no later than July 15, 2024**
  - **All Required Permits Issues no later than July 15, 2024**

EXHIBIT G TO SECOND AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.005

PHASE II FEE SCHEDULE - GMP PROPOSAL

WILLIS SMITH CONSTRUCTION

Fire Station 85 FEMA
City of North Port

Guaranteed Maximum Price
April 4, 2024

Schedule: 7 Months
Project Area (Square Feet): 0

DIVISION	SCOPE OF WORK	TOTAL	COMMENTS
01A	General Conditions	4,444	
07C	Roofing	2,800	
09B	Cement Plastering	2,800	
09I	Painting and Coatings	1,316	
32C	Fences and Gates	1,700	
32F	Landscape/Irrigation	4,240	
	SUBTOTAL	17,300	
	Construction Contingency	1,730	10.00%
	SUBTOTAL	$ 19,030	
	Insurance/Risk Management	285	1.50%
	Builder's Risk Insurance	0	0.00%
	SUBTOTAL	$ 19,315	
	Contractor Fee/Overhead	1,932	10.0%
	SUBTOTAL	$ 21,247	
	Payment/Performance Bond	0	0.00%
	GRAND TOTAL	$ 21,247	

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EXHIBIT G TO SECOND AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.005

PHASE II - GMP SUMMARY

[PROJECT NAME]	[Total]
General Conditions / Requirements	$6,376.00
Direct Cost	$12,856.00
Subtotal	**$19,232.00**
CMAR Contingency	$1,730.00
CMAR's Insurance	$285.00
Total – Guaranteed Maximum Price	**$21,247.00**

- No allowances are established within this GMP.

EXHIBIT H TO SECOND AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.005

PHASE II LIST OF CONSTRUCTION DOCUMENTS

N/A

EXHIBIT I TO SECOND AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.005

PHASE II KEY PERSONNEL

PERSONNEL NAME	RESPONSIBILITY
Brett Raymaker	Project Executive
Jenn Sufferling	Project Manager
Eric Deinlein	Superintendent

EXHIBIT J TO SECOND AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.005

PHASE II CLARIFICATIONS AND EXCLUSIONS

Schedule

- A GMP approval date for the project is assumed to be July 9, 2024
- Should the project be delayed beyond the start date set above, there could be an impact on final project cost.
- Project schedule is based on the deliverable dates currently showing in the contract exhibit.

General Scope of Work:

- This GMP is based on site assessment surveys and field inspections which include anticipated scopes of work regarding each individual work assignment.
- Normal working hours of construction are from 7:00am – 3:30 pm. Special Hours for construction shall be coordinated and approved by the City Administrative Agent.
- Proposal includes sales tax on all materials provided to the project. There is no Direct Material Purchase on this project.
- The amount for Insurance/Risk Management included in this proposal is for Contractor's use for items that are a legitimate cost of the work, including material cost increases, but do not constitute a change order. Such proposals will be negotiated, and a Field Change Order issued.
- Retainage shall not be held on "soft cost" portions of the work such as General Conditions, Carpentry/Installations, Insurance, Bonds, and Fee/Overhead.
- This GMP is not a line item GMP; the Construction Manager at its sole discretion, may transfer funds between any line items (with the exception of contingency) in order to properly execute the Work.
- Replacement materials may not be an exact match to existing finishes due to weathering, wear and tear, etc.
- Section 26. Project Signage is not applicable to this scope of work.
- Section 34. Design Consultant is not applicable to this scope of work.
- Section 39. Temporary Facilities is not applicable to this scope of work.
- Project is not subject to Davis Bacon requirements.

Contingencies

- The GMP contains project contingency to allow for unforeseen events and conditions.
- Contingency is currently included for use as reviewed & approved by the Owner to cover unforeseen conditions related to the existing campus or buyout related items. All unused contingency at the completion of the project will be returned to the Owner.
- All contingency expenses will be tacked and require the approval of the City Administrative Agent.

GC, GR and Staffing

- Pricing is further based on a single mobilization. Should the work not be completed during this mobilization, for reasons beyond the CMaR's control, additional costs may be required and will be subject to negotiation with the Owner.
- Upon execution of the GMP, the general conditions labor and general requirements will convert to lump sum and be billed out as a fixed amount on a monthly basis divisible by the total duration of the project shown per the contract schedule. The labor rates are then auditable only to confirm the total hours used on the project, not the composition thereof.

Insurances and Bonding

- Due to the low cost of this work, bonding is NOT included in the GMP.
- Due to the low cost of this work, Payment & Performance Bond is excluded from the GMP amendment.
- Standard General Liability Commercial Contractor Insurance coverage included.
- Due to the low cost of this work, Builder's Risk Insurance is excluded from the GMP amendment.

Owner Costs

To eliminate confusion caused by duplication and/or omissions, the following costs are assumed to be held by the Owner:

- All permit fees.
- All Impact Fees (water/sewer/road/etc.).
- All utility fees including, but not limited to, FPL, Comcast, Verizon, TECO, and other utility company fees for relocation of any utilities or tapping fees.

Direct Costs / Trades

Roofing

- Roofing materials to be replaced as they cannot be salvaged.

Fencing

- Fencing materials to be salvaged and repaired where possible, and replaced only when required.

Hardie Board Siding

- Hardie Board materials to be replaced as they cannot be salvaged. Existing partial boards in repair area to be removed and replaced with new full pieces to allow for correct installation of the new materials.

Landscaping

- Plant materials to be replaced as they cannot be salvaged.

Exclusions:

The following services are not included in the GMP:

- Repair of the porch screen door is excluded, as it was operational during the site walk.
- Professional Architectural and Engineering
- Builder's Risk Insurance, including all deductibles
- Payment and Performance Bond
- Building permit fees
- Impact fees
- Threshold Inspections
- SWFWMD Permit
- Offsite Improvements and utilities
- Materials Testing Services (hazardous Materials, Geotechnical, Concrete, Soils, etc.)0
- Record As-built documents
- Code upgrades or corrections unless specifically identified.
- Relocation or rework of existing systems, piping, raceways not specifically noted
- Unforeseen conditions not previously identified, listed on the drawings or visible to the naked eye.
- Moisture mitigation and/or mold removal/remediation

ATTACHMENT 1.1 TO SECOND AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.005

Attachment 1.1

GENERAL INSURANCE

A. Insurance.

(1) Before performing any work pursuant to this Contract, the Contractor must procure and maintain, during the life of this Contract, the insurance listed below against all claims of injury to persons or damage to property which may arise from or in connection with its performance of the Contract work, unless otherwise specified. The policies of insurance must be primary and written on forms acceptable to the City and placed with insurance carriers approved and licensed by the State of Florida Department of Financial Services, and meet a minimum financial A.M. Best and Company, Inc. rating of no less than "A - Excellent: FSC VII." No changes can be made to these specifications without prior written approval by the City Manager or designee. The City Manager or designee may alter the amounts or types of insurance policies required by this Contract upon agreement with the Contractor. The insurance policies must remain in place until all of the Contractor's and subcontractor(s)' obligations and warranty periods in place pursuant to this Contract have been discharged or satisfied.

(2) The below insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City in no way warrants that the minimum limits are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work done pursuant to this Contract by the Contractor, its agents, representatives, employees, or subcontractors. Contractor is free to purchase additional insurance as it may determine necessary. The extent of Contractor's liability for indemnity of the City must not be limited by insurance coverage or lack thereof, or unreasonably delayed for any reason, including but not limited to, insurance coverage disputes between the Contractor and its carrier.

B. Workers' Compensation and Employers' Liability Insurance. Coverage pursuant to Florida Statutes, Chapter 440 must apply to all employees at the statutory limits provided by state and federal laws. The policy must include Employers' Liability with a limit of $1,000,000 each accident; $1,000,000 each employee; and $1,000,000 policy limit for bodily injury or disease. The policy must include proof of current Worker's Compensation coverage or Worker's Compensation exemption (notarized affidavit).

C. Comprehensive Commercial General Liability Insurance. The Contractor must procure and maintain, and require all subcontractors to procure and maintain, during the life of this Contract, a comprehensive commercial general liability policy, including but not limited to bodily injury, property damage, broad form contractual liability and Explosion, Collapse and Underground (XCU) coverage. The general aggregate limit must apply separately to this Contract, or the general aggregate limit must be twice the required occurrence limit.

The policy must include General Liability with a limit of $1,000,000 for General Aggregate; $1,000,000 for each occurrence; $1,000,000 for Products and Completed Operations; and $100,000 for damage to rented premises. Proof of insurance must be filed by the Contractor with the City within **ten (10) calendar days** after the Effective Date of this Contract.

D. Automobile Liability Insurance. The Contractor must procure and maintain, and require all subcontractors to procure and maintain, during the life of this Contract, automobile liability insurance to include all owned, leased, hired, and non-owned vehicles. Automobile liability insurance must be written on a standard ISO form (CA 00 01) covering any auto (Code 1), or if Contractor has no owned autos, hire (Code 8) and non-owned (Code 9) autos.

The policy must include liability insurance with a limit of $1,000,000 for Combined Single Limit (CSL) for each accident; $1,000,000 per person for Bodily Injury; $1,000,000 per accident for Bodily Injury; and $1,000,000 per accident for property damage.

E. Waiver of Subrogation. All required insurance policies, except for Workers' Compensation, are to be endorsed with a Waiver of Subrogation. The insurance companies, by proper endorsement or through other means, must agree to waive all rights of subrogation against the City, its Commissioners, officers, officials, employees, volunteers, and the City's insurance carriers, for losses paid under the terms of these polices that arise from the contractual relationship or work performed by the Contractor for the City. It is the Contractor's responsibility to notify its insurance company of the Waiver of Subrogation and request written authorization or the proper endorsement. ADDITIONALLY, THE CONTRACTOR, ITS OFFICERS, OFFICIALS, AGENTS, EMPLOYEES, VOLUNTEERS, AND ANY SUBCONTRACTORS, AGREE TO WAIVE ALL RIGHTS OF SUBROGATION AGAINST THE CITY AND ITS INSURANCE CARRIERS FOR ANY LOSSES PAID, SUSTAINED, OR INCURRED, BUT NOT COVERED BY INSURANCE, THAT ARISE FROM THE CONTRACTUAL RELATIONSHIP OR WORK PERFORMED. THIS WAIVER APPLIES TO ANY DEDUCTIBLES OR SELF-INSURED RETENTIONS FOR WHICH THE CONTRACTOR OR ITS AGENTS MAY BE RESPONSIBLE.

F. Policy Form.

(1) All policies required by this Contract, except for Workers' Compensation and Professional Liability, or unless specific approval is given by Risk Management through the City's Purchasing Division, are to be written on an occurrence basis, and must name the City of North Port, Florida, its Commissioners, officers, agents, employees, and volunteers as additional insured as their interest may appear under this Contract. Claims Made Policies may be accepted for professional liability, hazardous materials and such other risks as are authorized by the City's Purchasing Division. All Claims Made Policies contributing to the satisfaction of the insurance requirements must have an extended reporting period option or automatic coverage of not less than two (2) years. If provided as an option, Contractor must purchase the extended reporting period on cancellation or termination unless a new policy is affected with a retroactive date, including at least the last policy year.

(2) Insurance requirements itemized in this Contract, and required of the Contractor, must be provided by or on behalf of all subcontractors to cover their operations performed under this Contract. The Contractor is responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to its subcontractors.

(3) Each insurance policy required by this Contract must:

(a) Apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability.

(b) Be endorsed to state that coverage must not be suspended, voided, or cancelled by either party except after notice is delivered in accordance with the policy provisions. The Contractor is to notify the City's Purchasing Division of any occurrence by written notice via certified mail, return receipt requested.

(4) The City retains the right to review, at any time, coverage, form, and amount of insurance.

(5) The Contractor is solely responsible for payment of all premiums for insurance required in this Contract and is solely responsible for the payment of all deductibles, SIR (self-insured retentions), any loss or portion of any loss that is not covered by any available insurance policy, and retention as set forth in the policies, whether the City is an insured under the policy. Contractor's insurance is considered primary for any loss, regardless of any insurance maintained by the City.

(6) All certificates of insurance must be on file with and approved by the City before commencement of any work done pursuant to this Contract. All required certificates of insurance must be accompanied by a copy of the additionally insured documents/endorsements (CG 20101185 or combination of CG 2010370704 and CG 20370704). Certificates of insurance evidencing Claims Made or Occurrences form coverage and conditions to this Contract, as well as the Contract number and description of work, are to be furnished to the City's Purchasing Division at 4970 City Hall Boulevard, Suite 337, North Port, FL 34286 prior to commencement of the work and a minimum of **thirty (30) calendar days** prior to expiration of the insurance Contract when applicable. All insurance certificates must be received by the City's Purchasing Division before the Contractor commences or continues work. The certificate of insurance issued by the underwriting department of the insurance carrier must certify compliance with the insurance requirements of this Contract.

(7) Notices of Accidents (Occurrences) and Notices of Claims associated with work being performed pursuant to this Contract must be provided to Contractor's insurer(s) and the City's Purchasing Division as soon as practicable after notice to the insured Contractor.

ATTACHMENT 1.2 TO SECOND AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.005

Attachment 1.2

PROFESSIONAL LIABILITY INSURANCE

The Consultant must procure and maintain, and require all subconsultants to procure and maintain, during the life of this Contract, professional liability insurance with a minimum $2,000,000 per occurrence; and with a $2,000,000 policy term general aggregate. Coverage shall be extended beyond the policy year term either by a supplemental extended reporting period (ERP) with as great of duration as available, with no less coverage and reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made. The City prefers all professional liability insurance be written on an Occurrence Form; however, in the event that the professional liability insurance required by this Contract is written on a claims-made basis, the Consultant warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained for a period of two (2) years or an extended reporting period (ERP) with tail coverage will be obtained and maintained for a period of two (2) years beginning at the time work under this Contract is completed.

UNLESS THE PARTIES HAVE AGREED TO AN OPT-OUT PURSUANT TO FLORIDA STATUTES SECTION 558.005(1), AN EMPLOYED DESIGN PROFESSIONAL, OR AN AGENT OF THE CONSULTANT IS NOT INDIVIDUALLY LIABLE FOR NEGLIGENCE ARISING OUT OF THE COURSE AND SCOPE OF THIS CONTRACT FOR ECONOMIC DAMAGES SO LONG AS THE CONSULTANT MAINTAINS THE LIMITS OF PROFESSIONAL LIABILITY INSURANCE AS PROVIDED IN THIS ATTACHMENT.

ATTACHMENT 2.2 TO SECOND AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.005

Attachment 2.2

CONSTRUCTION MANAGER AT RISK (CMAR) SERVICES PHASE II INDEMNITY, AND RELEASE

A. **TO THE EXTENT PERMITTED BY FLORIDA LAW, THE CMAR ASSUMES ALL LIABILITY FOR, AND RELEASES AND AGREES TO INDEMNIFY, PROTECT, AND HOLD HARMLESS THE CITY, ITS COMMISSIONERS, OFFICERS, AGENTS AND EMPLOYEES, FROM ALL LIABILITIES, FINES, CLAIMS, ASSESSMENTS, SUITS, JUDGMENTS, DAMAGES, LOSSES AND COSTS, INCLUDING CONSEQUENTIAL, SPECIAL, INDIRECT, AND PUNITIVE DAMAGES, (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COURT COSTS, WHETHER THE FEES AND COSTS ARE INCURRED IN NEGOTIATIONS, AT THE TRIAL LEVEL OR ON APPEAL, OR IN THE COLLECTION OF ATTORNEYS' FEES), ARISING OUT OF ANY ACTS, ACTIONS, BREACHES, NEGLECT OR OMISSIONS OF THE CMAR, OR THE CMAR'S OFFICERS, EMPLOYEES, AGENTS, SUB-CONTRACTORS, SUB-CONSULTANTS, AND OTHER PERSONS EMPLOYED OR UTILIZED BY THE CMAR IN THE PERFORMANCE OF, OR THE FAILURE TO PERFORM, THIS CONTRACT. THIS CONTRACT DOES NOT CONSTITUTE A WAIVER OF SOVEREIGN IMMUNITY OR CONSENT BY THE CITY OR ITS SUBDIVISIONS TO SUIT BY THIRD PARTIES.**

B. **FURTHER, THE CMAR SHALL FULLY INDEMNIFY, AND HOLD HARMLESS THE CITY FROM ALL SUITS, ACTIONS, DAMAGES, AND COSTS OF EVERY NAME AND DESCRIPTION, INCLUDING ATTORNEYS' FEES, ARISING FROM OR RELATING TO VIOLATION OR INFRINGEMENT OF A TRADEMARK, COPYRIGHT, PATENT, TRADE SECRET OR INTELLECTUAL PROPERTY RIGHT.**

C. The City must provide all available information and assistance that the CMAR may reasonably require regarding any claim. In the event of a claim, the city must promptly notify the CMAR in writing by prepaid certified mail (return receipt requested) or by delivery through any nationally recognized courier service (such as federal express or ups) which provides evidence of delivery, at the address provided for receipt of notices in this Contract.

D. The insurance coverage and limits required in this Contract may or may not be adequate to protect the city and such insurance coverage will not be deemed a limitation on the CMAR liability under the indemnity provided in this section. In any proceedings between the parties arising out of or related to this indemnity provision, the prevailing party shall be reimbursed all costs, expenses, and reasonable attorney fees through all proceedings (at both trial and appellate levels).

E. Nothing in this Contract shall be deemed to affect the rights, privileges and immunities of the city as set forth in Florida Statutes Section 768.28.

F. The terms of this section survive the termination or completion of this Contract work.

ATTACHMENT 3 TO SECOND AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.005

FEMA PROVISIONS

Section 1: Prohibition on Contracting for Covered Telecommunications Equipment or Services

(a) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim).

(b) *Prohibitions.*

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the Contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) *Exceptions.*

(1) This clause does not prohibit Contractors from providing—

(i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

(i) Covered telecommunications equipment or services that:

i. Are *not used* as a substantial or essential component of any system; *and*

ii. Are *not used* as critical technology of any system.

(ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) *Reporting requirement.*

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

Section 2: Domestic Preference for Procurements

As appropriate, and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Section 3: Equal Employment Opportunity

(a) This section applies if the contract is for a federally assisted construction contract. As defined in 41 C.F.R. § 60-1.3:

(1) A *federally assisted construction contract* means "any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any federal program involving a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work."

(2) *Construction work* means as "the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction."

(3) *Contract* means "any Government contract or subcontract or any federally assisted construction contract or subcontract."

(4) Additional definitions pertaining to this section can be found at 41 C.F.R. § 60-1.3.

(b) Unless exempted in 41 C.F.R. Part 60, the following terms apply, and during the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this

section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or contract unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or contract as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided,* however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Section 4: Davis-Bacon Act

(a) This section applies when required by federal program legislation for prime construction contracts over $2,000. The Davis-Bacon Act only applies to the Emergency Management Performance Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, Transit Security Grant Program, Intercity Passenger Rail Program, and Rehabilitation of High Hazard Potential Dams Program. Unless otherwise stated in a program's authorizing statute, it *does not* apply to other FEMA grant and cooperative agreement programs, including the Public Assistance program. Where this section applies:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached

hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers, or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor to require a subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees -

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman

hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Section 5: Copeland Anti-Kickback Act

(a) This section applies only if the Davis-Bacon Act applies (see Section 4).

(b) The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.

(c) The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(d) A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

Section 6: Contract Work Hours and Safety Standards Act

(a) This section applies to all procurements over $100,000 that involve the employment of mechanics, laborers, and construction work. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(b) Where this section applies:

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or

any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) If this contract is only subject to Contract Work Hours and Safety Standards Act and not subject to the other statutes in 29 C.F.R. § 5.1, the following terms apply:

(1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

Section 7: Clean Air and Water

(a) This section applies if the contract is over $150,000.

(b) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of Florida, FEMA, and the appropriate Environmental Protection Agency Regional Office. The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with federal assistance provided by FEMA.

(c) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of Florida, FEMA, and the appropriate Environmental Protection Agency Regional Office. The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with federal assistance provided by FEMA.

Section 8: Suspension and Debarment

(a) If this contract is for $25,000 or more, or requires the consent of an official of a federal agency, then this contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As

such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. The Contractor agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C throughout the period of the contract.

(b) This certification is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

Section 9: Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of more than $100,000 shall file the FEMA-required certification found at 44 C.F.R. Part 18, Appendix A (attached hereto). Each tier certifies to the tier above that it will not and has not used federally 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 shall 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 recipient who in turn will forward the certification(s) to the federal awarding agency.

Section 10: Procurement of Recovered Materials

(a) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

competitively within a timeframe providing for compliance with the contract performance schedule;

meeting contract performance requirements; or

at a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage: https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.

(b) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Section 11: Access to Records

(a) The Contractor agrees to provide the City, the State of Florida, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(b) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(c) In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

Section 12: DHS Seal, Logo, and Flags

The Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The Contractor shall include this provision in any subcontracts.

Section 13: Compliance with Federal Law

The Contractor acknowledges that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

Section 14: No Obligation of Federal Government

The federal government is not a party to this contract and is not subject to any obligations or liabilities to the non-federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

Section 15: False Claims

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

Section 16: Affirmative Socioeconomic Steps

If subcontracts are to be let, the prime Contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Section 17: Copyright and Data Rights

If the contract requires the Contractor or subcontractor to produce copyrightable subject matter or data, then the Contractor grants to the City, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the City or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the City data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the City.

Section 18: Patent Rights

If this contract is a *funding agreement* as defined in 37 C.F.R. § 401.2(a), then the standard patents rights clause at 37 C.F.R. § 401.14 is hereby incorporated by reference as if fully set forth herein.

ATTACHMENT 15 TO SECOND AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.005

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS PRIMARY COVERED TRANSACTIONS

This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000.

The Contractor certifies that, neither the firm nor any person associated therewith in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, and/or position involving the administration of federal funds:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as defined in 49 CFR s29.110(a), by any federal department or agency;

(b) has within a three-year period preceding this certification been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; 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) is presently indicted for or otherwise criminally or civilly charged by a federal, state, or local governmental entity with commission of any of the offenses enumerated in paragraph (b) of this certification; and

(d) has within a three-year period preceding this certification had one or more federal, state, or local government public transactions terminated for cause or default.

The Contractor certifies that it shall not knowingly enter into any transaction with any subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this project by any federal agency unless authorized by the City of North Port.

The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by the City of North Port. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City of North Port, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer.

The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Willis A. Smith Construction, Inc.	59-1399895
Company Name (Contractor)	Tax ID Number
Brett Rasmussen	
Authorized Representative Name	Authorized Representative Signature
59-1399895	N/A
Federal Issued Tax	CAGE Code issued through www.sam.gov

Identification Number
(If Social Security number DO NOT enter)

DATE: 6/17/24

ATTACHMENT 16 TO SECOND AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.005

CONTRACT CHANGES

A. The parties may make changes to the contract work, including additions or deletions, provided that such changes are within the general scope of the contract work. Any change affecting the contract price must be in writing and signed by both parties. The Contractor is not entitled to any increase in price or extension of time unless the contract is changed in accordance with this section.

B. Either party may submit to the other a change proposal, which must identify any proposed changes in contract price or time, explain why the change is believed necessary, and cite to any applicable provision of the contract. Within a reasonable time, the party receiving the proposal shall respond in writing to the other party. If the parties agree to the change, they will execute an amendment to the contract changing its terms.

C. Without invalidating the contract, the City may order additions, deletions, or revisions in the work, provided that such changes are within the general scope of the contract work. Such changes may be accomplished by a contract amendment, if the City Commission and Contractor have agreed as to the effect, if any, of the changes on contract price. If the parties cannot agree, the Contractor shall proceed with the work, or, in the case of a deletion, cease activities with respect to the deleted work, subject to the Contractor's right to claim for additional compensation or time. Any such claim must be made in writing within 14 days. Additional compensation will be limited to Contractor's actual cost of the work, plus reasonable profit and overhead. Nothing in this section shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the contract or governing laws and regulations.

ATTACHMENT 17 TO SECOND AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.005

SANCTIONS AND PENALTIES

In the event of a breach of the terms of this Contract, the Contractor and its subcontractors will be subject to sanctions and penalties as may be imposed and remedies invoked as provided by rule, regulation, or order of the local, state, and federal agency, and as otherwise provided by law and other terms of this Contract.

ATTACHMENT 18 TO SECOND AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.005

TERMINATION FOR CONVENIENCE

The City reserves the right, in its best interest as determined by the City, to cancel this Contract for convenience by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. In the event this Contract is terminated for convenience, Contractor shall be paid for any services performed to the City's satisfaction pursuant to the Contract through the termination date specified in the written notice of termination. The Contractor acknowledges and agrees that Contractor has received good, valuable, and sufficient consideration from City, the receipt and adequacy of which are hereby acknowledged by the Contractor, for City's right to terminate this Contract for convenience. The Contractor will not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.