



**CONTRACT FOR CONSTRUCTION  
MANAGEMENT/GENERAL CONTRACTING SERVICES FOR  
CONSTRUCTION PHASE SERVICES FOR PROFESSIONAL  
CONSTRUCTION MANAGEMENT/GENERAL CONTACTING  
SERVICES (CMAR) FOR A NEW PUBLIC WORKS  
FACILITY, PART B**

Between

CITY OF EDGEWATER

AND

WHARTON – SMITH, INC.

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**RFQ NO. 24-ES-01**

## **CONTRACT FOR CONSTRUCTION MANAGEMENT /GENERAL CONTRACTING SERVICES**

### **PART B: CONSTRUCTION PERFORMANCE PHASE SERVICES**

This Contract for Construction Management/General Contracting Services for Construction Performance Phase Services for the New Public Works Facility , Part B, by and between the City of Edgewater, Florida, a body corporate and politic and a subdivision of the State of Florida, whose address is City of Edgewater, 104 N Riverside Drive, Florida 32132 (hereinafter referred to as the "City"), and ~~{add company name and address}~~ Wharton-Smith, Inc. 750 Monroe Road, Sanford, FL 32771 (hereinafter referred to as the "Construction Manager/General Contractor" or "CM/GC" or "Contractor").

WHEREAS, the City intends to construct Phase I of a multi-phased project to construct a new Public Works Facility. Phase I of the facility will be used for transitioning the City's fleet and fueling operations, as well as the new staging location for the Public Works and Environmental Services Department Administrative Divisions., hereinafter called the "Project" in accordance with the construction Contract Documents prepared by the firm of Schenkel Shultz Architecture, hereafter referred to as the "Architect/Engineer" or "A/E."; and

WHEREAS, the CM/GC's scope of work will include all the construction work related to the entire facility; and

WHEREAS, the City desires the services of a firm with proven expertise in efficiently managing construction operations ("CM" function) and thoroughly experienced in high quality general contracting to be responsible for the organizing, directing and supervising of all construction activities required for the completion of the Project, including construction methods, direction of labor, Project site labor safety and loss prevention program and quality assurance and control programs ("GC" function); and

WHEREAS, it is determined that the execution of this Contract is beneficial to the people of the City of Edgewater, Florida.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference, and other specific consideration set forth in this Contract, the receipt and sufficiency of which is acknowledged by CM/GC and City, the parties agree and stipulate as follows:

### **ARTICLE 1B: DEFINITIONS; EXHIBITS; AND PURPOSE/INTENT**

#### **1.0 DEFINITIONS.**

**Amendment:** An amendment to this Contract in writing approved by the City, approved by the Director of Finance, and signed by the City Manager and authorizing an addition, deletion, or revision in the scope of work, or an adjustment in the Contract price or the time for completion issued after execution of this Contract.

**Application for Progress Payment:** The current estimate form furnished and certified by the contractor, construction manager, or general contractor which is to be used by the foregoing in requesting progress payments for work performed in the Project.

**Architect:** A person or firm that is authorized to practice architecture pursuant to Florida Statute 481.299 or a general contractor who provides architectural services under a design-build contract authorized by F.S. 481.299(3). "Architect" shall be synonymous with "Architect/Engineer," and "A/E."

**Architect/Engineer (A/E):** The design professional identified in the contract documents and who is licensed and registered in the State of Florida and selected by the City to provide construction management/general contracting services. The terms "Architect" and "Architect/Engineer or A/E" means the architect/engineer or its authorized representative.

**Bid Documents:** The official forms on which the City requires formal bids to be prepared and submitted by the bidder.

**Calendar day:** Any day (as referenced in Section 5.0.1), including Saturdays, Sundays, and holidays, regardless of weather conditions.

**Change Order:** A written order signed by the City or its designated representative(s) as specified in the Contract Documents and the contractor authorizing an addition, deletion, or revision in the work, or an adjustment in the contract price or time.

**Contract:** An agreement between the City and Contractor, with binding legal and moral force, covering the work to be performed in exchange for money.

**Contract Administrator:** The Director of Purchasing and Contracts or his/her designee responsible for addressing any concerns within this Contract.

**Contract Bonds:** The securities (Performance and Payment Bonds) furnished by the Contractor and the surety as a guarantee that the Contractor will fulfill the terms of the contract in accordance with the specifications, drawings, and other contract documents.

**Contract Documents:**

Contract documents shall include but are not limited to the following: (1) the contract known as "Contract For Construction Management/General Contracting Services For Pre-Construction Phase Services For Professional Construction Management/General Contracting Services (CMAR) For A New Public Works Facility, Part A" entered into by the City and CM/GC on ~~[date of Part A contract execution]~~ August 6, 2024, hereinafter referred to as "Part A"; (2) "Contract For Construction Management/General Contracting Services For Construction Phase Services For Professional Construction Management/General Contracting Services (CMAR) For A New Public Works Facility, Part B, hereinafter referred to as "Part B". Part A and Part B represents the entire contract between the City and

the CM/GC and supersedes all prior negotiations, representations or contracts; (3) Plans, Specifications, Site Plans, Surveys, Soil & Subsurface Investigation provided during project solicitation; (4) Advertising, Pre-Qualification, Bidding and Contract Award for Trade Contracts; (5) Guaranteed Maximum Price (GMP) identified in Part A; (6) performance and payment bonds; (7) certificates of insurance; (8) Notice of Award and/or Notice to Proceed;

(9) the conditions of this Contract (general, special, supplementary, and other; (10) drawings; (11) job specifications; (12) written interpretations; (13) change orders; (14) project manuals; (15) addenda issued before the execution of this Contract; and, (16) any modifications or amendments to this Contract issued after execution of this Contract; (17) sales tax procedures of this contract, and any amendments to the foregoing.

**Construction Manager/General Contractor:** These terms shall be synonymous with "Construction Manager" and/or "General Contractor" and "CM/GC." The CM/GC is the entity identified as such throughout this Contract and is referred to as if singular in number and neutral in gender. The term "CM/GC" means the CM/GC or his representative

**City:** Shall mean the City of Edgewater (a body corporate and politic and a subdivision of the State of Florida) including its districts, authorities, separate units of government established by law, ordinance or resolution, partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the City has agreed by contract to provide additional insured status.

**City Representative:** Also known as the Owner's representative who is the City Engineer or person designated by the City to review, approve and make decisions regarding the scope of work.

**Deliverable:** The result(s) or end products or services of the Project that meet the defined design or construction specifications, warranties, and functional parameters articulated in the scope of work for Part A and Part B.

**Direct Labor and Personnel Costs:** Represent those actual costs, exclusive of overhead and profit, reasonably and necessarily incurred and paid by the CM/GC in the performance of Part B of the Contract, from the date of the Notice to Proceed until the completion of the Project, for payroll payments made to its employees working on the Project site, as described and defined in Article 8B hereafter and subject to the provisions of Article 9B, hereafter.

**Employee Benefits:** Includes, without limitation, unemployment compensation contributions, social security taxes and other mandatory and customary contributions and fringe benefits, insofar as such costs are based on wages, salaries, or other remuneration normally and regularly paid by the CM/GC to its employees.

**Modification:** A written amendment to the Contract Documents approved by the City and signed by the contractor and the City or City's designated representative(s) (including the CM/GC and/or A/E) which includes but is not limited to the following:

- A. Amendment;
- B. Change Order;
- C. Field Order: A written clarification, interpretation, minor change or alteration issued by the contractor or CM/GC;
- D. Addenda: A document written by the contractor and approved by the City that is added to the original Contract Documents to clarify, revise, add to, or delete from the original Contract Documents or previous addenda. The document includes a written clarification or interpretation prepared by the CM/GC.

**Notice to Proceed:** The official letter from the City to the CM/GC establishing a date on which the Project will commence.

**Owner Direct Purchase:** The direct purchase of supplies and/or materials for use in public works contracts for the purpose of saving sales tax pursuant to the State of Florida, Florida Administrative Code 12A-1.094.

**Part A:** The Construction Management/General Contracting Services for Pre-Construction Performance Phase Services for the New Public Works Facility contract reached with ~~[name of company] [date of Part A contract execution]~~ Wharton-Smith, Inc., August 6, 2024.

**Project:** Fixed capital outlay study or planning activity described in the public notice of the State or City which includes the entire Scope of Work which shall be performed in accordance with the Contract Documents. A Project may include:

- A. A grouping of minor construction, rehabilitation, or renovation activities;
- B. A grouping of substantially similar construction, rehabilitation, or renovation activities;
- C. The entire work to be performed pursuant to the Contract Documents.

**Project Manager or City Project Manager:** The City employee or designated City Representative (including the CM/GC) who is assigned to the Project and is responsible for the day-to-day administration and coordination of the Project for the City.

**Scope of Services/Work:** The specifications and requirements governing the work or services to be performed under this Contract and defined in Part A including responsibility for performing and complying with all incidental matters pertaining thereto.

**Services:** The professional services or construction work to be performed as provided for under this Contract.

**Shop Drawings:** All diagrams, illustrations, brochures, schedules, and/or other data which are prepared by the contractor, a subcontractor, manufacturer, supplier, distributor, or other person on behalf of the contractor, and which illustrate the equipment, material, or some portion of the work.

**Specifications:** The document or scope of work that establishes the material and performance requirements of goods and services to be delivered to the City.

**Subcontractor:** A person other than a materialman or laborer who enters into a contract with a Contractor for the performance of any part of this Contract.

**Sub-subcontractor:** A person other than a materialman or laborer who enters into a contract with a subcontractor for the performance of any part of such subcontractor's contract.

**Trade Contractor:** The person or entity qualified to perform work under this Contract including a contractor, subcontractor, supplier, laborer or materialman that has a direct contract with the CM/GC to perform work in the Project.

**Work:** Any and all obligations, work, services, duties and responsibilities necessary to the successful completion of the Project assigned to or undertaken by the contractor or CM/GC under the Contract Documents, including the furnishing of all labor, materials, equipment and other incidentals.

## **1.1 EXHIBITS.**

**1.1.1** The exhibits listed below are incorporated into and made a part of this Contract.

- 1.1.1.1** Exhibit "A" – Guaranteed Maximum Price (GMP) Proposal
- 1.1.1.2** Exhibit "B" – Plans, Specifications, Survey, Investigations
- 1.1.1.3** Exhibit "C" – Sales Tax Exemption Procedure
- 1.1.1.4** Exhibit "D" – Performance & Payment Bonds

**1.1.2** This Contract shall not be superseded by any provisions of the Plans and Specifications and may be amended only by written instrument signed by both the City and the CM/GC.

**1.1.3** The Contract Documents do not include proposal solicitation documents such as the Request for Qualification, advertisements or Addenda, the instructions to respondents or clarifications issued during the selection of the CM/GC, sample

forms, CM/GC's proposal or portions of it, or any other documents, unless specifically enumerated and incorporated in this Contract.

**1.1.4** The Contract Documents shall be signed in triplicate by the City and the CM/GC.

**1.2 Purpose and Intent.** The primary purpose of Part B of this Contract is to secure for the City, the services of a firm that will organize, direct and manage the performance of all construction activities for the Project; contract directly with Trade Contractors and assume the customary contractual responsibilities of a general contractor; assume the financial responsibility of producing the Project within the Guaranteed Maximum Price ("GMP") and within the time constraints established during the preconstruction phase of the Project. Therefore, the CM/GC shall provide all traditional services and perform as a general contractor and, in addition thereto, shall provide services as a construction manager consistent with the requirements of this Contract.

**1.2.1** The CM/GC covenants with the City to furnish its best skill and judgment in furthering the interests of the City. The CM/GC agrees to furnish efficient business administration, construction management and superintendence and to use its best efforts to complete the Project in an expeditious and economical manner consistent with the interest of the City. To that end, the CM/GC will maintain adequate cost and schedule control systems and perform screening of trade contractors to assure a high quality of construction consistent with the requirements of the Contract Documents.

**1.2.2** All permanent construction for the Project shall be performed under trade contracts between the CM/GC and its Trade Contractors. The procurement activity of the CM/GC should be such as to preclude any conflict of interest. In particular, the CM/GC shall avoid bidding work in competition with bidding Trade Contractors. Neither the CM/GC nor any firm in which a principal stockholder or member of the CM/GC's firm has a financial interest, shall during the term of the Contract make or cause to be made any bid for construction work on the Project. Notwithstanding the foregoing and upon City's written approval, the CM/GC may perform with its own employee's work of a Trade Contractor who fails to perform in accordance with the provisions of its trade contract.

**1.2.3** Upon notice that the City elects to proceed with Part B of this Contract, the CM/GC shall post performance and payment bonds each in the amount of 100% of the Guaranteed Maximum Price, and on written "Notice to Proceed," shall immediately commence the performance of the services required in Part B of the Contract.

**1.2.4** The CM/GC shall provide the insurance and bonding for the Project as required in Article 11B and shall be reimbursed the cost in accordance with Article 6B, hereunder.

**1.2.5** By executing this Contract, the CM/GC represents that it has visited the site, familiarized itself with the local conditions under which the Work is to be performed, and correlated its observations with the requirements of the Contract Documents. The CM/GC and each Trade Contractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation:

- A. The location, conditions, layout and nature of the Project site and surrounding areas,
- B. Anticipated labor supply and costs,
- C. Availability and cost of materials, tools, equipment, and other similar issues.

**1.2.5.1** The City assumes no responsibility or liability for the physical conditions or safety of the Project site or any improvements located on the Project site. The CM/GC shall be solely responsible for providing a safe place for the performance of the Work and the City shall not be required to make any adjustment in either the agreed amount of the GMP or the Contract Time in connection with any failure by the CM/GC or any Trade Contractor to comply with the requirements of Paragraph 1.1.2, hereof.

**1.2.6** This Contract between the City and the CM/GC is intended solely for the benefit of the City and the CM/GC and no other persons or entities. The services to be performed hereunder shall be performed by the CM/GC's own staff, unless otherwise authorized by the City. The employment of, contract with, or use of the services of any other person or firm by the CM/GC, as consultant or otherwise, shall be subject to the prior written approval of the City. Such approval shall not be construed as constituting an agreement between the City and any such person or firm.

**1.2.7** In the event the parties hereto enter into a subsequent Contract specifically modifying this Contract between City and CM/GC, it is expressly agreed that such modification shall take precedence over this Contract to the extent of the modification only.

**1.2.8** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all.

**1.2.9** Work not covered in the Contract Documents shall not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results.



**1.2.10** Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

**1.2.11** The organization of the Technical Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the CM/GC in dividing the Work among Trade Contractors or in establishing the extent of Work to be performed by any one of them.

**1.2.12** If CM/GC finds a conflict, error or discrepancy in the Contract Documents, it shall call it to the Architect's attention, in writing, and request the Architect's interpretation and direction before proceeding with the Work affected thereby. Such notice shall be provided by the CM/GC to the Architect in a timely fashion so as not to cause additional costs due to delay. In resolving such conflicts, errors and discrepancies, the documents shall be given precedence in the following order:

- A. Modifications to the Contract;
- B. This Contract between the City and CM/GC;
- C. Addenda or Exhibits to the Contract;
- D. Detailed (Technical) Specifications;
- E. Project Plans (Drawings);
- F. Procedures for Advertising, Pre-Qualification, Bidding and Contract Award for Trade Contracts (Part A);
- G. Bonds and Guaranties

**1.2.13** In the case of conflicts between drawings, or between provisions of the specifications, the more detailed or specific of the conflicting provisions or representations shall take precedence. For example, where figured dimensions are shown on the drawings, they shall take precedence over scaled distances and scaled dimensions, and detail drawings shall govern over general drawings.

**1.2.14** In those cases where it is not reasonably clear which of the conflicting provisions or representations is the more detailed or specific, the CM/GC shall be deemed to have estimated on, and agreed to provide, the greater quantity or better quality of materials and work unless he shall have, prior to submitting the GMP, asked for and obtained a written decision of the A/E as to which quantity or quality or method or materials shall be required.

## **ARTICLE 2B: CM/GC SERVICES**

**2.0 General Provisions.** The CM/GC shall supervise and direct the Work, using its best skill and attention. The CM/GC shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Contract including coordination of the work of all Trade Contractors.

- 2.0.1** Unless otherwise provided in the Contract Documents, the CM/GC shall furnish and pay for all labor, materials, equipment, tools, construction equipment and machinery, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated in the Work. The CM/GC shall check all materials entering the Project site, including materials furnished under trade contracts, and labor performing any portion of the Work and shall keep full detailed accounts of such materials and labor.
- 2.0.2** All materials and equipment purchased by the City under an Owner Direct Purchase (Sales Tax Recovery) shall be F.O.B. destination to the location of the project or the specified site on a purchase order.
- 2.0.3** Manufactured articles, materials and equipment shall be applied, installed, connected, erected, cleaned and conditioned in accordance with manufacturers' recommendations. Likewise, materials and equipment shall be stored in accordance with manufacturers' recommendations, or in such a manner as to ensure the preservation of their quality and fitness for incorporation in the Work. When considered necessary by the Architect, such materials and equipment shall be placed on wooden platforms or other elevated surfaces, and/or shall be placed under cover. Stored materials and equipment shall be located so as to facilitate prompt inspection.
- 2.0.4** The CM/GC shall comply with the provisions of Section 255.20, Florida Statutes, concerning the purchase of timber products. All lumber, timber and other forest products used in the Project shall be produced and manufactured in Florida if such products are available without delaying construction and provided that price, fitness and quality of such Florida products are equal to out-of-state products.
- 2.0.5** Manage, schedule and direct the Work including the activity of Trade Contractors and coordinate the performance of the Work, such as to complete the Project in accordance with City's objectives of cost, timeliness and quality.
- 2.0.6** The CM/GC shall not be relieved from its obligations to perform the Work in strict accordance with the Contract Documents either by the activities or duties of the City or its representatives, or by inspections, tests or approvals required or performed by persons other than the CM/GC, unless such deviation shall have been approved by the City in writing.
- 2.0.7** The City reserves the right to award separate contracts in conjunction with the Work. The CM/GC shall cooperate with such separate Contractors employed by the City so that their work may be completed expeditiously and within normal working hours. The CM/GC shall afford such separate Contractors reasonable opportunity for the receipt, transportation and storage of their materials and

equipment at their work site and for the execution of their work, and shall properly connect and coordinate its work with theirs. City's separate Contractors shall conform to CM/GC's Project Schedule and not delay the work of CM/GC's Trade Contractors or the final completion of the Project. The CM/GC shall not be responsible for actions or delays occasioned by City's separate Contractors or for coordinating, directing or supervising them or their work.

**2.0.8** If any part of CM/GC's work depends upon the work performed by separate Contractors, the CM/GC shall carefully inspect such work and before beginning his part of the work, promptly report to the City any apparent discrepancies or defects that render the separate Contractor's work unsuitable to receive CM/GC's work. The City shall take the appropriate corrective action.

**2.0.9** The CM/GC shall not endanger the work of City's separate Contractors by cutting, excavating, or otherwise altering their work, and shall not cut or alter their work without the written approval of the City.

**2.1 CM/GC's Project Site Organization.** Maintain a competent full-time staff at the Project site to coordinate and direct the Work and the progress of the Trade Contractors on the Project. Identify an on-site senior staff member (Project Manager) to represent CM/GC on a daily basis with authority to negotiate change orders and contract modifications on behalf of CM/GC so as not to delay the progress of the Work. The Project Manager shall represent CM/GC and all communications given to the Project Manager shall be as binding as if given to CM/GC. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

**2.1.1 Key Management Personnel.** All of CM/GC's on-site management and supervisory personnel shall be approved by the City prior to assignment to the Project and shall not be removed or replaced without City's consent. The City shall have the right to direct the CM/GC to remove or replace any on-site personnel whose performance becomes unsatisfactory to the City. In such event the CM/GC shall promptly replace such personnel.

**2.1.2 Superintendence.** The CM/GC shall employ a competent Project Superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. It shall be the responsibility of the Project Manager and Superintendent to coordinate the work of all Trade Contractors under contract with the CM/GC.

**2.1.3 Labor Relations.** Develop, implement and administer as necessary an effective labor relations program for the Project in order to avoid labor disputes during performance of the Contract.

**2.1.4** The CM/GC shall at all times enforce strict discipline and good order among its employees and all Trade Contractors under direct or indirect contract with the

CM/GC and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to that person.

- 2.1.5** The CM/GC shall be responsible to the City for the acts and omissions of its employees, Trade Contractors and their agents and employees, and other persons performing any of the Work under a direct or indirect contract with the CM/GC.

**2.2 Obtaining Competitive Bids.** Conduct the selection of qualified bidders in strict accordance with the approved qualification requirements provided in Exhibit "A" attached hereto. The CM/GC shall endeavor to achieve maximum competition among qualified bidders in order to obtain the most reasonable price for acceptable work. Using its best business skills, the CM/GC shall develop Trade Contractors' interest in the Project by publicizing the invitation for bids through distribution to reputable local Trade Contractors and suppliers, posting in public places, advertising in newspapers and trade journals, and such other means as may be appropriate, in sufficient time to enable prospective bidders to prepare and submit their qualifications. In close collaboration with the City's representative's schedule, conduct pre-bid conferences to inform prospective bidders of the requirements of the Contract Documents, provide clarifications and answer questions as necessary. The specific requirements of compliance with the laws and regulations of various governmental agencies having jurisdiction over the Project (i.e. Disadvantaged and Women Business Enterprises (D&WBE), Municipal code section 2-269, City Ordinance No. 90-20, § 9,5-17-90; compliance with the Public Entity Crimes law, applicable laws, etc.) shall be fully explained and emphasized at the pre-bid conference. The CM/GC may require bidders to submit bid bonds and evidence of bonding capacity, as well as meet specified qualifications as prerequisite to bidding on the Work. However, unnecessarily restrictive requirements which might unduly limit the number of bidders shall be avoided. Specific instructions stating clearly whether bonding is required or not shall be included with each bid package.

- 2.2.1** Should the City have objections to awarding a contract to any pre-qualified Trade Contractor or supplier, the City shall timely notify the CM/GC upon review of the pre-qualified bidders list. The CM/GC shall not solicit a bid proposal from a bidder so rejected.

- 2.2.2** Solicit competitive bids on appropriate bidding packages from qualified Trade Contractors. Analyze and evaluate the bids received and their relationship to budgeted amounts and prepare for review with the City a bid tabulation and such other supporting data as necessary to properly compare the bids and their responsiveness to the desired scope of work. Review the scope of work in detail with apparent qualified low bidders and attempt to achieve additional savings through negotiation whenever practical. Maintain records of all pre-award interviews with apparent low bidders. Prepare and submit written recommendations to the City for award of trade contracts, identifying the D&WBE to be utilized. Award and execute trade contracts with the successful bidders.

Provide to the City, copies of fully executed trade contracts, insurance certificates and bonds as required in Article 4B, hereinafter.

**2.2.3** CM/GC shall submit the names, addresses, phone numbers, license numbers of all Trade Contractors or Subcontractors who will perform work under this contract including minority status of its subcontractors together with the services they will supply. No change in the Trade Contractors or Subcontractor shall be made by CM/GC unless approved by the City in writing and only based on reason of financial distress or City deemed performance issues. In addition, the CM/GC or Trade Contractor shall register and post any open positions as a result of the award of this contract through the Center for Business Excellence (CBE).

**2.3 Project Control System.** Establish on-site organization and lines of authority in order to carry out the overall intent of this Contract. Activate the Management Control System (MCS) as provided in Part A, Article 3A, Paragraph 3.10.

**2.3.1** Establish procedures for administration of the Work to be performed under the Contract and coordination of construction activities with other separate Contractors that may perform work for the City adjacent to the Project site. Incorporate such procedures into a project document and distribute to the City and all persons designated by the City. The manual shall include, at least, the following data:

- 2.3.1.1** Directory of Personnel;
- 2.3.1.2** Security Requirements and Procedures;
- 2.3.1.3** Correspondence Requirements;
- 2.3.1.4** Reports and Records Requirements;
- 2.3.1.5** Inspection Procedures;
- 2.3.1.6** Shop Drawing Submittal Procedures;
- 2.3.1.7** Testing Laboratories Procedures;
- 2.3.1.8** Contract Changes Procedures;
- 2.3.1.9** Extensions of Time;
- 2.3.1.10** Progress Payments Procedures;
- 2.3.1.11** Final Acceptance Procedures;

#### **2.3.1.12** Miscellaneous Instructions.

- 2.3.2** Schedule and conduct progress meetings with Trade Contractors bi-weekly, or more frequently if requested by the City, to review such matters as job procedures, construction progress, schedule, shop drawing status and other matters as necessary. Provide prior notice to the City of all such meetings and prepare and distribute minutes. Attend separate meetings with the City as requested by the City.
- 2.3.3** Review the Project Schedule with the Trade Contractors and, if necessary, expand the level of detail to incorporate specific Trade Contractor input consistent with the overall completion requirements. Provide regular monitoring and updating of the Project Schedule and various sub-networks as construction progresses. Identify potential variances between scheduled and probable milestone dates. Review schedule for work not started or incomplete and take appropriate measures and action to meet the scheduled milestone dates. Provide summary reports of each monitoring and document all changes. Regular schedule updates and reporting shall be included as part of the Monthly Progress Report required under Paragraph 2.3.1. Display the current Project Schedule in the on-site office for review at progress meetings.
- 2.3.4** Determine the adequacy of the Trade Contractors' labor force and equipment and the availability of materials and supplies to meet the Project Schedule. Take necessary corrective actions when these requirements are not being met by any Trade Contractor and advise the City of same.
- 2.3.5** Give all notices required by law and exercise best efforts to ensure that all Work is performed and constructed so that it complies with the applicable laws and ordinances, the Plans and Specifications, requirements of regulatory agencies having jurisdiction on the Project including, without limitation, the requirements of the National Fire Prevention Association (NFPA), the State Fire Marshall, and the Occupational Safety and Health Administration (OSHA), and all codes governing public buildings, without, however, assuming any of the A/E's responsibilities for design in accordance therewith. The CM/GC shall be responsible for performing all Work so that it is satisfactory to the regulatory agencies required to inspect and approve the Work. It is not the responsibility of CM/GC to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations unless such laws, statutes, building codes and regulations bear upon the performance of the Work by the CM/GC. However, should the CM/GC become aware of any conflicts, inconsistencies, or omissions in the Plans and Specifications which might result in work inconsistent with the requirements of such regulatory agencies, the CM/GC shall, at once, notify the City and request its written instruction and interpretation of the Plans and Specifications. If the CM/GC performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the City, it shall assume full responsibility therefore and shall bear all costs attributable thereto.

**2.3.6** Use the Project site only for purposes necessary to the performance of this Contract. Confine any equipment, apparatus, materials and operations within reasonable limits designated or allowed by City and refrain from unnecessarily encumbering the Project site with materials. If the GMP provides for Owner-Furnished-Contractor- Installed ("OFCI") materials or equipment, whenever such OFCI materials and equipment are shipped to the Project site, the CM/GC shall notify the City and shall be responsible for the acceptance, proper storage, and incorporation into the Work of such OFCI material and equipment.

**2.3.7** Supervise and evaluate the work of Trade Contractors for determination of defects and deficiencies and promptly report to the City any observed deficiencies or defects and implement the corrective actions directed by the A/E. Facilitate separate inspections by regulatory agencies. Provide to the City suitable access to observe the Work. If any portion of the Work is covered, the City may direct in writing that CM/GC uncover that portion of the Work so that the A/E may inspect or observe that portion of the Work. If that portion of the Work which is uncovered is not defective and is in accordance with the Plans and Specifications, the cost of uncovering that portion of the Work, repairing any portion of the Work damaged thereby, and recovering that portion of the Work shall cause the Guaranteed Maximum Price to be increased in accordance with Article 7B, Paragraph 7.0.2. If any portion of the Work uncovered is defective or is not in accordance with the Plans and Specifications, then the cost of repairing the defective work, uncovering and recovering such portion of the Work and the cost of repairing any portion of Work damaged thereby shall be the responsibility of the CM/GC. If a portion of the Work is covered contrary to the City's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the City, be uncovered for the City's observation and be replaced at the CM/GC's expense without change in the Contract Time.

**2.4 Physical Construction.** Provide all supervision, labor, materials, construction equipment, tools and subcontract items which are necessary for the completion of the Work which are not provided by the Trade Contractors. To the extent that the CM/GC performs any portion of the Work with its own forces, it shall, with respect to such work, perform in accordance with the Contract Documents and all requirements of this Contract shall apply as if it were a Trade Contractor for that portion of the Work. The CM/GC shall not bid on any of the trade work in competition with Trade Contractors or perform such work with its own forces without the prior written consent of the City.

**2.4.1** Make provisions for all temporary facilities, equipment and services which are necessary for the performance of the Work or which are required by the Trade Contractors for performing the Work in compliance with the Contract Documents, and remove such facilities and terminate such services upon the completion of the Project.

- 2.4.2** Furnish and install construction signs advertising the Project as directed and approved by the City prior to their installation. Allow no other signs to be displayed on the Project site, except as approved by the City.
- 2.4.3** Keep the Project site clear and clean during construction, including the removal of all waste materials, rubbish, tools, scaffolding, and surplus materials and equipment from the Project site. Comply with all applicable Federal, State and local laws, regulations, ordinances, codes and standards concerning environmental control during construction, including reduction of air pollution, dust and noise control, containment of chemical vapors, control of engine exhaust gases, control of smoke, reduction of water pollution by control of sanitary facilities, proper storage of fuels and other potential contaminants and prevention of siltation and land erosion. Maintain streets and sidewalks around the Project Site in a clean condition. Remove all spillage and tracking arising from the performance of the Work from such areas, and establish a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust upon such areas.
- 2.4.4** Ascertain any restrictive traffic conditions and comply with reasonable requests of the City in the use and operation of trucks and equipment on the Project site. Protect existing curbs, walks or other improvements from damage by heavy equipment.
- 2.5 Cost Control.** Develop and maintain an effective system of Project cost control which is satisfactory to the City. Revise and update the Project Budget as approved changes occur, and develop cash flow reports and forecasts as needed. Identify variances between actual and budgeted costs and advise the City whenever projected costs exceed budgets. Cost control reports shall be included as part of the Monthly Progress Report required in Paragraph 2.3.1 hereof.
- 2.5.1** The CM/GC shall maintain a system of accounting consistent with generally accepted accounting principles regulations. The CM/GC shall preserve all accounting records for a period of ~~five (5)~~three (3) years after final acceptance of the Work. The City shall have access to all such accounting records at any time during the performance of the Work and for a period of ~~five (5)~~three (3) years after final acceptance of the Work.
- 2.6 Discounts/Sales Tax Exemption.** All discounts for prompt payment shall accrue to the City to the extent the Cost of Work is paid directly by the City or from a fund made available by the City to the CM/GC for such payments. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the City.
- 2.6.1 Owner-Direct Purchase.** The CM/GC agrees to arrange for purchase of materials and other items subject to the State sales tax through the City of



Edgewater to save, where practicable, the payment of sales taxes. The CM/GC will establish a procedure with the City for such purchase. In the event the City does not execute the appropriate documents submitted by the CM/GC within fifteen (15) days after receipt of same, the CM/GC may, in its sole discretion, order such materials irrespective of loss of cost savings. It is the intent of these provisions to implement the cost savings afforded by the sales tax exemption without delay of the Work and that the CM/GC retain complete control of the Project Schedule. The CM/GC shall not be entitled to a time extension in the event that delay is occasioned by the City's direct purchase of materials.

**2.7 Change Orders.** Develop and implement a system for the preparation, review and processing of Change Orders. Without assuming any of the Architect/Engineer's responsibilities for design, recommend necessary or desirable changes to the City and Architect/Engineer, review all proposed changes and submit recommendations to the City.

**2.7.1** When requested by the City, promptly prepare and submit estimates of probable cost for changes proposed in the Work including similar estimates from the Trade Contractors. If directed by the City, promptly secure formal written Change Order Proposals from such Trade Contractors.

**2.8 Payments to Trade Contractors.** Develop and implement a procedure mutually acceptable to the City for the review, processing and payment of Trade Contractors' applications for progress and final payments consistent with Article 10B, hereafter.

**2.8.1 Contractor's Payment of Subcontractors.** Contractor shall save and hold the City harmless from any and all claims or actions by Contractor's Subcontractors and/or Sub-subcontractors for payment of monies owed by Contractor for Work performed under this Contract.

**2.8.2** Nothing in this Contract shall create any obligation on the part of the City to pay directly to any Subcontractor of Contractor or Sub-subcontractor of Subcontractor any monies due to such Subcontractor, or claims of a Subcontractor or Sub-subcontractor of Subcontractor for amounts owed by Contractor to Subcontractor for Work performed under this Contract

**2.9 Permits and Fees.** Obtain all building permits and special permits for permanent improvements, excluding permits for inspection or temporary facilities required to be obtained directly by the Trade Contractors. Obtain approvals from all the authorities having jurisdiction over the Project or the completed facilities. Certificates of inspection, use and occupancy shall be delivered to the City upon completion of the Work in sufficient time for occupation of the Project in accordance with the Master Schedule.

**2.10 Labor Safety Program.** The CM/GC shall be responsible for initiating, maintaining and supervising effective safety programs and shall require similar programs of the Trade

Contractors. The current OSHA guidelines shall serve as the basis for the Project Safety Program.

- 2.10.1** Designate a qualified member of the Project site organization as the Safety Engineer. The Safety Engineer's duties shall include development of the means and procedures to prevent accidents and injury to persons or damage to property and to administer the Project Safety Program.
- 2.10.2** Comply with all applicable provisions of Federal, State and local laws relating to labor safety.
- 2.10.3** Promptly notify the City in writing upon receiving notice of filing of any charge of non-compliance with OSHA or upon receiving notification that a Federal or State Inspector shall visit the Project site.
- 2.10.4** Inform all employees of applicable safety and security rules and of all related procedures, before beginning work on the Project.
- 2.10.5** At progress meetings with Trade Contractors conduct a review of job safety and accident prevention, and prepare minutes of such meetings that will be available for review by the City, on request.
- 2.10.6** Require Trade Contractors to make provisions for all planking, bridges, bracing, shoring, sheet piling, lights and warning signs necessary for the protection of streets, adjacent property and persons. Do not permit Trade Contractors to excessively load any structure. Protect the completed segments of the Work, stored materials and equipment, City's property, all completed Work with delicate finishes, and adjacent property from loss or damage. Require Trade Contractors to use all recognized safety procedures and techniques to protect life and property during energizing and de-energizing of all electrical equipment. Coordinate and schedule required inspections so as not to interfere with the progress of the Work.
- 2.10.7** Make provisions for Project security to protect the Project site and materials stored on-site against theft, vandalism, fire and accidents etc., as required by Project site conditions. Mobile equipment and operable equipment stationed at the Project site and hazardous parts of new construction subject to mischief shall be locked or otherwise made inaccessible, inoperable or protected when unattended.
- 2.10.8** In the event of accidents involving personal injury or property damage, immediately notify the City and furnish as much data as is available. As soon as practicable, but not later than forty-eight (48) hours, submit a report to the City in writing regarding the extent of damage or injury, the persons involved and their employers, the number of days persons are hospitalized, and any other pertinent

information required by the City. Require similar information from the Trade Contractors.

**2.11 Document Interpretation.** Execution of this Contract by the CM/GC shall be an acknowledgment that the Contract Documents are full and complete, are sufficient to have enabled it to determine the cost of the Work and that the Plans, the Specifications, and all addenda are sufficient to enable the CM/GC to perform the Work outlined in those documents in accordance with applicable laws, statutes, building codes and regulations, and otherwise to fulfill all of its obligations under the Contract Documents. If the CM/GC performs any portion of the Work knowing that any of the Contract Documents contain a recognized error, inconsistency or omission, the CM/GC shall be responsible for such performance and shall bear the cost for correction of such performance.

**2.11.1** CM/GC shall compare and check the field conditions, dimensions, elevations, lines, grades and other data indicated on the Plans and Specifications with the actual field conditions, dimensions, elevations, lines and grades. Promptly bring any observed conflicts, discrepancies or hidden conditions to the attention of the A/E and obtain the City's written instruction before proceeding with the portion of the Work affected. Make necessary provisions in the trade contracts requiring actual verifications of field dimensions, elevations, lines and grades as a requirement of shop drawing submission.

**2.12 Shop Drawings and Samples.** In collaboration with the A/E, CM/GC shall establish and implement procedures for tracking and expediting the processing and approval of shop drawings and samples. Prior to commencement of the Work, a conference will be held to review the Project Schedule, establish the Submittal Schedule for samples, shop drawings and other submittals and to establish a working understanding and cooperation between the parties.

**2.12.1** Prepare and review with the Architect/Engineer a submittal control log or schedule identifying all submittals and shop drawings anticipated or required from Trade Contractors and Project suppliers and indicating the dates required for submission to maintain the Project Schedule. The Submittal Control Log shall contain the date submitted to the Architect, the date received from the Architect, the date resubmitted to the Architect and the date received from the Architect. Said log shall consecutively number all submittals regardless of nature for future tracking and revisions noted by letter designation.

**2.12.2** Identify any submittals requiring expedited submission and review by the Trade Contractors and Architect/Engineer, respectively. Provide regular updating of the submittal control log or schedule for review at progress meetings.

- 2.12.3** Require the Trade Contractors to provide such identification data and supporting documentation on shop drawings as may be reasonably required by the Architect/Engineer.
- 2.12.4** Review all shop drawings for conformance to the Plans and Specifications and return to the Trade Contractors, for correction and resubmittal, any shop drawings or submittals not consistent with the Plans and Specifications. If shop drawings show variations from Contract Documents, whether due to standard shop practice or other reasons, CM/GC shall make specific mention of such variation in its submittal letter. Acceptance of any such variations require the express written approval of the Architect/ Engineer, and neither the stamp "Approved" nor the stamp "Approved as Noted" shall constitute written approval of such variation unless CM/GC made specific mention of the variation in its submittal letter. The Architect/Engineer shall, within fifteen (15) days after receipt of same, review shop drawings and samples and return to CM/GC the shop drawings stamped "Approved", "Approved as Noted", "Revise as Noted", "Rejected," or "Resubmit." Shop drawings stamped "Rejected" or "Resubmit", and unacceptable samples shall be returned to CM/GC for correction and resubmission. CM/GC shall correct and resubmit shop drawings and samples, as necessary and as required by the Architect/Engineer. CM/GC shall retain on the Project site the originals of all approved shop drawings.
- 2.12.5** Nothing in the A/E's review of shop drawings and samples shall be construed as authorizing additional work and/or increase of the Cost of Work, which authorization may only be granted by issuance of Change Orders. The Architect/Engineer's review does not relieve the CM/GC or its Trade Contractors of the responsibility for strict adherence to the requirements of the Plans and Specifications, nor for errors, omissions or deficiencies in shop drawings or samples or in the performance of the Work, excluding design errors and omissions or design deficiencies for which the Architect/Engineer is responsible.
- 2.12.6** Begin no fabrication of materials and permit no work to be installed unless applicable submittals have been stamped "Approved" or "Approved as Noted" by the Architect/Engineer.
- 2.12.7** Prepare Coordination Drawings as may be necessary to properly coordinate the Work among the Trade Contractors.
- 2.13 Reports and Project Site Documents.** Record the progress of the Project. Submit written Monthly Progress Reports to the City including information on the Trade Contractors' work, percentage of Work completed, current Project Budget (the GMP Status), schedule update and various reports showing current estimated cost to complete, and other data as required by the City. Keep a daily log available to the City. Record information related to the daily construction activity as required and approved by the City.

**2.13.1** Maintain at the Project site, on a current basis: copies of all trade contracts, set of plans with latest revisions, samples, purchasing documents for materials and equipment, maintenance and operating manuals and instructions and any other construction related documents. Obtain data from Trade Contractors and maintain a current set of Record Drawings (also referred to as "As-Built" Drawings) recording all deviations from the approved Plans and Specifications as they occur, to clearly depict how the Work was actually performed, signed by the CM/GC, certifying that they show complete and exact "as-built" conditions, stating sizes, kind of materials, vital piping, conduit locations and similar matters. Pay particular attention to the accurate recording of concealed electrical and mechanical work. Include necessary descriptions, plans, photographs, sketches, marked prints and similar data. Require similar information to be maintained by the Trade Contractors. Maintain such records at the Project site and keep current as the Work progresses. Make all records and related data available for regular review by the Architect/Engineer. At the completion of the Project, submit all such record documents to the City in a format acceptable to the City. The CM/GC may retain copies thereof for its files.

**2.13.2** All plans, specifications, computations, sketches, test data, survey results, photographs, renderings and other material relating to the Work, whether furnished to or prepared by the CM/GC, shall remain the property of the City. The CM/GC may retain copies thereof for its files.

**2.14 Substantial Completion.** When the CM/GC considers the Work or designated portions thereof to be substantially complete and ready for beneficial occupancy, provide written notice to the City and A/E that the Work is ready for inspection, and prepare for the City a list of incomplete or unsatisfactory items and a schedule for their completion. Failure to include an item on such list does not alter the responsibility of the CM/GC to complete all Work in accordance with the Contract Documents. Before providing written notice to the A/E, the City and the Owner's Representative that the Work is ready for inspection, the CM/GC shall obtain all certificates of occupancy that may be required prior to occupancy, and any specialty certificates from the Trade Contractors or any other approvals and acceptance required by the Federal or State Government or other authority or governmental agency having jurisdiction, unless unable to do so as a result of design deficiencies. Within ten (10) days of receipt of the CM/GC's request for inspection, the A/E shall commence the Substantial Completion inspection and complete it expeditiously. Should the A/E find the work to be satisfactory, the A/E shall issue a Certificate of Substantial Completion along with a Punch list of incomplete and/or incorrect work items.

**2.14.1** The City shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding that the scheduled time for completing the entire Work or such portions of the Work may have not, yet, expired and providing that such actions of the City do not delay the overall

completion of the Work. However, such use and occupancy of facilities shall not be deemed to be an acceptance by the City of any work not executed in accordance with the Contract Documents. Provided, however, such partial occupancy or use by the City shall be subject to the consent of CM/GC's insurer and surety and shall be authorized by public authorities having jurisdiction over the Work; provided further, such partial occupancy or use may not commence until the City and the CM/GC have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damages to the Work and insurance and have agreed in writing concerning the period for correction of the Work and commencement of warranties required hereunder. Consent of the CM/GC to partial occupancy and use shall not be unreasonably withheld. Immediately prior to such partial occupancy and use, the City, the CM/GC, and the A/E shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**2.14.2** In the absence of a Certificate of Substantial Completion issued by the City, no portion of the Work shall be subject to the activation of CM/GC's bonded one (1) year guaranty on workmanship and materials, as provided in Paragraph 2.17 hereafter, despite the fact that the building may be partially utilized. Where mechanical equipment is used prior to final inspection, the City shall perform routine maintenance and furnish those supplies that normally wear out in use, such as seals, packing, lubricants, etc. However, any major failure or breakdown of equipment not attributable to lack of maintenance or improper use or abuse of the equipment by the City shall be made good by the CM/GC under the terms of the Contract Warranty, manufacturers' warranties, bonds, or other such instruments of guaranty.

**2.14.3** Prior to City's occupancy of any portion of the facilities, arrange for final cleaning and operational readiness of the designated areas of the Work, to the satisfaction of the City.

**2.15 Start-Up.** Prior to the issuance of the Certificate of Substantial Completion, the CM/GC with its Trade Contractors shall start up, test, adjust, balance and otherwise place in a satisfactory working condition all items of mechanical and electrical systems. In the presence of City's maintenance personnel and the City, direct the readiness checkout of utilities, systems and equipment.

**2.15.1** The CM/GC and manufacturer representatives, as necessary, shall provide free full instruction to City's maintenance personnel in: (i) the proper use of the installed equipment; (ii) the proper methods of cleaning and maintaining all of the finished surfaces; and (iii) the proper methods of replacement of the consumable items such as filters, light bulbs, washers, etc.

**2.16 Final Completion.** When the CM/GC considers the Work to be finally complete, provide written notice to the City that the Work is ready for final inspection. Secure and transmit to the City and A/E all required guarantees, affidavits, releases, bonds and waivers. Turn over to the City all keys, manuals, record plans and maintenance stocks.

**2.16.1** After the A/E has executed the Certificate of Substantial Completion, and prior to the execution of the Certificate of Final Completion, the CM/GC shall submit to the City, in addition to affidavits and other documents as required by the Contract, the following items:

**2.16.1.1.** Validated warranties and notarized copies of all guarantees for equipment and materials as required herein.

**2.16.1.2.** Copies of all approved shop drawings or installation diagrams and three (3) copies of all brochures, manuals, etc., of all equipment as offered by the manufacturers.

**2.16.1.3.** List of all Trade Contractors and major suppliers (shall include address, telephone number and name of individual to contact regarding this Project).

**2.16.1.4.** Record Drawings ("As-Built" drawings) of the completed Project. The CM/GC shall acquire Mylar reproducible of the original Contract Plans, upon which it shall cause to be recorded changes from the Original Contract Documents.

**2.16.1.5.** Three (3) copies of an operating manual for the Project, assembled and bound, presenting full details for care and maintenance of all equipment incorporated in the Work, including literature relating to items such as motors, wiring diagrams, instruction sheets and other information pertaining to equipment operation and maintenance.

**2.16.2** These items shall be packaged in a suitable metal file box, supplied for the Project as approved by the Program Manager, and shall be properly indexed. Individual submission of these items shall not be accepted.

**2.17 Contract Warranty.** The CM/GC warrants that all materials and equipment included in the Work are new, unless otherwise specified, and that all the Work is of good quality, free from improper workmanship and defective materials and in conformance with the Contract Documents. The CM/GC further agrees to correct any portion of the Work defective in material or workmanship for a period of one (1) year from the date of the Project Completion or for such longer periods of time as may be set forth with respect to specific warranties contained in the technical sections of the Project Specifications. The CM/GC shall collect and deliver to the City in a manner acceptable to the City any specific written warranties given by manufacturers or required by the Contract

Documents and as required in Paragraph 2.16.1, above, which warranties shall bear a date of commencement and stating the period of warranty as required by the Contract Documents. The CM/GC is responsible for the warranty of all Work, whether furnished by the CM/GC, a Trade Contractor, or other person or entity furnishing a portion of the Work.

**2.17.1** During the warranty period, if the CM/GC is unable or unwilling to respond immediately to make emergency repairs, under conditions which the City may determine to be an emergency situation, the City reserves the right to make such emergency repair and then to bill the CM/GC for the cost of such repair.

**2.18 Communications.** Make all communications to the City through the City Engineer or Designee, who shall represent the City as Project Director. The City Contracts Administrator shall receive a copy of all correspondence.

**2.19 Additional Services.** At the request of the City and upon written authorization from the City defining the extent and rate of compensation mutually acceptable for such services, the CM/GC shall provide additional services as authorized via a change order pursuant to Article 7B.

## **ARTICLE 3B: RESPONSIBILITIES**

### **3.0 CITY'S RESPONSIBILITIES.**

**3.0.1** It is expressly understood that the City shall retain, under a separate contract the architectural, engineering, and other professional services required for the design of the Project.

**3.0.2** City shall disclose, to the extent practicable and upon written request from CM/GC, the sources of funding for the Project and the particular conditions and requirements, if any, imposed by the funds providers and the extent to which the CM/GC's activity is affected by such requirements.

**3.0.3** City shall designate a representative who shall be fully acquainted with the Project and has authority to approve the Project Budget and subsequent changes in that budget (i.e., Change Orders), render decisions promptly, and furnish information expeditiously.

**3.0.4** City shall retain a Threshold Inspector for the Project as may be required by the Florida Threshold Law and shall provide Soil and Material Testing Services under a separate contract.

**3.0.5** Upon request of the CM/GC, the City shall furnish any surveys, soils reports, reports describing subsurface conditions, information concerning legal limitations on construction of improvement, information concerning utility locations, and



information concerning the legal description for the property which the City has in its possession. The City does not assume responsibility for the accuracy of such surveys, reports or information and the CM/GC shall satisfy itself as to the accuracy and reliability of such surveys, reports and information. The CM/GC represents that it is familiar with the Project site and has received all the information it needs concerning the conditions of the Project site. The CM/GC represents that it has inspected the location of the Work and has satisfied itself as to the condition of the site, including, without limitation, all structural, surface and subsurface conditions. The CM/GC shall undertake such further investigations and studies as may be necessary or useful to determine surface and subsurface conditions. Based on the foregoing inspections, understandings, contracts and acknowledgments, the CM/GC agrees and acknowledges (i) that the Guaranteed Maximum Price is reasonable compensation for all the Work, including all unforeseen, foreseen and foreseeable risks, hazards, and difficulties in connection with the Work, and (ii) that the Contract time is adequate for the performance of the Work, and (iii) that the Work shall not result in any lateral or vertical movement of any structure.

- 3.0.6** City shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities and furnish and pay for legal and auditing services as may be required in the process of providing these items.
- 3.0.7** City will furnish to CM/GC, without charge, all copies of Plans and Specifications necessary to perform the Work.
- 3.0.8** Without assuming any responsibilities for design or construction deficiencies, if the City becomes aware of any fault or defect in the Work or any non-conformance with the Plans and Specifications or deficiencies in CM/GC's services, the CM/GC shall be notified thereof.
- 3.0.9** The City and its representatives shall communicate with the Trade Contractors only through the CM/GC.
- 3.0.10** The City shall be responsible for the removal, encapsulation, transportation and disposal of any asbestos or asbestos-related products as may be required in connection with the Project, unless such products have been brought on the Project site by the CM/GC or any of his Trade Contractors. City shall indemnify and hold harmless the CM/GC, its subcontractors, agents and employees from and against all loss, expense or damage (including, but not limited to, attorney's fees incurred by CM/GC) as a result of the City's removal and disposal from the Project site of all pre-existing hazardous materials. The CM/GC shall not be required to perform without its consent any work related to hazardous materials.

### **3.1 ARCHITECT/ENGINEER'S RESPONSIBILITIES.**

- 3.1.1** The Architect/Engineer (A/E) is the person, firm, or corporation selected by the City to provide Design and Construction Administration Services and is referred to, throughout this Contract, as if singular in number and neutral in gender. The A/E is responsible for: the complete design of the Project ("Architect/Engineer" function) monitoring of and overseeing the CM/GC's performance of the Contract. The A/E, at its option, will fulfill some of his responsibilities through subconsultants (i.e. Architect, Structural/Civil Engineer, Mechanical Engineer etc.)
- 3.1.2** The A/E is the interpreter of the Plans and Specifications issued for construction and subsequent revisions. The A/E's written decisions as to the true intent and meaning of the Plans and Specification shall be final and binding. All such interpretation shall be made in writing or in the form of drawings. The A/E shall determine whether CM/GC has complied with the Plans and Specifications and the A/E has authority to reject and stop work which does not conform to the Plans and Specifications. The CM/GC shall report, immediately, to the City any such stop work order.
- 3.1.3** The A/E and its representatives shall have access to all Work in preparation and progress. The A/E is obligated to give notice to the CM/GC when deficiencies are first observed and any such notice shall be in writing.
- 3.1.4** The A/E or its representative shall certify the percentage of Work completed on a monthly basis and such certification shall be used in the determination of the amount of payment due CM/GC for Cost of the Project; review and approve shop drawings and samples; review and approve or reject CM/GC's Record Drawings ("As-Built" Drawings), written guarantees and operating and maintenance manuals; approve test procedures, witness and approve field tests, including equipment performance tests and start-up tests of major specialized systems; prepare punch lists and approve the completed portions of the Work; and perform other functions as City may designate.
- 3.1.5** At City's option and direction, and under separate contract, the A/E may provide a Resident Representative at the Project site to observe the progress and quality of the Work being performed and to determine, in general, that the Work is proceeding in accordance with the Contract Documents.

## **3.2 OWNER'S REPRESENTATIVE RESPONSIBILITIES.**

- 3.2.1** The Owner's Representative (OR) is the person, firm or corporation selected by the City to provide general oversight services for the City during both the design and construction phases of the Project.
- 3.2.2** The OR may provide any or all of the following services during the Project:

- 3.2.2.1** Review and monitoring of the design schedule;
- 3.2.2.2** Review and monitoring of project budgets;
- 3.2.2.3** Permitting assistance;
- 3.2.2.4** Estimating;
- 3.2.2.5** Value Engineering Evaluation;
- 3.2.2.6** Claims prevention;
- 3.2.2.7** Review of pay requests of design and construction firms;
- 3.2.2.8** Provide on-site construction supervision and reporting;
- 3.2.2.9** Participate/conduct periodic progress meetings;
- 3.2.2.10** Monitor the construction schedule;
- 3.2.2.11** Prepare management reports;
- 3.3.2.12** Assist the design team in the preparation of punch lists and final completion inspection;
- 3.2.2.13** Assist in the assembly and transmittal of:
  - 3.2.2.13.1** As-built documents;
  - 3.2.2.13.2** Manuals;
  - 3.2.2.13.3** Warranties.
- 3.2.2.14** Provide professional testimony as may be required.

#### **ARTICLE 4B: TRADE CONTRACTORS AND TRADE CONTRACTS**

- 4.0** A Trade Contractor is a person or entity who has a direct contract with the CM/GC to perform any part of the Work in accordance with the Contract Documents. The term "Trade Contractor" is referred to throughout the Contract Documents as if singular in number and neutral in gender and means a Subcontractor or its authorized representative. The term Trade Contractor does not include any of the City's separate Contractors or their subcontractors.
- 4.1** The CM/GC may, in its sole discretion, take all steps necessary, including arbitration or litigation, to assure that the Trade Contractors perform their contracts in accordance with the terms of those contracts. Trade contracts will be awarded after the proposals

received from qualified Trade Contractors are reviewed by the City and the CM/GC and authorization from the City, pursuant to Article 2B, Paragraph 2.3.3, is received.

- 4.2** Each trade contract awarded by the CM/GC is a separate contract awarded on the basis of competitive bidding. These contracts are synonymous to the term "subcontracts". The relationship of the CM/GC to the Trade Contractor is the same as that of a General Contractor to a Subcontractor.
- 4.3** Unless otherwise mutually agreed, in writing, between the CM/GC and a particular Trade Contractor, all Trade Contractors shall be required to provide payment and performance bonds in an amount equal to the full value of each trade contract, to protect the City, the CM/GC and all other appropriate parties to this Contract.
- 4.4** Nothing in this Contract with the CM/GC, or in its trade contracts and purchase orders issued to its suppliers in connection with the performance of the Contract, shall create any contractual relationship between the City and any Trade Contractor or supplier (except as may be necessary to provide the required indemnification), except as may be necessary to secure to the City, State of Florida Sales Tax exemptions to the extent provided by law, and all such trade contracts and purchase orders shall specifically state that no such relationship is created thereby. The City may furnish to any Trade Contractor or supplier, to the extent practicable, evidence of amounts paid to the CM/GC on account of specific work done in accordance with this Contract. However, nothing in the Contract Documents requires the City to pay or see to the payment of any monies due any Trade Contractor, except as otherwise may be required by law.
- 4.5** Notwithstanding anything else contained herein, the City reserves the right to make any payments for the purpose of removing or avoiding a lien or for any other reason whatsoever, directly to Trade Contractors or their subcontractors for or on account of work performed or materials furnished under the Contract. Provided, however, the City shall first give the CM/GC seven (7) days written notice of its intent to make such payment. If, prior to the end of said seven (7) days, the CM/GC shall object in writing to the payment proposed by the City, or any portion thereof, the City shall not exercise its rights hereunder; provided, the CM/GC has, within ten (10) days of its objection to any such notice from the City, reasonably documented to the City the basis of his objection. If the CM/GC fails to object as hereinabove provided, the City shall give the CM/GC seven (7) days' notice prior to making such payment. To the extent that any such payments are made in good faith and upon submittal to the City of evidence of their being due and payable, the City shall have no liability in connection therewith and shall have the right to deduct such payments from any amounts owed to the CM/GC.
- 4.6** Each trade contract shall be similar in form and substance to a standard form recommended by the CM/GC and approved by the City and each shall provide that (i) the Trade Contractor, to the extent of the Work to be performed by the Trade Contractor, is bound to the CM/GC by the terms of the Contract Documents and shall assume toward the CM/GC all the obligations and responsibilities which the CM/GC, by this

Contract, assumes toward the City, (ii) the City is an intended third party beneficiary of the Trade Contract, and (iii) the Trade Contractor agrees to a contingent assignment of the Trade Contract by the CM/GC to the City the contingency being termination by the City of the CM/GC for cause and written acceptance of the assignment by the City. Each Trade Contractor shall include similar provisions in its subcontracts. A copy of each Trade Contract shall be furnished to the City.

## **ARTICLE 5B: CONTRACT TIME; LIQUIDATED DAMAGES; LIMITATION OF LIABILITY; INDEMNIFICATION**

**5.0 Contract Time Defined.** Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Substantial Completion of the Work, as defined in Paragraph 5.1.

**5.0.1** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically designated. All time limits stated in the Contract Documents are of the essence of the Contract.

**5.1 Date of Commencement and Substantial Completion.** The date of commencement of the Work is the date established in the Notice to Proceed. The Work to be performed under this Contract, Part B, shall be commenced within ~~ten (10)~~thirty 30 days after receipt of the Notice to Proceed from the City (Date of Commencement), and, subject to such time adjustments that may be authorized under this Contract, shall be substantially completed (Substantial Completion) no later than ~~365-487~~ calendar days after the agreed upon Notice to Proceed date issued by the City (hereinafter "Contract Time").

**5.1.1** The CM/GC shall begin the Work on the Date of Commencement and shall carry the Work forward, expeditiously, with adequate forces and shall achieve Substantial Completion within the Contract Time.

**5.1.2** The Date of Substantial Completion of the Work is the date certified by the Architect when construction is sufficiently complete, in accordance with the Contract Documents, so the City can occupy or utilize the Work for the use for which it is intended.

**5.2 Liquidated Damages.** If the CM/GC fails to achieve Substantial Completion of the Work within the Contract Time and as otherwise required by the Contract Documents, the City shall be entitled to retain or recover from the CM/GC, as liquidated damages and not as a penalty, the per diem amount specified hereinafter, commencing on the first day following expiration of the Contract Time and continuing until the actual date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the City will incur as a result of delayed completion of Work and the parties acknowledge that the exact amount of such damages would otherwise be extremely difficult to ascertain. Therefore, the mutually agreed upon amount for liquidated damages shall be ONE THOUSAND DOLLARS and 00/100

(\$1,000.00) per day, and not as a penalty. The City may deduct liquidated damages described in this paragraph for any unpaid amounts then or thereafter due to the CM/GC under this Contract. Any liquidated damages not so deducted from any unpaid amounts due the CM/GC shall be payable to the City at the demand of the City. These liquidated damages are in lieu of liability for all extra costs, losses, expenses, claims, penalties, and any other damages of any nature incurred by CM/GC resulting from not attaining the Substantial Completion Date.

**5.3 Notice to Suspend Work.** The CM/GC shall delay or suspend the progress of the Work, or any part thereof, whenever it shall be so required by written order of the City, and for such periods of time as the City may order, providing that in the event of such delays or suspension of the progress of the Work, or any part thereof, the Contract Time for the Work so suspended or of Work delayed by such suspension shall be extended for a period equivalent to the time lost by reason of the suspension(s), except when CM/GC is notified to suspend Work on account of faulty construction or construction methods that endanger the Work. Such order of the City shall not otherwise modify or invalidate in any way any of the provisions of this Contract, and CM/GC shall not be entitled to any damages or compensation from City on account of such delays or suspensions, except Direct Costs (as identified in Articles 8B and 9B, Paragraph 9.1) resulting from an extension or delay of the overall completion of the Project beyond the contract completion date.

**5.4 Delays and Extensions of Time.** When alterations or additions are made to the Work pursuant to authorized Change Orders, the CM/GC shall submit to the City, in writing, any resultant claim for an extension of the Contract Time, and shall deliver such claims to the City within twenty (20) days after the occurrence of the event giving rise to the claim. The extension of Contract Time shall be submitted to the City (Edgewater City Council) for approval. Any approved change in Contract Time shall be incorporated in a Change Order. No changes in Contract Time shall be made for any alterations or additions to the Work which are not demonstrated to affect the overall completion of the Project. The provisions of this paragraph shall, in no way, alter, change or invalidate the provisions of the Contract Documents with respect to liquidated damages. The CM/GC shall not be entitled to any damages or other compensation solely on the account of an extension of the Contract Time.

**5.4.1** Should the CM/GC be obstructed or delayed in the commencement, prosecution or completion of any part of the Work by any act or delay of the City; or by any acts or neglect of any separate Contractor employed by the City; or by riot, strikes, insurrection, war, pestilence, fire, lightening, earthquakes, hurricanes, floods, epidemics, abnormal weather conditions; or through any act, default or delay of other parties under contract with the City; or by any other cause, which are, in the opinion of the City, entirely beyond the control of CM/GC, then the Contract Time for the portion of the Work so delayed shall be extended by Change Order to the extent such delay will prevent the CM/GC from achieving Substantial Completion within the Contract Time and if the performance of the

Work is not, was not or would not have been delayed by any other cause for which the CM/GC is not entitled to an extension in the Contract Time under the Contract Documents. The CM/GC further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the CM/GC, (ii) could not be limited or avoided by the CM/GC's timely notice to the City of the delay and (iii) is of a duration not less than one (1) day. Such allowance shall not be made unless a claim for extension of time is made by the CM/GC to the City, in writing, within twenty (20) days from the date when the alleged cause for delay occurred.

- 5.4.2** It is further expressly agreed that the CM/GC shall not be entitled to any damages or compensation from the City on account of any delays resulting from any of the causes specified above except that if delays are caused by the City or by parties under contract with the City, the CM/GC shall be entitled to direct job costs (i.e. Project site personnel overhead) resulting from an extension or delay of the overall completion of the Project beyond the contract completion date. Any change in the Contract Time resulting from any claims for delays shall be incorporated in a signed Change Order upon approval of that change by the City (Edgewater City Council).

## **5.5 LIMITATION OF LIABILITY.**

- 5.5.1 Sovereign Immunity.** The City expressly retains all rights, benefits and immunities of sovereign immunity in accordance with section 768.28, Florida Statutes (as amended). Notwithstanding anything set forth in any section of this Contract to the contrary, nothing in this Contract shall be deemed as a waiver of immunity or limits of liability of the City beyond any statutory limited waiver of immunity or limits of liability which may have been or may be adopted by the Florida Legislature and the cap on the amount and liability of the City for damages, regardless of the number or nature of claims in tort, equity, or contract, shall not exceed the dollar amount set by the legislature for tort. Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the City, which claim would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

- 5.5.2 No Third Party Beneficiaries.** Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the City, which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

- 5.5.3 Claims Notice.** The CM/GC shall timely report in writing to the City Clerk's Office any incident which it believes might result in claims against the City under any of the coverage's mentioned herein.

Name: Bonnie Zlotnik, CMC, City Clerk

City of Edgewater  
Office of the City Clerk  
PO Box 100  
Address: 104 N. Riverside Drive  
Edgewater, Florida, 32132  
Telephone: (386) 424.2400 ext. 1101  
Fax: (386) 424-2410  
Email: cityclerk@cityofedgewater.org

## **5.6 INDEMNIFICATION.**

**5.6.1 Indemnification.** The CM/GC shall indemnify, defend and hold harmless the City, including its districts, authorities, separate units of government established by law (constitutional), ordinance or resolution, partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the City has agreed by contract to provide additional insured status from and against all claims, damages, losses, and expenses, including, but not limited to, attorney's fees arising out of, resulting from, or incident to CM/GC's performance of its obligations in whole or part of this Contract, unless such injury or damage is occasioned solely by the fault, negligence, or willful misconduct of the City.

**5.6.2** In all claims against City, CM/GC's indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or any benefits payable by or for CM/GC, or its employees, agents, contractors, or subcontractors.

**5.6.3** IN ACCORDANCE WITH FL STATUTE 558.0035:

- (1) A DESIGN PROFESSIONAL EMPLOYED BY A BUSINESS ENTITY OR AN AGENT OF THE BUSINESS ENTITY IS NOT INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE OCCURRING WITHIN THE COURSE AND SCOPE OF A PROFESSIONAL SERVICES CONTRACT IF:
  - (A) THE CONTRACT IS MADE BETWEEN THE BUSINESS ENTITY AND A CLAIMANT OR WITH ANOTHER ENTITY FOR THE PROVISION OF PROFESSIONAL SERVICES TO THE CLAIMANT;
  - (B) THE CONTRACT DOES NOT NAME AS A PARTY TO THE CONTRACT THE INDIVIDUAL EMPLOYEE OR AGENT WHO WILL PERFORM THE PROFESSIONAL SERVICES;
  - (C) THE BUSINESS ENTITY MAINTAINS ANY PROFESSIONAL LIABILITY INSURANCE REQUIRED UNDER THE CONTRACT; AND
  - (D) ANY DAMAGES ARE SOLELY ECONOMIC IN NATURE AND THE DAMAGES DO NOT EXTEND TO PERSONAL INJURIES OR PROPERTY NOT SUBJECT TO THE CONTRACT.



- (2) AS USED IN THIS SECTION, THE TERM "BUSINESS ENTITY" MEANS ANY CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, LIMITED PARTNERSHIP, PROPRIETORSHIP, FIRM, ENTERPRISE, FRANCHISE, ASSOCIATION, SELF-EMPLOYED INDIVIDUAL, OR TRUST, WHETHER FICTITIOUSLY NAMED OR NOT, DOING BUSINESS IN THIS STATE.

**5.6.4 Indemnification for Grant Funded Projects.** For any agreements that are funded or may in future be funded by Federal Emergency Management Agency (FEMA) Public Assistance grants or other Federal or State grants or program, the following shall apply: Consultant/Contractor shall indemnify, defend and hold harmless the Florida Department of Emergency Management, its employees and/or their contractors (FDEM) and the government of the United States, its employees and/or their contractors (US), from and against all claims, damages, losses, and expenses, including, but not limited to, attorney's fees arising out of, resulting from, or incident to Contractor's performance of its obligations in whole or part of this Agreement, unless such injury or damage is occasioned solely by the fault, negligence, or willful misconduct of the FDEM, or US.

**5.6.5** In all claims against FDEM or US, Consultant/Contractor's indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or any benefits payable by or for Consultant/Contractor, or its employees, agents, contractors, or subconsultants/subcontractors.

## **ARTICLE 6B, CM/GC'S COMPENSATION**

**6.0** In consideration of the performance of the Contract by the CM/GC, the City agrees to pay the CM/GC in current funds, as compensation for their services in the amount of \_\_\_\_\_ (words), (\_\_\_\_\_) (numbers) as the Guaranteed Maximum Price (GMP), more particularly described in Exhibit "A".

**6.1** The CM/GC's Compensation shall include the following:

**6.1.1** Salaries or other compensation of CM/GC's employees at the principal office and branch offices, except employees listed in Paragraph 8.0.1, hereof.

**6.1.2** General operating expenses of CM/GC's principal and branch offices other than the Project site office.

**6.1.3** Any part of CM/GC's capital expenses, including interest on CM/GC's capital employed for the Project, if any.

**6.1.4** Overhead, general expenses, and any other costs incurred by the CM/GC in the performance of the Contract, except as may be expressly included in Article 8B, hereafter.

**6.1.5** Cost in excess of the Guaranteed Maximum Price, if any is incurred.

**6.2** Adjustments of the Compensation shall be made only as follows:

**6.2.1** For approved changes in the Work (additional), as provided in Article 7B, an increase to the Compensation in an equitable amount to be included in the Change Order.

**6.2.2** If the CM/GC is placed in charge of the reconstruction of any insured or uninsured loss, the Compensation shall be increased in the same proportion as set forth above.

## **ARTICLE 7B: CHANGES IN THE WORK**

**7.0** The City, without invalidating this Contract, may order changes in the Work, within the general scope of this Contract, consisting of additions, deletions or other revisions (hereinafter called "Change"). All Changes in the Work shall be authorized by Change Order, as defined in Paragraph 7.0.1, thereafter. Except in cases of emergency endangering life or property, the CM/GC shall not proceed with Changes in the Work without prior written approval of the City.

**7.0.1** A Change Order is a written order to the CM/GC, signed by the City or its authorized agent, issued after the execution of this Contract authorizing, without limitation, a change in: the Work, the method or manner of performing the Work, the GMP, the Fee, the Contract Time, or any or all of them. The procedures to be followed in the implementation of Changes shall be established in collaboration with and as approved by the City.

**7.0.2** The increase or decrease in the GMP resulting from a Change in the Work shall be determined as follows:

**7.0.2.1** By mutual acceptance of a lump sum properly itemized and supported by sufficient data for documentation;

**7.0.2.2** By unit prices previously agreed upon;

**7.0.2.3** By cost of the work as defined in Article 9B; and

**7.0.2.4** By the method provided in Paragraph 7.0.3, hereof.

**7.0.3** If none of the methods set forth in Paragraphs 7.0.2, above, is agreed upon, the CM/GC, upon a notice of changes in the work signed by the City, shall promptly proceed with the work so ordered. The cost of such work shall then be determined on the basis of the reasonable expenditures and savings of those performing the work attributed to the change, including, in the case of an

increase in the Guaranteed Maximum Price, an increase in Compensation in accordance with Article 6B. In such case, as well as under Paragraph 7.0.2 hereof, the CM/GC shall keep and present, in such form as the City may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Work as required in Article 9B, hereafter. In the case of a deductive Change, the amount of decrease in the Cost of the Work will be the amount of the actual net decrease. When both additions and credits are involved in any one Change, the increase in Fee shall be figured on the basis of net increase.

**7.0.4** If during performance of the Work, unknown or latent conditions which are at variance with the conditions indicated in the Contract Documents or with information furnished by the City are encountered, or if unknown or latent conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract are encountered, then the GMP, the Contract Time and the Fee shall be equitably adjusted by Change Order upon claim by either party made within thirty (30) days after the first observance of such conditions, except that the CM/GC shall not receive any additional compensation or Fee for any such conditions unless the existence of those conditions is brought to the City's attention before such conditions are disturbed. No adjustment in the Contract Time or Guaranteed Maximum Price shall be permitted, however, in connection with a concealed or unknown condition which does not differ materially from those conditions disclosed or which reasonably should have been discovered by the CM/GC's prior inspections, tests, reviews and preconstruction services for the Project.

**7.1 Minor Changes in the Work.** The City shall have the authority to order minor changes in the Work, if such changes do not require an adjustment of the Fee or of a Trade Contractor's price or an extension of the Contract Time and are not inconsistent with the intent of the Plans and Specifications. Such changes may be affected by written Field Order and shall be binding on the City and the CM/GC. The CM/GC shall not be entitled to recover any cost resulting from a Field Order or to request or claim an extension of the Contract Time as a result of a Field Order. Should the CM/GC believe that a Field Order will result in an additional cost to the Project or delay the Work, it shall notify the City of that fact and request written confirmation before executing the instructions of such Field Order. The A/E will investigate and make determinations and recommendations.

**7.2 Emergencies.** In an emergency affecting the safety of persons or property, the CM/GC shall act, at its discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the CM/GC on account of emergency work shall be determined in accordance with the provisions of this Article 7B.

## **ARTICLE 8B: CM/GC'S DIRECT LABOR AND PERSONNEL COSTS**

**8.0 Direct Labor and Personnel Costs.** This category of expenses shall include (provided the GMP is not exceeded) and are limited to the following cost items:

- 8.0.1** Wages and employee benefits as may be payable, paid for labor, other than the Project site supervisory and office employees, in the direct employ of the CM/GC and used for performing the Contract work.
- 8.0.2** Reasonable travel and lodging expenses of CM/GC's officers or employees incurred in the discharge of duties connected with the Project. Relocation costs of CM/GC's employees in connection with this Project shall not be reimbursable.

## **ARTICLE 9B: COST OF THE WORK**

**9.0 Cost of the Work.** The Cost of the Work shall include, without limitation, the cost items set forth as follows:

- 9.0.1** The cost of all materials, supplies and equipment incorporated in the Work and the cost of transportation and storage thereof. The City, in its sole discretion, may make payment for materials, supplies or equipment stored off-site.
- 9.0.2** Payments made by the CM/GC to its Trade Contractors for work performed for the Project under trade contracts.
- 9.0.3** The cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers, which are used and consumed in the performance of the Work and the cost, less salvage value, on items used but not consumed which remain the property of the CM/GC. This cost shall not include the cost of materials, supplies, equipment, temporary facilities and hand tools furnished by Trade Contractors as part of their trade work which shall be incorporated in the trade contracts cost.
- 9.0.4** Rental charges of all necessary motor vehicles, machinery and equipment, including hand tools, whether rented from the CM/GC or others, and including transportation and delivery costs, installation, maintenance, repair and replacement, and dismantling and removal, at rental charges consistent with those prevailing in the area of the Project.
- 9.0.5** Actual cost, without mark-up, of the premium for all insurance and bonds which the CM/GC is required to provide pursuant to this Contract.

- 9.0.6** Sales, use, gross receipt, or similar taxes related to the performance of the Work, imposed by any governmental authority and for which the CM/GC is liable.
- 9.0.7** Building and operating permit fees, inspection and filing fees, sewer and water fees and deposits lost for causes other than CM/GC's own negligence.
- 9.0.8** Losses, expenses or damages to the extent not compensated by insurance or otherwise, including settlement made with the written approval of the City.
- 9.0.9** The cost of corrective work (within the GMP limit).
- 9.0.10** Minor expenses such as telegrams, long-distance telephone calls, telephone service at the Project site, postage, office supplies, and similar items.
- 9.0.11** Cost of debris and trash removal including daily cleanup.
- 9.0.12** Cost of final cleanup prior to occupancy including window washing, dusting of all surfaces, carpet cleaning and vacuuming, floor polishing, fixture cleaning etc.
- 9.0.13** Cost related to emergencies affecting the safety of persons and loss of property.
- 9.0.14** Legal costs properly resulting from prosecution of the Work for the City, provided that they are not the result of CM/GC's own negligence or malfeasance. Legal costs incurred in connection with disputes with the City shall not be included in the Cost of the Work.
- 9.0.15** Cost of items related to the Project Safety Program including barricades, firefighting equipment and extinguishers, special and protective wearing apparel and safety equipment, temporary roads and parking, dust and noise control, installation and operation of temporary hoists, scaffolds, ladders and runways, and likely items.
- 9.0.16** Cost of watchmen or similar security services.
- 9.0.17** Cost of survey, measurement and layout work required for the proper execution of the Work.
- 9.0.18** Cost of purchase or rental of office equipment such as typewriters, cameras, radio communications, computers, pagers, copiers, dictating units, and other items such as office and tool trailers, vehicles and furniture purchased by CM/GC in connection with the Work.

**9.0.19** Cost of preparation of shop drawings, coordination drawings, photographs, and "as-built" documentation.

**9.0.20** Cost of data processing, computerized scheduling and document reproduction services required in the performance of the Work.

**9.0.21** Costs incurred during the Warranty Period after completion of the Project (within the GMP limit).

**9.1 General Conditions Cost.** The cost of all items required to provide the General Conditions of the Project shall be segregated and listed, in detail, separately as required in Part A, Article 3A, Paragraph 3.11.

## **ARTICLE 10B: PAYMENTS TO CM/GC**

**10.0 Progress Payments.** Based upon Application for Payment submitted to the A/E by the CM/GC and Certificate of Payment issued by the A/E and approved by the City, the City shall make payment to CM/GC against the account of the GMP, in accordance with the Contract requirements and as provided hereinafter.

**10.0.1** With each Application for Payment, the CM/GC warrants that title to all work, materials and equipment, for which payment is requested will pass to the City, free and clear of all liens, claims, security interests or encumbrances (hereinafter referred to as "liens") either by incorporation in the Work or upon the receipt of payment by CM/GC, whichever occurs first, and that none of the work, materials and equipment for which payment is requested will have been acquired by the CM/GC or any other person performing work or furnishing materials and equipment for the Project, subject to a contract under which an interest therein or an encumbrance thereon is retained or otherwise imposed by the seller, the CM/GC or any other person.

**10.0.2** Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the Project site and, if approved by the City, payments may similarly be made for materials or equipment suitably stored at some other location, if stored in a bonded warehouse in the State of Florida within a radius of 150 miles from the Project site. Payments for materials or equipment stored on or off-site shall be conditioned upon submission by the CM/GC of bills of sale or such other documents, satisfactory to the City, establishing City's title to such materials or equipment or otherwise protecting City's interest, including insurance and providing transportation to the Project site for those materials and equipment stored off-site.

**10.0.3** All payments on trade contracts shall be subject to five percent (5%) retainage until the work of the Trade Contractor is substantially complete as provided in

Article 2B, Paragraph 2.14, hereof. When the CM/GC agrees that the work of any Trade Contractor is fifty percent (50%) complete, he may recommend to the City partial release of retainage. If such an action is acceptable to the City, the retainage may be partially released.

- 10.0.4** The Fee shall be paid proportionately to the percentage of Work completed, on a monthly basis. Five percent (5%) retainage shall apply to the monthly payments for both, the Fee and Work completed. The accumulated balance (retention) relating to CM/GC Fee shall be paid at the time of payment following Substantial Completion. The accumulated balance relating to the work shall be paid at the time of final payment, unless otherwise agreed by the City. Interest will not be paid on retainage held under the Contract.
- 10.0.5** The A/E will, within seven (7) days after the receipt of CM/GC's Application for Payment, either issue a Certificate for Payment to the City with a copy to the CM/GC for such amount as the A/E determines is properly due, or notify the CM/GC in writing his reasons for withholding certification.
- 10.0.6** The issuance of a Certificate for Payment will constitute a representation by the A/E to the City, based on its observations at the Project site and the data comprising the Application for Payment, that the Work has progressed to the point indicated, that, to the best of its knowledge, information and belief the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon substantial completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in its Certificate), and that the CM/GC is entitled to payment in the amount certified. However, by issuing a Certificate for Payment, the A/E shall not thereby be deemed to represent that it has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that it has reviewed the construction means, methods, techniques, sequences or procedures, or that it has made any examination to ascertain how or for what purpose the CM/GC has used the amounts previously paid on account of the Contract Price.
- 10.0.7** Within twenty (20) days from City's receipt of a Certificate for Payment, the City shall pay to the CM/GC that portion of the GMP previously unpaid, properly allocable to labor, materials, and equipment already incorporated in the Work that has been satisfactorily performed in accordance with the requirements of the Contract Documents, as determined by the A/E, together with the portion properly allocable to materials and equipment suitably stored by the last day of the preceding calendar month at the Project site or at some other locations approved in writing by the City. No Certificate for Payment, nor any progress payment made pursuant to such certification, nor any partial or entire use or

occupancy of the Project by the City, shall constitute an acceptance of Work that is not in accordance with the Contract Documents.

**10.0.8** Upon receipt of payment from the City and out of the amount paid to the CM/GC on account of Trade Contractors' work, the CM/GC shall promptly pay each Trade Contractor the amount to which each is entitled, reflecting the percentage actually retained, if applicable, from payments to the CM/GC on account of such Trade Contractors' work.

**10.1 Payments Withheld.** If conditions warrant it, the A/E may decline to certify payment, in whole or in part, to the extent necessary to protect City's interest. If the A/E is unable to certify payment in the amount of the Application, he will notify the CM/GC. If the CM/GC and the A/E cannot agree on a revised amount, the A/E will promptly issue a Certificate for Payment for the amount for which it is able to make such representation to the City.

**10.1.1** The A/E may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, it may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary, in its opinion, to protect the City from loss because of:

**10.1.1.1** Defective Work not remedied;

**10.1.1.2** Third party claims filed or reasonable evidence indicating probable filing of such claims;

**10.1.1.3** Failure of the CM/GC to make payments properly to Trade Contractors or for labor, materials or equipment;

**10.1.1.4** Reasonable evidence that the Work cannot be completed for the unpaid balance of the GMP;

**10.1.1.5** Reasonable evidence that the Work will not be completed within the Contract Time; or

**10.1.1.6** Persistent failure to carry out the Work in accordance with the Contract Documents.

**10.1.2** When the grounds for withholding certification are removed, payment shall be made for amounts withheld because of them.

**10.2 Final Payment.** The term "Contract Price" shall mean the sum of all payments (progress and final) made by the City to the CM/GC for the completed Work, which includes all materials, equipment, labor, transportation, equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities, and all other temporary and permanent facilities and incidentals necessary for the execution and



completion of the Project. All cost savings, if any, shall be returned to the City as part of the net aggregate savings established at the time the final accounting is submitted, at the completion of the Work.

**10.2.1** The final payment constituting the unpaid balance of the Contract Price, shall be due and payable when the Project is delivered to the City, or when the City occupies the Project, whichever event first occurs, provided that the Project be then substantially completed and this Contract substantially performed. If there should remain minor items to be completed, the CM/GC and the A/E shall list such items and the CM/GC shall deliver, in writing, its unconditional promise to complete said items within thirty (30) days or such longer period as may be permitted in writing by the City. The City shall retain an amount equal to One Hundred Fifty (150%) per cent of the sum of the estimated cost of completing each unfinished item, as determined by the City. Alternately, the CM/GC may provide, for City's consideration, its own estimate for said unfinished items listing each item separately with its estimated cost of completion. Thereafter, the City shall pay the amount retained for incomplete items as each item is completed, on a monthly basis.

## **ARTICLE 11B: INSURANCE AND BONDING**

### **11.0 INSURANCE REQUIREMENTS.**

**11.0.1 Required Types of Insurance.** The Contractor shall purchase and maintain at its own expense, during the term of this Contract the types and amounts of insurance with limits no less than those shown on Exhibit "C", in the form and from companies satisfactory to the City.

### **11.1 BONDING REQUIREMENTS.**

**11.1.1** The CM/GC and/or Trade Contractor shall furnish separate performance and payment bonds as security for the faithful performance and payment of all its obligations under the Contract Documents. These bonds shall be in amounts equal to the GMP and in such form as prescribed pursuant to §255.05 Florida Statutes and with such sureties as are acceptable to the City. The bonds shall become effective upon execution of this Contract and shall remain in effect for one (1) year beyond the date of the Certificate of Substantial Completion of the Work as a protection to the City against losses resulting from latent defects in materials or improper performance of work under the Contract, which may appear or be discovered during that period. The bonds shall provide one hundred percent (100%) coverage for CM/GC's or Trade Contractor's default on either performance or payment.

**11.1.2** The performance and payment bonds shall have as the surety thereon only such surety company or companies as are authorized to write bonds of such character

and amount under the laws of the State of Florida and with an agent resident in the State of Florida. The Attorney-in-Fact, or other officer who signs such bonds for the surety company must file with such bonds a certified copy of its Power-of-Attorney authorizing it to do so.

**11.1.3 Qualification of Sureties.** The following requirements shall be met by surety companies furnishing performance, payment or any other type of bonds:

**11.1.3.1** The Surety presents and warrants to the Oblige that it has an A.M. Best's Financial Strength Rating (FSR) of no less than "A-" on the Financial Strength Rating (FSR) and Class "VIII" or better.

**11.1.3.2** The surety shall also be listed on the U.S. Department of Treasury (Dept. Circular 570) entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies."

**11.1.3.3** The surety companies proposed by the CM/GC or Trade Contractor for the Project are subject to City's approval which approval shall not be unreasonably withheld. At any time after approval, if the City, for cause (such cause being defined as the filing for liquidation, appointment of receiver to manage said surety business, insolvency, filing petitions or applications for protection or liquidation under federal bankruptcy laws, or other causes adversely affecting the surety's ability to perform under its bonds), becomes dissatisfied with any surety or sureties then upon the bond(s), the CM/GC or trade Contractor shall, within fifteen (15) days after written notice from the City to do so, substitute acceptable bond(s) in such form and sum, and signed by such other surety or sureties as may be satisfactory to the City. The premiums on the bond(s) shall be paid by the CM/GC or Trade Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished acceptable bond(s) to the City.

## **ARTICLE 12B: TERMINATION**

**12.0 City's Right to Stop the Work.** The City shall have the right to stop the Work or a designated portion thereof, for major changes in design, because of non-conformance of the Work with the Plans and Specifications and shop drawings, or for such other reason as would make the continuance of the Work or a designated portion thereof no longer feasible. Notice of such action by the City shall be made in writing to the CM/GC and shall not restrict or limit in any way the remaining provisions of this Contract.

**12.1 Termination by the City for Cause.** If the CM/GC fails to perform any of its obligations under this Contract, including any obligation it assumes to perform portions of the Work

with its own forces, the City may give the CM/GC written notice of the deficiency and direct immediate corrective action. If the CM/GC fails to perform in accordance with such notice, within seven (7) days from the receipt of City's written notice, the City may perform the work involved and deduct the costs from funds due or to become due CM/GC. The CM/GC shall have the right, however, to make good any deficiencies or commence and continue to cure any default during the seven (7) day period following written notice.

**12.1.1** If the CM/GC fails to furnish City with assurances satisfactory to the City evidencing the CM/GC's ability to complete the Work in compliance with all the requirements of the Contract Documents, or if it fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than ten (10) days, except as permitted under the Contract Documents or if it makes a general assignment for the benefit of its creditors, or if a trustee or receiver appointed on account of its insolvency is unable to maintain progress, or if it refuses or fails to supply enough properly skilled workers or proper materials, or if it fails to make proper payment to Trade Contractors for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or is guilty of a substantial violation of a provision of this Contract, then the City may, without prejudice to any right or remedy and after giving the CM/GC and its surety seven (7) days' written notice, during which period the GM/GC fails to commence and continue to cure the violation, terminate the employment of the CM/GC and take possession of the Project site and of all materials, equipment, tools, construction equipment and machinery thereon and may finish the Project by whatever reasonable method the City may deem expedient. In the event of such termination, the City shall reimburse the CM/GC for any unpaid portion of the Cost of Work incurred by him under Article 9B (subject to the GMP) up to the time of termination. The CM/GC shall not be entitled to any additional payment of Fee. The CM/GC shall not be entitled to any compensation for City's use of such materials, equipment, tools, construction equipment and machinery. However, at the completion of the Work, such materials, equipment, tools, construction equipment and machinery which were not incorporated in the Project shall be returned to the CM/GC. The CM/GC shall not be entitled to additional compensation for damages, claims or reimbursement of any kind other than those specifically stated in this Paragraph 12.1.1 in the event of termination under the terms therein.

**12.2 Termination by the City for Convenience.** If the City terminates this Contract other than pursuant to Paragraph 12.1.1, the CM/GC shall be reimbursed for any unpaid portion of the Cost of Work which has been incurred up to the time of termination, plus the unpaid portion of the Fee earned up to the time of termination, plus Trade Contract and purchase order cancellation charges, if any, incurred by the CM/GC as a direct result of the termination. The City shall also pay to the CM/GC fair compensation, either by purchase or rental, at City's option, for any equipment used or retained by the City for completion of the Work. In case of such termination of the Contract, the City shall

further assume and become liable for the obligations, commitments and unsettled claims that the CM/GC has previously undertaken or incurred in good faith in connection with the Project. The CM/GC shall, as a condition of receiving the payments referred to in this Paragraph 12.2, execute and deliver all documents and take all steps, including the legal assignment of his contractual rights, as the City may require, for the purpose of fully vesting in the City the rights and benefits of the CM/GC under such obligations or commitments, and shall execute a complete waiver and release of the City.

- 12.3 Termination by CM/GC.** If the Project is stopped in whole or a substantial part, through no act or fault of the CM/GC, for a period of thirty (30) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making material unavailable, or because of City's failure to make payment for work performed in accordance with the Contract Documents (unless the City is withholding payment as provided in Paragraph 10.1), then the CM/GC may, upon seven (7) days' written notice to the City and the Program Manager, terminate this Contract and recover from the City payment for the unpaid and undisputed portion of the Cost of Work which has been incurred up to the date of termination, the unpaid portion of the Fee earned up to the date of termination, and any cancellation charges on existing obligations of the CM/GC related to the Project. The City shall have the right, however, to make any required payment or cure any default during the seven (7) day period following written notice and, in such event, neither the Contract nor the Work under the Contract shall be terminated. The CM/GC shall not be entitled to additional compensation for damages, claims or reimbursement of any kind other than those specifically stated in this Paragraph 12.3 in the event of termination under the terms therein.

## **ARTICLE 13B: CLAIMS AND DISPUTES**

- 13.0 Claims.** Under this Contract the CM/GC shall not have the right to compensation to satisfy any claim for costs, liabilities, or debt of any kind whatsoever from any act or omission attributable to the City unless the CM/GC has provided notice to the City within twenty (20) days of the event giving rise to the claims and unless the detailed claim therefore is delivered to the City within sixty (60) days following the notice. The detailed claim shall include:
- 13.0.1** The date of the occurrence of the event giving rise to the claim and the date and manner of CM/GC's compliance with the notice requirements of this Article 13B, and
  - 13.0.2** The reasons upon which the CM/GC bases its claim, demonstrating thereby that the costs, liabilities or debts reflected in the claim are not already a part of the GMP and its compensation under the Contract, and therefore specific relief is due it for the claim.

- 13.0.3** The City shall respond to the claim within twenty-one (21) days after receipt of a claim. In the event there is no resolution of the claim from that response, the CM/GC reserves its right to seek legal redress.

### **13.1 MEDIATION.**

**13.1.1** The parties to this Contract shall exercise their best efforts to negotiate and settle promptly any dispute that may arise with respect to this Contract in accordance with the provisions set forth in this Section. The CM/GC and City Project Manager shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, to address and work toward resolution of issues that arise in performance of this Contract and any applicable scope of services. Issues shall be escalated to successive management levels as needed.

**13.1.2** If a dispute develops between the parties concerning any provision of this Contract, or the interpretation thereof, or any conduct by the other party under these contracts, and the parties are unable to resolve such dispute within five (5) days, that party, known as the Invoking Party, through its applicable Project Manager, shall promptly bring the disputed matter to the attention of the non-Invoking Party's Project Manager or designated representative, as the case may be, of the other party in writing ("Dispute Notice") in order to resolve such dispute.

**13.1.3** Upon issuance of a Dispute Notice, the Project Managers or designated representative shall furnish to each other all non-privileged information with respect to the dispute believed by them to be appropriate and germane. The Project Managers shall negotiate in an effort to resolve the dispute without the necessity of any formal proceeding. If such dispute is not resolved by the Project Managers or designated representative within five (5) business days, the Project Managers shall escalate the dispute as indicated below.

<b>Business Days</b>	<b>CM/GC's Representative</b>	<b>City Representative</b>
10	CM/GC	Project Manager
10	CM/GC's Local Officer	Director of Environmental Services
20	CM/GC's COO or President	City Manager

**13.2 Formal Dispute Resolution.** At any point after issuance of a Dispute Notice under this section, either party may initiate formal non-binding mediation before a single mediator, which mediation shall be completed within thirty (30) days of initiation, in accordance with the rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700 et seq. of the Florida Rules of Civil Procedure, and

Chapter 44, Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize such termination remedies and commence litigation in a court of competent jurisdiction. If litigation is prematurely commenced, it shall be stayed until the mediator makes the required certification.

- 13.3** The CM/GC shall carry on the Work and maintain the progress scheduled during any administrative or judicial proceeding, unless otherwise agreed by the CM/GC and the City in writing, and the City shall continue to make payments to the CM/GC in accordance with the provisions of this Contract.
- 13.4** All claims, disputes and other litigation shall be determined under the judicial system of the State of Florida. Venue for litigation shall be Volusia County, Florida.

#### **ARTICLE 14B: MISCELLANEOUS PROVISIONS**

- 14.0 Disadvantaged Business Enterprises Participation.** The CM/GC will appraise itself of and comply with all applicable laws concerning contracts with small business concerns owned and controlled by socially and economically disadvantaged individuals and all applicable labor wages rates and scales. In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 CFR, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, 49 CFR, Part 23, and Edgewater City Ordinances (Municipal code section 2-269, City Ordinance No. 90-20, § 9,5-17-90), participation by Disadvantaged and Women Business Enterprises ("D&WBE") in the Project shall be affirmatively assured by the CM/GC. DBE shall be afforded full opportunity to submit proposals in response to invitations to bid and will not be discriminated against on the grounds of race, color or national origin in consideration for an award. It is the City's goal that the D&WBE participation for the Project is at least ten percent (10%).
- 14.1 Assignment; Florida Law Applicability.** Neither the City nor the CM/GC shall assign the interest in this Contract without the written consent of the other except as to the assignment of proceeds. This Contract shall be governed by the laws of the State of Florida.
- 14.2 Assignment of Antitrust Claims.** The CM/GC agrees that, after completion of all Work under this Contract and all amendment thereto and prior to final payment, it will execute and deliver to the City an "Assignment of Antitrust Claims".
  - 14.2.1** The CM/GC agrees that prior to and as a condition for receiving final payment, it will cause each of its suppliers and Trade Contractors who have furnished services, goods or materials in connection with the performance of this Contract to execute and deliver to the City an Assignment of Antitrust Claims in the same form as above.

**14.3 Governing Law.** This Contract is to be governed by the laws of the State of Florida. Venue for any litigation between the parties to this Contract shall be in Volusia County, Florida and any trial shall be non-jury.

**14.4 Attorney's Fees.** ~~In any legal proceeding by a party to enforce its rights under this Contract against the other party, each party shall bear its own Attorney's fees and costs without recourse against the other party.~~ "In any legal proceeding by a party to enforce its rights under this Contract against the other party, the prevailing party shall be entitled to recover from the other party its reasonable attorney's fees and expenses, including reasonable attorney's fees and expenses on appeal."

**14.5 Force Majeure.** Neither party shall be liable for any failure or delay in the performance of its obligations under the Contract to the extent such failure or delay necessarily results from the occurrence of a Force Majeure Event beyond the control or reasonable anticipation of either party, including, but not limited to, compliance with any unanticipated government law or regulation not otherwise in effect at the time of execution of this Contract, acts of God, acts of domestic or international terrorism, any virus, bacterium, or other microorganism capable of inducing physical distress, illness, or disease, whether due to a pandemic or otherwise, unforeseeable governmental acts or omissions, fires, strikes, natural disasters, wars, riots, transportation problems, and/or any other unforeseeable cause whatsoever beyond the reasonable control of the parties (and such cause being referred to as a "Force Majeure Event"). Accordingly, the parties further agree that:

**14.5.1** Upon the occurrence of Force Majeure Event, the non-performing party shall be excused from any further performance of those obligations under this Contract that are affected by the Force Majeure Event for as long as (a) the Force Majeure Event continues; and (b) the non-performing party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

**14.5.2** Upon the occurrence of a Force Majeure Event, the non-performing party shall notify the other party of the occurrence of such event and describe in reasonable detail the effect(s) of such event upon the party's performance of its obligations and duties pursuant to this Contract. Such notice shall be delivered or otherwise communicated to the other party within three (3) business days following the failure or delay caused by the Force Majeure Event, or as soon as possible after such failure or delay if the Force Majeure Event precludes the non-performing party from providing notice within such time period.

**14.5.3** In the event of a Force Majeure Event, the time for performance by the parties under the applicable statement of work shall be extended for a period of time equal to the time lost by reason of such cause through execution of a Change Order pursuant to the terms of the Contract.

**14.6 Claims Notice.** The CM/GC shall immediately report in writing to the City's designated representative or agent any incident that might reasonably be expected to result in any claim under any of the coverage mentioned herein. The Consultant agrees to cooperate with the City in promptly releasing reasonable information periodically as to the disposition of any claims, including a résumé of claims experience relating to all

Consultants' operations at the City project site. The designated representative for the City shall be:

Name: Bonnie Zlotnik, CMC, City Clerk  
City of Edgewater  
Office of the City Clerk  
Address: PO Box 100  
104 N. Riverside Drive  
Edgewater, Florida, 32132  
Telephone: (386) 424.2400 ext. 1101  
Fax: (386) 424-2410  
Email: cityclerk@cityofedgewater.org

**14.7 Successors and Assigns.** City and CM/GC each binds itself and its partners, successors and successors in interest, affiliates, executors, administrators, assigns and legal representatives to the other party to this Contract and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, contracts and obligations of this Contract. Neither City nor CM/GC shall assign, sublet or transfer any rights under or interest in this Contract without the written consent of the other. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Contract.

**14.8 Additional Rights and Remedies.** The rights and remedies of the City provided for under this Contract are in addition to any other rights and remedies provided by law; the City may assert its right of recovery by any appropriate means including, but not limited to, set-off, suit, with-holding, recoupment, or counterclaim, either during or after performance of this Contract.

#### **14.9 LOCAL GOVERNMENT POLICIES.**

##### **14.9.1 Public Records Law.**

Pursuant to section 119.0701(2)(a), Florida Statutes, the City is required to provide Contractor with this statement:

**IF THE CM/GC HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CM/GC'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 386-424-2400 x1102, CityClerk@cityofedgewater.org, by mail, City of Edgewater, Attn: City Clerk, PO Box 100, Edgewater, FL 32132.**

By entering into this Contract, Contractor acknowledges and agrees that any records maintained, generated, received, or kept in connection with, or related to the performance of services provided under, this Contract are public records subject to the public records disclosure requirements of section 119.07(1),



Florida Statutes, and Article I, section 24 of the Florida Constitution. Pursuant to section 119.0701, Florida Statutes, any Contractor entering into a contract for services with the City is required to:

- 14.9.1.1** Keep and maintain public records required by the City to perform the services and work provided pursuant to this Contract.
- 14.9.1.2** Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- 14.9.1.3** Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the records to the City.
- 14.9.1.4** Upon completion of the Contract, transfer, at no cost, to the City all public records in the possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- 14.9.1.5** Requests to inspect or copy public records relating to the City's Contract for services must be made directly to the City. If Contractor receives any such request, Contractor shall instruct the requestor to contact the City. If the City does not possess the records requested, the City shall immediately notify the Contractor of such request, and the Contractor must provide the records to the City or otherwise allow the records to be inspected or copied within a reasonable time.
- 14.9.1.6** Contractor acknowledges that failure to provide the public records to the City within a reasonable time may be subject to penalties under section 119.10, Florida Statutes.
- 14.9.1.7** Contractor further agrees not to release any records that are statutorily confidential or otherwise exempt from disclosure without first receiving prior written authorization from the City.

Contractor shall indemnify and hold the City harmless against any and all

claims, damage awards, and causes of action arising from the Contractor's failure to comply with the public records disclosure requirements of section 119.07(1), Florida Statutes, or by Contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorney's fees and costs arising therefrom. Contractor authorizes City to seek declaratory, injunctive, or other appropriate relief against Contractor from a Circuit Court in Volusia County on an expedited basis to enforce the requirements of this section.

**14.9.2 Financial Records.** CM/GC agrees to maintain such financial records and other records as may be prescribed by the City or by applicable federal and state laws, rules, and regulations. City shall have the right to audit the books, records, and accounts of CM/GC that are directly related to the Contract. CM/GC shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Contract. CM/GC shall preserve and make available, at reasonable times for examination and audit by City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Contract for a minimum period of three (3) years after termination of this Contract. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings; provided, however, that it shall be City's responsibility to notify CM/GC of the pendency of such audit. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

**14.9.3 Payments Subject to Appropriation.** Notwithstanding any other term or provision of this Contract, the continuation of this Contract beyond a single fiscal year of City is subject to the appropriation and availability of. If at any time funds are not appropriated for the Services and Deliverables provided or to be provided under this Contract, cancellation shall be accepted by CM/GC with thirty (30) days prior written notice, but failure to give such notice shall be of no effect. Termination by the City due to non-appropriation shall be without a termination charge by CM/GC. City shall not be obligated to pay CM/GC under this Contract beyond the date of termination. CM/GC shall have no right to compel the Edgewater City Council to appropriate funds for any fiscal year to pay the compensation.

**14.9.4 PROHIBITION AGAINST CONTINGENT FEES.**

**14.9.4.1** The CM/GC warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CM/GC to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely

for CM/GC any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

**14.9.4.2** Neither CM/GC, nor any parent or subsidiary corporation of CM/GC has employed or retained any company or persons, other than a bona fide employee working solely for CM/GC, to solicit or secure this Contract and that they have not paid or agreed to pay any persons, company, corporation, individual or firm, other than a bona fide employee working solely for CM/GC, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, City shall have the right to terminate the Contract at its discretion, without liability and to deduct from the Contract Price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

**14.9.4.3** For the breach or violation, the City shall have the right to terminate this Contract without liability and, at its discretion, to deduct from the Contract Price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

**14.9.5 Truth in Negotiation.** CM/GC's signature on this Contract shall act as the execution of truth-in-negotiation certificate stating that wage rates, and other factual unit costs supporting the compensation set forth in this Contract are accurate, complete and current at the time of contracting and that it has disclosed to the City prior to the execution of this Contract all debts, fees or obligations owed to or pending before the City.

**14.9.6 No Code Violation or Past Due Debt.** The Consultant warrants and represents that neither the business, nor any officer or significant stakeholder of the business is in violation of the City of Edgewater Code of Ordinances, and does not owe the City any past due debt. Any breach of the foregoing warranty and representation shall be a material breach of this Contract and the City shall have the right to terminate this Contract as set forth herein.

**14.9.7 Changes Due to Public Welfare.** The City and CM/GC agree to enter into good faith negotiations regarding modifications to this Contract which may be required in order to implement changes in the interest of the public welfare or due to change in law or Ordinance.

**14.9.8 Compliance with Applicable Laws.** CM/GC shall perform its obligations hereunder in accordance with all applicable federal, state and local laws,

ordinances, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the performance of this Contract. Additionally, CM/GC shall obtain and maintain at its own expense all applicable licenses and permits to conduct business pursuant to this Contract from the federal government, State of Florida, City of Edgewater, or municipalities when legally required and maintain same in full force and effect during the term of this Contract.

**14.9.9 Drug Free Workplace.** The City of Edgewater is a drug-free and smoke-free workplace. CM/GC agrees that it shall provide a drug-free environment to its personnel during the terms of the Contract and shall comply, subject to the prior receipt, with the City's policies on drug-free and smoke-free work place during the term of this Contract.

**14.9.10 Background Checks.** CM/GC and City understand that certain areas of the City's premises may not be available to CM/GC personnel without background checks and that such access is not required to perform the Services contemplated by this Contract.

**14.9.11 Employment of Illegal Aliens.** CM/GC certifies that it does not knowingly or willingly and shall not during the performance of the Contract employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986, as amended.

**14.9.12 Nondiscrimination and Americans with Disabilities Act.** CM/GC shall not unlawfully discriminate against any person in the operations and activities in the use or expenditure of the funds or any portion of the funds provided by this Contract. CM/GC agrees it shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any Services funded by City, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In performing under this Contract, CM/GC agrees that it shall not commit an unfair employment practice in violation of any state or federal law and that it shall not discriminate against any member of the public, employee or applicant for employment for work under this Contract because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability and shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability.

**14.9.12.1** In accordance with the American Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing a special accommodation to participate in the proceedings, or an interpreter to participate in any proceedings, should contact the should contact the [City Clerk's office](#) at 386-424-2400 x1102 for

assistance, at least two business days before any meeting date. Assisted listening system receivers are available for the hearing impaired, and can be obtained from the City Clerk's office by [calling 386-424-2400 x1102](tel:386-424-2400).

**14.10 E-Verify.** The Contractor covenants and agrees to the following provisions, as required by law:

**14.10.1** If and to the extent the Agreement meets the criteria set forth at 48 C.F.R. § 52.222-54(e), the criteria of 48 C.F.R. § 52.222-54 are hereby incorporated by reference into this Agreement as if fully set forth herein.

**14.10.2** Contractor and any of Contractor's Subcontractors shall register with and utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility and work authorization status of all new employees hired by Contractor (or Contractor's Subcontractors) on or after the effective date of this Agreement and thereafter during the remaining term of the Agreement.

**14.10.3** In the event Contractor enters into a subcontract, Contractor shall require, via written contract, the Subcontractor agree to: (i) register with and utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired on or after the effective date of the subcontract and thereafter during the remaining term of the subcontract; and (ii) provide Contractor with an affidavit stating that the Subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of such affidavit for the duration of this Agreement or the subcontract, whichever is longer. The contractor shall provide a copy of such affidavit to the City before the Subcontractor begins any work associated with the Agreement. If the City has a good faith belief that a subcontractor knowingly violated the requirements set forth in this Section 14.10 or Sections 448.09(1) or 448.095 of the Florida Statutes, but also has a good faith belief Contractor otherwise complied with this Section 14.10 and applicable law, the City shall promptly notify Contractor and order Contractor to immediately terminate its contract with the Subcontractor. Failure to comply with said order shall constitute a material breach of this Agreement.

**14.10.1** If the City has a good faith belief Contractor has knowingly violated, or if Contractor is found to have violated, this Section 14.10; Section 448.09(1), Florida Statutes; Section 448.095, Florida Statutes; or the presidential Executive order and subsequent Federal Acquisition Regulation (FAR) rule requiring federal contractors to use E-Verify, if applicable, then the following shall be true: (i) such violation shall be a material breach of this Agreement by Contractor; (ii) Contractor shall indemnify, defend, and hold harmless the City from any resulting costs or expenses, including fines or penalties levied by a government agency and the City's loss or repayment of grant funds; (iii) the City may terminate this Agreement immediately and without penalty and such termination shall not be or be considered a breach of this Agreement; and (iv)

Contractor shall be liable for any additional costs incurred by the City as a result of the termination of the Agreement. Contractor acknowledges and understands that if the City terminates this Agreement in accordance with this Section 14.10, Contractor shall be ineligible for award of a public contract for at least 1 year after the date on which the Agreement was terminated.

- 14.11 CONTROLLING LAW.** This Contract is to be governed by the laws of the State of Florida. Venue for any litigation between the parties to this Contract shall be in Volusia County, Florida and any trial shall be non-jury. Each party agrees to bear its own costs and attorney's fees relating to any dispute arising under this Contract. "In any legal proceeding by a party to enforce its rights under this Contract against the other party, the prevailing party shall be entitled to recover from the other party its reasonable attorney's fees and expenses, including reasonable attorney's fees and expenses on appeal."
- 14.12 MODIFICATIONS TO CONTRACT.** This Contract and any exhibits, amendments and schedules may only be amended, supplemented, modified or canceled by a written instrument duly executed by the parties hereto.
- 14.13 ENTIRE CONTRACT.** This Contract, together with any exhibits, schedules, attachments and amendments thereto constitute the entire Contract between City and CM/GC and supersede all prior written or oral understandings.
- 14.14 SCRUTINIZED COMPANIES, FL STATUTE SECTION 287.135 AND 215.473.** Contractor must certify that the company is not participating in a boycott of Israel. For Contracts for goods or services of one million dollars or more, Contractor must also certify that Contractor is not on the Scrutinized Companies that Boycott Israel List, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has not been engaged in business operations in Cuba or Syria. Subject to limited exceptions provided in state law, the City will not contract for the provision of goods or services with (i) any company participating in a boycott of Israel, and, (ii) for Contracts for goods or services of one million dollars or more, any other scrutinized company as described above. Contractor must have submitted the certification form with their response to City Solicitation RFQ-24-ES-01. Submitting a false certification shall be deemed a material breach of contract. The City shall provide notice, in writing, to the Contractor of the City's determination concerning the false certification. The Contractor shall have five (5) Calendar days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active contract term, the Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Contractor does not demonstrate that the City's determination of false certification was made in error then the City shall have the right to terminate the Contract and seek civil remedies pursuant to Section 287.135, Florida Statutes, as amended from time to time.

*Remainder of Page Intentionally Left Blank*

IN WITNESS WHEREOF, the parties have made and executed this Contract for Construction Management/General Contracting Services for Construction Performance Phase Services for the CONTRACT FOR CONSTRUCTION MANAGEMENT/GENERAL CONTRACTING SERVICES FOR PRE-CONSTRUCTION PHASE SERVICES FOR PROFESSIONAL CONSTRUCTION MANAGEMENT/GENERAL CONTACTING SERVICES (CMAR) FOR A NEW PUBLIC WORKS FACILITY, Part B, the day and year first below written.

Vendor acknowledges that \_\_\_\_\_ [name of title of signatory] (the "Authorized Signatory") is authorized to execute contracts/agreements with the City of Edgewater and any affixed electronic or conformed signature of the Authorized Signatory shall be the act of and attributable to the Authorized Signatory. By signing this Agreement electronically, the Authorized Signatory does thereby adopt the electronic or conformed signature as his or her own and designates a copy of same for use as an official record by the City of Edgewater.

---

Attest:

**CITY OF EDGEWATER**

\_\_\_\_\_  
Bonnie Zlotnik, CMC  
City Clerk

BY: \_\_\_\_\_  
Diezel DePew  
Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

City Council Date: \_\_\_\_\_

---

Attest:

**WHARTON SMITH, INC.**

\_\_\_\_\_  
Signature

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Name and Title

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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