

**THIRTEENTH AMENDMENT TO CONSTRUCTION MANAGER AT RISK CONTRACT NO. 2023-17.001  
FOR CONSTRUCTION SERVICES CONTRACT PHASE II**

*This Thirteenth Amendment to Construction Manager at Risk Contract No. 2023-17.001 for Construction Services Contract Phase II, Work Assignment #2024-41FM ("Thirteenth 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 Wharton-Smith, Inc., a Florida for profit, registered to do business in the State of Florida, whose principal place of business is 750 Monroe Road, Sanford, FL 32771 ("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. 2023-17.001 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 Thirteenth Amendment for Work Assignment #2024-41FM includes the CMAR services for Demolition of the former 5900 Sam Shapos Way Building; and

**WHEREAS**, the CMAR has reviewed the services to be provided under this Thirteenth Amendment and is qualified, willing, and able to provide and perform these services in accordance with the terms of this Thirteenth 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 Thirteenth Amendment, all of which are incorporated by reference as if set forth fully herein. This Thirteenth 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 Thirteenth Amendment mean and include both the Original Contract and this Thirteenth Amendment.
- C. This Thirteenth 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 III. COMPENSATION**

Section III. B. of the Original Contract is amended in its entirety to read as follows:

### **III. COMPENSATION**

- B. The CMAR certifies, represents, and warrants that wage rates and other factual unit costs supporting the compensation relative to this Contract are accurate, complete, and current at the time of entering this Contract. The original contract price and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. CMAR’s execution of this Contract is its truth-in-negotiation certification to and acknowledgement of the above, as required by Florida Statutes Section 287.055(5)(a), as may be amended from time to time, as applicable.

## **3. ORIGINAL CONTRACT – SECTION XIX. SUPPLEMENTAL DOCUMENTS**

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

Exhibit D	Preconstruction Work Assignment #2024-41FM
	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.

- ☒ ATTACHMENT 1.1 – GENERAL INSURANCE
- ☐ 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
- ☒ ATTACHMENT 2.2 – CONSTRUCTION RELATED SERVICES INDEMNITY, DEFENSE, & RELEASE
- ☐ 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
- ☒ ATTACHMENT 15 – CERTIFICATION REGARDING DEBARMENT, AND SUSPENSION
- ☒ ATTACHMENT 16 – CONTRACT CHANGES
- ☒ ATTACHMENT 17 – SANCTIONS AND PENALTIES
- ☒ ATTACHMENT 18 – TERMINATION FOR CONVENIENCE
- ☐ ATTACHMENT 19 – BUILD AMERICA BUY AMERICA ACT

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



**CONSTRUCTION MANAGER AT RISK  
WHARTON-SMITH, INC.**

By: Darin A. Crafton  
Name: Darin A. Crafton  
Title: Chief Operating Officer- Commercial

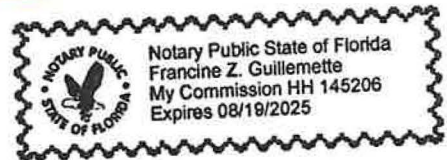
**SWORN ACKNOWLEDGEMENT**

STATE OF Florida  
COUNTY OF Seminole

Sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 18 day of July 2025, by Darin A. Crafton (name), as Chief Operating Officer- Commercial (title) for Wharton-Smith, Inc. (entity).

Notary Public

X Personally Known OR \_\_\_ Produced Identification  
Type of Identification Produced \_\_\_\_\_





Approved by the City Commission of the City of North Port, Florida on \_\_\_\_\_, 2025.

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

\_\_\_\_\_  
MICHAEL GOLEN, CPM  
INTERIM CITY ATTORNEY

**EXHIBIT D TO THIRTEENTH AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.001**

**WORK ASSIGNMENT #2024-41FM**



**City of North Port**  
**PURCHASING**  
Office: 941.429.7170  
Fax: 941.429.7173  
Email: [purchasing@northportfl.gov](mailto:purchasing@northportfl.gov)



**WORK ASSIGNMENT**  
**Wharton Smith, Inc.**

CONSULTANT

CONTINUING CONTRACT NO. & TITLE

Construction Manager at Risk No. 2023-17.001

**THIS WORK ASSIGNMENT**

WORK ASSIGNMENT # 2024-41FM  
SHORT TITLE Hurricane Ian Damage Repairs - Art Center  
DATE SUBMITTED 4/9/2024  
AMOUNT (LUMP SUM) \$2,151.59  
SCHEDULED COMPLETION 30 days to GMP from completion

**CONTRACT AND BUDGET OVERVIEW FOR FISCAL YEAR 2024**

**DEPARTMENT**  
TOTAL OF PREVIOUS ASSIGNMENTS \$64,287.19  
THIS WORK ASSIGNMENT \$2,151.59  
TOTAL WORK ASSIGNMENTS \$66,438.78  
ACCOUNT NO/PROJECT NO 001-0760-519.46-04 / 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 CONSTRUCTION SHALL NOT EXCEED \$4,000,000 PER FLORIDA STATUTE 287.055 AS AMENDED.

SUBMITTED BY:

[Signature] 4-10-24  
CONSULTANT Wharton Smith, Inc. DATE

APPROVED BY:

Chuck [Signature]  
Speake [Signature]  
Digitally signed by Chuck Speake  
Date: 2024.04.15 12:01:40 -0400

DEPARTMENT DIRECTOR DATE

Alla V. Skipper [Signature]  
Digitally signed by Alla V. Skipper  
Date: 2024.04.16 11:10:52 -0400

PURCHASING DATE

[Signature] 4/10/24

ASSISTANT CITY MANAGER DATE

Lisa [Signature]  
Herrmann [Signature]  
Digitally signed by Lisa Herrmann  
Date: 2024.04.16 11:38:14 -0400

BUDGET ADMINISTRATOR DATE

Kimberly [Signature]  
Williams [Signature]  
Digitally signed by Kimberly Williams  
Date: 2024.04.17 16:01:39 -0400

FINANCE DIRECTOR DATE

[Signature] 4/18/24

CITY MANAGER DATE

March 2024

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**EXHIBIT A TO EXHIBIT D TO THIRTEENTH AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.001**

**Work Assignment 2024-41FM**

**Hurricane Ian Damage Repairs – Art Center**

**Preconstruction Scope:**

Work associated with establishing a GMP which must include remaining damages, identified in the assessment from Rostan titled Sam Shapos Way Building. 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 B TO EXHIBIT D TO THIRTEENTH AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.001**

**Work Assignment 2024-41FM**

**FEE SCHEDULE FOR WORK ASSIGNMENT**

**PRECONSTRUCTION FEE SCHEDULE**

Fixed Fee for services described in the Scope of Services:	\$2,151.59
Owner's Contingency (not-to-exceed Amount), if authorized:	\$0.00
<b>TOTAL CONTRACT NOT-TO-EXCEED AMOUNT</b>	<b>\$2,151.59</b>

**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 B TO EXHIBIT D TO THIRTEENTH AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.001**

**Exhibit B to Exhibit D (CONTINUED) – Work Assignment 2024-41FM**

**PRECONSTRUCTION FEE SCHEDULE AND PROPOSAL**

**PRECONSTRUCTION PROPOSAL**



**Wharton-Smith, Inc.**  
CONSTRUCTION GROUP

December 18, 2023

Kim Humphrey, Facilities Manager Public Works  
1100 N. Chamberlain Blvd  
North Port, Florida 34286

**Re: Preconstruction Services: City of North Port Art Center proposal**

Dear Kim,

Wharton-Smith, Inc. is pleased to submit our proposal for the preconstruction services for the **City of North Port Art Center** project.

Based on our early pre-construction efforts and *damage reports provided by the City of North Port*, it is our understanding that this project includes the following scope of work:

- Detect and repair any possible leaks.
- Replace damaged acoustical ceiling tiles.
- Remove and replace damaged soffit and fascia.

Wharton Smith will provide site inspections with written and photographic documentation of the needed repairs while coordinating with City Staff and Design professionals, as needed. After a competitive bid process with our subcontractors and vendors Wharton Smith will provide a GMP Estimate to the City of North Port for review.

We estimate the cost of these preconstruction services to be **\$2,151.59** and billable rates are detailed below.

Caryn Huff Project Executive 4 hrs. @ \$104.96 = \$ 419.84  
Juanmiguel Grout Pre-Con Services 6 hrs. @ \$ 104.96 = \$ 629.76  
Chuck Hardwick Sr. Project Manager 7 hrs. @ \$98.97 = \$692.79  
KerIn Schwelgert Project Manager 3 hrs. @ \$ 86.40 = \$ 259.20  
Administrative Costs 1 LS @ \$150 = \$150.00

Thank you for the opportunity to submit a proposal. We look forward to working with you on this project.

Please contact me with any questions about the enclosed.

Sincerely,

  
Caryn Huff  
Project Executive

2525 Bobcat Village Center Road, Unit #105, North Port, FL 34288 | Phone: (941) 621-4723

AL - 45684 | FL - CG C1511243 | GA - GCCO 001333 | LA - 52227 | MS - 18232MC | NC - 38755 | SC - G97817 | TN - 62419 | VA - 2705121584A

**EXHIBIT C TO EXHIBIT D TO THIRTEENTH AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.001**

**Work Assignment 2024-02-FM**

**PRECONSTRUCTION SCHEDULE**

<u>Description</u>	Estimated Calendar Days from Notice to Proceed Completion
Provide a GMP	30 Days

**EXHIBIT E TO THIRTEENTH AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.002**

**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:**

Due to the extent of the damages, cost to repair, and the age and overall condition of the facility, the former 5900 Sam Shapos Way building will be demolished under this amendment.

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:

- (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.
- (4) 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 successfully 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 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:

<b>1. Temporary Facilities</b>
Temporary offices / field offices
Sheds
Toilets, Rental Toilets
Storage
Protection
First aid and facilities
Signage, project sign
<b>2. Temporary Utilities</b>
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
<b>3. Hoist Facilities</b>
Material Hoists
Personnel Hoists
Temporary Elevators
Scissor Lifts
Special Construction for Hoist
Safety and protection for Hoist
<b>4. Protection and Safety</b>
Safety Labor
Safety Materials
Fire Extinguishers
Site Fencing, barricades and safety signage
Protect Finish Work
Traffic Control
Flagmen
Protect Existing Elements
<b>5. Cleaning</b>
Cleaning Labor
Cleaning Materials and Equipment
Front-end Loader / Forklift
Trash Chute and Dumpsters
Rubbish Removal
Final Cleaning
Site Cleaning

<b>6. Field Office</b>
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
<b>7. Miscellaneous / General Expenses</b>
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
<b>8. Contract Closeout</b>
Warranties administration
Punch list activities and administration
All other items necessary to properly close out the work
<b>9. Taxes and Other</b>
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 any 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 Thirteenth 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 Thirteenth 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 as 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 braces).
- (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 from 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 damages 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 from 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 shown thereon. All material or labor for Work which is shown on the Specifications and Drawings or is reasonably inferable therefrom 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 it has a good faith belief that the proposed Substitution meets the foregoing requirements. Construction Manager 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 THIRTEENTH AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.001**

**PHASE II PROJECT SCHEDULE**

<b><u>Description of Milestone</u></b>	<b><u>Calendar Days from Notice to Proceed to Completion of Milestone</u></b>
Substantial Completion (30 Days)	30
Final Completion (30 days)	60

- **Schedule assumes:**
  - **Notice to Proceed / PO issued no later than 7 calendar days after Contract Amendment Award.**
  - **All Required Permits Issued no later than 7 calendar days after Contract Amendment Award.**

**EXHIBIT G TO THIRTEENTH AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.001**

**PHASE II FEE SCHEDULE - GMP PROPOSAL**



**Wharton-Smith, Inc.**  
CONSTRUCTION GROUP

April 29, 2025

Kim Humphrey  
Facilities Manager / Public Works  
City of North Port  
1100 N. Chamberlain Blvd.  
North Port, FL 34286

Re: City of North Port Hurricane Ian Damage Repairs  
GMP for Art Center

Dear Ms. Humphrey,

On behalf of Wharton-Smith, Inc. we would like to thank you for the opportunity to provide a GMP for the Art Center. This GMP deliverable includes Hurricane Ian Damage Repairs to the insured asset listed above within the City of North Port. We have included in-depth assessments of the identified facility.

We are pleased to offer this proposal for the cost of the work not to exceed: **\$84,342**

Thank you again for your trust in Wharton-Smith and we look forward to performing this work.

Respectfully,

Caryn Huff  
Area Manager  
Wharton-Smith, Inc.

**EXHIBIT G TO THIRTEENTH AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.001**

**PHASE II - GMP SUMMARY**

<b>Dallas White Park Multi-Use &amp; ADA</b>	<b>[Total]</b>
General Conditions / Requirements	\$21,679.00
Direct Cost	\$46,710.00
<b>Subtotal</b>	<b>\$68,389.00</b>
CMAR Contingency	\$1,876.00
Owner's Contingency	\$1,877.00
CMAR's Insurance	\$1,853.00
CMAR Fee/Overhead	\$5,518.00
P & P Bond	\$2,006.00
Builder's Risk Insurance	\$2,823.00
<b>Total – Guaranteed Maximum Price</b>	<b>\$84,342.00</b>

Allowance for escalation in the amount of \$39,328 included within GMP within the Direct Cost line item.



**EXHIBIT H TO THIRTEENTH AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.001**

**PHASE II LIST OF CONSTRUCTION DOCUMENTS**

**N/A**

**EXHIBIT I TO THIRTEENTH AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.001**

**PHASE II KEY PERSONNEL**

<b><u>PERSONNEL NAME</u></b>	<b><u>RESPONSIBILITY</u></b>
Caryn Huff	Project Executive
Chuck Hardwick	Project Manager
Kerin Schweigert	Assistant Project Manager
Josh Schaefer	Superintendent

**EXHIBIT J TO THIRTEENTH AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.001**

**PHASE II CLARIFICATIONS AND EXCLUSIONS**

**Schedule**

- 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 – 5:00 pm daily (Mon-Sat). Special Hours for construction shall be coordinated and approved by the City Administrative Agent.
- Budget pricing shall be held per subcontract price for the duration of the Agreement. Issues related to material and labor cost escalation shall be reviewed on a case-by-case basis.
- All savings created from “buy-out” or unused “scope of work” savings will be considered as savings to the Overall Project and may be utilized anywhere within the Overall Project if it is funded from the same budgetary source and received approval from the City Administrative Agent. All savings will be tracked and reallocated as directed by the City Administrative Agent. (For example, savings remaining from the restroom scope of work from the GMP work assignment, might be reallocated to another scope within the Overall Scope of Work assignment if it is coming from the same funding source and approved by the City Administrative Agent.)

**Building Demolition:**

- Included in this scope of work is demolition of:
  - Existing (approx.) 4,500 SF concrete building;
  - Existing adjacent (approx.) 1,728 SF wood building;
  - Existing adjacent (approx.) 100 SF former kiln/shed.
  - Silt fencing as required during demolition.
  - Foundations to remain in place, any disturbed grass areas will receive hydroseed.

**Contingencies**

- The GMP contains project contingencies 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**

- Standard General Liability Commercial Contractor Insurance coverage included.
- Bond and Builder’s Risk are included in the GMP

**Owner Costs**

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

- 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.

**Exclusions:**

The following services are not included in the GMP:

- Architectural or Engineering fees
- Geotechnical reports.
- Historical Resources Mitigation
- Environmental Impact Mitigation
- Gopher Tortoise Relocation.
- Fire watch or off-hour security.
- Underground Unforeseen Conditions (i.e.: rock removal, muck removal, unsuitable fill remediation, unidentified utilities, etc.).
- Section 39. Temporary Facilities is not applicable to this scope of work.

**ATTACHMENT 1.1 TO THIRTEENTH AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.001**

**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 for each accident; \$1,000,000 each employee; and \$1,000,000 policy limit for bodily injury or disease. Proof of insurance must be filed by the Contractor with the City within **ten (10) calendar days** after the Effective Date of this Contract.

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; \$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, hired (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. Proof of such insurance must be filed by the Contractor with the City within **ten (10) calendar days** after the Effective Date of this Contract.

- 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 policies 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 1.4 TO THIRTEENTH AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.001**

**Attachment 1.4**

**BUILDER'S RISK (COURSE OF CONSTRUCTION) OR INSTALLATION FLOATER**

The policy must include the "All Risk" (Special Perils) coverage with limits equal to the completed value of the project; and must not include coinsurance penalty provisions.

**ATTACHMENT 2.2 TO THIRTEENTH AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.001**

**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, NEGLIGENCE 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 13 TO THIRTEENTH AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.001

PERFORMANCE AND PAYMENT BOND REQUIREMENTS

A. Security.

- (1) The Contractor must provide the required performance and payment bond or other acceptable security to the City within **ten (10) business days** of executing this Contract. Failure by the Contractor to provide the bond within **ten (10) business days** constitutes a default. Pursuant to Section 2-404 of the Code of City of North Port, Florida, upon default the City may immediately award the bid to the next lowest responsive and responsible bidder and recover from the original successful bidder the difference in cost between the original winning bid and the next lowest responsive and responsible bidder. The default is only curable at the option of the City.
- (2) In addition, the Contractor is responsible and bears all cost associated with recording the Performance and Payment Bond with the Sarasota County Clerk's Office. The Contractor must furnish the receipt of the recording and certified copy of the recorded bond to the Purchasing Division at the time of the pre-construction meeting. Such default is only curable at the option of the City.

B. Performance and Payment Bond. The Contractor must provide a Performance and Payment Bond, in the form prescribed in Florida Statutes Section 255.05, in the amount of one hundred percent (100%) of the Contract price, the costs of which are to be paid by the Contractor. The bond must be acceptable to the City only if the Surety Company:

- (1) Is licensed to do business in the State of Florida;
- (2) Holds a certificate of authority authorizing it to write surety bonds in the State of Florida;
- (3) Has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued;
- (4) Is otherwise in compliance with the provisions of the Florida Insurance Code;
- (5) Holds a currently valid certificate of authority issued by the United States Department of Treasury under 31 U.S.C. §§ 9304-9308;
- (6) Has a current rating of at least Excellent (A or A-) as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc., of 75 Fulton Street, New York, New York 10038; and
- (7) Has an underwriting limitation of at least two times the dollar amount of the Contract price.

C. Substitute Bond Required. If the Surety Company for any bond furnished by the Contractor files for bankruptcy, has a receiver appointed, is declared bankrupt, becomes insolvent, has an assignment made for the benefit of creditors, has its right to do business terminated in the State of Florida, or ceases to meet the requirements imposed by this Contract, the Contractor must, within **five (5) calendar days** thereafter, substitute another Bond and Surety Company, both of which are subject to the City's approval.

D. Surety Acceptance of Terms. By execution of the bond, the Surety Company acknowledges that it has read the surety qualifications and surety obligations imposed by this Contract and satisfies all conditions.

ATTACHMENT 14 TO THIRTEENTH AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.001

**PERFORMANCE AND PAYMENT BOND**

*In compliance with F.S. Section 255.05(10) and Code of the City of North Port Sec. 2-414*

<b>BOND NO.:</b>	
<b>BOND AMOUNT:</b>	\$
	Wharton-Smith, Inc.
<b>CONTRACTOR NAME:</b>	
<b>PRINCIPAL ADDRESS:</b>	225 Bobcat Village Center Road Unit 105, North Port, FL
<b>PRINCIPAL PHONE NO.:</b>	
<b>SURETY COMPANY NAME:</b>	
<b>SURETY AGENT:</b>	
<b>PRINCIPAL ADDRESS:</b>	
<b>PRINCIPAL PHONE NO.:</b>	
<b>CITY NAME:</b>	City of North Port, Florida
<b>PRINCIPAL ADDRESS:</b>	4970 City Hall Boulevard
	North Port, Florida 34286
<b>CITY CONTACT PHONE NO.:</b>	(941) 223-2900
<b>CONTRACT NO.: (if applicable)</b>	
<b>PROJECT ADDRESS:</b>	5900 Sam Shapos Way
<b>(if applicable)</b>	North Port, Florida 34286
<b>DESCRIPTION OF PROJECT:</b>	Demolition of former 5900 Sam Shapos Way Building
<b>(if applicable)</b>	
<b>DESCRIPTION OF</b>	Demolition of former 5900 Sam Shapos Way Building
<b>IMPROVEMENT:</b>	

By this Bond, we, \_\_\_\_\_, as Principal ("Contractor") and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, with its principal office in the City of \_\_\_\_\_, as Surety ("Surety") are held firmly bound unto the City of North Port, Florida, as Obligee ("City"), in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, Contractor has by written agreement dated \_\_\_\_\_, entered into a Contract with City for \_\_\_\_\_

\_\_\_\_\_ in accordance with drawings and specifications prepared by \_\_\_\_\_

\_\_\_\_\_, which Contract is by reference made a part hereof, and is hereinafter referred to as the CONTRACT.

NOW, THEREFORE, THE CONDITION OF THIS BOND is such that if Contractor:

1. Performs the Contract dated \_\_\_\_\_, between Contractor and City for construction for the **DESCRIPTION** the Contract being made a part of this bond by reference, at the times and in the manner prescribed in the Contract: and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Contractor with labor, materials, or supplies, used directly or indirectly by Contractor in the prosecution of the work provided for in the Contract: and
3. Pays City all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that City sustains because of a default by Contractor under the Contract: and
4. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract, then this bond is void otherwise it remains in full force.

Any action instituted by City under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes.

Any changes in or under the Contract documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect Surety's obligation under this bond.

IN WITNESS WHEREOF, the said Contractor and Surety have signed and sealed this instrument as follows:

**CONTRACTOR**

\_\_\_\_\_ *[insert name of principal]*

By: \_\_\_\_\_

\_\_\_\_\_ Title

(SEAL)

\_\_\_\_\_ Date

**SURETY**

\_\_\_\_\_  
By: \_\_\_\_\_ (SEAL)  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date

Any Claims under this bond may be addressed to  
(name and address of Surety):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone No: \_\_\_\_\_

Name and address of agent or representative in Florida if different from above:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone No.: \_\_\_\_\_







**ATTACHMENT 16 TO THIRTEENTH AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.001**

**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 THIRTEENTH AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.001**

**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 THIRTEENTH AMENDMENT TO CMAR SERVICES CONTRACT NO. 2023-17.001**

**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.