

AGREEMENT

This Professional Services Agreement (“Agreement”) is made effective as of the 7th day of September 2023, by and between the City of Cartersville (“Owner”) and Pennant Construction Management, Inc. (“Construction Manager at Risk - CMAR”) for construction management services defined as the Renovation of the City of Cartersville’s Electric Department administrative facility (“Project”) located at 320 E. Erwin Street, Cartersville, Georgia.

RECITALS:

Whereas, the Owner desires to renovate and extend improvements on the property (“Project”) located at 320 S. Erwin Street, Cartersville, Georgia which is owned by the City of Cartersville (“Owner”); and whereas, the Construction Manager at Risk is a general contractor which shall provide the services described in this Agreement and which will be detailed in final plans and specifications provided by Croft & Associates, Inc.

NOW, THEREFORE, it is agreed between the parties as follows:

Section 1.0 Description of Services.

1.1 The CMAR shall provide the general contracting services necessary to complete all construction related activities of the project and/or parcel. The CMAR shall cooperate with local building authorities to conform to the plans and specifications; to furnish construction administration, management services and supervision; to manage at all times an adequate supply of workers and material through subcontracts; and to supervise the work. The Owner agrees to furnish or approve, in a timely manner, information required by the CMAR and to make payments to the CMAR in accordance with the requirements of the Contract Documents.

1.2 The Owner shall act as the designated person by which the CMAR shall answer directly to. In communications relating to the Project, the Owner shall communicate with Contractors and Subcontractors only through the CMAR.

1.3 The Owner's representative on site at the Project shall be the CMAR, and all communications to the Owner shall be made through the CMAR. Unless otherwise stated herein, no Modification to the Contract shall be made without the written approval of the Owner.

1.4 The CMAR shall coordinate with the project designer and file the application for the primary building permit on said projects which shall include all planning, conversations and meetings with applicable parties which shall include all architects, engineers, building officials, fire marshals and others deemed necessary to enable a permit to be obtain for projects.

1.5 The CMAR shall schedule and conduct meetings with the Owner to discuss such matters as procedures, progress, coordination and scheduling of work. The CMAR shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The CMAR shall also provide recommendations consistent with the project requirements to the Owner on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, cost of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions based on input from project design professionals.

1.6 The CMAR shall exercise reasonable care in preparing schedules and additional estimates. The CMAR, however, does not guarantee schedules that might be affected by exterior influences such as supply chain issues, acts of God and other. The CMAR is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

1.7 Those portions of the work that the CMAR does not customarily perform with the CMAR's own personnel shall be performed under subcontracts or by other appropriate agreements with the Owner and will guidance from the Project Manager. The CMAR shall obtain bids from subcontractors and from suppliers of materials or equipment fabricated especially for the work and shall deliver such bids to the Owner. The CMAR shall not be required to contract on behalf of the Owner with anyone to whom the CMAR has reasonable objection. The CMAR shall oversee all aspects of the projects with the authority to schedule, direct and instruct all subcontractors hired to complete the projects scope of work, shall have the authority to have subcontractors correct any deficiencies with regards to work and shall have the authority to have any subcontractor that fails to do so removed from the projects.

1.8 The CMAR shall have the authority to request all inspections from building inspectors, fire marshals or reigning authorities, which shall include a final inspection upon the completion of the scope of works. The successful achievement of a final inspection for construction services shall constitute the completed projects.

2.0 Payment to CMAR

2.1 Payment to CMAR. The CMAR shall be responsible for all construction cost related to the project and undertaken by subcontractors, materials suppliers and other such sources. All cost shall be paid direct by the CMAR and the CMAR shall then receive payment from the Owner per the instructions of this contract document. In addition to the construction cost related to the project and undertaken by subcontractors, materials suppliers and other such sources, the Owner shall pay the CMAR a total construction fee of twelve percent (12%) of the total of all construction cost related to Project. This 12% fee will include the base construction fee amount for management of 7.5% plus the additional expenses of 3% for bonding and 1.5% for insurance. The Owner shall also pay the defined fixed overhead cost and expense which is to be prorated over the course of the project and equals \$70,000.00. Any direct or indirect expense related to the projects paid by the Project Manager shall be reimbursable.

2.2 Draw amounts can be requested by the CMAR at the payment intervals established for each project based on work completed to date. Unless a different time or date is stated and agreed to by both the Owner and CMAR, all progress billing will be invoiced with payments due in 15 days. Owner cannot establish or allow to be created any form of delay which creates a hindrance in the CMAR's ability to complete such intermediate and final payments. Such earned amounts due the CMAR are payable at standard draw periods set forth in individual projects agreement and shall not be withheld for any such reason short of an illegal or unlawful act. The CMAR may charge interest on that portion of the draw amount which has been due and payable for 30 days or more at a rate of 1 1/2 percent per month calculated on the amount owed from the date upon which it became due and payable until paid.

2.3 Change Orders are expenses created by the owner or unknown conditions with the building/site that are outside the original scope of work and contract agreement of which is guaranteed by the CMAR. When such conditions arise within the project, the first party (often referred to as "the initiating party") shall inform the second party of the change. At that point a scope of work for the change shall be developed and a cost for such a change established. The cost of the change shall be based on typical material, labor and rental expenses for the item plus 12.5% total construction fee (7.5% Construction Fee, 3% Bond Fee and 1.5% Insurance Fee). The scope and expense shall be placed in writing with a change order request by both parties. Failure to enter into a written change order by one or both parties does not constitute a right to fail to pay for such change and it likewise does not create an opportunity for payment to be sought beyond the amount stated in this paragraph. Payment of change orders are to be made upon performance of service which may include a percentage of payment for the percentage of task completed.

Section 3.0 Performance of Service

3.1 The manner in which the Services are to be performed and the specific hours to be worked by the CMAR shall be determined by the CMAR. The Owner will rely on the CMAR to work as many hours as may be reasonably necessary to complete the services in a timely and thorough manner and in accordance with the project schedule agreed upon with the Owner.

3.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

3.3 The Owner shall provide a full set of stamped architectural drawings and structural drawings as by licensed professionals so that CMAR can have a full scope of work for task to be completed. The Owner shall also provide all certificate of approval from the local municipalities attesting the approval for construction of the project to proceed. If variances are required, it is the requirement of the Owner to obtain approval from the municipality and provide CMAR with all documents including restriction and/or limitations that may be included in the approval. The Owner is responsible for filing required documentation and obtaining approval from local, state and federal agencies that may maintain jurisdiction over the project. Documentation will be provided to the project manager.

3.4 The CMAR shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. Any delays in or failure of performance by any party of his or its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party and adequate planning.

Section 4.0 Exclusions and Allowances contained in this Agreement

4.1 This agreement is subject to the approval of the plans by the City of Cartersville Building Inspector and Fire Marshall. Any changed or additions to these plans required by either agency can render this agreement void if determined by the CMAR. If financial requirements of the project increase as a result of these agencies, the both parties to this agreement shall negotiate an acceptable amendment to the cost to accommodate such change. In the event that the parties can not comes to an acceptable conclusion, the CMAR has a right to void the agreement without penalty.

4.2 Items that may not be defined by the plans and have not been included are exclusion and maybe listed as an addendum to this agreement. Failure to have all items listed may constitute inclusion but the list is included as a general guideline to assist in the engagement of this agreement.

5.0 Termination of this Agreement

5.1 The term of this agreement shall begin upon the execution of this agreement or by an earlier period in which any billable service was rendered. Completion of the project shall be upon the successful completion of all requirements necessary for a certificate of occupancy to be obtained based on the scope of work. This agreement may be terminated by the CMAR for the following reasons: a) Failure of Owner to pay CMAR or any subcontractor total amounts earned by the party, b) Acts by the Owner which are deemed to be illegal, unlawful, immoral or unethical as defined and understood by the CMAR, c) the filing of a petition for bankruptcy relief for the Owner, d) should the Owner, in the sole and absolute discretion of the CMAR, become insolvent or should it appear to the CMAR that the Owner may be unable to financially pay for the project or the remaining portions of the project, or e) an interruption by the Owner in the ability of the CMAR to properly and adequately manage the project for the purpose of completing the scope of work.

5.2 The Owner shall have the right to terminate this agreement for the following reasons: a) failure of the CMAR to properly conduct and complete the task set forth in this agreement, b) Acts by the CMAR which are deemed to be illegal, unlawful, immoral or unethical as defined by law and understood by the Owner, or c) failure by the CMAR to complete the projects in a reasonable time frame with consideration and without penalty to the limitations in

completing the task that may be created by the Owner, Owner's subcontracted labor and/or the funding source/partner for such project.

5.3 In the event that termination is made based on any of the three causes above mentioned, the CMAR is due all monies earned to date and/or those funds that are reimbursable. Payment shall be made immediately by the Owner. This agreement may be terminated for any reason with a thirty-day written notice. If termination is without an above referenced cause, all outstanding funds shall be immediately paid plus a termination fee of 10% for all remaining compensation that would have been earned if CMAR would have been allowed to continue in his full capacity.

6.0 Testing for Project Conditions

6.1 During the Preconstruction Phase, the Owner shall obtain with the assistance of the design professional furnish the following information, services or test with reasonable promptness: tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. The Owner shall also furnish any other information or services under the Owner's control and relevant to the CMAR's performance of the Work with reasonable promptness after receiving the CMAR's written request for such information or services. The CMAR shall be entitled to rely on the accuracy of provided information and is to be held harmless by the owner against claims and/or penalties related to the any occurrences or activity relying on such test results.

6.2 The CMAR is not responsible for any existing environmental conditional that might be present, known or unknown, at the time of this agreement. The responsibility to cure any structural concerns lies only with items specifically called for correction in the construction documents.

7.0 Insurance

7.1 The CMAR agrees to provide the Owner with proof of the presence of a worker's compensation insurance policy for Pennant Construction Management, Inc. and/or its successors. The CMAR shall also keep a record of such insurance for all subcontractors holding a contract directly with the Owner and/or CMAR.

7.2 The CMAR agrees to secure and maintain in full force and affect a policy of professional liability insurance in a minimum amount of \$2,000,000 per accident and \$5,000,000 aggregate providing coverage for any negligent acts or errors by Project Manager made during the term of this Agreement. The CMAR agrees to provide Owner with a copy of a certificate of professional liability insurance. The CMAR shall also keep a record of such insurance for all subcontractors holding a contract directly with the Owner and/or CMAR.

7.3 The owner is responsible to obtain all property and content insurance including a builder's risk policy for the duration of the project.

8.0 Non-Discrimination of Workers

8.1 The CMAR, in performing under this Agreement, shall not discriminate against any workers, employees, or applicants, or any member of the public, because of race, creed, color, religion, age, sex or national origin, nor otherwise commit an unfair employment practice.

9.0 Indemnity. Owner shall indemnify, defend, and hold CMAR, its employees, officers, directors, and affiliates harmless from any loss, cost, expense, or damage claimed by third parties for property damage and/or bodily injury, including death, to the proportionate extent such loss, cost, expense, or damage arises from the negligence or willful misconduct of Owner, its employees, officers, or directors in connection with the Agreement or project.

10.0 Right of Entry

10.1 The CMAR shall use a reasonable degree of care when entering upon any property owned by the Owner in connection with the Project. In the case of property not owned by the Owner, the CMAR shall comply with any and all instructions and requirements for the use of such property. The Owner also concedes to allow subcontractors, their employees and suppliers, under the supervision of the CMAR, to enter the premises for the purpose of carrying out their individual contracts.

10.2 In the case of property owned by any other entity, the CMAR shall separately negotiate and obtain any license or permission to enter upon the property. The Owner agrees to cooperate with the CMAR in the Project Manager's negotiation with other entities in order to secure licenses or permission.

11.0 Miscellaneous

11.1 Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the first page of this Agreement, or at such other address as has been previously furnished in writing to the other party or parties. Such notice shall be deemed given when deposited in the United States mail.

11.2 This Agreement shall not be assigned by CMAR without the written acknowledgement and acceptance by the Owner.

11.3 The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

11.4 This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect. Exhibits to this agreement shall include the architectural/mechanical drawings and the project manual.

11.5 Time is of the Essence. If any payment or any other condition, obligation, or duty is not timely made, tendered or performed by either party, then this Agreement, at the option of the party who is not in default, may be terminated by the non-defaulting party, in which case, the non-defaulting party may recover such damages as may be proper. If the non-defaulting party elects to treat this Agreement as being in full force and effect, the non-defaulting party shall have the right to an action for specific performance or damage or both.

11.6 A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

11.7 Governing Law and Venue. This Agreement shall be governed by the laws of the State of Georgia. The Owner hereby waives its constitutional right to venue in its home county and hereby irrevocably consents to the jurisdiction and venue of the Superior Court of Bartow County, Georgia for the purpose of any litigation involving the breach or enforcement of this Agreement.

11.8 Binding Law. This Agreement shall inure to the benefit of, and be binding upon, the parties, their respective legal representatives, successors, heirs, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

11.9 No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Owner and Project Manager, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other

third party on such Agreement. It is the express intention of the parties that any person other than Owner or Project Manager receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

CITY OF CARTERSVILLE (OWNER)

By: Matt Santini, Mayor
City of Cartersville

Attest: Julia Drake, City Clerk
City of Cartersville

CONSTRUCTION MANAGER AT RISK (CMAR)

By: Ron Goss, Jr.
Pennant Construction Management, Inc.

Signed, sealed and delivered on the
_____ day of _____, 2023

Contractor Affidavit and Agreement (Example):

CONTRACTOR AFFIDAVIT AND AGREEMENT

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with (name of public employer) has registered with and is participating in a federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with (name of public employer), contractor will secure from such subcontractor(s) similar verification of compliance with O.C.G.A. 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or a substantially similar form. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the (name of the public employer) at the time the subcontractor(s) is retained to perform such service.

4683307
EEV / Basic Pilot Program* User Identification Number

[Signature]
BY: Authorized Officer or Agent
(Pennant Construction Management, Inc.)

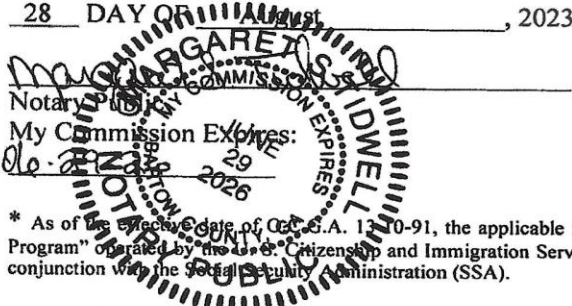
August 28, 2023
Date

General Contractor/VP
Title of Authorized Officer or Agent of Contractor

Ron Goss, Jr.
Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE
28 DAY OF August, 2023

[Signature]
Notary Public
My Commission Expires:
08-29-2026



* As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV / Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

(End of Form)