

***Agreement Between Owner and
Construction Manager at Risk (Rev 3)***

for

***Cartersville WPCP Expansion to 25 mgd
Cartersville, Georgia***



June 2024



Revision History

REVISION	DATE ISSUED	DESCRIPTION / ISSUED FOR
Rev 3	0711-2024	Incorporated Select CMAR and Owner Comments
Rev 2	06-18-2024	Conformed Draft Agreement for Owner and CMAR review
Rev 1	04-17-2024	Revised Draft Agreement via Addendum #1
Rev 0	03-14-2024	Draft Agreement for bidding purposes

CONTENTS

ARTICLE 1 — Definitions	5
ARTICLE 2 — CMAR Responsibilities	10
ARTICLE 3 — Owner Responsibilities	12
ARTICLE 4 — Subcontracts and Labor Relations	12
ARTICLE 5 — Time	13
ARTICLE 6 — Compensation.....	15
ARTICLE 7 — Changes	16
ARTICLE 8 — Payment.....	16
ARTICLE 9 — Liability	16
ARTICLE 10 — Dispute Mitigation and Resolution.....	17
ARTICLE 11 — Miscellaneous Provisions.....	18
Exhibit A—General Conditions to Agreement	
Exhibit B—CMAR Phase I Preconstruction Scope of Services	
Exhibit C—Phase I Notice to Proceed	
Exhibit D—Phase I Early Work(s) Package(s)	
Exhibit D.1—Phase I Early Work(s) Package(s) Amendment Form	
Exhibit E—Phase II Construction Price Amendment	
Exhibit F—Initial Schedule of Work	
Exhibit G—Project Technical Scheduling Requirements	
Exhibit H—Preconstruction Phase Services Hourly Rate Schedule	
Exhibit I—Project Technical Performance Requirements	
Exhibit J—Key Personnel	
Exhibit K—Additional Required Forms	

Cartersville WPCP Expansion to 25 mgd Agreement Between Owner and Construction Manager at-Risk (CMAR)

Agreement

This Agreement is made this ____ day of _____ in the year 2024 (the “Contract Date”), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by and between the

OWNER

City of Cartersville
1 North Erwin Street
Cartersville, GA 30120

and the

CONSTRUCTION MANAGER AT-RISK (CMAR):

Archer Western Construction, LLC
2839 Paces Ferry Road, SE
Atlanta, GA, 30339

for services in connection with the following Project:

PROJECT NO.: _____

PROJECT NAME: CARTERSVILLE WPCP EXPANSION TO 25 MGD

PROJECT LOCATION: 102 WALNUT GROVE ROAD, SE, CARTERSVILLE, GEORGIA 30120

PROJECT SUMMARY: The scope of work under this project includes construction of the following facilities at the Cartersville WPCP:

Facility	Planned Improvements
Influent Pump Station	New 55-mgd influent pump station Submersible pumps, coarse screens, and bypass channel New Influent PS Electrical Building
Preliminary Treatment	New 55-mgd Headworks Facility Fine screens, grit removal, and odor control New Headworks Electrical Building
Flow Equalization	Gravity feed to/from EQ, Equalize to Max Day Flow (42 mgd) Two 6-MG EQ tanks (approx. 170-ft Φ by 35.5-ft tall), prestressed concrete

Facility	Planned Improvements
Biological Treatment	Two new bioreactors (5 mgd MM capacity each), approx. 3 MG each, 22 ft deep Diffused aeration, vertical shaft mixing, internal recycle pump Bioreactor splitter box
Blowers	New Blower Building with attached electrical room High speed turbo blowers
Final Clarifiers	Two new 135-ft Φ clarifiers; option for a third new 135-ft Φ clarifier New scum pump station New clarifier flow distribution box
Tertiary Filtration	Addition to existing filter facility Two new 5-mgd (MM) tertiary filters Rapid mix and flocculation
UV Disinfection	New 42-mgd UV disinfection facility Effluent Parshall flume NPW pumps with sodium hypochlorite feed system
Outfall Line/Diffuser	New parallel outfall line and/or parallel diffuser
Solids Dewatering	Add fourth BFP, including BFP feed pump, polymer pump, and conveyor modifications
Biosolids Dryer	Provisions for installation of future dryer (e.g., concrete pad, drains, electrical power stub-outs)
Septage Receiving Station	New Septage Receiving Station
Alum Storage and Feed System	Expand existing alum storage and feed system New tanks and pumps
RAS / WAS Pump Station	Existing RAS Pump Station modifications to accommodate new clarifiers New submersible RAS pumps
Site Modifications, Electrical Distribution/Communications Coordination	New electrical switchgear building Backup power for the entire WPCP including 2 standby generators Medium voltage (12.47kV) distribution system New fault-tolerant communication ring

The Work includes, but is not limited to, all piping and valves, grading and paving, sedimentation and erosion control, electrical work, instrumentation and controls, HVAC equipment and all other work necessary to render the facilities complete and operational in accordance with the Contract Documents. The expanded facility will be capable of meeting all current and anticipated regulatory requirements of the State of Georgia.

The existing WPCP shall remain in service at all times during construction of the new and modified facilities. Multiple Work Packages will be required to facilitate maintenance of plant operations and to expedite completion of the Project.

Notice to the Owner and/or CMAR (each individually a “Party” and collectively, the “Parties”) shall be given at the above addresses.

Accordingly, the Parties hereto hereby agree as follows.

ARTICLE 1 — Definitions

1.1 Definitions

1.1.1 “Agreement” means this Agreement between Owner and CMAR (where the Basis of Payment is the Cost of the Work plus CMAR’s Fee with a Guaranteed Maximum Price or a Lump Sum, as modified by the Parties, and the exhibits and attachments made part of this Agreement upon its execution), as modified by subsequent Amendments.

1.1.2 “Allowance” is an estimated sum to be used as Owner directs for categories of Work that cannot be established at the time the GMP or Fixed Price are agreed upon. Owner can direct Work under Allowances only up to the established amount. Any work directed over the established Allowance amount is to be processed by Change Order to CMAR.

1.1.3 “Applicable Law” or “Applicable Laws” means, collectively, all applicable federal, state, and local laws, statutes, rules, regulations, tariffs, levies, embargoes, ordinances, codes, and binding administrative or judicial precedents or authorities, including the binding interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation, or administration thereof, and all applicable administrative orders, directed binding duties, licenses, authorizations, and permits of, and binding agreements with, any Governmental Authority, in each case applicable to or affecting the Project or the Work of CMAR under this Agreement or the other Contract Documents.

1.1.4 “Assumptions” and “Clarifications” are material terms associated with CMAR’s Guaranteed Maximum Price or Lump Sum upon which the Owner and CMAR agree and are more particularly described in Attachment 23 of the Phase II Construction Price Amendment.

1.1.5 “Bid Package” or “Bid Packages” means one or more design bid packages for specific scopes of the Work that are developed and generated by the Engineer for bidding and award pursuant to this Agreement.

1.1.6 The term “Business Day” or “business day” means any day other than a Saturday, Sunday, or legal holiday on which national banks located in the state jurisdiction in which the Project is situated are not required or permitted to be open for business to the public.

1.1.7 A "Change Order" is a written order signed by the Owner and the CMAR after execution of this Agreement indicating any change to the Agreement including, among other things, changes in the Scope of the Work, the CMAR's Fee for Preconstruction Phase Services, the Phase II Construction Price and Date of Substantial Completion, or Date of Final Completion.

1.1.8 A "Change Order Proposal" is a proposal submitted by the CMAR or the Owner for a change in the Work as evidenced by a Change Order.

1.1.9 The "CMAR" is Archer Western Construction, LLC.

1.1.10 The "CMAR Representative" is David Walker, Vice President.

1.1.11 "Construction Phase" or "Construction Phase Services" means the Work of the CMAR undertaken during Phase II pursuant to the Drawings and Specifications in accordance with Paragraph 2.2 of this Agreement and other applicable terms and provisions of this Agreement and the other Contract Documents.

1.1.12 "Construction General Conditions Costs" are an element of the Cost of Work that is included in the Construction Price as agreed to by the CMAR and the Owner and has the meaning set forth in Article 5 of the Phase II Construction Price Amendment.

1.1.13 "Contingencies," where applicable, has the meaning set forth in Paragraph 10.5 of the Phase II Construction Price Amendment.

1.1.14 The "Contract Documents" represents the entire and integrated agreement between the Parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. It consists of this Agreement, the General Conditions, the Phase II Construction Price Amendment, the Drawings, Specifications, addenda issued prior to execution of this Agreement, information furnished by the Owner under Paragraph 3.8 of the General Conditions, any supplemental or other conditions attached as an exhibit to this Agreement, performance Specifications attached as an exhibit to this Agreement, the CMAR's qualifications, Assumptions, and Clarifications mutually agreed upon by Owner and CMAR and identified in and attached to this Agreement and/or the Phase II Construction Price Amendment, the other documents listed in this Agreement, and any modifications issued after its execution, including, without limitation, Change Orders and Owner Change Directives. The Contract Documents do not include bidding instructions or sample forms not attached as exhibits to this Agreement.

1.1.15 The "Contract Time" is the overall time period allowed for performance of the Work.

1.1.16 "Cost of the Work," where applicable, has the meaning of the sum of all allowed direct and indirect costs necessarily and reasonably incurred and paid by CMAR in the performance of the Work including those set forth in the Phase II Construction Price Amendment.

1.1.17 The term “Day” or “day” shall mean calendar day unless otherwise specifically defined.

1.1.18 “Defective Work” is any portion of the Work that does not conform to the Contract Documents, as more fully described in Paragraphs 2.4 and 2.5 of the General Conditions.

1.1.19 “Differing Site Conditions” means conditions at the Project site that are: (a) subsurface or other physical conditions materially different from those indicated in the Contract Documents, or (b) unusual or unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents.

1.1.20 “Drawings” means the documents prepared by Engineer or other consultants of Owner showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

1.1.21 “Early Work(s) Package(s)” is procurement or construction work that may be performed during Phase I or Phase II that may benefit the Project.

1.1.22 “Engineer” means the licensed Engineer and its consultants, retained by Owner to perform design services for the Project. The Engineer for the Project is Hazen and Sawyer.

1.1.23 “Engineer Contract” means the engineering contract between Owner and Engineer for the design and/or engineering of the Project or portions thereof.

1.1.24 “Fee” or “CMAR Fee” means, where a GMP has been selected by the Owner and CMAR as the basis for establishing a Phase II Construction Price for the Project or Bid Package, as applicable, the Fee to be charged by the CMAR, which shall either be (a) expressed as a percentage of the Cost of the Work, or (b) a fixed dollar amount based on the Cost of the Work, in each case agreed upon by the Owner and the CMAR at the time of execution of, and in accordance with, the Phase II Construction Price Amendment for the CMAR’s performance of the Work.

1.1.25 “Field Order” means minor changes in the Work if the changes do not involve an adjustment in the Phase II Construction Price or the Contract Times and are compatible with the design of the completed Project as a functioning whole as indicated by the Contract Documents.

1.1.26 “Final Completion” occurs on the date when the CMAR’s obligations under this Agreement are complete and accepted by the Owner and final payment becomes due and payable in accordance with Article 14 of the Phase II Construction Price Amendment and Paragraph 8.9 of the General Conditions. This date shall be confirmed by a Certificate of Final Completion signed by the Owner and the CMAR.

1.1.27 “Final Payment” has the meaning set forth in Article 14 of the Phase II Construction Price Amendment.

1.1.28 “Force Majeure,” as defined in the General Conditions in Paragraph 5.4.1.3.

1.1.29 The “General Conditions” to the Agreement is included as Exhibit A.

1.1.30 “GMP” or “Guaranteed Maximum Price” means, with regard to the Project as a whole or any Bid Package for construction of any portion of the Work where a GMP is selected by the Parties as the basis for the Phase II Construction Price, as may be further defined in the Phase II Construction Price Amendment for the Project, as applicable. The Guaranteed Maximum Price for the Work covered thereby, as established by a Phase II Construction Price Amendment executed by and between Owner and CMAR, is further defined as the Cost of Work plus Allowances and fee for such Work. Subject to Change Orders and other allowable adjustments made pursuant to this Agreement or the other Contract Documents, where the Phase II Construction Price for any Work is based on a GMP, the Phase II Construction Price for such Work shall not exceed the GMP for such Work plus any approved additions or deductions to the GMP.

1.1.31 “Governmental Authorities” means any federal, state, local, or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank, public office, court, arbitration or mediation panel, or other entity exercising executive, legislative, judicial, taxing, regulatory, or administrative powers or functions of government.

1.1.32 “Lump Sum” means a lump-sum contract price established for the Phase II Construction Phase Services in accordance with a Phase II Construction Price Amendment.

1.1.33 A “Material Supplier” is a person or entity retained by the CMAR or a Subcontractor to provide material or equipment for the Work.

1.1.34 “Others” means other contractors, Material Suppliers, and persons at the Worksite who are not employed by the CMAR or Subcontractors.

1.1.35 “Owner” is City of Cartersville and includes the Owner’s representative and any other Owner authorized person or entity.

1.1.36 “Owner’s Approved Budget” means the sum of \$200,000,000.00.

1.1.37 “Owner Change Directive” means a directive issued by Owner to CMAR to undertake and perform a change in the Work prior to the time such Parties have reached agreement on the adjustment, if any, of the Phase II Construction Price or the Contract Time.

1.1.38 The Owner’s authorized representative is Sidney Forsyth, Cartersville Water Department Director (the “Owner’s Representative”).

1.1.39 “Phase I” means the Preconstruction Phase.

1.1.40 “Phase II” means the Construction Phase Services performed by CMAR pursuant to this Agreement and the other Contract Documents.

1.1.41 “Phase II Construction Price” means the contract price established by the Parties for CMAR’s performance of the Work during the Construction Phase in accordance with this Agreement and the other Contract Documents and as reflected in the Phase II Construction Price Amendment, as the same may be modified by any Change Orders increasing or reducing such contract price and may be either a Lump Sum price or GMP.

1.1.42 “Phase II Construction Price Amendment” has the meaning given to it in Exhibit B, Paragraph 1.15.

1.1.43 “Phase II Construction Price Proposal” has the meaning given to it in Exhibit B, Paragraph 1.15.2.

1.1.44 “Preconstruction Phase” or “Preconstruction Phase Services” means the Phase I Preconstruction Services performed by CMAR in connection with the Project and described in Paragraph 2.1 of this Agreement.

1.1.45 “Project” is the building, facility, or other improvements for which the CMAR is to perform Work under this Agreement. It may also include construction by the Owner or Others which is not part of the Work of this agreement.

1.1.46 “Risk Register” is the result of an assessment led by either the Owner or the CMAR, and agreed to by both parties, that identifies potential project risks and the likelihood of occurrence and allocates the responsibility for mitigation of each risk element.

1.1.47 “Schedule” is the critical path method (CPM) schedule prepared by the CMAR that specifies the dates on which the CMAR plans to begin and complete various parts of the Work, including all activities during Phase I Preconstruction and Phase II Construction.

1.1.48 “Schedule Update” means any update to the Schedule prepared and submitted by CMAR to Owner concurrently with CMAR’s submission to Owner of a Phase II Construction Price Proposal, a Phase II Construction Price Amendment, or as otherwise required or permitted hereunder.

1.1.49 “Specifications” means the documents prepared by Owner, Engineer, or

other consultant of Owner consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work and performance of related services.

1.1.50 A “Subcontractor” is a person or entity retained by the CMAR as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The Subcontractor

obligations within this Agreement shall also apply to the CMAR for all self-perform trade work.

1.1.51 “Substantial Completion of the Work,” or “Substantially Complete” or a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner may occupy or utilize the Work, or a designated portion, for the beneficial use for which it is intended. This date shall be confirmed by a certificate of Substantial Completion signed by the Engineer and CMAR with Owner’s consent. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond the CMAR’s control. In addition to and without limiting the generality of the foregoing requirements of this Paragraph 1.1.51, “Substantial Completion” of the Work or a portion of the Work shall not be deemed to have occurred unless and until the Project or a portion thereof is available for beneficial use and satisfies any other requirements set forth in the Phase II Construction Price Amendment.

1.1.52 A “Sub-subcontractor” is a person or entity who has an agreement with a Subcontractor to perform any portion of the Work.

1.1.53 “Work” means the construction and services necessary or incidental to fulfill the CMAR’s obligations for the Project in conformance with this Agreement and the other Contract Documents, including the Preconstruction Phase Services and the Construction Phase Services as set forth in the Scope of Work.

1.1.54 “Worksite” means the location of the Project as identified in Article 1 where the Work is to be performed.

Capitalized terms used herein but not defined herein shall have the meanings given them in the Phase II Construction Price Amendment, General Conditions, and other Contract Documents.

ARTICLE 2 — CMAR Responsibilities

2.1 Phase I Preconstruction Phase Services

2.1.1 Commencement. Preconstruction Phase Services, as described in **Exhibit B** attached hereto, shall commence no later than ten (10) calendar days following the Owner’s issuance of a Phase I Notice to Proceed in substantially the form of **Exhibit C** attached hereto and incorporated herein by this reference with the appropriate box checked. For the performance of the Preconstruction Phase Services CMAR

shall be paid the Preconstruction Phase Services fees in the amount and in the manner set forth in Paragraph 6.1.

Early Work(s) Package(s). If applicable, Early Work(s) Package(s) commenced prior to mutual execution of a Phase II Construction Price Amendment shall be performed and paid for pursuant to **Exhibit D** and **Exhibit D.1** to this Agreement but otherwise subject to the terms, covenants, and conditions of this Agreement and the other Contract Documents.

2.1.2 Completion. CMAR's Preconstruction Phase Services shall be deemed to have been completed upon mutual execution of a Phase II Construction Price Amendment for the Work, hereto attached as **Exhibit E**, covered by the Construction Phase Services. If the Owner and CMAR are unable to reach a written agreement on a Phase II Construction Price Amendment, the Owner may terminate this Agreement for convenience on five (5) business days' written notice to the CMAR in accordance with Paragraph 10.3 of the General Conditions. In the event of such termination for convenience, the CMAR shall be compensated for (1) the portion of the CMAR's Preconstruction or Construction Phase Services, if any, performed to the date of such termination, but the CMAR shall not be entitled to compensation for Work not performed, plus (2) reasonable demobilization costs, if any, which shall include, but not be limited to, reasonable cost(s) incurred by CMAR to break contractual obligations with Subcontractors, Subconsultants, Suppliers, Vendors, and Materialmen entered prior to Subcontractor's receipt of the notice of termination. In such event, the CMAR shall have no obligation to perform the Scope of Work covered by such unexecuted Phase II Construction Price Amendment.

2.1.3 CMAR's Fee. Notwithstanding the Parties' obligation to negotiate the Phase II Construction Price Amendment as provided herein, the Parties agree that the CMAR's Fee for Construction Phase Services shall be 8%. The CMAR's Fee shall not be subject to negotiation and shall be incorporated into the Phase II Construction Price Amendment.

2.2 Construction Phase Services

2.2.1 Commencement. Unless otherwise provided to the contrary elsewhere in this Agreement or the other Contract Documents, CMAR's Construction Phase Services shall commence within ten (10) days of the Phase II Notice to Proceed.

2.2.2 Self-Perform Work. As part of the CMAR's Construction Phase Services, the CMAR may be entitled to self-perform work on a negotiated basis or competitively bid against the market in accordance with applicable law and Owner approval. Any self-perform Work, whether negotiated or competitively bid, that is approved by the Owner is subject to the terms and conditions of and as identified in **Exhibit B** and the following provisions of this Paragraph 2.2.2.

2.2.2.1 The CMAR may seek to perform portions of the Work itself, other than minor work that may be included in the CMAR's Construction General Conditions Costs, if the CMAR or CMAR team member submits its

proposal and is awarded for those portions of Work in the same manner as all other Subcontractors. If the CMAR intends to submit a proposal for such Work, it shall notify Owner prior to soliciting Proposals and all such proposals shall be submitted directly to the Owner in accordance with **Exhibit B**. If the Owner determines that the CMAR's bid or CMAR team member's proposal provides the best value, based on cost and relevant experience for the Owner, the CMAR or CMAR team member may be awarded that portion of the Work.

2.2.2.2 If a selected Subcontractor defaults in the performance of its Work or fails to execute a subcontract after being selected in accordance with this paragraph, the CMAR may, without advertising, fulfill the contract requirements through selection of an alternate Subcontractor or self-performance, in each case with the Owner's prior written approval. Owner shall be notified in the event of a Subcontractor default or failure to execute the subcontract.

2.2.2.3 Work identified pursuant to **Exhibit B** and performed directly by the CMAR shall be not be limited. For any Work that is proposed to be performed directly by the CMAR, bids or request for proposal shall be submitted to and reviewed by the Owner's Representative or any other neutral party as determined by the Owner to avoid a conflict of interest.

ARTICLE 3 — Owner Responsibilities

3.1 Owner Responsibilities

Owner shall be responsible for providing the information and delivering the materials set forth in Article 3 of the General Conditions.

ARTICLE 4 — Subcontracts and Labor Relations

4.1 Subcontractors

The work not performed by the CMAR with its own forces shall be performed by Subcontractors. All subcontracts shall be issued on a Lump Sum basis unless the Owner has given prior written approval of a different method of payment to the Subcontractor. Owner will require CMAR to competitively bid subcontracts for all services or supplies.

4.2 Labor Relations

4.2.1 Prevailing Wages. Deleted.

4.2.2 Compliance Monitoring. CMAR shall require every subcontract to provide certified payroll reports with respect to all persons performing labor necessary to complete any portion of Work on the Project.

4.2.3 Nondiscrimination / Nonharassment. CMAR shall not engage in any form

of discrimination or harassment because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability, or any other protected classification against any employee or applicant for employment on the Project.

ARTICLE 5 — Time

5.1 Performance of the Work

5.1.1 Date of Commencement. The Date of Commencement of the Preconstruction Phase Services and Construction Services, as applicable, shall be as set forth in Subparagraph 5.1.1 of the General Conditions. The Work shall proceed in general accordance with the Schedule of Work as such Schedule may be amended from time to time, subject to other provisions of this Agreement. The Schedule is subject to allowable adjustments in the Contract Time as permitted herein or in the other Contract Documents.

5.1.2 Substantial / Final Completion. Unless the Parties agree otherwise, the Date of Substantial Completion and the Date of Final Completion shall be established pursuant to the Phase II Construction Price Amendment, subject to adjustments as provided for in the Contract Documents. If a Phase II Construction Price is not established and the Parties desire to establish a Date of Substantial Completion or Date of Final Completion, it shall be set forth via Amendment.

5.1.3 The CMAR shall not knowingly commence the Work before the effective date of insurance to be provided by the CMAR and Owner as required by the Contract Documents.

5.2 Schedule of the Work

5.2.1 The initial Schedule of Work is attached hereto as **Exhibit F**.

5.2.2 Owner will timely review the baseline Schedule submitted by CMAR. If the Owner determines that additional supporting data are necessary to fully evaluate the Schedule, the Owner will request additional supporting data in writing. Such data shall be furnished no later than five (5) business days after the date of such request. Owner will render a decision promptly and in any case within five (5) business days after the latter of the receipt of the Schedule update or the deadline for furnishing such additional supporting data. Owner shall review, approve, and/or provide comments in a reasonable time.

5.2.3 Contemporaneously with CMAR's submission of its Phase II Construction Price Proposal in accordance with Phase II Construction Price Amendment, the CMAR shall submit to the Owner and, if directed, the Engineer, a Schedule Update, in compliance with the technical scheduling requirements attached hereto as **Exhibit G** and the requirements of this Paragraph 5.2, that shall show the dates on which the CMAR plans to commence and complete various parts of the Work, including dates on which information and approvals are required from the Owner.

5.3 Contract Time, Delays, and Extensions of Time

5.3.1 The Contract Time for Phase I Preconstruction Services is 460 days. The Contract Time for Phase II Construction Services will be set as part of the Phase II Construction Amendment.

5.3.2 The Contract Time, as it may be modified from time to time in accordance with this Agreement and any other applicable Contract Documents, shall control the determination of liquidated damages payable to CMAR under Paragraph 5.4 and in the determination of any delay under Paragraph 5.3.

5.3.3 The CMAR will include [TBD] days per year of weather-related delays within the Project Construction Schedule. If the number of weather-related delays exceeds [TBD] days per year, the CMAR may be entitled to a commensurate extension of time and reimbursement of costs associated with the delay, including Construction General Conditions Costs, in each case as may be agreed upon by the Owner and CMAR but subject to the requirements of Article 5 of the General Conditions.

5.3.4 In the event delays to the Work are encountered for any reason, the CMAR shall provide prompt written notice to the Owner of the cause of such delays after CMAR first recognizes the delay. Excusable delays shall be adjusted upon and subject to the terms and conditions of Article 5 of the General Conditions.

5.3.5 A waiver of or failure by the Owner or Owner's Representative to enforce any requirement in this Article 5 hereof or the requirements of Article 5 of the General Conditions, including, without limitation, the requirements in Paragraph 5.3 thereof, in connection with any or all past delays shall not constitute a waiver of, and shall not preclude the Owner or Owner's Representative from enforcing such requirements in connection with any present or future delays.

5.4 Liquidated Damages

5.4.1 Substantial Completion. The Owner and the CMAR agree that this Agreement shall provide for the imposition of liquidated damages for any CMAR delay not excused by Paragraph 5.3 hereof or elsewhere in this Agreement.

5.4.1.1 The CMAR agrees that if the Work of the Project is not Substantially Completed on or before the Substantial Completion Date applicable to the Project or related Bid Package, the CMAR shall pay the Owner as liquidated damages and not as a penalty the sum of \$10,000.00 per day for each day of unexcused delay past the Substantial Completion Date. After Substantial Completion, if CMAR shall neglect, refuse or fail to complete the remaining Work within the time specified for completion and readiness for final payment applicable to the Project or related Bid Package, CMAR shall pay the Owner as liquidated damages and not as a penalty the sum of \$5,000.00 per day for each day of unexcused delay past the Final

Completion Date. The liquidated damages provided herein shall be the sole and exclusive remedy for any unexcused delay in the performance of CMAR's obligations hereunder and shall be in lieu of any and all other liability to the Owner for extra costs, losses, expenses, claims, penalties and any other damages of whatever nature (whether actual, compensatory, direct, indirect, special, consequential, punitive, or otherwise) incurred by the Owner and which are caused by any unexcused CMAR delay in timely achieving Substantial or Final Completion on or before the Substantial or Final Completion Date. The Parties acknowledge and agree that it would be extremely difficult, if not impossible, to quantify the economic loss incurred by the Owner as a result of such unexcused delay, that the liquidated damages contemplated herein are reasonable and represent a fair approximation of the economic loss to be incurred by Owner as a result of such unexcused delay, and that such liquidated damages shall be enforceable to the maximum extent permitted under Applicable Law.

ARTICLE 6 — Compensation

6.1 CMAR's Compensation for Preconstruction Phase Services

6.1.1 The Owner shall compensate CMAR for performance of the CMAR's Preconstruction Phase Services outlined in Paragraph 2.1 hereof on a Lump Sum basis. Such compensation shall be based on the direct personnel costs incurred by CMAR and includes the direct salaries of the CMAR's personnel providing Preconstruction Phase Services on the Project and CMAR's customary and mandatory contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions and, unless otherwise provided, includes all sales, use, consumer, and other taxes mandated by applicable law, and appropriate fee applied to such costs. Such compensation shall include all other direct and indirect costs for the performance of the CMAR's Preconstruction Services.

6.1.2 The CMAR's Lump Sum Fee for Preconstruction Services is One Million, Five Hundred Eighty-Five Thousand dollars (\$1,585,000).

6.2 CMAR Compensation for Early Work(s) Package(s)

6.2.1 If the Parties agree to negotiate Early Work Packages, refer to **Exhibit D**. Services performed for Early Works shall be subject to this Agreement and the General Conditions and other provisions of the Contract Documents applicable to the Phase II Construction Services.

6.3 CMAR's Compensation for Construction Phase Services

6.3.1 The Owner shall compensate the CMAR for Work performed and described in a Phase II Construction Price Amendment on the basis of either a Lump Sum

Phase II Construction Price or Guaranteed Maximum Price, in each case as set forth in such Phase II Construction Price Amendment and General Conditions.

6.4 Hourly Rates

6.4.1 Where Work or portions thereof performed by the CMAR for Preconstruction Phase Services is charged on an hourly rate basis, such Work shall be subject to and completed in accordance with the CMAR's hourly rate schedule attached hereto as **Exhibit H** and incorporated herein by this reference and shall be inclusive of markup for overhead and profit. A separate hourly rate schedule for Construction Phase Services shall be attached to the Phase II Construction Price Amendment upon Owner's and CMAR's mutual execution of the same and shall be at cost without markup for overhead and profit.

ARTICLE 7 — Changes

Changes in the Work that are within the general scope of this Agreement shall be accomplished, without invalidating this Agreement, by Change Order, Owner Change Directive, and Field Order, in each case in accordance with and subject to the terms and provisions of Article 7 of the General Conditions and any Phase II Construction Price Amendment executed in connection herewith for the Project.

ARTICLE 8 — Payment

Payments for Preconstruction Phase Services shall be made monthly in proportion to services performed unless otherwise agreed, in writing, by Owner and CMAR.

8.1 Payments for Construction Phase Services performed following the execution of a Phase II Construction Price Amendment for the same shall be made in accordance with such Amendment and the General Conditions.

ARTICLE 9 — Liability

9.1 Waiver of Consequential Damages

Except for (a) damages mutually agreed upon by the Parties as liquidated damages in Paragraph 5.4 hereof, and (b) subject to the following provisions set forth in this Paragraph 9.1, notwithstanding anything else herein to the contrary, the CMAR agrees to waive all claims against each other for any consequential or other special damages that may arise out of or relate to this agreement. The CMAR agrees to waive consequential damages including, but not limited to, loss of business, loss of financing, loss of profits not related to this Project, loss of bonding capacity, loss of reputation and / or insolvency. The provisions of this paragraph shall also apply to the termination of this Agreement and shall survive such termination.

9.2 CMAR's Limitation of Liability

Notwithstanding anything to the contrary contained herein or in the other Contract Documents, the maximum liability, in the aggregate, of the CMAR, its Subcontractors, sureties (if any) and their respective officers, directors, shareholders, employees, agents, successors and assigns to Owner and anyone claiming by, through, or under Owner for any loss, damage, suit, action, liability, claim, or expense caused by, resulting from, or arising out of or relating in any way to this Agreement or the Project from any cause whatsoever, including, without limitation, the negligence, breach of contract, strict liability, express or implied warranty, indemnity, professional errors or omissions, or any other cause arising at law or in equity, shall in all events be limited to and not exceed 120% of the Phase II Construction Price. This limitation has been freely bargained for by the Parties for valuable consideration and shall be enforceable to the maximum extent permitted by applicable law.

- 9.3** Releases, waivers, and limitations on liability and remedies expressed in the Contract Documents shall apply even in the event of the fault, tort (including negligence), strict liability, breach of contract or warranty, or other basis of liability of the benefited Party, and shall extend to and benefit the Subcontractors, agents, employees, officers, directors, assignees, affiliates, and vendors and each of their respective Subcontractors, agents, employees, officers, directors, assignees, affiliates, and vendors of each Party.

ARTICLE 10 — Dispute Mitigation and Resolution

10.1 Claims Procedures

Claims procedures are governed by Article 11 of the General Conditions.

10.2 Preconstruction Phase Services

If, during the Preconstruction Phase Services the Parties cannot reach resolution on a matter relating to or arising out of the Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) business days from the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) business days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) days from the date of first discussion, the Parties shall submit such matter to the mediation procedures identified in Paragraph 11.2.2 of the General Conditions as a condition precedent to any judicial forum or voluntary binding alternative dispute resolution proceeding subsequently agreed to by the Parties.

10.3 Construction Phase Services

During the Construction Phase Services, the Parties shall resolve any disputes between them in accordance with the dispute mitigation and resolution procedures selected by them in Article 11 of the General Conditions.

ARTICLE 11 — Miscellaneous Provisions

11.1 Governing Law

This Agreement shall be governed by the laws of the State of Georgia in effect at the location of the Project, including the Ordinances and Regulations of the City of Cartersville.

11.2 Severability

The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

11.3 No Waiver of Performance

The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance or any other term, covenant, condition, or right.

11.4 Titles and Groupings

The titles given to the articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose. The grouping of the articles in this Agreement and of the Owner's Specifications under the various headings is solely for the purpose of convenient organization and in no event shall the grouping of provisions, the use of paragraphs, or the use of headings be construed to limit or alter the meaning of any provisions.

11.5 Joint Drafting

The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party but shall be construed in a neutral manner.

11.6 Not Used

11.7 Counterparts; Electronic Signatures

This Agreement, the General Conditions, and other Contract Documents may be

executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. Facsimile or electronic signatures on this Agreement and/or the other Contract Documents, as applicable, shall be deemed originals for all purposes.

11.8 Attorneys' Fees

In the event of any claim, controversy, or dispute involving this Agreement, the Parties' performance hereunder or interpretation hereof, if the Owner is the substantially prevailing Party in such claim, controversy, or dispute they shall be awarded its reasonable attorneys' fees and costs, including attorneys' fees and costs of any associated appeal.

11.9 Exhibits, Schedules, and Addenda

Exhibits, schedules, and addenda bearing on the payment and performance of the Construction Phase Services will be attached to the Phase II Construction Price Amendment for such Construction Phase Services. The following Exhibits A through C as well as Exhibits H and J pertaining to the Preconstruction Phase Services are attached hereto and incorporated herein by this reference. The remaining exhibits for Early Works Packages as well as the Construction Phase Services shall be negotiated by the Parties and incorporated through an appropriate change order, including the Phase II Construction Price Amendment.

- Exhibit A General Conditions to Agreement
- Exhibit B CMAR Phase I Preconstruction Scope of Services
- Exhibit C Phase I Notice to Proceed (to be issued by the Owner to the selected CMAR)
- Exhibit D Phase I Early Works Packages (to be negotiated and incorporated as part of Phase II Amendment)
- Exhibit D.1 Phase I Early Works Packages Amendment Form (to be negotiated and incorporated as part of Phase II Amendment)
- Exhibit E Phase II Construction Price Amendment (to be negotiated and incorporated as part of Phase II Amendment)
- Exhibit F Initial Schedule of Work (to be negotiated and incorporated as part of Phase II Amendment)

- Exhibit G Project Technical Scheduling Requirements (to be negotiated and incorporated as part of Phase II Amendment)
- Exhibit H Preconstruction Phase Services Hourly Rate Schedule
- Exhibit I Project Technical Performance Requirements (to be negotiated and incorporated as part of Phase II Amendment)
- Exhibit J Key Personnel
- Exhibit K Additional Required Forms

Other Certification of Contractor's Attorney
 Certification of Owner's Attorney

11.10 Other Provisions

None.

- CONTINUED ON NEXT PAGE -

This Agreement is entered into as of the date entered in Article 1.

OWNER: CITY OF CARTERSVILLE

BY: _____

PRINT NAME MATT SANTINI

PRINT TITLE MAYOR

[SEAL]

BY: _____

PRINT NAME JULIA DRAKE

PRINT TITLE CITY CLERK

CONSTRUCTION MANAGER AT-RISK (CMAR):

BY: _____

PRINT NAME DAVID WALKER

PRINT TITLE VICE PRESIDENT

[SEAL]

ATTEST: _____

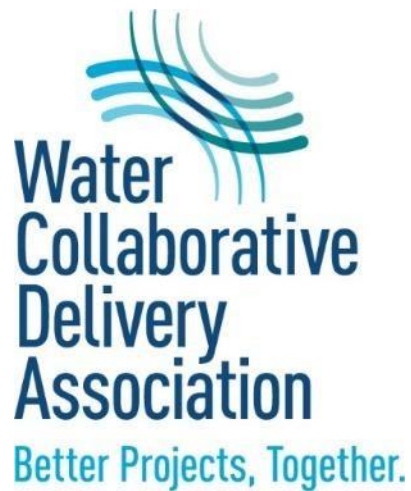
PRINT NAME _____

PRINT TITLE: SECRETARY

(Attach evidence of authority to sign and resolution or other documents authorizing execution of Agreement.)

Exhibit A—General Conditions to Agreement

Exhibit A – General Conditions to Agreement (Rev 3)



CONTENTS

ARTICLE 1 — General Provisions.....	1
ARTICLE 2 — CMAR Preconstruction Phase and Construction Phase Responsibilities	4
ARTICLE 3 — Owner’s Responsibilities.....	19
ARTICLE 4 — Subcontracts	22
ARTICLE 5 — Time.....	23
ARTICLE 6 — Compensation	28
ARTICLE 7 — Changes	28
ARTICLE 8 — Payment	30
ARTICLE 9 — Indemnity, Insurance, Waivers, and Bonds	36
ARTICLE 10 — Suspension, Notice to Cure, and Termination of the Agreement .	38
ARTICLE 11 — Claims, Claims Procedures, Dispute Mitigation, and Resolution .	42
ARTICLE 12 — Miscellaneous Provisions.....	47

Cartersville WPCP Expansion to 25 mgd General Conditions to Agreement Dated _____, 20____ (“Agreement”)

Between

City of Cartersville, as Owner (“Owner”), whose address is:

1 North Erwin Street
Cartersville, GA 30120

and

Archer Western Construction, LLC, as Construction Manager at-Risk (“CMAR”), whose address is:

Archer Western Construction, LLC
2839 Paces Ferry Road, SE
Atlanta, GA, 30339

For the following Project (“Project”):
Cartersville WPCP Expansion to 25 mgd

In which Hazen and Sawyer is the Engineer (“Engineer”).

Capitalized terms used herein but not defined herein shall have the meanings given them in the Agreement, Phase II Construction Price Amendment, and other Contract Documents.

ARTICLE 1— General Provisions

1.1 Contract; Order of Precedence

The Contract Documents are enumerated in the Agreement and consist of the Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, addenda issued prior to execution of the Agreement, other documents or exhibits listed in or attached to the Agreement, and Modifications issued after execution of the Agreement. A “Modification” is (a) a written amendment to the Agreement signed by both the Owner and the CMAR (each a “Party” and collectively, the “Parties”), (b) a Change Order, (c) an Owner Change Directive, or (d) a written order for a minor change in the Work issued by

the Engineer. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, instructions to bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the CMAR's bid or proposal, or portions of addenda relating to bidding or proposal requirements. Conflicts, ambiguities, or inconsistencies between or amongst the Contract Documents are governed by and subject to the order of precedence set forth in Paragraph 1.1.5 hereof.

1.1.1 The Drawings and Specifications are complementary. If Work is shown only on one but not on the other, the CMAR shall perform the Work as though fully described on both, in all cases consistent with the Contract Documents.

1.1.2 In case of conflicts or inconsistencies between the Drawings and Specifications, the Owner and the CMAR shall attempt to resolve the conflict or inconsistency through mutual and good faith discussions and if the Parties are unable to resolve the matter in a mutually satisfactory manner, the CMAR shall be entitled to submit a Claim in accordance with Article 11 hereof for the increased cost and time caused by or resulting from such conflict or inconsistency.

1.1.3 Where figures are given, they shall be preferred to scaled dimensions.

1.1.4 Any terms that have well-known technical or trade meanings, unless otherwise specifically defined in the Agreement or these General Conditions, shall be interpreted in accordance with their well-known meanings.

1.1.5 In the event of a conflict between provisions of any of the Contract Documents which cannot be resolved by giving effect to both provisions, the order of precedence of the Contract Documents in descending order, shall be as follows:

1.1.5.1 Amendments and Change Orders, with precedence of amendments and Change Orders in reverse order of execution;

1.1.5.2 The Agreement, including all exhibits thereto; in event of a conflict between the body of the Agreement and (or between) Agreement exhibits which cannot be resolved by giving effect to both provisions, the order of precedence shall be the body of the Agreement followed by the exhibits in the order they are attached to the body of the Agreement, with precedence of such exhibits given in the order in which they are attached to the Agreement;

1.1.5.3 Supplementary Conditions, if any, to the Contract Documents;

1.1.5.4 These General Conditions;

1.1.5.5 Drawings and Specifications; and

1.1.5.6 Notice to Proceed.

If any provision of the Agreement conflicts with or is inconsistent with any other provision of other Contract Documents, the provisions of the Agreement govern, unless the other provision specifically refers to the provision it supersedes and replaces it in the Agreement or unless otherwise superseded by the order of precedence set forth above in this Paragraph 1.1.5.

1.1.6 The Agreement and other Contract Documents are solely for the benefit of the Owner and the CMAR except to the extent expressly provided in the Agreement, represents the entire and integrated agreement between such Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

1.2 Relationship of Parties

The Owner and the CMAR agree to proceed with the Project based on mutual trust, good faith, and fair dealing.

1.2.1 The CMAR shall furnish preconstruction, permitting assistance, construction, administration, and management services and use the CMAR's reasonable efforts to perform the Work in an expeditious manner consistent with the Contract Documents. The Owner and CMAR shall endeavor to promote harmony and cooperation among all Project participants.

1.2.2 The CMAR represents that it is an independent contractor and that in its performance of the Work it shall act as an independent contractor.

1.2.3 Neither the CMAR nor any of its agents or employees shall act on behalf of or in the name of the Owner except as provided in the Agreement unless authorized in writing by the Owner's Representative.

1.2.4 The Owner's Representative shall possess full authority to give instructions from the Owner and shall be able to issue directions and Change Orders to the CMAR.

1.2.5 The CMAR Representative shall possess full authority to receive instructions from the Owner and to act on those instructions. The CMAR shall notify the Owner in writing of a change in the designation of the CMAR Representative. Upon such notice, the Owner will have five (5) Business Days to approve or reject the change in designation. Should the Owner reject the CMAR Representative, the CMAR and Owner shall meet within one (1) Business Day to decide on who will serve as the CMAR Representative.

1.2.6 The Owner and the CMAR shall perform their obligations with integrity, ensuring at a minimum that:

1.2.6.1 Conflicts of interest shall be avoided or disclosed promptly to the other Party; and

1.2.6.2 The Owner and the CMAR warrant that they have not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including their agents, officers, and employees, Subconsultants, or Others from whom they may be liable, to secure preferential treatment.

1.3 Engineer

The Owner, through its Engineer, shall provide all engineering and other design services necessary for the completion of the Work. The Owner shall obtain from the Engineer either a license for the CMAR and Subcontractors to use the design documents prepared by the Engineer or ownership of the copyrights for such design documents, and shall, to the fullest extent permitted the law, indemnify, defend, and hold harmless the CMAR against any suits or claims of infringement of any copyrights or licenses arising out of the use of the design documents except if used by the CMAR on work not contemplated by this Agreement or work outside the Project.

ARTICLE 2 — CMAR Preconstruction Phase and Construction Phase Responsibilities

2.1 General Responsibilities

2.1.1 The CMAR shall provide all labor, materials, equipment, and services necessary to complete the Work, all of which shall be provided in full accord and consistent with the Contract Documents as being necessary to produce the indicated results.

2.1.2 The CMAR shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures used, unless the Contract Documents give other specific instructions. In such case, the CMAR shall not be liable to the Owner for damages resulting from compliance with such instructions unless the CMAR recognized and failed to timely report to the Owner any error, inconsistency, omission, or unsafe practice that it discovered in the specified construction means, methods, techniques, sequences, or procedures. The CMAR shall not be required to provide professional services which constitute the practice of architecture or engineering except as otherwise provided in Subparagraph 2.1.6 nor shall the CMAR be liable for professional services rendered by or design documents prepared by the Engineer or any of its consultants or subconsultants at any tier. The CMAR shall be entitled to rely upon the adequacy, accuracy, and completeness of all design, engineering, and other consulting services provided by the Engineer and its consultants and subconsultants at all tiers and/or other consultants retained directly or indirectly by the Owner. The CMAR shall have no liability to the Owner or any other Party for the failure of any Drawings, Specifications, or other design or engineering produced by Others to be adequate, correct, complete, and free from defect for

any purpose or to comply with Applicable Law, all of which shall remain the responsibility of the Engineer.

2.1.3 The CMAR shall perform Work only within locations allowed by the Contract Documents, applicable permits, and Applicable Law.

2.1.4 The CMAR and its Subcontractors shall review and compare each of the Contract Documents with the others and with information furnished or made available by Owner and shall, subject to limitations set forth in Subparagraph 2.1.2 hereof, promptly report in writing to Owner's Representative any errors, inconsistencies, or omissions it discovers in the Contract Documents or inconsistencies it discovers with Applicable Law observed by the CMAR or its Subcontractors. The CMAR and its Subcontractors shall take field measurements, verify field conditions, and compare with the Contract Documents with such field measurements and conditions before commencing any of the Work. The observations and measurements are for the purpose of facilitating coordination and construction by the CMAR and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, they are opportunities for the CMAR to identify any readily observable or potential errors, omissions, or inconsistencies in the Contract Documents. Readily observable errors, inconsistencies, or omissions discovered by the CMAR shall be promptly reported in writing to Owner's Representative. The CMAR maintains responsibility for losses, including the costs of correcting Defective Work involving an error, inconsistency, or omission by the CMAR and/or its Subcontractors which are caused by or are attributable to the CMAR, but the CMAR does not have responsibility for losses arising from design or engineering errors or omissions and it is recognized that the CMAR's review, observations, and measurements are made in the CMAR's capacity as a construction manager and not as a licensed design or engineering professional.

2.1.5 Worksite Visit. The CMAR acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work and, during the Preconstruction Phase, has participated in Owner/Engineer work sessions and provided input and feedback to the Owner and Engineer on the design and engineering of the Project, both from a constructability and a budgeting and cost-trending analysis standpoint. The CMAR will advise the Owner if it requires additional visits to increase its familiarity with the general and local conditions of the Worksite which may impact the Work.

2.1.6 Professional Services. The CMAR may be required to procure professional services to carry out its responsibilities for construction means, methods, techniques, sequences, and procedures or as such services are specifically called for by the Contract Documents. The CMAR shall obtain these professional services and any design certifications required from design professionals licensed in the State where the Project is located. All Drawings, Specifications, calculations, certifications, and submittals prepared by such design professionals shall bear the signature and seal of such design professionals and

the Owner and the Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of such design services. If professional services are specifically required by the Contract Documents, the Owner, through the Engineer, shall indicate all required performance and design criteria. The CMAR shall not be responsible for the adequacy of such performance and design criteria. The CMAR shall not be required to provide such services in violation of Applicable Law in the jurisdiction where the Project is located. Should the CMAR refuse to provide services based on the inadequacy of design criteria or because of a violation of existing Applicable Law, the CMAR shall provide notice and an explanation to Owner within five (5) Business Days of the CMAR becoming aware of the issue. The CMAR shall work with Owner to mitigate the issue.

2.2 Preconstruction Phase Services

The CMAR's Scope of Work responsibilities include the Preconstruction Phase Services defined and described in the Agreement. The CMAR shall perform such Preconstruction Phase Services at the time, in the manner, and for the Fee set forth in Article 2 of the Agreement. Unless otherwise mutually agreed in writing by the Owner and the CMAR, such Preconstruction Phase Services do not require or obligate the CMAR to generate or produce any design or engineering for the Project but will require the CMAR to participate in Owner/Engineer work sessions and provide input and feedback to the Owner and Engineer on the design and engineering of the Project from a constructability, budgeting, schedule, and cost-trending analysis standpoint. The CMAR, when providing input and feedback, shall not be responsible or liable for any design or engineering related work or services. However, the CMAR shall be responsible for any temporary works or related construction engineering necessary to implement the construction of the Project.

2.3 Construction Phase Services

2.3.1 Commencement. Unless otherwise provided to the contrary elsewhere in this Agreement or the other Contract Documents, the CMAR's Construction Phase Services shall commence upon execution of a Phase II Construction Price Amendment for the Project or specific Bid Package or other portion of the Work.

2.3.2 Coordination. The CMAR shall supervise, coordinate, and direct the Work using the CMAR's ordinary skill and attention. Subject to Subparagraph 2.1.2, the CMAR shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and the coordination of all portions of the Work. The CMAR shall manage and administer all phases of construction activities to achieve the completion of all Work within the requirements of the Contract Documents. The CMAR shall coordinate the Work of its Subcontractors and Material Suppliers to optimize efficiency and minimize conflict and interference between the various Subcontractors on-site. It is recognized, however, that the CMAR is not acting in the capacity of a licensed design professional, and that the CMAR's examination is to facilitate construction and does not create an affirmative

responsibility to detect errors, omissions, or inconsistencies in the design Drawings or plans created by the Engineer or to ascertain from the design Drawings or plans created by the Engineer compliance with Applicable Laws. The CMAR does not have an affirmative responsibility to detect errors or omissions by the Engineer.

2.3.3 Cost Reporting. The CMAR shall keep such full and detailed accounts as are necessary for proper financial management under this Agreement. The CMAR shall maintain a complete set of all books and records prepared or used by the CMAR with respect to the Project. The CMAR's records supporting its performance and billings under this Agreement shall be current, complete, and accurate and maintained according to Generally Accepted Accounting Principles, consistently applied. The Owner shall be afforded access to all the CMAR's records, books, correspondence, instructions, Drawings, receipts, vouchers, memoranda, and similar data relating to this Agreement. The CMAR shall preserve all such records for a period of three years after the Final Payment in accordance with Paragraph 8.9 hereof or longer where required by law.

2.3.4 Construction Personnel and Supervision

2.3.4.1 The CMAR shall provide competent supervision for the performance of the Work. Before commencing the Work, the CMAR shall notify the Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager so the Owner may review the individual's qualifications. If, for reasonable cause, the Owner refuses to approve the individual, or withdraws its approval after once giving it, the CMAR shall name a different superintendent for the Owner's review. Any disapproved superintendent shall not perform in that capacity thereafter at the Worksite.

2.3.4.2 The CMAR shall be responsible to the Owner for acts or omissions of Parties or entities performing portions of the Work for or on behalf of the CMAR or any of its Subcontractors and Material Suppliers.

2.3.4.3 The CMAR shall permit only fit and ordinarily skilled persons to perform the Work. The CMAR shall enforce safety procedures, discipline, and good order among persons performing the Work. If the Owner reasonably determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned Work, the CMAR shall immediately reassign the person on receipt of the Owner's written notice to do so.

2.3.5 Submittals

2.3.5.1 The CMAR shall be responsible to the Owner for the accuracy and conformity of its submittals to the Contract Documents. The CMAR shall prepare and deliver its submittals to the Owner and Engineer in such time and sequence so as not to delay the performance of the Work or the work

of the Owner and Others. When the CMAR delivers its submittals to the Owner, the CMAR shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The review and approval of any CMAR submittal shall not be deemed to authorize changes, deviations, or substitutions from the requirements of the Contract Documents unless express written approval is obtained from the Owner specifically authorizing such deviation, substitution, or change. To the extent a change, deviation or substitution causes an impact to the Phase II Construction Price or Contract Time, such approval shall be promptly memorialized in a Change Order. Further, the Owner shall not make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to the CMAR. If the Contract Documents do not contain submittal requirements pertaining to the Work, the CMAR agrees upon request to submit in a timely fashion to the Owner for review and approval any submittals, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by the Owner.

2.3.5.2 The CMAR shall perform all Work strictly in accordance with approved submittals. Approval does not relieve the CMAR from responsibility for Defective Work resulting from errors or omissions of any kind on the approved submittals.

2.3.5.3 Record copies of the following, incorporating field changes and selections made during construction, shall be maintained at the Worksite and available to the Owner upon request: Drawings, Specifications, addenda, and other Modifications, and required submittals including product data, samples, and shop drawings.

2.3.5.4 No substitutions shall be made in the Work unless permitted in the Contract Documents and then only after the CMAR obtains all approvals required under the Contract Documents for substitutions. All such substitutions shall be memorialized promptly by written approval by the Owner no later than seven (7) days following the Owner's receipt of a written request for approval thereof. If required, the CMAR will prepare a Change Order request within seven (7) days following approval by the Owner and, if applicable, provide for an adjustment in the Phase II Construction Price or Contract Time.

2.3.5.5 The CMAR shall prepare and submit to the Owner updated electronic data, in accordance with Subparagraph 3.8.1.

2.3.6 Cooperation with Work of Owners and Others

2.3.6.1 The Owner may perform work at the Worksite directly or by Others. Any agreements with Others to perform construction or operations related to the Project shall include provisions pertaining to insurance,

indemnification, waiver of subrogation, coordination, interference, cleanup, and safety which are substantively the same as the corresponding provisions of this Agreement.

2.3.6.2 If the Owner elects to perform work at the Worksite directly or by Others, the CMAR and Owner shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. The Owner shall require each separate contractor to cooperate with the CMAR and assist with the coordination of activities and the review of construction schedules and operations. The Phase II Construction Price or the Date of Substantial Completion or the Date of Final Completion may be equitably adjusted, as mutually agreed by the Parties, for changes made necessary by the coordination of construction activities, and the Schedule of the Work shall be revised accordingly. The CMAR, Owner, and Others shall adhere to the revised Schedule of the Work until it may subsequently be revised.

2.3.6.3 With regard to the work of the Owner and Others, the CMAR shall (a) proceed with the Work in a manner which does not hinder, delay, or interfere with the work of the Owner or Others or cause the work of the Owner or Others to become defective, (b) afford the Owner or Others reasonable access for introduction and storage of their materials and equipment and performance of their activities, and (c) coordinate the CMAR's construction and operations with theirs as required by Subparagraph 2.3.6.2.

2.3.6.4 Before proceeding with any portion of the Work affected by the construction or operations of the Owner or Others, the CMAR shall visually examine such work performed by the Owner or Others and give the Owner prompt, written notification of any defects the CMAR discovers therein of their work which will prevent the proper execution of the Work. The CMAR's obligations in this Subparagraph 2.3.6.4 do not create a responsibility for the work of Others but are for the purpose of facilitating the Work. If the CMAR does not notify the Owner of patent defects interfering with the performance of the Work, the CMAR acknowledges that to the CMAR's reasonable knowledge at the time, the work of the Owner or Others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from the CMAR of defects, the Owner shall promptly inform the CMAR what action, if any, the CMAR shall take regarding the defects.

2.3.7 Cutting, Fitting, and Patching

2.3.7.1 The CMAR shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of the Owner or Others, if within the CMAR's Scope of Services.

2.3.7.2 Cutting, patching, or altering the work of the Owner or Others shall be done with the prior written approval of the Owner. Such approval shall not be unreasonably withheld.

2.3.8 Cleaning Up

2.3.8.1 The CMAR shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, the CMAR shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. The CMAR shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the CMAR shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris created by the CMAR and its Subcontractors.

2.3.8.2 If the CMAR fails to commence compliance with cleanup duties within two (2) Business Days after written notification from the Owner of noncompliance, the Owner may implement appropriate cleanup measures without further notice and the cost shall be deducted from any amounts due or to become due the CMAR in the next payment period.

2.3.9 Access to Work. The CMAR shall facilitate the access of the Owner, its Engineer, and Others to Work in progress. The Owner, Engineer, and Others shall follow safety protocols in effect and in compliance with OSHA.

2.3.10 Materials Furnished by the Owner or Others

2.3.10.1 In the event the Work includes installation of materials or equipment furnished by the Owner or Others, it shall be the responsibility of the CMAR to visually examine the items so provided and thereupon handle, store, and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of the CMAR shall be the responsibility of the CMAR and may be deducted from any amounts due or to become due the CMAR. Any defects discovered in such materials or equipment shall be reported at once to the Owner. Following receipt of written notice from the CMAR of defects, the Owner shall promptly inform the CMAR what action, if any, the CMAR shall take regarding the defects.

2.3.11 Tests and Inspections

2.3.11.1 The CMAR shall schedule all required tests, approvals, and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other Work related to the Project. The CMAR shall give proper notice to all required Parties of such tests, approvals, and inspections. If feasible, the Owner and Others may timely observe the tests at the normal place of testing. Except as provided in Subparagraph 2.3.11.3 below or unless otherwise required by the Contract

Documents, the Owner shall bear all expenses associated with tests, inspections, and approvals required by the Contract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by the Owner. Unless otherwise required by the Contract Documents, required certificates of testing, approval, or inspection shall be secured by the CMAR and promptly delivered to the Owner.

2.3.11.2 If the Owner or appropriate authorities determine that tests, inspections, or approvals in addition to those required by the Contract Documents will be necessary, the CMAR shall arrange for the procedures and give timely notice to the Owner and Others who may observe the procedures. Costs of the additional tests, inspections, or approvals are at the Owner's expense except as provided in Subparagraph 2.3.11.3.

2.3.11.3 If the procedures described in Subparagraph 2.3.11.1 and 2.3.11.2 indicate that portions of the Work fail to comply with the Contract Documents due to the negligence of the CMAR, the CMAR shall be responsible for costs of correction and retesting.

2.4 Warranty

2.4.1 The CMAR warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, and in conformance with the Specifications set forth in the Contract Documents. The CMAR further warrants that the Work shall be free from defects in materials and workmanship not intrinsic in the design or materials required in the Contract Documents. The CMAR's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use, or operation for a purpose for which the Project was not intended, improper or insufficient maintenance, inadequate, incomplete, or defective design, modifications performed by the Owner or Others, or abuse. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS PROVIDED FOR HEREIN, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, SUITABILITY, AND FITNESS FOR PARTICULAR PURPOSE ARE HEREBY DISCLAIMED AND ARE NULL AND VOID. The CMAR's warranty pursuant to this Subparagraph 2.4.1 shall commence on the earlier of (a) the Date of Substantial Completion of the Work or the designated portion as agreed to by the Owner and the CMAR, and (b) the date the Owner takes beneficial use of the Work or designated portion of the Work as agreed to by the Owner and the CMAR.

2.4.2 The CMAR shall use commercially reasonable efforts to obtain from its Subcontractors and Material Suppliers any special or extended warranties expressly required by the Contract Documents. The CMAR's liability for such warranties shall be limited to the one-year correction period referred to in Subparagraph 2.5. After that period, the CMAR shall assign them to the Owner and provide reasonable assistance to the Owner in enforcing the obligations of Subcontractors and Material Suppliers.

2.5 Correction of Defective Work

2.5.1 If prior to Substantial Completion and within one year after the date of Substantial Completion and Acceptance of the Work any Defective Work is found, the Owner shall promptly notify the CMAR in writing of the Defective Work. Unless the Owner provides written acceptance of the condition, the CMAR shall promptly correct the Defective Work. If the Owner discovers a defect, the Owner shall notify the CMAR within ten (10) Business Days of the date of discovery. Work that is found not to conform to the requirements of the Agreement prior to Substantial Completion but does not prevent achievement of Substantial Completion may be corrected prior to Final Completion.

2.5.2 With respect to any portion of Work first performed after Final Completion, the one-year correction period for the Defective Work shall be extended by the time period between Final Completion and the actual performance of the later Work.

2.5.3 If the CMAR fails to correct Defective Work within a mutually agreed time after receipt of written notice from the Owner prior to Final Payment, the Owner may correct it in accordance with the Owner's right to carry out the Work in Subparagraph 10.2.3. In such case, an appropriate Change Order shall be issued deducting the cost of correcting such deficiencies from payments then or thereafter due the CMAR. If payments then or thereafter due the CMAR are not sufficient to cover such amounts, the CMAR shall pay the difference to the Owner.

2.5.4 If after the one-year correction period but before the periods of limitations and repose applicable to the Work in the jurisdiction in which the Project is located have run the Owner discovers any Defective Work, the Owner shall, unless the Defective Work requires emergency correction, promptly notify the CMAR. If the CMAR elects to correct the Work, it shall provide written notice of such intent within fourteen (14) days of its receipt of notice from the Owner. The CMAR shall complete the correction of Work within a mutually agreed time frame. If the CMAR does not elect to correct the Work, the Owner may have the Work corrected by itself or Others and charge the CMAR for the reasonable cost of the correction. The Owner shall provide the CMAR with an accounting of correction costs it incurs.

2.5.5 If the CMAR's correction or removal of Defective Work causes damage to or destroys other completed or partially completed Work or existing building, the CMAR shall be responsible for the cost of correcting the destroyed or damaged property.

2.5.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of the CMAR's other obligations under the Contract Documents.

2.5.7 Prior to Final Payment, at the Owner's option and with the CMAR's agreement, the Owner may elect to accept Defective Work rather than require its

removal and correction. In such cases, the Phase II Construction Price shall be equitably adjusted for any diminution in the value of the Project, if any, caused by such Defective Work.

2.6 Correction of Covered Work

2.6.1 On request of the Owner, Work that has been covered without a requirement that it be inspected prior to being covered may be uncovered for the Owner's inspection. The Owner shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by the Owner or Others and the CMAR shall be entitled to a Change Order adjusting the Contract Time and/or the Phase II Construction Price for any resulting delay or added cost. If the uncovered Work proves to be defective, the CMAR shall pay the costs of uncovering and replacement.

2.6.2 If a portion of the Work is covered, contrary to specific requirements in the Contract Documents or contrary to a specific request from the Owner, the Owner, by written request, may require the CMAR to uncover the Work, at a mutually convenient time, for the Owner's observation. In this circumstance, the Work shall be replaced at the CMAR's expense and with no adjustment to the Contract Time.

2.6.3 The CMAR is required to correct in a timely fashion any Work rejected by the Owner which fails to comply with the Contract Documents prior to the commencement of the warranty period(s) or during the correction period(s) established under Paragraph 2.5. The CMAR shall correct at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible.

2.7 Safety of Persons and Property

2.7.1 Safety Precautions and Programs. The CMAR shall have overall responsibility for safety precautions and programs in the performance of the Work. While this Paragraph 2.7 establishes the responsibility for safety between the Owner and CMAR, it does not relieve the Engineer or Subcontractors of their responsibility for the safety of persons or property in the performance of their Work, nor for compliance with the provisions of Applicable Laws.

2.7.2 The CMAR shall seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect:

2.7.2.1 Its employees and other persons at the Worksite;

2.7.2.2 Materials and equipment stored at on-site or off-site locations for use in the Work; and

2.7.2.3 Property located at the Worksite and adjacent to Work areas,

whether the property is part of the Work.

2.7.3 CMAR’s Safety Representative. The CMAR shall designate an individual at the Worksite in the employ of the CMAR who shall act as the CMAR’s authorized safety representative with a duty to prevent accidents in accordance with Subparagraph 2.7.2. The CMAR shall report immediately in writing all accidents and injuries occurring at the Worksite. When the CMAR is required to file an accident report with a public authority, the CMAR shall furnish a copy of the report to the Owner concurrent with the report’s distribution with the public authority.

2.7.4 The CMAR shall provide the Owner with copies of all notices required of the CMAR by Applicable Law. The CMAR’s safety program shall comply with the requirements of Governmental Authorities having jurisdiction.

2.7.5 Damage or loss not insured under property insurance which may arise from the Work to the extent caused by negligent acts or omissions of the CMAR, or anyone for whose acts the CMAR may be liable, shall be promptly remedied by the CMAR. If the Owner deems any part of the Work or Worksite unsafe, and such safety concerns are due to the fault or neglect of the CMAR, its Subcontractors, or anyone else for whom such Parties are responsible, the Owner, without assuming responsibility for the CMAR’s safety program, may require the CMAR to stop performance of the Work or take corrective measures satisfactory to the Owner, or both. If the CMAR does not adopt corrective measures, the Owner may perform them and deduct their cost from the Phase II Construction Price. The CMAR agrees to make no claim for damages, or an increase in the Phase II Construction Price, or for a change in the Dates of Substantial or Final Completion based on the CMAR’s compliance with the Owner’s reasonable request.

2.8 Emergencies

2.8.1 In an emergency, the CMAR shall act in a reasonable manner to prevent personal injury or property damage. If appropriate, an equitable adjustment in the Phase II Construction Price or Date of Substantial Completion or Date of Final Completion shall be determined in a Change Order.

2.9 Hazardous Materials

2.9.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or cleanup. The CMAR shall not be obligated to commence or continue Work until any unknown Hazardous Material discovered or encountered at the Worksite has been removed, rendered, or determined to be harmless by the Owner as certified by an independent testing laboratory and approved by the appropriate government agency. The Owner shall retain generator status of any preexisting hazardous

materials contained on-site and shall sign manifests for removal of preexisting hazardous materials.

2.9.2 If after the commencement of the Work, unknown Hazardous Material is discovered or encountered at the Worksite, the CMAR shall be entitled to immediately stop Work in the affected area. The CMAR shall report the condition to the Owner, the Engineer, and, if required, the Governmental Authority with jurisdiction.

2.9.3 The CMAR shall not be required to perform any Work relating to or around Hazardous Material without written mutual agreement.

2.9.4 The Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures or remedial action. Such measures shall be the sole responsibility of the Owner and shall be performed in a manner minimizing any adverse effects upon the Work. The CMAR shall resume Work in the area affected by any Hazardous Material only upon written agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the Governmental Authority with jurisdiction.

2.9.5 If the CMAR incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, the CMAR may be entitled to an equitable adjustment in the Phase II Construction Price and in the Dates of Substantial and Final Completion.

2.9.6 To the extent not caused by the negligent acts or omissions of the CMAR, its Subcontractors and Sub-subcontractors, and the agents, officers, directors, and employees of each of them (collectively, the “CMAR Indemnitees”), and to the fullest extent permitted by law, the Owner shall defend, indemnify, and hold harmless the CMAR Indemnitees from and against any and all direct or indirect claims, suits, damages, losses, costs, and expenses (including, but not limited to, attorneys’ fees and costs) incurred by any such CMAR Indemnitees in connection with or arising out of or relating to the performance of the Work in any area contaminated or affected by Hazardous Material or any bodily injury or property damage suffered or incurred by any CMAR Indemnitee, in each case arising out of, relating to, resulting from, or incurred in connection with the generation, location, transportation, or the existence, remediation, or removal of any Hazardous Materials located on, under, in, or adjacent to the Project Site or transported to or from such Project Site, in each case where such generation, location, transportation, or the existence, remediation, or removal resulted from events or circumstances either (a) occurred prior to the CMAR’s execution of any Phase II Construction Price Amendment and entry onto the Project site at commencement of the Construction Phase Services covered by such Phase II Construction Price Amendment, and/or (b) did not result from or arise out of any errors or omissions of the CMAR or its Subcontractors at any tier. To the fullest extent permitted by law, such indemnification shall apply regardless of the fault,

negligence, breach of warranty or contract, or strict liability of the Owner and such indemnity obligations shall survive the termination of this Agreement and/or the completion of the Work and the transactions contemplated herein.

2.9.7 To the extent not caused by the acts or omissions of the Owner, its Engineer or other consultants, the agents, officers, directors, and employees of any of them, or any person or entity in the chain of title to the real property comprising the Project or any portion thereof, whether as owner, tenant, guest, licensee, invitee, or otherwise (collectively, the “Owner Indemnitees”), the CMAR shall defend, indemnify and hold harmless the Owner Indemnitees from and against any and all direct or indirect claims, suits, damages, losses, costs, and expenses (including, but not limited to, attorneys’ fees and costs) incurred by any such Owner Indemnitees in connection with or arising out of or relating to any Hazardous Materials first introduced onto the Project site by the CMAR or its Subcontractors on or after the date of the Agreement; provided however, that in no event shall such indemnity and defense obligations apply to (a) any Hazardous Materials specified for the Work by the Owner, the Engineer, any consultants of such Parties or any other person or entity for whom the Owner is legally responsible, or (b) common cleaning solvents used by the CMAR in the performance of the Work. To the fullest extent permitted by law, such indemnification shall survive the termination of this Agreement and/or the completion of the Work and the transactions contemplated herein.

2.9.8 Removal of Hazardous Materials

2.9.8.1 To the extent the Hazardous Materials not the subject of Subparagraph 2.9.7 above are identified in other applicable provisions above of this Paragraph 2.9, the CMAR shall proceed with remediation and removal of such Hazardous Materials as agent for the Owner in accordance with this Subparagraph 2.9.8.

2.9.8.2 The Owner hereby appoints the CMAR as its agent to act in the Owner’s name and on the Owner’s behalf to negotiate, enter, and execute contracts with third parties to remove, transport, and/or dispose of Hazardous Materials. The CMAR’s scope of authority as agent does not include the execution of any manifests or governmental documents related to the Hazardous Materials. All documents executed by the CMAR acting within the CMAR’s scope of authority shall provide that the CMAR is acting solely as agent for the Owner. The CMAR shall maintain appropriate records of all acts undertaken as agent for the Owner and all such documents shall be available for audit by the Owner.

2.9.8.3 The authority of the CMAR to act as agent on behalf of the Owner shall terminate upon termination or assignment of the Construction Agreement.

2.10 Materials Brought to the Worksite

2.10.1 Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the CMAR, Subcontractors, the Owner, or Others, shall be maintained at the Worksite by the CMAR and made available to the Owner, Subcontractors, and Others.

2.10.2 The CMAR shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by the CMAR in accordance with the Contract Documents and used or consumed in the performance of the Work.

2.10.3 To the extent caused by the negligent acts or omissions of the CMAR, its agents, officers, directors, and employees, the CMAR shall defend, indemnify, and hold harmless the Owner, its agents, officers, directors, and employees, in accordance with Paragraph 2.9.7 hereof, from and against claims, damages, losses, costs, and expenses, including, but not limited to, reasonable attorneys' fees, costs, and expenses incurred in connection with any dispute resolution process, in each case arising out of or relating to the delivery, handling, application, storage, removal, and disposal of all materials and substances.

2.11 Differing Site Conditions

2.11.1 If the CMAR encounters Differing Site Conditions, the CMAR shall stop Work within the affected area(s) and shall provide the Owner and the Engineer with written notice and details of its claim for Differing Site Conditions within the time period set forth in Paragraph 11.1. Any change in the Phase II Construction Price, estimated Cost of the Work and/or CMAR's Fee (where applicable), Date of Substantial Completion, or Date of Final Completion and, if appropriate, the Compensation for Construction Phase Services because of the Differing Site Conditions shall be determined as provided in Article 11. The CMAR shall only be entitled to pursue a claim for Differing Site Conditions if the Parties have not agreed, in writing, that Differing Site Conditions have occurred after the CMAR's submission of appropriate backup documentation.

2.12 Permits And Taxes

2.12.1 The CMAR shall give public authorities all notices required by law and, except for permits and fees which are the responsibility of the Owner pursuant to Paragraph 3.6 hereof, shall obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work. The CMAR shall provide to the Owner copies of all notices, permits, licenses, and renewals required under this Agreement.

2.12.2 The CMAR shall pay all applicable taxes legally enacted when bids are received or negotiations concluded for the Work provided by the CMAR.

2.12.2.1 Certain sales tax paid to the State of Georgia by the CMAR, its Subcontractors, suppliers, and vendors ultimately may be paid by the Owner by reimbursement to the CMAR through Progress Payments. The Owner desires to apply to the State of Georgia for a rebate of such sales

taxes back to the Owner. The CMAR shall assist the Owner with the Owner's procedures for applying for such rebates.

2.12.2.2 With each Application for Payment, the CMAR shall submit invoices that show the amount of sales tax paid, and the entity that paid the tax, for the items on that invoice. The CMAR shall develop and maintain an Excel spreadsheet that summarizes the date and amount of sales tax paid, the entity that paid the tax, and a cross reference to the CMAR's Application for Payment number. The CMAR shall further assist the Owner by periodically executing, and requiring its Subcontractors, suppliers, and vendors that paid sales tax to the State of Georgia to periodically execute, certain forms required by the State of Georgia as part of Owner's application for sales tax rebate.

2.12.3 The Phase II Construction Price shall be adjusted for additional costs, subject to approval by the Owner, resulting from Applicable Laws enacted after the date of this Agreement, including increased taxes.

2.12.4 If, in accordance with the Owner's direction, the CMAR claims an exemption for taxes, the Owner shall, to the fullest extent permitted by law, indemnify, defend, and hold the CMAR harmless from any liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by the CMAR because of any such action.

2.13 Confidentiality

2.13.1 The CMAR shall treat as confidential and shall not use for its own benefit nor disclose to third persons, except as is necessary for the performance of the Work, any of the Owner's confidential information, know-how, discoveries, production methods, and the like that may be disclosed to the CMAR or which the CMAR may acquire in connection with the Work. The Owner shall treat as confidential information all of the CMAR's estimating systems and historical and parameter cost data and identified related proprietary information that may be disclosed to the Owner in connection with the performance of this Agreement. The Owner and the CMAR shall each specify those items to be treated as confidential and shall mark them as "Confidential." The provisions of this Subparagraph 2.13.1 shall survive the termination or completion of this Agreement and the transactions contemplated hereby. This paragraph is subject to the Georgia Open Records Act O.C.G.A. § 50-18-70 et. seq.

ARTICLE 3 — Owner's Responsibilities

3.1 Adequate Funding for Project

At the CMAR's request following execution of the Phase II Construction Price Amendment and prior to the Owner's issuance of a Notice to Proceed with the Construction Phase Services, the Owner shall promptly furnish reasonable evidence satisfactory to the CMAR that the Owner has adequate funds available

and committed to fulfill all of the Owner's payment obligations under the Contract Documents. If the Owner fails to furnish such financial information in a timely manner, the CMAR may stop Work under Section 10.4 of the General Conditions or exercise any other right permitted under the Contract Documents. Following the Owner's issuance of the Phase II Notice to Proceed, so long as the Owner satisfies its payment obligations under the Agreement and other Contract Documents, the Owner shall not be required to furnish any further financial evidence of its ability to satisfy its payment obligations under the Contract Documents.

3.2 Owner's Representative

The Owner will identify the Owner's Representative, or any other authorized person or entity as defined in Subparagraph 1.1.38 of the Agreement, to act on behalf of the Owner. The Owner may change the Owner's Representative upon written notice to the CMAR.

The Owner's authorized representative shall be fully acquainted with the Project and shall have the authority to bind the Owner in all matters requiring the Owner's approval, authorization, or written notice. If the Owner changes its representative or the representative's authority as listed above, the Owner shall immediately notify the CMAR in writing.

3.3 Information And Services

Any information or services to be provided by the Owner shall be provided in a timely manner so as not to delay the Work. The Owner shall establish and update an overall budget for the Project in accordance with Paragraph 2.1 of the Agreement hereof, based on consultation with the CMAR and Engineer, which shall include Contingencies for changes in the Work and other costs which are the responsibility of the Owner.

3.4 Worksite Information

Except to the extent that the CMAR knows of any inaccuracy, the CMAR is entitled to rely on the following Project information furnished by the Owner pursuant to this Paragraph 3.4. To the extent the Owner has obtained, or is required elsewhere in the Contract Documents to obtain, the following Project information, the Owner

shall provide such information to the CMAR at the Owner's expense and with reasonable promptness so as not to delay the Schedule:

3.4.1 Information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data or Drawings depicting existing conditions, subsurface conditions and environmental studies, reports, and investigations.

3.4.2 Tests, inspections, and other reports dealing with environmental matters, Hazardous Material, and other existing conditions, including structural, mechanical, and chemical tests required by the Contract Documents or by law.

3.4.3 Any other information or services requested in writing by the CMAR which are relevant to the CMAR's performance of the Work and under the Owner's control. The information required by this Subparagraph 3.4.3 shall be provided in reasonable detail. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent site conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details shall include available services, lines at the Worksite and adjacent thereto, and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used by the CMAR in laying out the Work.

3.4.4 All licenses and other rights to use of the Drawings, Specifications, and any other intellectual property necessary or required for the CMAR's performance of the Work as well as any other rights to use of any other documents, materials, and/or information generated or produced by the Engineer or its consultants at any level in connection with the design, engineering, or programming for the Project.

3.5 Engineer

Unless otherwise expressly provided to the contrary in this Agreement, the Owner shall be responsible for retaining and paying the Engineer and all other professional design and engineering consultants required for construction of the Project or portions thereof.

3.6 Building Permit, Fees, And Approvals

Except for those permits and fees related to the Work which are the responsibility of the CMAR pursuant to Paragraph 2.12, the Owner shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit. Assuming the CMAR has performed all necessary and reasonable actions to obtain permits, the CMAR shall not be liable for any delays related to obtaining permits and shall

be entitled to any cost or Schedule impacts related thereto so long as not caused by any acts, errors, or omissions of the CMAR.

3.7 Mechanics and Construction Lien Information

Deleted.

3.8 Contract Documents

Unless otherwise specified, Owner shall provide electronic or hard copies of the Contract Documents to the CMAR as may be agreed to by the Owner and CMAR and without cost to the CMAR.

3.8.1 Electronic Documents. If the Owner requires that the Owner, Engineer, and CMAR exchange documents and data in electronic or digital form, prior to any such exchange the Owner, Engineer, and CMAR shall agree on a written protocol governing all exchanges which, at a minimum, shall specify: (1) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (2) management and coordination responsibilities; (3) necessary equipment, software, and services; (4) acceptable formats, transmission methods, and verification procedures; (5) methods for maintaining version control; (6) privacy and security requirements; and (7) storage and retrieval requirements. Except as otherwise agreed to by the Parties in writing, the Parties shall bear their own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

If the CMAR incurs additional costs or is delayed due to such loss or damage, the CMAR may be entitled to an equitable adjustment in the Phase II Construction Price estimated Cost of the Work, CMAR's Fee, Date of Substantial Completion, or Date of Final Completion.

3.9 Submittals

The CMAR shall have the duty to carefully review, inspect and examine any and all submittals before submission of same to the Owner. The Owner shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay and shall cause the Engineer to respond to such submittals and to either approve or reject the same no later than twenty-eight (28) days following Engineer's receipt of same, unless an earlier or later response deadline is provided elsewhere in the Contract Documents.

3.10 Access

The Owner shall provide the CMAR and its Subcontractors and Materials Suppliers at all tiers with appropriate physical and legal access to the Project Site and other

areas necessary for the proper and timely performance and completion of the Work.

ARTICLE 4 — Subcontracts

4.1 Subcontractors

The Work not performed by the CMAR with its own forces shall be performed by Subcontractors. All subcontracts shall be issued on a Lump-Sum cost basis unless the Owner has given prior written approval of a different method of payment to the Subcontractor.

4.2 Award of Subcontracts and Other Contracts for Portions of the Work

4.2.1 As soon after the execution of this Agreement as possible and at least thirty (30) days prior to the submitting a Phase I Early Works Package Proposal to the Owner, if applicable, and at least thirty (30) days prior to submitting the Phase II Construction Amendment Proposal to the Owner, the CMAR shall submit to the Owner and, if directed, the Engineer a written list of proposed Subcontractors and their Key Personnel qualifications, as well as a written list of significant Material Suppliers. If the Owner has a reasonable objection to any proposed Subcontractor or Material Supplier, the Owner shall notify the CMAR in writing. Failure to promptly object shall constitute acceptance. Subcontractors shall be secured by the CMAR in accordance with the Subcontractor Procurement Plan.

4.2.2 If the Owner has reasonably and promptly objected as provided in Subparagraph 4.2.1, the CMAR shall not contract with the proposed Subcontractor or Material Supplier, and the CMAR shall propose another acceptable to the Owner. If the substituted Subcontractor or Material Supplier is more or less expensive or use of such Party will result in a change in the Contract Time, the Owner shall execute an appropriate Change Order that shall reflect any increase or decrease in the Phase II Construction Price or Dates of Substantial or Final Completion because of the substitution.

The CMAR agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its Subcontractors and Material Suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractors' and Material Suppliers' portions of the Work.

4.2.3 The CMAR shall be responsible for ensuring Subcontractor compliance with Applicable Law, including applicable registration and reporting requirements.

4.3 Contingent Assignment of Subcontracts

4.3.1 If this Agreement is terminated for cause in accordance with Paragraph 10.1 hereof, each subcontract agreement shall be assigned by the CMAR to the Owner, subject to the prior rights of any surety, provided that the Owner accepts such assignment after termination by notifying the Subcontractor or Material Supplier and CMAR in writing, and assumes all rights and obligations of the CMAR pursuant to each subcontract agreement.

4.3.2 If the Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive days following termination, the Subcontractor's compensation shall be equitably adjusted because of the suspension.

ARTICLE 5 — Time

5.1 Performance of the Work

5.1.1 Date of Commencement. Unless otherwise provided to the contrary in the Agreement or other Contract Documents, the Date of Commencement of the Preconstruction Phase Services is the date of issuance of a Phase I Notice to Proceed for the same in accordance with Paragraph 2.1 of the Agreement. Unless otherwise provided to the contrary in the Agreement, the Date of Commencement of the Construction Phase Services is the date construction of those services commence following issuance of a Phase II Notice to Proceed by the Owner for some or all the Work covered by such Construction Phase Services as described in a Phase II Construction Price Amendment executed by the Owner or the CMAR for the same. The Work shall proceed in general accordance with the Schedule of Work as such Schedule may be amended from time to time, subject to other provisions of this Agreement. The Schedule is subject to allowable adjustments in the Contract Time as permitted herein or in the other Contract Documents.

5.1.2 Substantial/Final Completion. Unless the Parties agree or otherwise, the Date of Substantial Completion or the Date of Final Completion shall be established pursuant to the Phase II Construction Price Amendment, subject to adjustments as provided for in the Contract Documents. If a Phase II Construction Price is not established and the Parties desire to establish a Date of Substantial Completion or Date of Final Completion, it shall be set forth via Amendment.

5.1.3 Time limits stated above are of critical importance to this Agreement.

5.1.4 The CMAR shall not knowingly commence the Work before the effective date of the insurance to be provided by the CMAR and Owner as required by the Contract Documents.

5.2 Schedule of the Work

5.2.1 The CMAR shall submit an initial and updated Project Construction Schedule to the Owner in the form and within the time limits acceptable to the Owner. The Owner will determine the acceptability of the initial and updated Project Construction Schedule within a reasonable period of time. If the Owner deems the Project Construction Schedule unacceptable, it shall specify in writing to the CMAR the basis for its objection.

5.2.2 The initial and updated Project Construction Schedule shall represent a practical plan to complete the Work within the Contract Time. Schedules showing the Work completed in less than the Contract Time may be acceptable if judged by the Owner to be practical.

5.2.3 The CMAR shall use the Critical Path Method (“CPM” or “Critical Path”) to schedule and manage the Work. The CMAR shall create and manage the Schedule. If the CMAR does not have staff capable of preparing and managing CPM Schedules, the CMAR shall obtain such qualified personnel on a subcontract basis for supporting the Contract Documents.

5.2.4 All CPM scheduling shall be performed using CPM precedence diagramming method (PDM) scheduling software such as Primavera Project Planner or an Owner or Engineer required platform with import capabilities commercially available and reasonably acceptable to the CMAR. The CMAR shall submit all Schedules and associated reports to the Owner in digital (pdf) and native file or another specified format commercially available in the marketplace to allow the Owner and Engineer to complete the analysis and review of the Schedule.

5.3 Delays and Extensions of Time

5.3.1 If the CMAR is delayed at any time in the commencement or progress of the Work by Excusable Delay (as hereinafter defined), then, upon agreement of the Parties:

5.3.1.1 The Contract Time shall be extended by Change Order for a reasonable time based on the impact of such delay or concurrent delays to the Critical Path of the Project Schedule.

5.3.1.2 Provided the CMAR has mitigated the effects of such delay (such as, by way of example and not of limitation, through rescheduling, resequencing, or other measures), the Phase II Construction Price shall be adjusted to the extent reasonably necessary to compensate the CMAR for any increases in the Cost of the Work due to additional time to which the CMAR is entitled under this Paragraph 5.3.

Any adjustments made pursuant to Sections 5.3.1.1 or 5.3.1.2 shall be subject to limitations set forth in Article 7 hereof of these General Conditions and the provisions of Paragraphs 5.6 and 5.7 of these General Conditions.

The CMAR shall not be entitled to an adjustment in the Phase II Construction Price or the Contract Time for CMAR Delays.

5.4 Other Terms Defined

5.4.1 For purposes of the Contract Documents, the following terms shall have the meanings indicated for each:

5.4.1.1 "CMAR Delay" means each day of delay to the completion of the Work to the extent such delay was caused by and/or within the control of the CMAR, and (a) actually causes a delay in the Critical Path of such Work, and (b) is not caused by an Excusable Delay, Force Majeure, or Owner Delay. Delays attributable to and within the control of the CMAR, its Subcontractors of all tiers, its Material Suppliers, or other Party for whom the CMAR is responsible shall be deemed to be CMAR Delay.

5.4.1.2 "Excusable Delay" means any act, omission, condition, event, or circumstance beyond the CMAR's reasonable control and due to no fault of the CMAR including, but not limited to, the Owner's suspension of the Work without cause or the CMAR's suspension of the Work due to nonpayment, Owner Delay, delays or impacts caused by or attributable to a third party, delay caused by or resulting from Differing Site Conditions, or a Force Majeure Delay.

5.4.1.3 "Force Majeure" means any conditions, occurrences, or acts of God, and not within the reasonable control of the CMAR, not constituting Owner Delay, delay caused by Differing Site Conditions, or CMAR Delay, which impacts the Work or prevents or delays the CMAR from performing its obligations under the Contract Documents, including without limitation any one or more of the following:

5.4.1.3.1 Damage or destruction by fire or casualty.

5.4.1.3.2 Unusually severe weather including lightning, tornado, earthquake, flood, windstorm, named weather event, named storm, wind, natural disasters.

5.4.1.3.3 Pandemic, epidemic, quarantine, declaration of public health emergency, and/or governmental orders issued in connection with such public health emergencies.

5.4.1.3.4 Weather related delays beyond the number provided for in Paragraph 5.3.3 of the Agreement or as otherwise allowed or permitted, if applicable, in the Phase II Construction Price Amendment.

5.4.1.3.5 Strike or other labor dispute not specifically directed at the CMAR or any person or entity for whom the CMAR is

responsible under the Contract Documents.

5.4.1.3.6 Nationwide or global unavailability or shortage of materials or equipment resulting in Critical Path delay. To the extent that any alleged delay relates to nationwide or global unavailability or shortage of materials or equipment, the CMAR shall be required to provide documented proof to the Owner that the CMAR did not reasonably anticipate such unavailability as of the Effective Date (as defined in the Phase II Construction Price Amendment) of the Phase II Construction Price Amendment and made diligent and timely efforts to obtain (buy out) such materials or equipment as a condition precedent to any extension of the Contract Time or increase of the Phase II Construction Price under this paragraph.

5.4.1.3.7 Unavailability of utilities (not caused in whole or in part as a result of fault on the part of the Owner or the CMAR).

5.4.1.3.8 Riots, insurrections, acts of a public enemy, acts of domestic and/or foreign terrorism, or vandalism.

5.4.1.3.9 Bomb scares or similar third-party threats or disruptions.

5.4.1.3.10 Moratoriums or other unusual or unforeseeable delays in the issuance of any required approvals from any Governmental Authorities or utilities.

5.4.1.3.11 Delays caused by actions or inactions of Governmental Authorities (not caused in whole or in part as a result of fault on the part of the Owner or the CMAR) including, but not limited to, enactment or revision of Applicable Laws or official interpretations subsequent to the execution of the Agreement.

For the avoidance of doubt, the Owner's financial insolvency or inability to perform its financial obligations under the Agreement and the other Contract Documents shall not constitute an event of Force Majeure.

5.4.1.4 "Owner Delay" means a cost impact or each day of delay that actually impacts the completion of the Work and is caused by any one or more of the following actions or omissions of the Owner (or any tenant of the Owner) at the Project related to:

5.4.1.4.1 Any Change in the Work initiated by the Owner.

5.4.1.4.2 The Owner’s failure to timely approve or disapprove any item for which Owner approval is required under the Contract Documents provided notice has been provided as required by the Agreement for Change Orders except to the extent that the Owner’s failure is deemed to mean approval pursuant to the terms of the Agreement and except to the extent that the Owner cures such failure within seven (7) Business Days after receipt of written notice from the CMAR of such failure.

5.4.1.4.3 Any failure of the Owner to (a) comply with the CMAR’s reasonable requirements relative to access to areas of the Work reasonably necessary for the performance of Work, including, without limitation, the hoist, freight elevators, and/or defined path of travel established with respect to the Work; provided written notice of said request is received by Owner and said access does not constitute a safety risk to the public or employees or agents of the City.

5.5 Claims / Modifications for Excusable Delays

If any delay to the Work is caused by Excusable Delay, any adjustments to time or Phase II Construction Price shall be made in accordance with Section 5.3.

5.6 Construction General Conditions Costs

In the event of an Excusable Delay pursuant to which the CMAR, subject to consultation with and approval of the Owner, is entitled to an adjustment in the Contract Time in accordance with Paragraph 5.3.1 hereof but not otherwise, the CMAR may, subject to consultation with and approval of the Owner, be entitled to an equitable adjustment of the Phase II Construction General Conditions Costs, as negotiated between the Parties. The CMAR shall, in the event of an occurrence likely to cause Excusable Delay, cooperate in good faith with the Owner to minimize and mitigate the impact of any such occurrence and do all things reasonable under the circumstances to achieve this goal.

5.7 Monitoring Progress and Costs

Following acceptance by the Owner of the Phase II Construction Price, the CMAR and the Owner shall establish a process for monitoring costs against the Phase II Construction Price and actual progress against the Schedule of Work. The CMAR shall provide written reports to the Owner at monthly intervals on the status of the Work, showing variances between costs and the Phase II Construction Price and actual progress as compared to the Project Construction Schedule, including

estimates of future costs and recovery programs if actual progress indicates that

the Dates of Substantial Completion or Final Completion may not be met.

5.8 Owner Approval

Notwithstanding anything contained herein or in the other Contract Documents to the contrary, any decision by the Owner to approve (or disapprove) any requested adjustments in the Contract Time and/or the Phase II Construction Price (including any increase in the Construction General Conditions Costs) resulting from an Excusable Delay shall be made by the Owner in its sole but good faith discretion. Any failure by the Parties to reach an agreement hereunder shall not prejudice the CMAR's entitlement to price and Schedule relief otherwise provided and may constitute a Claim for purposes of the dispute-related provisions in this Agreement.

ARTICLE 6 — Compensation

6.1 CMAR's Compensation for Preconstruction Phase Services

The Owner shall compensate the CMAR for the performance of the CMAR's Preconstruction Phase Services in accordance with Paragraph 6.1.1 of the Agreement.

6.2 CMAR's Compensation for Early Work(s) Package(s)

Any Early Works compensation will be agreed to by the Parties pursuant to a separate written amendment to the Agreement (Early Works Price Amendment).

6.3 CMAR's Compensation for Construction Phase Services

The Owner shall compensate the CMAR for Work performed and described in a Phase II Construction Price Amendment on the basis of either a Lump Sum Phase II Construction Price or Guaranteed Maximum Price, in each case as set forth in such Phase II Construction Price Amendment.

6.4 Contingency and Allowances

Contingency and/or Allowances, if any, and the use thereof, shall be as set forth in, and subject to the terms, covenants, and conditions of the Phase II Construction Price Amendment executed in connection therewith.

ARTICLE 7 — Changes

Changes in the Work that are within the general scope of this Agreement shall be accomplished, without invalidating this Agreement, by Change Order, Owner Change Directive, and/or Field Order.

7.1 Change Order

7.1.1 The CMAR may request, or the Owner may order, changes in the Work or the timing or sequencing of the Work that impacts the Phase II Construction Price, where applicable the estimated Cost of the Work and CMAR's Fee, the Date of Substantial Completion, and/or the Date of Final Completion. All such changes in the Work shall be formalized in a Change Order. Any such requests for changes in the Work shall be processed in accordance with this Article 7.

7.1.2 The Phase II Construction Price will be adjusted only for Excusable Delay in accordance with and subject to the terms, conditions, and limitations set forth in Article 5.3 hereof.

7.2 Owner Change Directives and Field Orders

7.2.1 The Owner may issue a written Owner Change Directive directing a change in the Work prior to reaching agreement with the CMAR on the adjustment, if any, in the Phase II Construction Price or the Date of Substantial Completion or Date of Final Completion.

7.2.2 The Owner and the CMAR shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Phase II Construction Price or the Contract Time arising out of Owner Change Directives. If the Owner and the CMAR are unable to reach agreement within thirty (30) days, the issue shall be elevated to the CMAR's management and the Owner's Representative for a determination. As the Work associated with the Owner Change Directive is performed, the CMAR shall submit its costs for such Work with its Application for Payment and the CMAR shall be paid for the Work performed in accordance with the Phase II Contract Price Amendment. The Owner shall prepare an Owner Change Directive, utilizing the Owner's available funds, for any undisputed portion of the costs. Contingency funds may only be used for Owner Change Directives upon written agreement of the Parties.

7.2.3 When the Owner and the CMAR agree upon the adjustments in the Phase II Construction Price, the Date of Substantial Completion, and/or Date of Final Completion for a change in the Work directed by an Owner Change Directive, such agreement shall be the subject of an appropriate Change Order.

7.2.4 The Owner may authorize Field Orders. Such Field Orders will be binding on the Owner and on the CMAR, which shall perform the Work involved promptly. If the CMAR believes that a Field Order justifies an adjustment in the Phase II Construction Price or Contract Times or both, then the CMAR shall submit a Change Order Proposal.

7.3 Determination of Cost

7.3.1 An increase or decrease in the Phase II Construction Price established in a Phase II Construction Price Amendment (whether based on a GMP or Lump Sum Phase II Construction Price) or changes to the Project Construction Schedule or the Schedule/Contract Time resulting from a change in the Work that affect the

Phase II Construction Price shall, in each case, be determined by one or more of the following methods:

7.3.1.1 Unit prices set forth in this Agreement or as subsequently agreed.

7.3.1.2 A mutually accepted, itemized Lump Sum, based on the Cost of the Work definition appearing in the Phase II Construction Price Amendment.

7.3.1.3 Cost of Work (as defined in the Phase II Construction Price Amendment) calculated on a basis agreed upon by the Owner and the CMAR, plus CMAR's Fee.

7.3.1.4 If an increase or decrease cannot be agreed to as set forth in Clauses .1 through .3 above, and the Owner issues an Owner Change Directive, the cost of the change in the Work shall be determined by the reasonable actual expense and savings of the performance of the Work resulting from the change. Where applicable, if there is a net increase or decrease in the GMP, the CMAR's Fee shall be adjusted accordingly. The CMAR shall maintain a documented, itemized accounting evidencing the expenses and savings.

7.3.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to the Owner or the CMAR, such unit prices shall be equitably adjusted.

7.3.3 If the Owner and the CMAR disagree as to whether work required by the Owner is within the Scope of the Work, the CMAR shall furnish the Owner with an estimate of the costs to perform the disputed work in accordance with the Owner's interpretations. Any such disagreement shall be resolved in accordance with Article 11.

ARTICLE 8 — Payment

8.1 Schedule of Values

Concurrently with the CMAR's preparation and delivery to the Owner of any cost model or progressive cost model as required for the Phase I Preconstruction Services Scope of Work through and including the date on which a Phase II

Construction Price Amendment for any portion of the Work is executed by the CMAR, the CMAR shall prepare and submit to the Owner and, if directed, the Engineer, a Schedule of Values apportioned to the various divisions or phases of the Work in increasing level of detail. At the time a Phase II Construction Price Amendment is executed for the Work or any portion thereof, each line item contained in the Schedule of Values shall be assigned a value such that the total

of all items shall equal the Phase II Construction Price for such Work or portion thereof.

8.2 Progress Payments for Preconstruction Phase Services

Progress Payment for Preconstruction Phase Services shall be made in accordance with Paragraph 6.1 of the Agreement.

8.3 Progress Payments for Construction Phase Services

Applications for Payment for Construction Phase Services shall be submitted by the CMAR to the Owner and the same paid, in each case in accordance with and subject to the terms and provisions of this Article 8, the Phase II Construction Price Amendment, and other applicable provisions of the Agreement and other Contract Documents.

8.3.1 Applications. The CMAR shall submit to the Owner and, if directed, its Engineer a monthly application for payment for Construction Phase Services no later than the 25th day of the calendar month for the preceding thirty (30) days; the CMAR's applications for payment shall be itemized and supported by the CMAR's Schedule of Values and any other substantiating data as required by these General Conditions and the other Contract Documents. Payment applications shall include payment requests on account of properly authorized Change Orders or Owner Change Directives. The Owner shall pay amounts not in dispute and otherwise due no later than thirty (30) days after the CMAR has submitted a complete and accurate payment application. The Owner may deduct from any progress payment amounts as may be retained pursuant to Subparagraph 8.3.3 below, as well as amounts in dispute.

8.3.2 Lien Waivers and Liens.

8.3.2.1 Partial Lien Waivers and Affidavits. The Owner shall require, as a prerequisite for payment, but subject to the CMAR's receipt of payment, the CMAR shall provide partial conditional payment lien waivers in the amount of the application for payment and affidavits from its Subcontractors and Material Suppliers for the Work completed during the period covered by the current application for payment and partial unconditional payment lien waivers from the CMAR and all Subcontractors and Material Suppliers paid from the previous month's application payment. In no event shall the CMAR be required to sign an unconditional waiver of lien or claim, either partial or final, prior to receiving payment nor shall the

CMAR be required to execute or deliver any lien waiver for the Work not covered by such lien waiver or in an amount more than what it has been paid.

8.3.2.2 Responsibility for Liens. If the Owner has made payments in the time required by this Article 8 and is otherwise not in breach of its obligations, the CMAR shall, within thirty (30) days after written notice of

filing, cause the removal or bonding over of any liens filed against the premises or public improvement fund by any Party or Parties performing labor or services or supplying materials in connection with the Work by, among other things, securing a bond around the lien. If the CMAR fails to take such action on a lien, the Owner may cause the lien, after twenty (20) days written notice, to be removed at the CMAR's expense, including bond costs and reasonable attorneys' fees. This Clause shall not apply if there is a dispute pursuant to Article 11 relating to the subject matter of the lien.

8.3.3 Retainage. Retainage shall be withheld and disbursed in accordance with the terms and provisions of any Phase I Early Works Package Price Amendment and Phase II Construction Price Amendment. Retainage amounts held by Owner shall be in accordance with Georgia State law.

8.3.4 Stored Materials and Equipment. Unless otherwise provided in the Contract Documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored on-site or off-site, including applicable insurance, storage, and costs incurred transporting the materials to an off-site storage facility. Approval of payment applications for stored materials and equipment stored off-site shall be conditioned on submission by the CMAR of bills of sale and proof of required insurance, or such other procedures satisfactory to the Owner to establish the proper valuation of the stored materials and equipment, the Owner's title to such materials and equipment, and to otherwise protect the Owner's interests therein, including transportation to the Worksite.

8.4 Adjustment of CMAR's Payment Application

The Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect the Owner from loss or damage based upon the following, to the extent that the CMAR is responsible therefor under the Agreement:

8.4.1 The CMAR's failure to perform the Work as required by the Contract Documents.

8.4.2 Loss or damage arising out of or relating to this Agreement and caused by the CMAR to the Owner or Others to whom the Owner may be liable.

8.4.3 The CMAR's failure to properly pay Subcontractors and Material Suppliers following receipt of such payment from the Owner.

8.4.4 Defective Work not corrected in a timely fashion.

8.4.5 Reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Dates of Substantial or Final Completion.

8.4.6 Reasonable evidence demonstrating that the unpaid balance of the Phase II Construction Price is insufficient to fund the cost to complete the Work.

8.4.7 Third-party claims involving the CMAR or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the CMAR furnishes the Owner with adequate security in the form of a surety bond, letter of credit or other collateral or commitment sufficient to discharge such claims if established.

No later than ten (10) business days after receipt of an application for payment, the Owner shall give written notice to the CMAR, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by the CMAR in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

Undisputed portions of any Application for Payment shall be promptly paid by the Owner in accordance with the terms of the Agreement, these General Conditions, and other applicable Contract Documents.

8.5 Acceptance of Work

Neither the Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

8.6 Payment Delay

If for any reason, not the fault of the CMAR, the CMAR does not receive a progress payment from the Owner in accordance with the Agreement and Phase II Construction Price Amendment, the CMAR, upon giving the Owner such written notice, if any, as specified in the Phase II Construction Price Amendment, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to the CMAR has been received, including interest from the date payment was due in accordance with the Agreement and Phase II Construction Price Amendment. The Phase II Construction Price and Dates of Substantial or Final Completion shall be equitably adjusted by a Change Order for reasonable cost and delay resulting from shutdown, delay, and startup.

8.7 Substantial Completion

8.7.1 The CMAR shall notify the Owner and, if directed, its Engineer when it considers Substantial Completion of the Work or a designated portion to have been achieved. The Owner, with the assistance of its Engineer, shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or utilized for its intended use by the Owner without excessive interference in completing any remaining unfinished Work by the CMAR. If the Owner determines that the Work or designated portion has not reached Substantial Completion, the Owner, with the assistance of its Engineer, shall promptly compile

a list of items to be completed or corrected so the Owner may occupy or utilize the Work or designated portion for its intended use. The CMAR shall promptly complete all items on the list.

8.7.2 When Substantial Completion of the Work or a designated portion is achieved, the CMAR shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, and the respective responsibilities of the Owner and the CMAR for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by the CMAR to the Owner and, if directed, to its Engineer for the Owner's written acceptance of responsibilities assigned in the Certificate.

8.7.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the earlier of (a) the date of Substantial Completion of the Work or a designated portion, and (b) the date the Owner takes beneficial use of the Work or a designated portion of the Work.

8.8 Partial Occupancy or Beneficial Use

8.8.1 The Owner may occupy, or use completed or partially completed portions of the Work, beneficially when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) public authorities authorize the occupancy or use. The CMAR shall not unreasonably withhold consent to partial occupancy or use. The Owner shall not unreasonably refuse to accept partial occupancy. The CMAR shall be entitled to a Change Order if the Owner's partial use or occupancy of completed or partially completed portions of the Work adversely impacts completion of other portions of the Work through no fault of the CMAR.

8.9 Final Completion and Final Payment

8.9.1 Upon notification from the CMAR that the Work has reached Final Completion and is ready for final inspection and acceptance, the Owner, with the assistance of its Engineer, shall promptly conduct an inspection to determine if the

Work has reached Final Completion and is acceptable under the Contract Documents.

8.9.2 When the Work has reached Final Completion, as determined by the Owner, the CMAR shall prepare for the Owner's acceptance a final application for payment stating that to the best of the CMAR's knowledge, and based on the Owner's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

8.9.3 Final Payment shall be due on the CMAR's submission of the following to

the Owner:

8.9.3.1 An affidavit declaring any indebtedness connected with the Work, e.g., payrolls or invoices for materials or equipment, to have been paid, satisfied, or to be paid with the proceeds of Final Payment, so as not to encumber the Owner's property.

8.9.3.2 As-built Drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents.

8.9.3.3 Evidence of insurance and any performance guarantees required to be in effect beyond the Final Completion date.

8.9.3.4 CMAR's signed and sealed final change order to close out the Contract.

8.9.3.5 Release of any liens, conditioned on Final Payment being received.

8.9.3.6 Documentation that all permits obtained by the CMAR or its Subcontractors have been properly closed with the issuing agency.

8.9.3.7 A list of all Claims against the Owner that CMAR believes are unsettled.

8.9.3.8 Summary of financial and other information needed to support Owner's asset registry, if applicable.

8.9.3.9 Consent of any surety to final payment.

8.9.3.10 Any outstanding known and unreported accidents or injuries experienced by the CMAR or its Subcontractors at the Worksite.

8.9.3.11 Any other data reasonably required by the Owner establishing payment or satisfaction of all obligations required of the CMAR and its Subcontractors.

8.9.4 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of the CMAR, the Owner shall pay the balance due for portion(s) of the Work fully completed and accepted. If the remaining contract balance for Work not fully completed and accepted is less than the retained amount prior to payment, the CMAR shall submit to the Owner and, if directed, the Engineer the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by this Paragraph 8.9.

8.9.5 Claims not reserved in writing with the making of Final Payment shall be waived except for claims relating to liens or similar encumbrances, warranties, and

Defective Work.

8.9.6 Acceptance of Final Payment. Unless the CMAR provides written identification of unsettled claims with an application for Final Payment, its acceptance of Final Payment constitutes a waiver of such payment claims.

8.10 Late Payment

Deleted.

8.11 Change Of Payment

Upon execution of the Agreement, the CMAR shall provide the Owner with written payment instructions and all necessary forms required by the Owner to effectuate payments to the CMAR by wire transfer (the “Payment Information”). The CMAR shall submit the initial Payment Information to the Owner by certified mail or hand delivery only. If the Owner receives a request to change such Payment Information, the Owner agrees that it will not modify or make a change to this Payment Information without oral confirmation, followed by written confirmation, from the CMAR’s Chief Financial Officer or the CMAR’s Vice President of Finance. The Owner shall make no changes to the Payment Information if it does not receive the oral and written confirmations as stated herein.

ARTICLE 9 — Indemnity, Insurance, Waivers, and Bonds

9.1 Indemnity

9.1.1 The CMAR shall indemnify, defend, and hold harmless the Owner and its directors, officers, employees, successors, and assigns from and against any and all third-party claims, legal actions, causes of action, proceedings, suits, judgments, liens, and levies, including reasonable attorneys’ fees and disbursements but only to the extent for bodily injury or death of any person(s) and damages to tangible property (other than the Work itself), to the extent caused by the CMAR (or by its Subcontractor or Sub-subcontractors, regardless of tier) and arising from the intentional, willful or negligent acts or omissions of the CMAR, any Subcontractor at any tier, or any person or entity for whom such Parties are legally responsible in the performance of the Work.

9.1.2 The CMAR’s indemnity obligations under Paragraph 9.1 shall not apply (a) to the extent of the negligence or willful or intentional misconduct of the Owner, its officers, agents, employees, successors, or assigns, or (b) to any loss, cost, claim, suit, damage, liability, or expense (including attorneys’ fees and costs) for which the Owner is required to indemnify the CMAR Indemnitees in accordance with the Contract Documents.

9.1.3 In all claims against the Owner Indemnitees by any employee of the CMAR, anyone directly or indirectly employed by the CMAR or anyone for whose acts the CMAR may be liable, the indemnification obligation set forth in Paragraph 9.1 shall

not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CMAR under workers' compensation acts, disability benefit acts, or other employee benefit acts.

9.1.4 Notwithstanding any provision or term to the contrary herein, under no circumstances shall either Party be liable to the other for any consequential, incidental, special, or punitive damages and as provided in Article 9 of the Agreement.

9.2 CMAR's Insurance

9.2.1 Insurance and Bond requirements are provided in Attachment 16 of the Phase II Construction Price Amendment.

9.3 Property Insurance

Builder's Risk Insurance shall be obtained and maintained for the Project upon and subject to the terms and conditions of the Phase II Construction Price Amendment.

9.4 Risk Of Loss

Risk of loss or damage to the Work shall be upon the CMAR until the Date of Substantial Completion but only to the extent such loss or damage is paid by Builder's Risk Insurance specified in the Phase II Construction Price Amendment, unless otherwise agreed to by the Parties.

9.5 Adjustment of Loss

A loss insured under the Builder's Risk Insurance Policy required pursuant to the Phase II Construction Price Amendment to the Agreement shall be adjusted by the Party obtaining such Builder's Risk Insurance and made payable to such Party for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause, the Phase II Construction Price Amendment, and Paragraph 9.6 hereof. The CMAR shall pay Subcontractors their just shares of

insurance proceeds received by the CMAR, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

9.6 Insurance Payouts

If required in writing by a Party in interest, the Party obtaining such Builder's Risk Insurance shall, upon occurrence of an insured loss, give bond for proper performance of such Party's duties. The cost of required bonds shall be charged against proceeds received by each Party. Such Party shall deposit in a separate account proceeds so received, which such Party shall distribute in accordance with such agreement as the Parties in interest may reach, or in accordance with Article 11 of these General Conditions. The CMAR shall not be required to repair or

replace lost or damaged Work until a mutually acceptable Change Order, in accordance with Article 7, is executed and funds are available to pay for such loss or damage.

9.7 Bonds

Payment and performance bonds or other forms of substitute security, if any, shall be required as set forth in the Phase II Construction Price Amendment.

9.8 Royalties, Patents, and Copyrights

The CMAR shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by the CMAR and incorporated in the Work. The CMAR shall indemnify and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. To the fullest extent permitted by law, the Owner agrees to indemnify and hold the CMAR harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems specified by the Owner or Engineer or otherwise included in the Drawings, Specifications, and other documents, materials, or information provided by the Owner or the Engineer for construction of the Work, whether pursuant to this Agreement or otherwise.

ARTICLE 10 — Suspension, Notice to Cure, and Termination of the Agreement

10.1 The Owner may suspend Work at any time and, without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) days in the aggregate by notice in writing to the CMAR and the Engineer, which shall fix the date on which Work shall resume. The CMAR shall resume the Work on the date so fixed.

The CMAR will be allowed an increase in the Phase II Construction Price or an extension of the Contract Time, or both, for delayed or added costs, directly attributable to any suspension (but not lost profits) if the CMAR makes a claim therefor as provided in Articles 5 and 7.

If the CMAR fails to correct Defective Work as required by Paragraphs 2.5 and 2.6 herein or fails to perform the Work in accordance with the Contract Documents, the Owner or Owner's Representative may direct the CMAR to stop the Work, or any portion thereof, until the cause for such order has been eliminated by the CMAR. The CMAR shall not be entitled to any adjustment of Contract Time or Phase II Construction Price because of any such order. The Owner and Owner's Representative have no duty or responsibility to the CMAR or any other Party to exercise the right to stop the Work.

10.2 Owner Termination

10.2.1 Upon the Owner's provision of written notice and the CMAR's failure to commence cure after receipt of such written notice as provided in Paragraph 10.2.2, the Owner may Terminate Agreement in connection with any one or more of the following events:

10.2.1.1 If the CMAR is adjudged a bankrupt or insolvent.

10.2.1.2 If the CMAR makes a general assignment for the benefit of creditors.

10.2.1.3 If a trustee or receiver is appointed for the CMAR or for any of the CMAR's property.

10.2.1.4 If the CMAR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws.

10.2.1.5 If the CMAR materially fails to perform the Work in accordance with the Contract Documents, including, but not limited to, failure to supply sufficient skilled workmen or suitable materials or equipment or failure to adhere to the progress Schedule established and adjusted in accordance with pursuant to Article 5 of the Agreement and Article 5 hereof.

10.2.1.6 If the CMAR, without justification and provided the Owner has made payment of all amounts due to the CMAR, repeatedly fails to make timely payments to Subcontractors or Material Suppliers for labor, materials, or equipment.

10.2.2 The Owner may, without prejudice to any other right or remedy, serve written notice upon the CMAR and the CMAR's surety of the Owner's intention to terminate the Agreement upon the occurrence of any breach set forth in this Paragraph 10.2. Said notice to contain the reasons for such intention to terminate the Agreement and provide that unless within seven (7) days after the service of such notice the CMAR begins to correct its failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days, the Contract Documents shall cease and terminate, and the CMAR shall be excluded from the site. In such case, the CMAR

shall not be entitled to receive any further payment until the Work is finished by Others.

10.2.2.1 The foregoing notwithstanding, if the nature of the alleged reason for termination is not capable of being corrected or remedied within thirty (30) days, such correction or remedy shall commence and be completed with reasonable diligence and in no event later than sixty (60) days or such longer period as the parties mutually agree following the occurrence of such default.

10.2.3 In the event of any such termination, the Owner shall immediately serve written notice thereof upon the surety and the CMAR. Owner shall take possession of the Work incorporate in the Work all materials and equipment (excluding the

CMAR's own equipment) stored at the site or for which Owner has paid the CMAR but which are stored elsewhere that were intended to be incorporated into the Work, and finish the Work as Owner may deem expedient for the account and at the expense of the CMAR. The CMAR's surety shall be liable to the Owner for any excess costs or other damage occasioned the Owner thereby. If the unpaid Balance of the Phase II Construction Price exceeds the direct and indirect costs of completing the Work, including but not limited to, compensation for additional professional services and all costs generated to insure or bond the Work of substituted Contractors or Subcontractors utilized to complete the Work, such excess shall be paid to the CMAR. If such costs exceed the unpaid balance, the CMAR shall pay the difference to the Owner promptly upon demand; on failure of the CMAR to pay, the surety shall pay on demand by Owner. Any portion of such difference not paid by the CMAR or surety within 30 days following the mailing of a demand for such costs by the Owner shall earn interest rate authorized by Georgia State law. Such costs incurred by the Owner shall be verified by the Owner's Representative and incorporated in a Change Order, but in finishing the Work, the Owner shall have the obligation to mitigate its damages, but not be required to obtain the lowest figure for the Work performed. Any dispute under this section shall be addressed in accordance with Article 11 in this Agreement.

10.2.4 Where the CMAR's services have been so terminated by the Owner, the termination shall not affect any rights of the Owner against the CMAR then existing or which may thereafter accrue. Any retention or payment of monies due the CMAR by the Owner will not release the CMAR from liability.

10.2.5 The Owner may terminate the Agreement for convenience in accordance with Paragraph 10.3 hereof. In the event of such termination for convenience, the CMAR shall be compensated for the portion of the CMAR's Preconstruction or Construction Phase Services, if any, performed to the date of such termination, but the CMAR shall not be entitled to compensation for Work not performed.

10.3 Upon seven (7) days written notice to the CMAR, the Owner may, without cause and without prejudice to any other right or remedy of the Owner, terminate the Agreement for convenience. In such case, the CMAR shall be paid for (without duplication of any items):

10.3.1 Work executed in accordance with the Contract Documents prior to the effective date of termination, including CMAR Fee for Construction General Conditions Costs on such Work, as applicable.

10.3.2 Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for Construction General Conditions Costs and CMAR Fee thereon.

10.3.3 Other reasonable expenses directly attributable to termination, including

demobilization costs, cancellation charges and fees, and costs incurred to prepare a termination for convenience cost proposal and cancellation costs related to material and equipment subcontracts.

10.3.4 No profit on uncompleted Work for Preconstruction Phase Services shall be due or payable for any termination for convenience exercised by the Owner during the Preconstruction Phase Services in accordance with the Contract Documents.

10.4 CMAR Termination

If, through no act or fault of the CMAR, the Work is suspended for a period of more than ninety (90) days in the aggregate by the Owner or under an order of court or other public authority, or the Owner fails to pay within thirty (30) days to the CMAR any undisputed amounts due, or the Owner breaches any other material provision of the Agreement and the same is not cured within thirty (30) days following the Owner's receipt of written notice thereof from the CMAR, then the CMAR may, upon seven (7) days written notice to the Owner, terminate the Agreement and recover from the Owner payment for all Work executed and any expense sustained plus reasonable termination expenses, provided the Owner does not remedy such suspension or failure within that time. In addition, and in lieu of terminating the Contract Documents, if the Owner has failed to make any payment as aforesaid of undisputed amounts, the CMAR may, upon seven (7) days written notice to the Owner, stop the Work until payment of all amounts then due, in which case such work stoppage shall be treated as an Owner-directed suspension entitling the CMAR to an adjustment in the Phase II Construction Price or the Date of Substantial Completion or the Date of Final Completion.

10.4.1 In addition to, and without limiting the generality of the CMAR's suspension and termination rights under Paragraph 10.4, if the Owner directs the CMAR or its Subcontractors or Material Suppliers at any tier to perform Work that the CMAR informs the Owner is illegal or involves an imminent danger to human health, the environment, or the Owner's property or other nearby or adjoining properties, the CMAR shall have the right to notify the Owner, in writing, of such illegality or danger and the Owner shall meet with the CMAR within five (5) business days following the Owner's receipt of such notice to review and discuss such concerns and work cooperatively and in good faith with the CMAR to resolve them. Any resolution shall include an appropriate adjustment in the Phase II Construction Price and Project Construction Schedule to account for the added cost and time to the CMAR in objecting to and attempting to resolve such concerns. If the Owner fails to respond to the CMAR within five (5) business days following the CMAR's notification of such concerns, or the Parties, after meeting to discuss the same are unable, within an additional ten (10) business days to resolve the concerns to the CMAR's reasonable, good faith satisfaction, the CMAR shall thereafter have the right to terminate this Agreement for convenience and without cause upon an additional seven (7) days' written notice to the Owner. In such event, the Owner shall pay the CMAR the same amounts owing to the CMAR for an Owner's termination for convenience pursuant to Paragraph 10.3.

ARTICLE 11— Claims, Claims Procedures, Dispute Mitigation, and Resolution

11.1 Claims for Additional Cost or Time

Except as provided in any applicable Phase II Construction Price Amendment, for any claim for an increase in the Phase II Construction Price or the change in or extension to the Date of Substantial Completion or Date of Final Completion (each a “Claim”), the CMAR shall promptly give written notice to the Owner of the Claim (and in no event later than thirty (30) days after the start of the event giving rise thereto). Except in an emergency, notice shall be given before proceeding with the Work. Any change in the Phase II Construction Price or the Date of Substantial Completion or Date of Final Completion resulting from such Claim shall be authorized by Change Order.

11.1.1 Claims Procedures

Submission of a Claim, in full conformance with all requirements of this Article, and rejection of all or part of said Claim by the Owner, is a condition precedent to any action by the CMAR against the Owner, including, but not limited to, the filing of a lawsuit, request for mediation, or demand for arbitration.

11.1.2 Notice of Claim

11.1.2.1 If the CMAR disagrees with the decision in, or in any case where the CMAR deems additional compensation or a time extension to the Contract Time is due the CMAR for work or materials not covered in the Contract Documents or which the Owner has not recognized as extra work, the CMAR shall notify the Owner, in writing, of its intention to make a Claim.

11.1.2.2 Written notice shall use the words “Notice of Potential Claim.”

11.1.2.2.1 Such Notice of Potential Claim shall state the circumstances and the reasons for the Claim but need not state the amount.

11.1.2.2.2 A Notice of Potential Claim and all notices and other communications required or permitted under this Agreement or the other Contract Documents shall be in writing and delivered by hand delivery, certified first class mail return receipt requested, or reputable overnight courier to:

If to: Owner

City of Cartersville
Sidney Forsyth, Director
Cartersville Water

Department
301 Douthit Ferry Road,
Cartersville, GA 30120

If to: CMAR: Archer Western Construction, LLC
2839 Paces Ferry Road, SE
Atlanta, GA, 30339

11.1.2.3 Claims pertaining to decisions or such other determinations by the Owner relating to any Claim from the CMAR shall be communicated by the CMAR with the Owner in writing within five (5) days following receipt of such decision.

11.1.2.4 All other Claims by the CMAR shall be promptly filed in writing, and in no event later than thirty (30) days after the event or occurrence giving rise to the Claim.

11.1.2.5 Additionally, no Claim for additional compensation or extension of time for a delay will be considered unless the provisions for Delays and Time Extensions are complied with.

11.1.2.6 Unless expressly permitted in the Phase II Construction Price Amendment or other Contract Documents or expressly reserved in writing, no Claim for additional compensation for Work performed filed by the CMAR after the date of Final Payment will be considered.

11.1.3 Records of Extra Work

11.1.3.1 In proceeding under a Claim for extra Work, the CMAR shall keep accurate records in such a manner as to provide a clear distinction between the direct costs of extra Work paid and the costs of other operations.

11.1.3.2 Daily extra work reports shall:

11.1.3.2.1 Be signed by the CMAR or the CMAR Representative.

11.1.3.2.2 Itemize the materials used and state the direct cost of labor and the charges for equipment rental, whether furnished by the CMAR, Subcontractor, or any specialized forces.

11.1.3.2.3 Provide names or identifications and classifications of workers, the hourly rate of pay and hours worked, and also the size, type, and identification number of equipment and hours operated.

11.1.3.2.4 Substantiate material charges with attached valid copies of vendor's invoices and, if not available, the

invoices shall be submitted within ten (10) days after the date of delivery of the material.

11.1.3.3 Such information shall be submitted to the Owner on a monthly basis. The Owner shall review, disapprove, and request adjustments, or agree upon and sign daily extra work reports upon receipt from the CMAR. The CMAR and the Owner shall agree on the contents of the extra work reports daily.

11.1.3.3.1 The Owner will compare the Owner's records with the completed daily extra work reports furnished by the CMAR and make any necessary adjustments.

11.1.3.3.2 When these daily extra work reports are agreed upon and signed by both Parties, the reports shall become the basis of payment for the Work performed but shall not preclude subsequent adjustment based on a later audit by the Owner.

11.1.3.4 The CMAR's and Subcontractor's records pertaining to the Project shall be open to inspection or audit by representatives of the Owner, during the life of the Agreement, and for a period of three (3) years after the date of acceptance thereof, and the CMAR and all Subcontractors shall retain those records for that period. Such audit

shall not include the CMAR's proprietary information, including, but not limited to, the CMAR's formula or other data or communications used in calculating pricing.

11.1.3.4.1 Where payment for materials or labor is based on Work performed by Subcontractors and other forces not employees of the CMAR, the CMAR shall make every reasonable effort to ensure that the cost records of those other forces will be open to inspection and audit by representatives of the Owner on the same terms and conditions as the cost records of the CMAR.

11.1.3.4.2 If an audit is to be commenced more than five (5) days after the acceptance date of the Agreement, the CMAR will be given a reasonable notice of the time when the audit is to begin.

11.1.3.5 The CMAR and Subcontractors shall keep full and complete records of the costs and additional time incurred for any Work for which a Claim for additional compensation is made.

11.1.3.5.1 The Owner Representative or any designated Claim investigator or auditor shall have access to those records and any other records as may be required by the

Owner Representative to determine the facts or contentions involved in the Claims.

11.1.3.6 The Owner, or its authorized representatives, shall have access, upon reasonable notice, during normal business hours, to the CMAR and Subcontractors' books, documents, and accounting records, including, but not limited to, bid worksheets, bids, Subcontractor bids and proposals, estimates, cost accounting data, accounting records, payroll records, time sheets, canceled checks, balance sheets, project correspondence including, but not limited to, correspondence between the CMAR and its sureties and Subcontractors/Vendors, project files, scheduling information, and other records of the CMAR and Subcontractors directly or indirectly pertinent to the Work, original as well as change and Claimed extra Work, to verify and evaluate the accuracy of cost and pricing data submitted with any Change Order, prospective or completed, or any Claim for which additional compensation has been requested or Claim has been tendered. Notwithstanding the foregoing, nothing in this provision shall entitle the Owner to demand production or inspection of the CMAR's privileged, proprietary, or confidential information. This paragraph is subject to the Georgia Open Records Act O.C.G.A. § 50-18-70 et. seq.

11.1.3.6.1 Such access shall include the right to examine and audit such records, and make excerpts, transcriptions, and photocopies at the Owner's cost.

11.1.3.7 In case the Claim is found to be just, it shall be allowed and paid for as provided by the Contract Documents.

11.2 Dispute Resolution

11.2.1 Direct Discussions. If the Parties cannot reach resolution on a matter relating to or arising out of the Agreement or the Project, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within twenty (20) Business Days from the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within ten (10) Business Days to endeavor to reach resolution. If the dispute remains unresolved after forty-five (45) days from the date of first discussion, the Parties shall submit such matter to the dispute resolution procedures selected herein.

11.2.2 Mediation. Unless otherwise provided to the contrary in the Phase II Construction Price Amendment, Claims and other disputes or matters in controversy arising out of or related to the Agreement or Project that are not resolved pursuant to other provisions of this Article 11 shall be mediated prior to recourse to litigation or other binding dispute resolution proceeding. Such

mediation shall, unless the Parties mutually agree otherwise, be conducted by a mediator mutually agreeable to the Parties in Cartersville, Georgia and in accordance with the American Arbitration Association Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other Party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of litigation or other binding dispute resolution proceedings, and, in such event, mediation shall proceed at an appropriate time mutually agreed upon by the Parties or as directed by the court. The mediator shall be agreed to by the mediating Parties; in the absence of an agreement, the Parties shall each submit one name from the mediators listed by the American Arbitration Association in the locality in which the Project is located or other agreed-upon services. Such mediation shall be held for a period not to exceed one (1) day unless otherwise agreed in writing by the Parties. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Neither Party shall be deemed the prevailing Party and each Party shall pay its own attorneys' fees and costs and one-half of the mediator's fees and costs. Disputes that are not resolved through mediation in accordance with this Paragraph 11.2.2 shall be resolved in the manner selected by the Parties in Paragraph 11.2.3 below.

11.2.3 Dispute Resolution. If the matter remains unresolved after submission of the matter to direct management discussions or mediation, the Parties shall

submit the matter to the binding dispute resolution procedure selected below (**check one box**):

11.2.3.1 **By litigation.** Litigation shall commence in Bartow County Superior Court. The matter shall proceed as a bench trial tried to a single judge. **THEREFORE, THE PARTIES TO THIS AGREEMENT, INCLUDING ANY ASSIGNEES, HEREBY KNOWINGLY, VOLUNTARILY, AND IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY.**

11.2.4 Survival. The dispute resolution provisions of the Agreement shall survive the completion of the Work and/or the expiration or termination of the Contract Documents.

11.3 Venue

The venue of any binding dispute resolution procedure shall be Bartow County, Georgia. The Parties waive any objection to such venue on the basis of inconvenient form.

11.4 Multiparty Proceeding

The Parties agree that all Parties necessary to resolve a claim shall be Parties to the same dispute resolution proceeding. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution procedures.

11.5 Lien Rights

Nothing in this Article 11 or other applicable provisions of the Contract Documents shall limit any rights or remedies not expressly waived by the CMAR which the CMAR may have under Applicable Law.

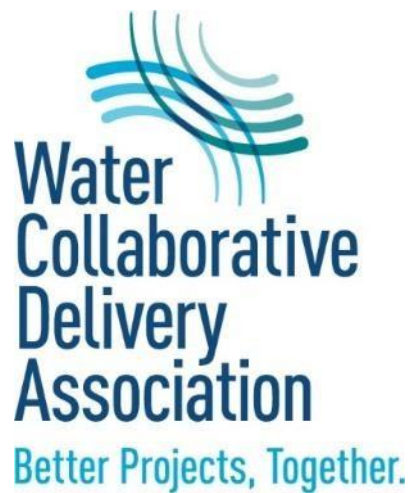
ARTICLE 12 — Miscellaneous Provisions

12.1 Assignment

Neither the Owner nor the CMAR shall assign its interest in the Agreement or the other Contract Documents without the written consent of the other except as to the assignment of proceeds. The terms and conditions of the Agreement and the other Contract Documents shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party to the Agreement or the other Contract Documents shall assign the Agreement without written consent of the other.

Exhibit B—CMAR Phase I Preconstruction Scope of Services

Exhibit B – Phase I Preconstruction Scope of Services (Rev 2)



CONTENTS

ARTICLE 1 — Phase I Preconstruction Phase Services	1
1.1 Scope and Commencement	1
1.2 Engineer	1
1.3 Key Personnel and Planning.....	1
1.4 Cost Models	2
1.5 Cost Trending	3
1.6 CMAR Preconstruction Phase Duties	3
1.7 Design Evolution Log and Cost and Schedule Logs	5
1.8 Cost Model Updates.....	6
1.9 Estimating and Budgeting Systems	6
1.10 Project Risk Registers	6
1.11 Constructability Reviews.....	7
1.12 Early Work(s) Package(s).....	7
1.13 Self-Perform Work	7
1.14 Subcontractor Procurement for Phase II Work Not Self-Performed	7
1.15 Phase II Construction Price Proposal and Amendment	8
1.16 Schedule.....	9

Exhibit B

CMAR Phase I Preconstruction Scope of Services

ARTICLE 1 — Phase I Preconstruction Phase Services

1.1 Scope and Commencement

“Preconstruction Phase Services” refers to the activities and services required to develop the Project Construction Schedule, Phase II Construction Price Proposal, and, if applicable, Phase I Early Work(s) Package(s). Preconstruction Phase Services shall commence no later than ten (10) days following the Owner’s issuance of a Phase I Notice to Proceed in substantially the form of **Exhibit C** to the Agreement. For performance of the Preconstruction Phase Services, CMAR shall be paid the Preconstruction Phase Services fees in the amount and in the manner set forth in Paragraph 6.1 of the Agreement. The CMAR shall, as part of the Preconstruction Phase Services, provide an evaluation of the Owner’s Program, conduct constructability reviews of the design, develop a baseline construction schedule and execution plan, and develop construction cost estimates throughout the design at agreed-upon milestones, each in terms of the other, as more particularly in this **Exhibit B**.

1.2 Engineer

The Engineer, with input from the Owner, will develop a design (the “Design”) for the Project that will establish performance requirements, design and engineering requirements, project goals and objectives, functional programming, and other specific elements to be incorporated into the Project. The initial Project technical performance requirements are included as **Exhibit I** of the Agreement.

1.3 Key Personnel and Planning

The CMAR shall, as part of its Preconstruction Phase Services, provide the following:

1.3.1 Provide all key personnel identified in the CMAR’s response to the Request for Proposal (RFP) previously submitted to the Owner for the Project, as well as the other personnel necessary to fully meet the CMAR’s obligations for the Preconstruction Phase Services.

1.3.2 Within ten (10) days following the Owner’s issuance of the Phase I Notice to Proceed for the Preconstruction Phase Services, provide a Construction Management Plan that includes its approach to safety, quality, cost estimating, and scheduling, during both Preconstruction and Construction Phase Services.

1.3.3 Provide a Construction Emergency Response Plan and Site Safety Plan.

1.3.4 Develop a Quality Management Plan to ensure conformance to the Project design and to every section of the Specifications.

1.3.5 Develop a Quality Control Program to ensure continuing attention to the production and installation of Work in accordance with current engineering and construction practices and quality standards for similar materials and components.

1.3.6 Provide an Environmental Management Plan detailing programs for a Stormwater Pollution Prevention Plan and handling other environmental issues (dust, on-site chemicals, fuel, and similar items) if required to comply with Applicable Law.

1.3.7 Participate in progress meetings once every two weeks on-site or at the office location provided by the Owner.

1.3.8 Participate in a Project kickoff meeting for Preconstruction Phase Services.

1.3.9 Work with the Owner and Engineer to establish document management and storage protocols and provide tools to support this process if the Owner or Engineer does not already have a system in place.

1.3.10 Work with the Owner and Engineer to establish a protocol for making and documenting decisions during the Preconstruction Phase.

1.3.11 Establish a protocol for developing meeting minutes for the Preconstruction Phase.

1.4 Cost Models

Not later than thirty (30) days following the Owner's issuance of the Phase I Notice to Proceed for Preconstruction Phase Services and concurrently with the CMAR's delivery to the Owner of a Construction Schedule as defined in the Agreement, the CMAR shall develop and submit to the Owner and Engineer, for the Owner's review and comment, a baseline project cost model (the "Cost Model") based on the current design milestone then achieved at the time the Phase I Notice to Proceed for Preconstruction Phase Services was issued by the Owner to the CMAR.

1.4.1 The initial Cost Model will be based on historical cost data using system studies, area, volume, and/or similar industry standard conceptual estimating techniques acceptable to the Owner such as, but not limited to, division or work breakdown structure. If the Engineer or the Owner suggests alternative materials and systems, the CMAR shall provide cost evaluations of those alternative materials and systems. Progressive Cost Models will be submitted by the CMAR

to the Owner for the Owner's review and comment at the designated milestones set forth in Subparagraph 1.5 of this Exhibit.

1.4.2 If the Cost Model exceeds the Owner's Approved Budget, and the Owner and the CMAR are unable to reach written agreement on the same, or the Cost Model or any revisions of such are otherwise unacceptable to the Owner, the Owner may terminate this Agreement for convenience on five (5) business days' written notice to the other Party in accordance with Paragraph 10.2.5 of the General Conditions.

1.5 Cost Trending

The CMAR shall undertake a cost trending analysis of the Project upon the Engineer's generation of Drawings and Specifications for the Project at the following milestones: thirty percent (30%) complete, sixty percent (60%) complete, and ninety percent (90%) complete. Such cost trending analysis shall be completed in accordance with Subparagraph 1.7 of this Exhibit.

1.6 CMAR Preconstruction Phase Duties

During the Preconstruction Phase, the CMAR shall:

1.6.1 Consult with, advise, and provide recommendations to the Owner and the Engineer on constructability aspects of the design and proposed construction of the Project.

1.6.2 Participate in up to four (4) onboarding meetings led by the Engineer to review current state of design documents, Risk Register, and ongoing cost trending analysis, which may include workshops to review the following: (a) facility- by-facility review, (b) discipline-by-discipline review (involving CMAR major Subcontractors if part of the CMAR team), (c) preliminary Project sequencing/Schedule, including major constraints, and (d) constructability issues.

1.6.3 Participate in regular meetings or workshops (once every two weeks) with the Engineer, the Owner, or Others as needed. The CMAR is responsible for notifying the Project team of any perceived cost or Schedule impacts during these meetings and following up with the appropriate documentation, and the CMAR will also highlight potential cost- and Schedule-saving alternates during these meetings. These meetings will generally be on the same day as the biweekly progress meetings defined in Section 1.3.7.

1.6.4 Perform constructability reviews at each design milestone (30%, 60%, and 90% complete) and report the results of these reviews to the Engineer and Owner.

1.6.5 In addition to the CMAR's cost-trending, value engineering, and related cost reduction recommendations, if required, obligations set forth in Subparagraph 1.7 of this Exhibit, perform regular informal value engineering reviews which identify,

evaluate, and propose cost-effective alternatives to all aspects of the Project design, such analysis to be presented by the CMAR in a format (report, sketches, drawings, PowerPoint presentation) that enables the Owner and the Engineer to readily evaluate proposed alternatives on the basis of their potential Project cost and time savings.

1.6.6 Cause the CMAR's key personnel to participate in key milestone design reviews to be conducted by the Engineer.

1.6.7 Identify long-lead equipment procurement items, if any, and provide recommendations to the Owner and the Engineer on how to prevent or minimize delivery impacts to the Project.

1.6.8 Review results of field investigations performed by Engineer. Determine if additional field investigations need to be performed by CMAR to validate existing Site conditions, develop maintenance of plant operation plans, and/or assess the condition of existing facilities.

1.6.9 Develop Bid Packages that align with the proposed sequence of construction and trade packaging, which may include multiple Lump Sum or GMP Phase II Construction Prices and Early Work Packages, if required by the Project Construction Schedule. In such event, the CMAR may elect to self-perform the Work reflected in such Bid Packages. CMAR shall:

1.6.9.1 CMAR elects to self-perform such Work by bidding the same against the market in accordance with Subparagraph 1.13 of this Exhibit.

1.6.9.2 CMAR elects to perform the Work through Subcontractors in accordance with Subparagraph 1.14 of this Exhibit.

1.6.9.3 CMAR elects to self-perform the Work with its own forces on a negotiated basis as agreed to with the Owner in accordance with Subparagraph 1.13 hereof.

1.6.9.4 CMAR not allowed to self-perform. Contractor is prohibited from self-performing due to Owner direction or restriction under Applicable Law.

1.6.10 Coordinate with the Engineer and local authorities having jurisdiction to ensure seamless transition into construction.

1.6.11 Develop a draft commissioning plan to capture any additions to the Project engineering and design that would facilitate commissioning and acceptance.

Unless otherwise mutually agreed in writing by the Owner and the CMAR, the Preconstruction Phase Services described in this **Exhibit B** do not require or obligate the CMAR to generate or produce any design or engineering for the Project.

1.7 Design Evolution Log and Cost and Schedule Logs

Following the Owner’s issuance of the Phase I Notice to Proceed for Preconstruction Phase Services and thereafter during the course of the design of the Project, the CMAR will lead and work with the Engineer to develop and maintain a design evolution log (the “Design Evolution Log”) and separate cost and schedule log (the “Cost and Schedule Trend Log”) that captures changes and decisions made with respect to deviations from the Owner’s Cost Model and related Scope of Work.

1.7.1 These Logs shall track all proposed positive and negative costs and Schedule changes to the Cost Model and Project Construction Schedule as well as those changes ultimately approved by the Owner. These Logs may be separate or combined with other Decision Logs or Design Evolution Logs based on the needs of the Project team. These Logs will track all potential scope change items, identify the options for resolving the change, and estimate the net cost and Schedule impact associated with adopting the change. The Logs will allow for real-time tracking of deviations from the Cost Model. Items will be reviewed with the Owner on a monthly basis during the design of the Project.

1.7.2 The CMAR shall update the Cost Model on a monthly basis through informal design reviews with the Engineer and undertake a cost trending analysis of the Project’s projected cost versus the Cost Model in accordance with the Project Construction Schedule, and shall promptly advise the Owner and the Engineer through the Cost and Schedule Trend Log when any cost estimates generated by the CMAR are trending above the Cost Model previously approved by the Owner for the Project.

1.7.3 In the event any cost estimate or the CMAR’s Phase II Construction Price Proposal for the Project or any Bid Package exceeds any prior cost estimate or Cost Model previously submitted to the Owner, if the Owner so directs, the CMAR and the Engineer shall:

1.7.3.1 Attend such meetings with the Owner and the Engineer as may be necessary, in the Owner’s judgment, to reach a consensus as to the manner of maintaining the Phase II Construction Price Proposal within the construction budget, cost estimates, and Cost Models previously approved by the Owner for the Project or applicable Bid Package.

1.7.3.2 Work together to bring the Project and/or applicable Bid Package back within the cost estimates and Cost Models previously approved by the Owner through means and methods, value engineering, related cost

reduction recommendations, and acceptable alternates or other means appropriate to reduce the cost.

1.7.3.3 When requested by the Owner, undertake an analysis of any proposed redesign of the Project or applicable Bid Package to bring the cost of the Project or applicable Bid Package back within the cost estimates and Cost Models previously approved for the Project or applicable Bid Package.

1.8 Cost Model Updates

The CMAR shall develop and submit an updated Cost Model in line with the agreed-upon format and standards for detail at the cost estimate design milestones and work with the Owner to review and reconcile comments on each cost estimate and identify and update Project risk allocations and usage. The CMAR shall price ideas and changes and update the Cost and Schedule Trend Log to reflect such ideas and changes.

1.9 Estimating and Budgeting Systems

The CMAR's estimating and budgeting systems and reports shall be flexible and shall include a means to provide a variance analysis throughout each budget update starting with the Cost Model and continuing through execution of the Phase II Construction Price Amendment for specified Work and final permitting, bidding, and award for such Work. The Cost Model shall include detail sheets for each Work task that shall reflect unit prices, quantities, and extensions for labor and materials.

1.9.1 The CMAR shall set up the estimate in a Construction Specifications Institute (CSI) format or as otherwise agreed upon by the Owner, in a detailed open-book collaborative manner that allows for full disclosure to allow the Owner to make timely and informed decisions, detailing, in all cases, the Cost of the Work for Construction Phase Services and the associated Construction General Conditions Costs thereon plus the CMAR's Fee on such amounts.

1.9.2 Each element of the Cost Model shall also include a detailed list of relevant clarifications as they relate to the preparation of each budget update. Allowances are also to be clearly identified within each budget update on a separate summary level report at each design phase.

1.10 Project Risk Registers

The CMAR shall develop and maintain a Project Risk Register during the Preconstruction Phase Services and lead regular meetings with the Owner and the Engineer to update risk mitigation activities and potential cost and Schedule impacts.

1.11 Constructability Reviews

The constructability reviews conducted by the CMAR as part of its Preconstruction Phase Services shall (a) identify physical conflicts between existing structures and/or utilities; (b) confirm that tie-in conditions to existing structures are coordinated with the Drawings; (c) confirm that sequencing of the Work is coordinated with the Drawings; (d) identify and clarify any potential impacts to existing facility operations which require a mitigation plan to be developed; (e) identify site logistics which need to be incorporated into the Drawings; and (f) identify items or issues in the Drawings which may cause the Project additional cost and time impacts and which can be avoided or eliminated from the Project.

1.12 Early Work(s) Package(s)

If applicable, Early Work(s) Package(s) will be developed and paid for in accordance with **Exhibit D** and **D.1**, respectively, and Paragraph 6.2 of the Agreement.

1.13 Self-Perform Work

As part of the CMAR's budgeting analysis during the Preconstruction Phase, the CMAR may (a) identify Scopes of Work in accordance with Subparagraph 2.2.2.1 of the Agreement that it believes can or should be self-performed by the CMAR as a means of maintaining the budget for the Project or Bid Package, as applicable, within the Owner's Approved Budget for the Project and the probable Cost of such self-performed Work versus the probable Cost of such Work if the same is competitively bid by qualified Subcontractors; and (b) develop a Construction General Conditions Cost estimate that will include separate estimates for Preconstruction Phase Services and Construction Phase Services. At the time of the CMAR's generation of any Phase II Construction Price Proposal, the Construction General Conditions Cost estimates may be converted to Lump Sum or Guaranteed Maximum Price amounts, as applicable, within the Phase II Construction Price and as may be agreed upon by the Owner and the CMAR.

1.14 Subcontractor Procurement for Phase II Work Not Self-Performed

During the Preconstruction Phase, the CMAR shall:

1.14.1 Actively "premarket" the Project with local trade Subcontractors, equipment vendors, and Material Suppliers to increase awareness and interest in submitting competitive bids and quotes.

1.14.2 Evaluate and prequalify trade Subcontractors and Material Suppliers according to state and local requirements.

1.15 Phase II Construction Price Proposal and Amendment

If the Owner and the CMAR can reach agreement on the Phase II Construction Price Proposal (herein defined), such agreement shall be evidenced by the Parties' execution of a Phase II Construction Price Amendment for the Project or applicable Bid Package in substantially the form of **Exhibit E** attached hereto and incorporated herein by this reference (each a "Phase II Construction Price Amendment").

1.15.1 Upon completion of Drawings and Specifications that, in the Engineer's professional judgment, are at least 75% complete, prepare and submit the following to the Owner prior to performing any portion of the Work: (a) a Procurement and Buyout Plan hereto identifying how the construction Work is to be procured, (b) the CMAR's plan for packaging the Work and which packages the CMAR proposes to self-perform, (c) a plan for satisfying any Project SBE, MBE, WBE, DBE, and LBE state or local contracting goals, if required, (d) a recommendation for receipt, opening, and evaluation of competitive bids and quotes in compliance with the Owner's procurement rules, and (e) a Risk Register and proposed basis for the CMAR's Contingency.

1.15.2 Upon completion of Task 1.15.1, and upon notification by the Owner, prepare a detailed Phase II Construction Price Proposal (each a "Phase II Construction Price Proposal") for the Work covered thereby with an open-book line-item cost breakdown on direct and indirect costs, Contingency (with its basis), and any Clarifications, Assumptions, qualifications, and exclusions based on the design milestone(s) specified herein.

1.15.2.1 The Phase II Construction Price Proposal shall remain valid for a minimum of 60 days after the Proposal, along with all required documentation, is received by the Owner.

1.15.3 Prepare and submit a cash-flow projection with the Phase II Construction Price Proposal.

1.15.4 After submission of the Phase II Construction Price Proposal, the CMAR and the Owner shall meet with the Owner to discuss and review the Phase II Construction Price Proposal and all supporting documentation in detail, negotiate in good faith, and attempt to reach agreement on the terms of the Phase II Construction Price Proposal. The CMAR shall include with each Phase II Construction Price Proposal a detailed written statement of its basis and the expiration date of the Phase II Construction Price Amendment, if any. If the Owner discovers any inconsistencies or inaccuracies in the information presented, the Owner shall promptly notify the CMAR, who shall make appropriate adjustments to the Phase II Construction Price Proposal, its basis, or both.

1.15.5 The CMAR shall include in each Phase II Construction Price Amendment (a) a final Project Construction Schedule, (b) a Phase II Construction Price summary and Construction General Conditions Cost summary, (c) a Schedule of Values, (d) a list of Allowances and alternates; (e) the Drawings and Specifications for the Work covered by such Phase II Construction Price Amendment, (f) all design, Owner, and construction Contingencies, (g) the CMAR's list of qualifications, Assumptions, Clarifications, and exclusions, and (h) all sales, consumer, use, and similar taxes for the Work covered by such Phase II Construction Price Amendment that is performed by the CMAR and legally enacted at the time such Phase II Construction Price Amendment is executed.

1.15.6 The Phase II Construction Price for the Project, as reflected in each Phase II Construction Price Proposal and related Phase II Construction Price Amendment, shall be based on either a Lump Sum Phase II Construction Price or GMP.

1.15.7 In the event that agreement is not reached on any Phase II Construction Price Proposal or Phase II Construction Price Amendment, or any Cost Model or cost estimate exceeds the Owner's Approved Budget for the Project and the Owner and the CMAR are unable to reach written agreement on the same, the Owner and the CMAR may each terminate the Agreement for convenience in accordance with Article 10 of the General Conditions. In the event of such termination for convenience, the CMAR shall be compensated for the portion of the CMAR's Preconstruction or Construction Phase Services, if any, performed to the date of such termination, but the CMAR shall not be entitled to compensation for Work not performed. In such event, the CMAR shall have no obligation to perform the Scope of Work covered by such unexecuted Phase II Construction Price Amendment.

1.16 Schedule

As part of the CMAR's Preconstruction Phase Services, no later than ten (10) days following the Engineer's delivery to the Owner and the CMAR of a design for the Project that, in the Engineer's professional judgment, is thirty percent (30%) complete or the Engineer's delivery to the Owner and the CMAR of a design satisfying the percentage of completion requirements otherwise mutually agreed in writing by the Owner and the Engineer, as applicable, the CMAR shall prepare and maintain: (a) a baseline Critical Path Method (CPM) Project Construction Schedule satisfying the Project technical schedule requirements as set forth in **Exhibit G** attached hereto and incorporated herein by this reference, and (b) a Baseline Cost Model in accordance with Paragraph 1.4 hereof, in each case in form and content reasonably acceptable to the Owner (such acceptance not to be unreasonably withheld, delayed, or conditioned) based on the current progress of the design at the time of such Phase I Notice to Proceed.

1.16.1 The CMAR shall periodically update the Project Construction Schedule for the Owner's acceptance. The Project Construction Schedule shall coordinate and integrate the CMAR's services, the Engineer's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project Construction Schedule shall include the following: (a) submission of Phase II Construction Price Proposal(s), (b) components of the Work, (c) times of commencement and completion required of each Subcontractor, (d) ordering and delivery of products, including those that must be ordered well in advance of construction, and (e) the occupancy requirements of the Owner.

1.16.2 The CMAR shall also, as part of its Preconstruction Phase Services, report on the actual versus planned progress of Preconstruction Phase Services on a biweekly basis and develop the Project Construction Schedule to a level of detail consistent with the Project's design progression and submit Schedule updates on at least a biweekly basis and concurrently with each cost estimate.

(Remainder of page left intentionally blank.)

Exhibit C—Phase I Notice to Proceed

EXHIBIT C – NOTICE TO PROCEED

Dated: _____, 2024

TO CONTRACTOR: Archer Western Construction, LLC

ADDRESS: 2839 Paces Ferry Road, SE

Atlanta, GA 30339

CONTRACT: Cartersville WPCP Expansion to 25 MGD – PHASE I PRECONSTRUCTION SERVICES

OWNER's Contract No. XXX

You are hereby notified that the Contract Times under the above contract will commence to run on XXXXX. By that date you are to begin performing the Work and your obligations under the Contract Documents. The date of Completion for Phase I Services is XXXXX, unless modified by the Owner.

Before you may start any Work at the Site, you and Owner must each deliver to the other (with copies to Engineer and other identified additional insureds) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

Also, before you may start any Work at the Site, you must:
(add other requirements)

None.

CITY OF CARTERSVILLE

By: _____
(AUTHORIZED SIGNATURE)

(TITLE)

THIS PAGE INTENTIONALLY LEFT BLANK

Exhibit D—Phase I Early Work(s) Package(s)

To be negotiated by the Parties and incorporated through an appropriate change order.

Exhibit D.1—Phase I Early Work(s) Package(s) Amendment Form

To be negotiated by the Parties and incorporated through an appropriate change order.

Exhibit E—Phase II Construction Price Amendment

To be negotiated by the Parties and incorporated through the Phase II Construction Price Amendment.

Exhibit F—Initial Schedule of Work

To be negotiated by the Parties and incorporated through an appropriate change order.

Exhibit H—Preconstruction Phase Services Hourly Rate Schedule

EXHIBIT H

PRECONSTRUCTION PHASE SERVICES HOURLY RATE SCHEDULE

Labor Category	Hourly Rate	Preconstruction Personnel
Project Executive	\$0.00 (no charge)	David Walker
Project Manager	\$230.00	Jason Ray
Construction Manager	\$195.00	John Wilson
Superintendents	\$215.00	Scott Guentzel Joe Gustin
Preconstruction Manager	\$195.00	Greg Dills
Lead Estimator	\$175.00	Steve Cornett
Assistant Project Manager	\$175.00	Blake Barnhill
Estimators	\$150.00	Evan, Boone, Smoak
VDC Manager	\$150.00	Rhett Rutherford
Project Engineer/ Scheduler	\$125.00	Austin Alexander
Procurement Manager	\$135.00	Clay Strovinskas
Admin	\$ 70.00	Sandra Murphy

Exhibit J—Key Personnel

Project Name		Catersville WPCP Expansion to 25 MGD													
Respondent Name		Archer Western Construction, LLC													
Staff Labor Category	Project Executive	Project Manager	Construction Manager	Superintendents	Preconstruction Manager	Lead Estimator	Assistant Project Manager	Estimators	VDC Manager	Project Engineer/Scheduler	Procurement Manager	Admin	LABOR	EXPENSES	SUBTOTAL
Preconstruction Key Personnel	David Walker	Jason Ray	John Wilson	Scott Guentzel - Joe Gustin	Greg Dills	Steve Cornett	Blake Bamhill	Evans - Boone - Smoak	Rhett Rutherford	Austin Alexander	Clay Strovinskaskas	Sandra Murphy			
Years of Experience	23	15	14	25-23	30	22	5	18-15-12	4	6	12	20			
Certifications (See resumes)	DBIA - OSHA 30	DBIA - PE - OSHA 30	DBIA - OSHA 30	OSHA 30	DBIA - OSHA 30	GA Utility License	OSHA 30	OSHA 30	OSHA 30	DBIA - EIT	OSHA 30	N/A			
Hourly Billing Rate	No Charge	\$230.00	\$195.00	\$215.00	\$195.00	\$175.00	\$175.00	\$150.00	\$150.00	\$125.00	\$135.00	\$70.00			
	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS			
Task 1 - Project Management/Key Personnel/Planning	240	480	240	240	480	240	480	120	120	120	120	240	\$512,400.00	\$40,000.00	\$552,400.00
1.1 General Period of Performance - 60 Weeks															
1.2 Monthly Project Report Requirements															
1.3 Meetings and Workshops (Every 2 weeks)															
1.4 Project Kickoff Meeting															
1.5 Onboarding Meetings (4 each)															
1.6 Develop Construction Management Plan															
1.7 Develop Emergency and Site Safety Plan															
1.8 Develop Environmental Management Plan															
1.9 Develop Document Management Plan															
1.10 Provide Input on Design Decision Plan															
1.11 Develop Cost Trending Plan															
1.12 Provide Input on Permitting Plan															
1.13 - Provide Input on Draft Commissioning Plan															
Task 2 - Existing Site and Facilities Conditions Review and Verification	40	80	40	40	40	0	80	0	80	40	0	0	\$73,600.00	\$5,000.00	\$78,600.00
2.0 Period of Performance - 60 Days (Concurrent w/ Task 3)															
2.1 General Review and Verification															
2.2 Review Underground Utilities and Structures Report															
2.3 Perform Topographic Drone Survey															
2.4 Review Geotechnical Investigation Report															
2.5 Review Hazardous Materials Survey															
2.6 Develop Existing Site Investigations Report															
Task 3 - Initial Design Baseline Deliverables	40	80	20	20	40	80	80	240	20	40	40	20	\$113,200.00	\$10,000.00	\$153,200.00
3.0 Period of Performance - 19 Weeks															
3.1 Develop Baseline Cost Model Submission															
3.2 Develop Baseline Schedule															
3.3 Initial Constructability Report															
3.4 Initial Value Engineering Report															
3.5 Develop Project Procurement Plan															
3.6 Provide input on Maintenance of Plant Operations															
3.7 Electrical/I&C Precon Support (Excel & M/R Systems)														\$30,000.00	
Task 4 - 30% Design	40	80	20	20	40	80	80	240	20	40	40	20	\$113,200.00	\$10,000.00	\$163,200.00
4.0 Period of Performance - 12 weeks															
4.1 30 Percent Design Workshops															
4.2 Develop Cost Model Submission															
4.3 Develop Schedule															
4.4 Value Engineering Report															
4.5 Constructability Report															
4.6 Update Project Procurement Plan															
4.7 Cost Model Review Workshop															
4.8 Develop Bid Packages and Early Works Packages															
4.9 Risk Register Update and Workshop															
4.10 Electrical/I&C Precon Support (Excel & M/R Systems)														\$40,000.00	

Project Name Respondent Name		Catersville WPCP Expansion to 25 MGD Archer Western Construction, LLC													
Staff Labor Category	Project Executive	Project Manager	Construction Manager	Superintendents	Preconstruction Manager	Lead Estimator	Assistant Project Manager	Estimators	VDC Manager	Project Engineer/Scheduler	Procurement Manager	Admin	LABOR	EXPENSES	SUBTOTAL
Preconstruction Key Personnel	David Walker	Jason Ray	John Wilson	Scott Guentzel - Joe Gustin	Greg Dills	Steve Cornett	Blake Bamhill	Evans - Boone - Smoak	Rhett Rutherford	Austin Alexander	Clay Strovinskaskas	Sandra Murphy			
Years of Experience	23	15	14	25-23	30	22	5	18-15-12	4	6	12	20			
Certifications (See resumes)	DBIA - OSHA 30	DBIA - PE - OSHA 30	DBIA - OSHA 30	OSHA 30	DBIA - OSHA 30	GA Utility License	OSHA 30	OSHA 30	OSHA 30	DBIA - EIT	OSHA 30	N/A			
Hourly Billing Rate	No Charge	\$230.00	\$195.00	\$215.00	\$195.00	\$175.00	\$175.00	\$150.00	\$150.00	\$125.00	\$135.00	\$70.00			
	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS			
Task 5 - 60% Design	40	80	20	20	40	80	80	240	20	40	40	20	\$113,200.00	\$10,000.00	\$163,200.00
5.0 Period of Performance - 18 weeks															
5.1 60 Percent Design Workshop															
5.2 Develop Cost Model Submission															
5.3 Develop Schedule															
5.4 Value Engineering Report															
5.5 Constructability Report															
5.6 Update Project Procurement Plan															
5.7 Cost Model Review Workshop															
5.8 Update Bid Packages and Early Works Packages															
5.9 Risk Register Update and Workshop															
5.10 Electrical/I&C Precon Support (Excel & M/R Systems)														\$40,000.00	
Task 6 - Work Package 1 - 90% Design and GMP	40	120	30	30	60	120	120	360	40	60	60	40	\$172,000.00	\$15,000.00	\$187,000.00
6.0 Period of Performance - 90 Days (Concurrent w/ Task 7)															
6.1 90 Percent Design Workshop															
6.2 Develop GMP Submission															
6.3 Develop GMP Schedule															
6.4 Update GMP Risk Register															
6.5 GMP Review Workshop															
6.6 Prepare Final GMP Submission and Amendment															
Task 7 - Work Package 2-4 - 90% Design and GMP	80	160	40	40	80	160	160	480	40	80	80	40	\$226,400.00	\$20,000.00	\$246,400.00
7.0 Period of Performance - 18 Weeks															
7.1 90 Percent Design Workshop															
7.2 Develop GMP Submission															
7.3 Develop GMP Schedule															
7.4 Update GMP Risk Register															
7.5 GMP Review Workshop															
7.6 Prepare Final GMP Submission and Amendment															
Subtotal Hours	520	1080	410	410	780	760	1080	1680	340	420	380	380	8240.0		
Subtotal Cost	\$0.00	\$248,400.00	\$79,950.00	\$88,150.00	\$152,100.00	\$133,000.00	\$189,000.00	\$252,000.00	\$51,000.00	\$52,500.00	\$51,300.00	\$26,600.00	\$1,324,000.00	\$220,000.00	\$1,544,000.00
General Liability @ \$8/1000														\$25,000.00	
Payment & Performance Bond														\$16,000.00	

Required Input from Bidders:

1. Labor Staff Categories and associate hourly billing rates.
2. Years of relevant experience, certifications, and other qualifications.
3. Total labor hours mapped to proposed staff categories/billing rates.
4. Billing rates are valid for the first year of the contract.

CMAR Phase 1 Fee \$1,585,000.00

THIS PAGE INTENTIONALLY LEFT BLANK

Exhibit K—Additional Required Forms

Corporate Certificate

Contractor's License Certification

E-Verify Form

Security and Immigration Compliance Act Certification

Subcontractor Affidavit Under O.C.G.A. 13-10-91(b)(3)

Non-Collusion Affidavit of Bidder

Bid Bond

Certification of Contractor's Attorney

Certification of Owner's Attorney

CORPORATE CERTIFICATE

I, Matthew M. Walsh, certify that I am the Secretary of the Corporation named as Bidder in the foregoing Bid; that David Walker, who signed said Bid on behalf of the Contractor was then Vice President of said Corporation; that said Bid was duly signed for and on behalf of said Corporation by authority of its Board of Directors, and is within the scope of its corporate powers; that said Corporation is organized under the laws of the State of Illinois.

This 2nd day of May, 2024.

Corporate Secretary: _____


(name signed)

Matthew M. Walsh, IV, Corporate Secretary
(name printed or typed)

Archer Western Construction, LLC



THIS PAGE INTENTIONALLY LEFT BLANK

CONTRACTOR'S LICENSE CERTIFICATION

Bidder/Contractor's Name: Archer Western Construction, LLC

Georgia General Contractor's License Number GCCO005835

Expiration Date of License: 6/30/2024

Georgia Utility Contractor's License Number: UC302167

Expiration Date of License: 4/30/2025

Attach copies of all current licenses.

I certify that the above information is true and correct and that the classification noted is applicable to the Bid for this Project.

BIDDER: Archer Western Construction, LLC

By: 
(name signed)

David Walker
(name printed or typed)

Title: Vice President - East Water Group

Date: May 2, 2024

THIS PAGE INTENTIONALLY LEFT BLANK



STATE OF GEORGIA

BRAD RAFFENSPERGER, Secretary of State

State Licensing Board for Residential and General Contractors

LICENSE NO. GCQA005832

Duane Michael Petersen
2839 Paces Ferry Road SE
Suite 1200
Atlanta GA 30339

Company Name: Archer Western Construction LLC

Company License NO: GCCO005835

General Contractor Qualifying Agent

EXP DATE - 06/30/2024 Status: Active

Issue Date: 02/12/2018

A pocket-sized license card is below. Above is an enlarged copy of your pocket card.

Please make note of the expiration date on your license. It is your responsibility to renew your license before it expires. Please notify the Board if you have a change of address.

Wall certificates suitable for framing are available at cost, see board fee schedule. To order a wall certificate, please order from the web site – www.sos.ga.gov/plb.

Please refer to Board Rules for any continuing education requirements your profession may require.

Georgia State Board of Professional Licensing

237 Coliseum Drive

Macon GA 31217

Phone: (404) 424-9966

www.sos.ga.gov/plb

Duane Michael Petersen
2839 Paces Ferry Road SE
Suite 1200
Atlanta GA 30339



STATE OF GEORGIA

BRAD RAFFENSPERGER, Secretary of State

State Licensing Board for Residential and General Contractors

License No. GCQA005832

Duane Michael Petersen

2839 Paces Ferry Road SE
Suite 1200
Atlanta GA 30339

Company Name: Archer Western Construction LLC

Company License NO: GCCO005835

General Contractor Qualifying Agent

EXP DATE - 06/30/2024 Status: Active

Issue Date: 02/12/2018



STATE OF GEORGIA
BRAD RAFFENSPERGER, Secretary of State
 Georgia Construction Industry Licensing Board
 LICENSE NO. UC302167
 Archer Western Construction LLC

2839 Paces Ferry Road SE
 Suite 1200
 Atlanta GA 30339

Utility Contractor

EXP DATE - 04/30/2025 Status: Active
 Issue Date: 07/21/2011

A pocket-sized license card is below. Above is an enlarged copy of your pocket card.

Please make note of the expiration date on your license. It is your responsibility to renew your license before it expires. Please notify the Board if you have a change of address.

Wall certificates suitable for framing are available at cost, see board fee schedule. To order a wall certificate, please order from the web site – www.sos.ga.gov/plb.

Please refer to Board Rules for any continuing education requirements your profession may require.

Georgia State Board of Professional Licensing
 237 Coliseum Drive
 Macon GA 31217
 Phone: (404) 424-9966
www.sos.ga.gov/plb

Archer Western Construction LLC
 2839 Paces Ferry Road SE
 Suite 1200
 Atlanta GA 30339



STATE OF GEORGIA
BRAD RAFFENSPERGER, Secretary of State
 Georgia Construction Industry Licensing Board
 License No. UC302167
 Archer Western Construction LLC

2839 Paces Ferry Road SE
 Suite 1200
 Atlanta GA 30339

Utility Contractor

EXP DATE - 04/30/2025 Status: Active
 Issue Date: 07/21/2011

E-Verify Form

Solicitation Name: Construction Manager at Risk Services for Pre-construction and Construction Services for Cartersville WPCP Expansion to 25 MGD, 102 Walnut Grove Road SE, Cartersville, GA 30120.

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 City of Cartersville 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 City of Cartersville, 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 substantially similar form. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the City of Cartersville at the time the subcontractor(s) is retained to perform such service.

The undersigned Contractor is using and will continue to use the federal work authorization program throughout the contract period.

413166
EEV/Basic Pilot Program* User Identification Number


BY:
(Contractor Name)

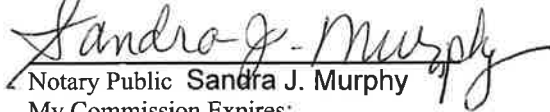
David Walker 5/2/24
Authorized Officer or Agent Date

Archer Western Construction, LLC Vice President-East Water Group
Contractor/Entity Name Title of Authorized Officer or Agent of Contractor

2839 Paces Ferry Road, Suite 1200, Atlanta, GA 30339
Contractor Address

David Walker
Printed Name of Authorized Officer or Agent

SUBSCRIBED AND
SWORN BEFORE ME
ON THIS THE
2nd DAY OF May, 2024


Notary Public Sandra J. Murphy
My Commission Expires:
2/21/2027



* 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).

THIS PAGE INTENTIONALLY LEFT BLANK

SECURITY AND IMMIGRATION COMPLIANCE ACT CERTIFICATION

Pursuant to the Georgia Security and Immigration Compliance Act of 2006, Contractor understands and agrees that compliance with the requirements of OCGA 13-10-91 and Georgia Department of Labor Rule 300-10-1 et. seq. are conditions of Agreement.

By initialing in the appropriate line below, Contractor certifies that the following employee number category as identified in OCGA 13-10-91 is applicable to Contractor:

- 1. XX 500 or more employees;
- 2. _____ 100 or more employees;
- 3. _____ Fewer than 100 employees.

Contractor understands and agrees that, in the event Contractor employs or contracts with Subcontractor in connection with this Agreement, Contractor shall:

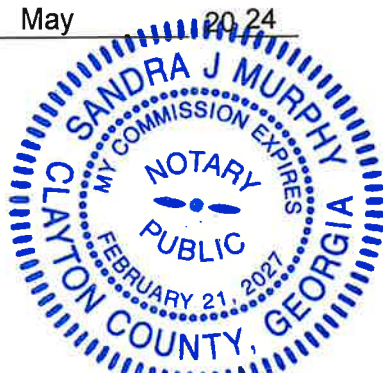
- 1. Secure from each Subcontractor an indication of the employee-number category as identified in OCGA 13-10-91; and
- 2. Secure from each Subcontractor not licensed as an Utility Contractor in the State of Georgia an attestation of Subcontractor's compliance with OCGA 13-10-91 and Georgia Department of Labor Rule 300-10-1-.02 by causing each Subcontractor to execute the attached Subcontractor Affidavit required by Georgia Department of Labor Rule 300-10-1-.08, or a substantially similar subcontractor affidavit. Contractor further understands and agrees that Contractor shall require the executed Subcontractor Affidavit, if applicable, to become a part of the agreement between Contractor and each Subcontractor. Contractor agrees to maintain records of each Subcontractor attestation required hereunder for inspection by Owner.

David Walker
BY: Authorized Officer or Agent
Vice President-East Water Group
Title of Authorized Officer or Agent if Contractor
David Walker
Printed Name of Authorized Officer or Agent

May 2, 2024
Date

Subscribed and Sworn Before Me on this 2nd day of May 2024

Sandra J. Murphy
Notary Public Sandra J. Murphy
My Commission Expires: 2/21/2027



THIS PAGE INTENTIONALLY LEFT BLANK

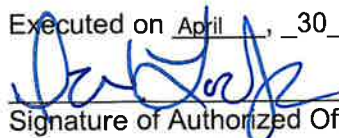
SUBCONTRACTOR AFFIDAVIT UNDER O.C.G.A. § 13-10-91(b)(3)

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with (name of Contractor) on behalf of CITY OF CARTERSVILLE has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five business days of receipt. If the undersigned subcontractor receives notice of receipt of an affidavit from any sub-subcontractor that has contracted with a sub-subcontractor, the undersigned subcontractor will forward, within five business days of receipt, a copy of such notice to the contractor. Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

52893
Federal Work Authorization User Identification Number
9/5/2007
Date of Authorization
Excel Electrical Technologies, Inc.
Name of Subcontractor
Cartersville WPCP Expansion to 25 mgd
Name of Project
City of Cartersville, GA
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

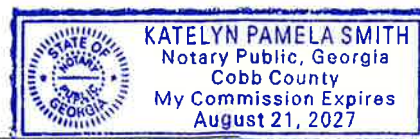
Executed on April, 30, 2024, Kennesaw, GA


Signature of Authorized Officer or Agent
Darren Lodge, Chief Operating Officer
Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE 30 DAY OF April, 2024.


NOTARY PUBLIC

My Commission Expires: August 21st, 2027



THIS PAGE INTENTIONALLY LEFT BLANK

NON-COLLUSION AFFIDAVIT OF BIDDER

STATE OF GEORGIA

COUNTY OF CLAYTON

David Walker

, being first duly sworn, deposes and says that:

He or she is Vice President-East Water Group of
(Owner, Partner, Officer, Representative or Agent)

Archer Western Construction, LLC, the Bidder that has submitted the attached Bid;

He or she is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;

Such Bid is genuine and is not a collusive or sham Bid;

Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this Affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any other Bidder, or to fix any overhead, profit or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Cartersville or any person interested in the proposed Contract; and

The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this Affiant.

(Signed)



(Title)

Vice President - East Water Group

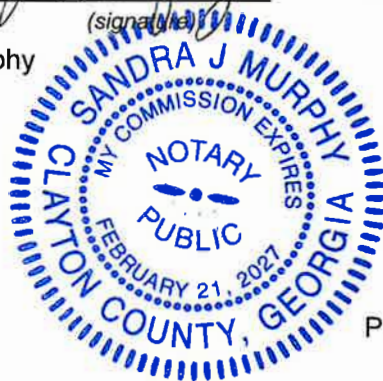
Subscribed and Sworn before me this 2nd day of May, 2024.


(Notary Public) *(signature)*

My Commission Expires: 2/21/2027

Sandra J. Murphy

(SEAL)



BID BOND

PENAL SUM FORM

BIDDER:

Archer Western Construction, LLC

SURETY:

Travelers Casualty and Surety Company of America

OWNER:

City of Cartersville
1 N. Erwin Street
Cartersville, Georgia, 30120

BID

PROPOSAL DUE DATE: May 2, 2024

PROJECT: Cartersville WPCP Expansion to 25 mgd

The Project will result in construction of facilities to expand the capacity of the WPCP from 15 to 25 mgd (maximum month basis). The project will include a new 55-mgd influent pump station and headworks facility, two 6-MG prestressed concrete equalization tanks, two new bioreactors, new blower building and blower equipment, two new 135-ft diameter clarifiers, two new tertiary filters, a new UV disinfection facility with Parshall flume and sodium hypochlorite feed system, new outfall line and diffuser, an additional belt filter press and associated equipment, provisions for a future dryer, new septage receiving station, additional alum storage and feed equipment, modifications to the existing RAS pump station, new electrical switchgear building, two new standby power generators, and all associated sitework, yard piping, stormwater, structural, mechanical, architectural, electrical, and instrumentation and control improvements.

BOND

BOND NUMBER 5676997

DATE: *(Not later than Proposal Due Date)*: May 2, 2024

PENAL SUM: 5 PERCENT OF PHASE I FEE

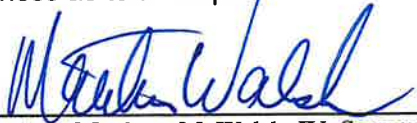
IN WITNESS WHEREOF, Surety and Bidder, intending to be legally bound hereby, subject to the following terms hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

TERMS OF BID BOND

1. Bidder and Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Request for Proposals (RFP) Documents the executed Agreement required by the Bidding Documents, any Performance and Payment Bonds, and Certification of Insurance required by the RFP Documents and Contract Documents.
3. This obligation shall be null and void if:
 - a. Owner accepts Bidder's Proposal and Bidder delivers within the time required by the RFP Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the RFP Documents, any Performance and Payment Bonds and Certification of Insurance required by the RFP Documents and Contract Documents, or
 - b. All proposals are rejected by Owner, or
 - c. Owner fails to issue a Notice of Award to Bidder within the time specified in the RFP Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the time for issuing Notice of Award including extensions shall not in the aggregate exceed 60 days from the Proposal Due Date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in paragraph 4 above is received by Bidder and Surety, and in no case later than one year after Proposal Due Date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notice required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.

9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirements of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of the Bond conflicts with any applicable provision of any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "bid" as used herein includes a bid, offer or proposal as applicable.

Witness as to Principal:


 (signature) Matthew M. Walsh, IV, Secretary


Archer Western Construction, LLC

Principal


By:  (SEAL)
 (signature) Daniel P. Walsh

Title: President

Witness as to Surety:


 (signature) Ron Phillips, Witness

Travelers Casualty and Surety Company of America
 Surety

By:  (signature) Joshua Smith,
 Attorney-in-Fact Attorney-in-Fact

929 W. Adams Street

Chicago, IL 60607

Address of Attorney-in-Fact

Note: Surety companies executing Bonds must be in good standing according to the latest published United States Treasury Circular 570 and be authorized to transact business in the state where the Project is located.



**Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company**

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Joshua Smith** of **CHICAGO**, Illinois, their true and lawful Attorney(s)-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **21st** day of **April**, 2021.



State of Connecticut

City of Hartford ss.

By:
Robert L. Raney, Senior Vice President

On this the **21st** day of **April**, 2021, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, 2026



Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of each of the Companies, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **2nd** day of **May**, 2024.



Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.**

CERTIFICATION OF CONTRACTOR'S ATTORNEY

The undersigned Contractor hereby certifies one of the following:

_____ (initial) Prior to execution and delivery of the contract contained herein, the attorney has examined the attached contract, any applicable performance and payment bonds and the manner of execution thereof, as well as all other documents attached hereto and is of the opinion that upon the execution and delivery of these documents, same will constitute a valid and legally binding obligation of the undersigned contractor in accordance with the terms, conditions and provisions thereof.

Typed Name of Attorney

Signature of Attorney

Date: _____

_____ (initial) The undersigned contractor has an attorney but has not obtained any legal opinion regarding the execution and delivery of these documents.

_____ (initial) The undersigned contractor does not have an attorney and has elected not to engage an attorney regarding the execution and delivery of this contract and attached documents.

CONTRACTOR

Name of Contractor: _____

By: _____

Title: _____

Attest: _____

Title: _____

[SEAL]

THIS PAGE INTENTIONALLY LEFT BLANK

CERTIFICATION OF OWNER'S ATTORNEY

I, the undersigned _____, the duly authorized and acting legal representative of CITY OF CARTERSVILLE, do hereby certify as follows:

Prior to execution and delivery thereof by City of Cartersville, I have examined the attached contract and any applicable performance and payment bonds and the manner of execution thereof, and I am of the opinion that upon the correction of any matters noted hereon, the foregoing contract will be ready for execution and upon execution and delivery will constitute a valid and legally binding obligation of City of Cartersville in accordance with the terms, conditions, and provisions thereof.

Date: _____

Typed Name

Signature

THIS PAGE INTENTIONALLY LEFT BLANK