

**CITY OF NAPLES  
PURCHASING DIVISION  
CITY HALL, 735 8<sup>TH</sup> STREET SOUTH  
NAPLES, FLORIDA 34102  
PH: 239-213-7100    FX: 239-213-7105**

**ADDENDUM NUMBER 2**

NOTIFICATION DATE:	SOLICITATION TITLE:	SOLICITATION NUMBER:	BID OPENING DATE & TIME:
<b>1/4/2022</b>	<b>Beach Restoration and Water Quality Improvements (Beach Outfalls) - Construction Manager at Risk (CMAR) – RFQ</b>	<b>23-001</b>	<b>1/20/2023 2:00PM</b>

**THE FOLLOWING INFORMATION IS HEREBY INCORPORATED INTO,  
AND MADE AN OFFICIAL PART OF THE ABOVE REFERENCED BID.**

**The following answers to written submitted questions:**

1. Can you please confirm that as of today, 11/22/2022, the generator is to be sited on Alligator Lake and not in the center of the 3rd Ave N ROW as depicted in the current set of construction documents on Naplesgov.com.

**ANSWER: As of 11/22/2022, the generator is to be sited on Alligator Lake and not in the center of 3rd Ave. N. ROW as depicted in the current set of construction documents on Naplesgov.com. Please reference the attached Exhibit B PS Proposed Pavement Drainage Plan.**

2. Can we get a copy of the Contract for Preconstruction and Construction phase of work?

**ANSWER: Please reference Attached Exhibit A.**

3. What is the amount of the Fee for the Preconstruction Phase? How will this be determined, and will this be a lump sum or % basis on actual costs?

**ANSWER: For all Pre-Construction Phase Services, including, but not limited to, providing value engineering services, reviewing Construction Documents for constructability, assisting and meeting with Design Professional (ECE) during the various design phases, and preparing cost estimates, Construction Manager shall receive the fixed amount of [PC Lump Sum] (\$\_\_\_) as the total lump sum compensation for its services. Monthly installment payment of the total lump sum compensation shall be based upon the percent completion of the designated portion of the Pre-Construction Services for each particular month and City's receipt of Construction Manager's written invoice for such payment..**

4. Section 11 of the RFQ, pg. 42 requires the CMAR Contractor to carry Professional Liability Insurance. Since we are not the Designer, we do not usually carry this Insurance, why is this required to be carried by CMAR Contractor? Please remove this requirement?

**IMPORTANT MESSAGE**

**PLEASE ACKNOWLEDGE RECEIPT OF THIS ADDENDUM ON THE BID COVER SHEET.**

**ANSWER: Pursuant to Section 4 PRECONSTRUCTION PHASE, page 37 of the proposal document, the CMR “Become a member of the design team, providing input regarding costs, constructability, durability of materials, and long-range maintenance needs” insurance requirement remains.**

5. What is the MBE Goal for this project?

**ANSWER: Please reference TAB 16 - Certified (MBE) Minority Business Enterprise Status and evaluation criteria, pages 51 and 43 of the proposal documents.**

6. Can the CMAR Contractor self-perform the work on the project? Is there a maximum limit of the scope that the CMAR contractor can self-perform?

**ANSWER: Any and all work to be self-performed by Construction Manager must be approved in writing by Owner in its sole discretion prior to commencement of such work.**

7. How will the CMAR contractor be paid for the work? will the GMP be a Lump Sum? or will the CMAR contractor be paid on a unit price basis? How will Contingency be handled?

**ANSWER: Please reference Section 4. Contract Amount of the attached Exhibit A.**

8. Regarding Tab 15, is the City looking for a formal statement from each firm that they acknowledge the City’s rights and obligations described in Tab 15?

The City will comply with section 287.055, Florida Statutes, and the City Procurement Code, and have the following rights and obligations with respect to the selection process:

1. All materials submitted will become the property of the City. Submittals are part of the public record and no Statement material will be returned.
2. The City may use Statements for purposes in the furtherance of the goals and objectives of the Project.
3. The City may record all submittals and/or presentations for archival or promotional purposes.
4. The City may suspend or discontinue the selection process at any time and reject any or all Statements without obligation to any Firm.
5. The award of the Contract is subject to availability of funds and the City may suspend, discontinue, or cancel the selection process or the Project at any time.
6. The City may waive any informality or irregularity in any Statements received and accept the Statement if, in its judgment, it is in the best interest of the City.

**ANSWER: No, the City is not looking for a formal statement from each firm.**

9. Tab 4 of the submittal requirements states to provide a list of 5 client references, TAB 13 states to provide 3 references, and the special conditions (page 16) states the vendor must provide a minimum of three verifiable references. Please clarify how many references the City of Naples would like us to provide.

**ANSWER: Three (3) verifiable references.**

10. Tab 4 asked for “all projects completed and active over the past 7 years and provide the vendors approach in managing these projects”. Do you really want us to provide you every project we’ve

**IMPORTANT MESSAGE**

**PLEASE ACKNOWLEDGE RECEIPT OF THIS ADDENDUM ON THE BID COVER SHEET.**

managed over the past 7 years? This list could be incredible long and may not be the same specific type of work related to this RFP.

**ANSWER: Please list all projects similar in scope and active over the past 7 years and provide the vendors approach in managing these projects.**

11. It is typical in the industry that most governmental/municipal contractors shut down operations between the 24th of December until the 2nd or 3rd of January. With the questions being due December 27th with answers to follow, and the proposal being due four business days following the holiday week we would respectfully request the proposal due date be extended to January 13th 2022 (1 week past the current January 6th deadline)?

**ANSWER: Please reference Addendum 1 for time extension.**

12. Attachment D and Attachment F appear to be the same exact plan sheets. Was this your intent?

**ANSWER: No, please disregard Attachment D. This was duplicated in error.**

13. Attachment G was not downloading correctly, nor is it printable. Can you please re-upload this document?

**ANSWER: Please reference ATTACHMENT V - Updated Attachment G Offshore & Outfall Removal Plan\_25 Sheets\_OCR located at <https://www.naplesgov.com/purchasing/page/23-001-beach-restoration-and-water-quality-improvements-beach-outfalls-construction>. Be advised this is large file and takes a while to download.**

14. Attachment H is labeled "roadway plans profiles 60 sheets, however it appears to be the "Naples Outfalls Offshore Pipeline" plans and only contains 25 plan sheets.

**ANSWER: Please reference Attachment U - Updated Attachment H Roadway Plans & Profiles\_60 Sheets-OCR located at <https://www.naplesgov.com/purchasing/page/23-001-beach-restoration-and-water-quality-improvements-beach-outfalls-construction>. Be advised this is large file and takes a while to download.**

15. Attachment I is labeled as "signing and marking with 39 sheets but appears to be the same as attachment j stormwater consolidation and contains 41 sheets.

**ANSWER: Please disregard Attachment I. This was duplicated in error.**

16. Please specify what is the allowable contract time? The RFQ page 6, states that the Contract will be in place for 3 years plus 2 -1 year extensions?

**ANSWER: Pursuant to page 2 of the proposal document TO ENSURE ACCEPTANCE OF THE PROPOSAL, PLEASE FOLLOW THESE INSTRUCTIONS. ANY AND ALL SPECIAL CONDITIONS, ATTACHED HERETO, HAVE PRECEDENCE. Please reference Special Conditions, page 16 of the qualification document.**

17. Regarding question 1. is there a breakdown of anticipated time for a) Preconstruction b) Construction?

**ANSWER: The anticipated times shall be mutually agreed upon by Owner and Construction Manager.**

18. The Contractor is responsible for Safety and Security per the RFQ. Does this mean that the Contractor will need to supply a full-time dedicated Safety Manager?

**IMPORTANT MESSAGE**

**PLEASE ACKNOWLEDGE RECEIPT OF THIS ADDENDUM ON THE BID COVER SHEET.**

**ANSWER: No, the Construction Manager shall develop and implement, in accordance with the requirements of the Contract Documents, a safety plan for the Work.**

19. Tab 7 requests the contractor provides name and experience of Subconsultants, does this apply to Subcontractors? The specific Subcontractors are not known at this time, this work will be advertised and bid during preconstruction period?

**ANSWER: This applies for Subconsultants and Subcontractors used during the PRECONSTRUCTION PHASE of the project.**

20. We respectfully request that the RFQ due date be extended three weeks to January 27, 2023. This is due to the current due date falling right after a fast-approaching long holiday period.

**ANSWER: Please reference Addendum 1 for time extension.**

21. Please provide us the policies and procedures that outline the City's CM at risk regulations to develop a GMP.

**ANSWER: Please reference the attached Exhibit A sample agreement for detail.**

22. Please specify how compensation will be made to the Contractor for personnel relocation, travel, or Cost of living adjustments, during the Preconstruction phase of the project? During the construction phase will these costs need to be included in the unit price items of work?

**ANSWER: These costs should be incorporated within the (2) separate phases of the CMAR.**

23. It is stated in the RFQ that this will be a unit price contract with the CMAR contractor. Will there be a bid item for mobilization? if not, where should these costs be included for the Construction Manager at Risk and the Subcontractors?

**ANSWER: These costs should be incorporated within the Construction Phase of the CMAR.**

24. In order to organize the proposal in the Tab Format requested, please advise on the preferred Tab(s) or location(s) for the Mandatory forms and other required letters/certificates including:

- Cover Sheet
- Submission Checklist Sheet
- IRS W-9 Form
- Sunbiz Report
- Acknowledgement of Business Type
- Immigration Law Affidavit Certification
- Bond Capacity letter from Surety
- Certificates of Insurance
- Addenda

**ANSWER: While the above sequence is acceptable, the vendor's responsibility is to ensure all the required documentation is submitted with the RFQ submission.**

25. The RFQ pg. 38, states that The CMAR firm is to Competitively bid the project to qualified sub-contractors, according to the policies and procedures outlined in the City's CM At-Risk regulations

**IMPORTANT MESSAGE**

**PLEASE ACKNOWLEDGE RECEIPT OF THIS ADDENDUM ON THE BID COVER SHEET.**

and develop a guaranteed maximum price (GMP). Can we get a copy of the city's CM At-Risk regulations

**ANSWER: Please reference Attached Exhibit A.**

**Exhibit A - SAMPLES CMAR AGREEMENT**

**# # #**

**IMPORTANT MESSAGE**

**PLEASE ACKNOWLEDGE RECEIPT OF THIS ADDENDUM ON THE BID COVER SHEET .**

**CONSTRUCTION MANAGER AT RISK CONTRACT**

**BETWEEN**

**CITY OF NAPLES, FLORIDA**

**AND**

**[CMAR name]**

**FOR**

**RFQ#[bid number]**

**“[project name]”**

**DATE \_\_\_\_**

## Exhibit A Sample CMAR Agreement

### TABLE OF CONTENTS

SECTION 1.	CONTRACT DOCUMENTS .....	1
SECTION 2.	SCOPE OF WORK .....	1
SECTION 3.	RELATIONSHIP OF PARTIES .....	3
SECTION 4.	CONTRACT AMOUNT .....	5
SECTION 5.	COST OF THE WORK .....	6
SECTION 6.	BONDS .....	10
SECTION 7.	CONTRACT TIME AND LIQUIDATED DAMAGES .....	12
SECTION 8.	EXHIBITS INCORPORATED .....	13
SECTION 9.	NOTICES .....	14
SECTION 10.	MODIFICATION .....	14
SECTION 11.	SUCCESSORS AND ASSIGNS .....	14
SECTION 12.	GOVERNING LAW .....	15
SECTION 13.	NO WAIVER .....	15
SECTION 14.	ENTIRE AGREEMENT .....	15
SECTION 15.	SEVERABILITY .....	15
SECTION 16.	CONSTRUCTION .....	15
SECTION 17.	PUBLIC RECORDS .....	15
SECTION 18.	E-VERIFY .....	17
EXHIBIT A GENERAL TERMS AND CONDITIONS .....		A-1
1.	INTENT OF CONTRACT DOCUMENTS .....	A-1
2.	INVESTIGATION AND UTILITIES .....	A-2
3.	SCHEDULE .....	A-2
4.	PROGRESS PAYMENTS .....	A-3
5.	PAYMENTS WITHHELD .....	A-4
6.	FINAL PAYMENT .....	A-5
7.	SUBMITTALS AND SUBSTITUTIONS .....	A-5
8.	PRE-CONSTRUCTION PHASE SERVICES .....	A-7
9.	CONSTRUCTION PHASE SERVICES .....	A-8
10.	DAILY REPORTS, RECORD CONTRACT DOCUMENTS AND MEETINGS .....	A-13
11.	CONTRACT TIME AND TIME EXTENSIONS .....	A-14
12.	CHANGES IN THE WORK .....	A-15
13.	CLAIMS AND DISPUTES .....	A-16

## Exhibit A Sample CMAR Agreement

14.	OTHER WORK .....	A-17
15.	INSURANCE .....	A-18
16.	WAIVER OF SUBROGATION.....	A-18
17.	INDEMNIFICATION.....	A-18
18.	CLEANUP AND PROTECTIONS .....	A-18
19.	ASSIGNMENT.....	A-19
20.	PERMITS, LICENSES AND TAXES .....	A-19
21.	TERMINATION FOR DEFAULT.....	A-22
22.	TERMINATION FOR CONVENIENCE AND RIGHT OF SUSPENSION .....	A-24
23.	COMPLETION.....	A-24
24.	WARRANTY .....	A-25
25.	TESTS AND INSPECTIONS .....	A-26
26.	DEFECTIVE WORK.....	A-27
27.	SUPERVISION AND CONSTRUCTION MANAGER'S REPRESENTATIVE .....	A-29
28.	PROTECTION OF WORK .....	A-30
29.	EMERGENCIES.....	A-30
30.	USE OF PREMISES.....	A-31
31.	SAFETY .....	A-31
32.	PROJECT MEETINGS .....	A-33
33.	MATERIAL SAFETY DATA SHEET .....	A-33
34.	AUDITING RIGHTS.....	A-33
35.	COMPLIANCE WITH LAWS.....	A-34
36.	SUBCONTRACTS .....	A-34
37.	MARKET ANALYSIS AND SOLICITATION OF BIDS .....	A-37
38.	PARTNERING .....	A-40
39.	SECURING AGREEMENT.....	A-40
40.	PUBLIC ENTITY CRIMES .....	A-40
41.	EQUAL EMPLOYMENT OPPORTUNITY/NON- DISCRIMINATION/MWBE/LDB AND APPRENTICESHIP PROGRAM .....	A-41
42.	CHANGED CONDITIONS.....	A-41
	EXHIBIT B SUPPLEMENTAL TERMS AND CONDITIONS .....	B-1
	EXHIBIT C FORM OF PAYMENT BOND.....	C-1
	EXHIBIT D FORM OF PERFORMANCE BOND .....	D-1



## Exhibit A Sample CMAR Agreement

EXHIBIT E INSURANCE REQUIREMENTS .....	E-1
EXHIBIT F RELEASE AND AFFIDAVIT .....	F-1
EXHIBIT G CONSTRUCTION MANAGER APPLICATION FOR PAYMENT .....	G-1
EXHIBIT H CHANGE ORDER .....	H-1
EXHIBIT I MASTER PROJECT SCHEDULE MILESTONES .....	I-1
EXHIBIT J CONSTRUCTION MANAGER'S STAFFING SCHEDULE .....	J-1
EXHIBIT K GMP AMENDMENT TO AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER.....	K-1
EXHIBIT L TRUTH-IN-NEGOTIATION CERTIFICATE .....	L-1
EXHIBIT M FINAL PAYMENT CHECKLIST .....	M-1
EXHIBIT N SCOPE OF WORK.....	N-1
EXHIBIT O SCHEDULE OF VALUES .....	O-1

## Exhibit A Sample CMAR Agreement

### **CONSTRUCTION MANAGER AT RISK AGREEMENT**

**THE City of Naples, a Florida municipal corporation**, (“Owner”), hereby contracts with [CMAR name], whose mailing address is 735 8<sup>th</sup> Street South., Naples, Florida 34102 (“Construction Manager” or “CMAR”), a Florida corporation, to perform all work (“Work”) in connection with the management and construction of that certain construction of **RFQ#[bid number] “[project name]”** (“Project”), located at [location] said Work being set forth in the plans and specifications being prepared by [EOR], the Architect and/or Engineer of Record (“Design Professional”) and all other Contract Documents hereafter specified.

Owner and Construction Manager, for the consideration herein set forth, agree as follows:

#### **Section 1. Contract Documents**

A. The Contract Documents consist of this Agreement, the Exhibits described in Section 8 hereof, and any duly executed and issued addenda, Change Orders, Construction Change Directives, Field Orders, and amendments relating thereto. Further, the term Contract Documents shall include all plans and specifications for the construction of the Project (“Construction Documents”) being prepared by Design Professional, but only after said Construction Documents have been completed by Design Professional and approved in writing by Owner. All of the foregoing Contract Documents are sometimes referred to herein as the “Contract”.

B. Owner shall furnish Construction Manager with one (1) sealed copy and one (1) reproducible set of the Construction Documents. Any additional copies of Construction Documents, required by Construction Manager for execution of the Work, shall be made by Construction Manager from its reproducible set at Construction Manager’s sole cost and expense. The reproducible set of the Construction Documents shall be returned to Owner upon final acceptance of the Work or termination of the Contract, whichever occurs first. Provided, however, Owner is furnishing Construction Manager a reproducible set of Construction Documents for Construction Manager’s convenience and such furnishing by Owner shall not be deemed to be a waiver by Owner or Design Professional of any copyright, patent or license they may have with respect to the Construction Documents. All such copyrights, patents and licenses hereby being expressly reserved by Owner and Design Professional.

#### **Section 2. Scope of Work**

The Work to be provided by Construction Manager pursuant to this Contract shall be performed essentially in two phases, as described in Owner’s request for proposals for the Work (the “RFP”). Those phases being Pre-Construction Phase Services and Construction Phase Services. At the discretion of Owner, those two phases may overlap. Further, the Work shall be performed in accordance with the scope of work attached hereto as Exhibit N and incorporated herein by reference.

A. **Pre-Construction Phase Services.** Construction Manager shall review and comment upon the Construction Documents being developed by Design Professional. The scope of that review shall include, but not be limited to, reviewing those various documents for value engineering and constructability. As the Construction Documents are developed by Design Professional through the various design phases set forth in the Design Professional Services Agreement between Design Professional and Owner (“Design Agreement”), Construction

[Type here]

[Type here]

[Type here]

## Exhibit A Sample CMAR Agreement

Manager shall provide Owner with detailed construction cost estimates with respect to those documents. Construction Manager agrees to attend any, and all design and preconstruction conferences and to otherwise assist and cooperate with Design Professional with respect to the design of the Project. Construction Manager shall provide all other services during the Pre-Construction Phase of the Project as set forth in the Contract Documents.

B. **Construction Phase Services.** After the Construction Documents have been sufficiently completed by Design Professional and approved by Owner for all of the Work (or such portions thereof as may be designated by Owner in writing), and Owner and Construction Manager have agreed in writing upon the guaranteed maximum price to be paid Construction Manager and the Contract Time for the Work (or designated portions thereof) as hereafter provided, Construction Manager shall furnish and pay for all management, supervision, financing, labor, materials, tools, fuel, supplies, utilities, equipment and services of every kind and type necessary to diligently, timely and fully perform and complete in a good and workmanlike manner the construction of the Work (or designated portions thereof) in accordance with all of the terms and conditions of the Contract Documents. Notwithstanding anything herein to the contrary, as and to the extent expressly directed and authorized by Owner in writing, Construction Manager shall commence to construct those portions of the Work designated by Owner even though the guaranteed maximum price and/or Contract Time for the entire Work has not yet been agreed to by the parties, so long as they have agreed in writing upon the compensation to be paid Construction Manager and the performance time for such portion of the Work.

### Section 3. **Relationship of Parties**

A. Construction Manager accepts the relationship of trust and confidence established by this Agreement. Construction Manager covenants with Owner to cooperate with Design Professional: to utilize Construction Manager's best skill, efforts, and judgment in furthering the interest of Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in the best way and the most expeditious and economical manner, consistent with the interests of Owner. Further, Construction Manager acknowledges that: (i) it has represented to Owner that it has specific expertise in the planning, management, and construction of projects similar to the nature, character, and components of this Project, and (ii) such representation is a material inducement to Owner to enter into this Contract.

B. Wherever the terms of this Contract refer to some action, consent, or approval (excluding approvals of Change Orders, Construction Change Directive, or amendments to the

## Exhibit A Sample CMAR Agreement

Contract) to be provided by Owner or some notice, report or document is to be provided to Owner, such reference to “Owner” shall mean Owner, Owner’s staff, or Owner’s designee (to the extent such designee has been expressly authorized by Owner in writing), unless otherwise stated herein.

C. Owner may utilize the services of a Program Manager to assist it with the management of the design and construction of the Project. In the event Owner does utilize the services of a Program Manager with respect to this Project, Owner shall notify Construction Manager in writing of such decision and the Program Manager shall be deemed to be an Owner designee as referenced in Paragraph B above. Further, to the extent Construction Manager is required to name Owner as an additional insured under any insurance policy to be maintained by Construction Manager pursuant to the terms of the Contract Documents, Construction Manager shall cause the Program Manager to also be named as an additional insured party under all such policies. The Program Manager shall be Owner’s representative with respect to the Project, with authority to transmit instructions, receive information, and interpret and define Owner’s policies and decisions with respect to the Work. Owner may utilize the services of a Project Manager or any representative designated by Owner from time to time (“Owner’s Representative”) to assist Owner with the management of the design and construction of the Project. In the event Owner does utilize the services of a Project Manager or Owner’s Representative with respect to this Project, Owner shall notify Construction Manager in writing of such decision and the Project Manager or Owner’s Representative, as applicable, shall be deemed to be an Owner designee as referenced in Paragraph B above. Further, to the extent Construction Manager is required to name Owner as an additional insured under any insurance policy to be maintained by Construction Manager pursuant to the terms of the Contract Documents, Construction Manager shall cause the Program Manager or Owner’s Representative, as applicable, to also be named as an additional insured party under all such policies. In the event Owner does utilize the services of a Project Manager, the Project Manager shall be deemed Owner’s Representative with respect to the Project and is designated to do all things necessary to properly administer the terms and conditions of this Agreement on behalf of Owner, including, without limitation, transmitting instructions, receiving and dispensing materials and information relative to the Project, interpreting and defining Owner’s policies and decisions with respect to the Work, and issuing Owner approvals as necessitated during the Project.

The Project Manager or Owner’s Representative, as applicable, will be responsible for the following tasks as related to the Project:

1. Examine reports, sketches, drawings, estimates, proposals, and other documents presented by the Construction Manager, for the purpose of issuance of those approvals necessary to support preparation and submission of invoices by the Construction Manager.
2. Provide instructions, receipt of information, interpretation and definition of Owner’s policies and decisions with respect to design, construction, materials, and other matters pertinent to the work covered by this Agreement.
3. Provide review and written confirmation of all documents and payment requests.

## Exhibit A Sample CMAR Agreement

Notwithstanding anything herein to the contrary, the Project Manager or Owner's Representative, as applicable, shall be responsible for the review of any Change Orders on behalf of Owner. Understanding that all Change Orders must be processed in accordance with City of Naples Procurement Ordinance in effect at that time. Any Change Orders with a total sum in excess of 10% of the City approved contract award, and/or as otherwise mandated pursuant to the Procurement Ordinance shall require the review and approval of the City of Naples, Florida.

D. Construction Manager at Risk hereby designates **[CMAR PM], as its Project Manager**, with full authority to bind and obligate Construction Manager on all matters arising out of or relating to the Work or the Contract Documents. Construction Manager agrees that the Project Manager shall devote whatever time is required to satisfactorily manage the Work and further agrees that the Project Manager shall not be removed or replaced by Construction Manager without Owner's prior approval, which approval shall not be unreasonably withheld.

### **Section 4. Contract Amount**

In consideration of the full and faithful performance by Construction Manager of the covenants in this Contract, Owner agrees to pay, or cause to be paid, to Construction Manager the following amounts (herein "Contract Amount"), in accordance with the terms of this Contract:

(ii) **Pre-Construction Phase Services.** For all Pre-Construction Phase Services, including, but not limited to, providing value engineering services, reviewing Construction Documents for constructability, assisting and meeting with Design Professional during the various design phases, and preparing cost estimates, Construction Manager shall receive the fixed amount of **[PC Lump Sum]** (\$\_\_\_\_) as the total lump sum compensation for its services. Monthly installment payment of the total lump sum compensation shall be based upon the percent completion of the designated portion of the Pre-Construction Services for each particular month and Owner's receipt of Construction Manager's written invoice for such payment, said invoice to be in a form reasonably acceptable to Owner. Any remaining final invoice for completed Pre-Construction Services shall be submitted: (i) before the GMP Amendment is executed for the entire Work, or the parties fail to reach agreement on the GMP Amendment and Owner elects to terminate this Contract as provided in section 4.B hereafter, whichever occurs first.

A. **Construction Phase.** With respect to the Construction Phase Services to be provided by Construction Manager hereunder, Owner shall reimburse Construction Manager for the Cost of the Work (as that term is defined hereafter) and pay Construction Manager a fixed Construction Management Fee of **[CMAR percentage] percent** (\_\_\_\_ %) of the estimated Cost of the Work, as that estimate is established at the time the GMP is initially set by the parties, and as may be adjusted in accordance with the Contract Documents. The Construction Management Fee shall be Construction Manager's total compensation for all overhead not reimbursable as Cost of the Work under Section 5.A. below, as well as Construction Manager's total profit for Construction Phase Services. Construction Manager agrees to provide Owner with a guaranteed maximum price proposal for the total sum of the Construction Management Fee plus the Cost of the Work within 60 days after the

## Exhibit A Sample CMAR Agreement

Construction Documents are 100% completed by the Design Professional and approved in writing by Owner. The guaranteed maximum price proposal shall be based upon the previous cost estimates provided by Construction Manager as required hereunder. Further, the proposal shall be broken down into the categories and level of detail required by Owner. Construction Manager agrees that all of its books, records and files, with respect to its development of the guaranteed maximum price proposal, shall be open to Owner for review and copying. The final guaranteed maximum price shall be mutually agreed upon by Owner and Construction Manager and shall be set forth in the GMP Amendment ("GMP"). The form for GMP Amendment is attached hereto as Exhibit K. Construction Manager shall provide a detailed breakdown acceptable to Owner of its guaranteed maximum price proposal, as well as for the GMP. For each line item in the GMP, Construction Manager shall develop and maintain a written report which identifies and explains all variances and deviations from the bid amount originally submitted for that line item, to the final line item price incorporated into the GMP. Construction Manager guarantees that in no event shall the Construction Management Fee and the total Cost of the Work exceed the GMP, except as the GMP may be adjusted pursuant to the terms herein for Change Orders and Construction Change Directives. In the event Construction Manager and Owner fail to reach an agreement on the GMP, Owner may elect to terminate this Contract. In the event of any such termination, Construction Manager shall be entitled to receive that portion of the Contract Amount attributable to the Pre-Construction Phase Services earned through the date of termination plus that portion of any earned compensation associated with any Construction Phase Services provided, to the extent such services were expressly approved in advance and in writing by Owner; but Construction Manager shall not be entitled to any further or additional compensation from Owner, including but not limited to damages or lost profits on portions of the Work not performed.

### **Section 5. Cost of the Work**

A. **Costs to be Reimbursed.** The term Cost of the Work shall mean all costs necessarily and reasonably incurred by Construction Manager in the proper performance of the Construction Phase Services portion of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with the prior written consent of Owner only after Construction Manager has provided sufficient support in writing that exceptional circumstances exist, which justify the payment of rates higher than the standard. The Cost of the Work shall include only those items set forth below in this subsection A:

#### **1. Labor Costs.**

- a. Wages of construction workers directly employed by Construction Manager to perform the construction of the Work at the Project site or, with Owner's written agreement, at off-site workshops. Costs to be reimbursed will be the actual wages paid to the individuals performing the work.
- b. Wages or salaries of Construction Manager's supervisory and administrative personnel who are stationed at the Project site with Owner's written agreement.



## Exhibit A Sample CMAR Agreement

- c. Wages and salaries of Construction Manager's supervisory and administrative personnel engaged at factories, workshops or on the road in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and only with Owner's written agreement as in subsection A.1.b above.
2. **Subcontract Costs.** Payments made by Construction Manager to subcontractors and for professional consulting services in accordance with the requirements of the applicable written subcontracts.
3. **Cost of Materials and Equipment Incorporated into the Completed Construction.**
  - a. Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
  - b. Costs of materials described in subsection A.3.a, above, in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to Owner at the completion of the Work or, at Owner's option, shall be sold by Construction Manager; amounts realized, if any, from such sales, shall be credited to Owner as a deduction from the Costs of the Work.
4. **Costs of other materials and equipment, temporary facilities, and related items.**
  - a. Costs, including transportation, installation, maintenance, dismantling and removal, of materials, supplies, temporary facilities (including project field offices, furniture and fixtures), temporary utilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site and fully consumed in the performance of the Work; and costs less salvage value on such items if not fully consumed, whether sold to others or retained by Construction Manager.
  - b. Rental charges, at standard industry rates for the area, for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site, whether rented from Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of all equipment rented, whether from Construction Manager or others, shall be subject to Owner's prior written approval.

## Exhibit A Sample CMAR Agreement

- c. Cost of removal and proper disposal of debris from the Project site.
- d. Costs of postage and parcel delivery charges, internet and telephone service at the Project site, and reasonable petty cash expenses of the Project site office.
- e. That portion of the reasonable travel and subsistence expenses of Construction Manager's personnel, assigned to the Project site, incurred while traveling outside of the City of Naples area in discharge of duties connected with the Work, provided all of such expenses and charges shall be subject to the prior written approval of Owner and Section 112.061 of the Florida Statutes governing payments by the State for travel expenses.

### 5. **Miscellaneous Costs.**

- a. That portion of any separate premiums for (i) bonds directly attributable to this Contract and (ii) any additional insurance coverages which are purchased by Construction Manager, with Owner's prior written approval, beyond the level of coverage specified herein.
- b. Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which Construction Manager is liable.
- c. Fees and assessments for the building permit and for other permits, licenses and inspections for which Construction Manager is required by the Contract Documents to pay.
- d. Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded pursuant to the terms of this Contract.
- e. Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents.
- f. Deposits lost for causes other than Construction Manager's fault or negligence.
- g. Legal, mediation and arbitration costs, other than those arising from disputes between Owner and Construction Manager, reasonably incurred by Construction Manager in performance of the Work and with Owner's prior written consent, said consent to be given or denied in Owner's sole discretion.



## Exhibit A Sample CMAR Agreement

- h. Costs reasonably incurred in repairing or correcting damage or nonconforming Work executed by Construction Manager, or its subcontractors or suppliers, provided that such damage or nonconforming Work was not caused by (i) the negligence or failure to fulfill a specific responsibility of Construction Manager to Owner set forth in the Contract Documents, or (ii) Construction Manager's foremen, engineers, superintendents or other supervisory, administrative or managerial personnel, or (iii) the failure of Construction Manager's personnel to supervise adequately those portions of the Work to be performed by Construction Manager's subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by Construction Manager from (i) insurance or bonds, (ii) any of the subcontractors or suppliers, or (iii) some other appropriate source.
- 6. **Other Costs.** Other costs incurred in performance of the Work if and to the extent approved in advance in writing by Owner.
- B. **Costs Not To Be Reimbursed.** The Cost of the Work shall not include the following items:
  - 1. Salaries and other compensation of Construction Manager's personnel stationed at Construction Manager's principal office or offices other than the Project site office.
  - 2. Expenses of Construction Manager's principal office and offices other than the Project site office.
  - 3. Overhead and general expenses, except as may be expressly included in subsection A above.
  - 4. Construction Manager's capital expenses, including interest on Construction Manager's capital employed for the Work.
  - 5. Rental costs of machinery and equipment, except as specifically provided in subsection A.4.b above.
  - 6. Except as expressly provided in subsection A.5.h. above, costs due to the fault or negligence of Construction Manager, subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including, but not limited to, costs for the correction of damaged, defective, or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.
  - 7. Any costs not specifically and expressly described in subsection A above.

## Exhibit A Sample CMAR Agreement

8. Costs which would cause the GMP to be exceeded (as the GMP may be adjusted pursuant to the terms herein for Change Order and Construction Change Directive).

### C. **Discounts, Rebates and Refunds.**

1. Cash discounts obtained on payments made by Construction Manager shall accrue to Owner if (i) before making the payment, Construction Manager included them in an application for payment and received payment therefor from Owner, or (ii) Owner has deposited funds with Construction Manager with which to make payments; otherwise, cash discounts shall accrue to Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to Owner, and Construction Manager shall make provisions so that they can be secured.
2. Amounts which accrued to Owner in accordance with the provisions of subsection C.1. above shall be credited to Owner as a deduction from the Cost of the Work.

### **Section 6. Bonds**

A. Within ten (10) business days after the GMP is agreed to by Owner and Construction Manager, Construction Manager shall provide Owner with Performance and Payment Bonds, in the form prescribed in Exhibits C and D, in the amount of 100% of the total sum of the GMP, the costs of which are to be paid by Construction Manager. The Performance and Payment Bonds must comply with the following provisions and must be otherwise acceptable to Owner:

1. The Bonds must be underwritten by a surety company which has a currently valid Certificate of Authority issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
2. The surety company shall have currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
3. The surety company shall be in full compliance with the provisions of the Florida Insurance Code.
4. The surety company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued.
5. The Bonds must be fully performable in Florida, with service and venue in Collier County, Florida.

## Exhibit A Sample CMAR Agreement

6. If the GMP exceeds \$500,000.00, the surety company shall also comply with the following provisions:

- a. The surety company shall have at least the following minimum ratings in the latest issue of Best's Key Rating Guide:

CONTRACT	POLICYHOLDER'S RATING	REQUIRED FINANCIAL RATING
\$ 500,000 to 1,000,000	A	CLASS IV
1,000,000 to 2,500,000	A	CLASS V
2,500,000 to 5,000,000	A	CLASS VI
5,000,000 to 10,000,000	A	CLASS VII
10,000,000 to 25,000,000	A	CLASS VIII
25,000,000 to 50,000,000	A	CLASS IX
50,000,000 to 75,000,000	A	CLASS X

- b. The surety company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:

- (1) Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to do business in this state have been met.
- (2) In the case of a surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any surety deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

B. If the surety for any bond furnished by Construction Manager is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the Contract Documents, Construction Manager shall, within five (5) calendar days thereafter, substitute another bond and surety, both of which shall be subject to the minimum requirements noted above and Owner's approval.

C. In accordance with the requirements of Section 255.05(1)(a), Florida Statutes, Construction Manager shall record within 5 days in the Public Records of City of Naples, Florida, a copy of the Performance and Payment Bonds. Construction Manager shall deliver within 10 days to Owner evidence, reasonably acceptable to Owner, of the recording of said Bonds. The delivery of such evidence is a condition precedent to Owner's obligation to make any progress payments to Construction Manager hereunder.

## **Exhibit A Sample CMAR Agreement**

### **Section 7. Contract Time and Liquidated Damages**

A. Time is of the essence in the performance of the Work under this Contract. The “Pre-Construction Commencement Date” shall be established in a Notice to Proceed to be issued by Owner. Construction Manager shall commence the Pre-Construction Phase Services portion of the Work within five (5) calendar days after the Pre-Construction Phase Commencement Date. Any Work performed by Construction Manager prior to the Pre-Construction Phase Commencement Date shall be at the sole risk of Construction Manager. The “Construction Phase Commencement Date” shall be established in the GMP Amendment. Construction Manager shall commence the Construction Phase Services portion of the Work within five (5) calendar days after the Construction Phase Commencement Date, which shall be established in a Construction Phase Commencement Notice to Proceed to be issued by Owner. No portion of the Work, with respect to the Construction Phase Services to be provided hereunder, shall be performed prior to the Construction Phase Commencement Notice to Proceed, unless expressly approved in advance by Owner in writing. The total period of time beginning with the Construction Phase Commencement Date and ending on the date of Substantial Completion of the Work is referred to hereafter as the “Contract Time”. The Contract Time is set forth with more specificity in Paragraph B below.

B. Because the Work is to be completed in two phases, the timely completion of the first phase is critical to the timely completion of the second phase and, therefore, completion of the entire Project. Accordingly, Construction Manager agrees to provide the Pre-Construction Phase Services in accordance with the design schedule established pursuant to the terms of the Design Agreement. With respect to the Construction Phase Services, the GMP Amendment shall include the date that portion of the Work associated with the Construction Phase Services must be substantially completed by Construction Manager. That Substantial Completion date shall be established in terms of calendar days after the Construction Phase Commencement Date. In the event Construction Manager and Owner fail to reach an agreement on the Contract Time and the Substantial Completion date, Owner may elect to terminate this Contract. In the event of any such termination, Construction Manager shall be entitled to receive that portion of the Contract Amount attributable to the Pre-Construction Phase Services earned to the date of termination plus that portion of any earned compensation associated with any Construction Phase Services provided, to the extent such services were expressly approved in advance and in writing by Owner; but Construction Manager shall not be entitled to any further or additional compensation from Owner, including but not limited to damages or lost profits on portions of the Work not performed. Substantial Completion of the Work shall be achieved when the Work has been completed to the point where Owner can occupy or utilize the Work for its intended purpose. Design Professional shall certify the date Substantial Completion of the Work is achieved. If Owner has designated portions of the Work to be turned over to Owner prior to Substantial Completion of the entire Work, Design Professional shall certify the date as to when Substantial Completion of such designated portions of the Work have been achieved. The entire Work shall be fully completed and ready for final acceptance by Owner within sixty (60) calendar days after the Substantial Completion date, or within sixty (60) calendar days after Construction Manager’s receipt of the punch list, whichever date occurs last.

C. Owner and Construction Manager recognize that, since time is of the essence for this Contract, Owner will suffer financial loss if the Work associated with the Construction

## **Exhibit A Sample CMAR Agreement**

Phase is not substantially completed within the time specified in the GMP Amendment, as said time may be adjusted as provided for herein. In such event, the total amount of Owner's damages, will be difficult, if not impossible, to definitely ascertain and quantify, because this is a public construction project that will, when completed, benefit the public and enhance the delivery of valuable services to the public, in City of Naples, Florida. It is hereby agreed that it is appropriate and fair that Owner receive liquidated damages from Construction Manager, if Construction Manager fails to achieve Substantial Completion of the Work within the required Contract Time. Should Construction Manager fail to substantially complete the Work within the required time period, Owner shall be entitled to assess, as liquidated damages, but not as a penalty, that sum specified in the GMP Amendment for each calendar day thereafter until Substantial Completion is achieved. Construction Manager hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of Owner's actual damages at the time of contracting if Construction Manager fails to substantially complete the Work in a timely manner.

D. When any period of time is referenced by days herein, it shall be computed to exclude the first day and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the laws of Florida, such day shall be omitted from the computation, and the last day shall become the next succeeding day which is not a Saturday, Sunday or legal holiday. The term "business day" as used herein shall mean all days of the week excluding Saturdays, Sundays and all legal holidays observed by Owner.

### **Section 8. Exhibits Incorporated**

The following documents are expressly agreed to be incorporated by reference and made a part of this Agreement.

- Exhibit A: General Terms and Conditions
- Exhibit B: Supplemental Terms and Conditions
- Exhibit C: Form of Payment Bond
- Exhibit D: Form of Performance Bond
- Exhibit E: Insurance Requirements
- Exhibit F: Form of Release and Affidavit
- Exhibit G: Form of Construction Manager Application for Payment
- Exhibit H: Form of Change Order
- Exhibit I: Master Project Schedule Milestones
- Exhibit J: Construction Manager's Staffing Schedule
- Exhibit K: GMP Amendment to Agreement Between Owner and Construction Manager
- Exhibit L: Truth-In-Negotiation Certificate
- Exhibit M: Final Payment Checklist
- Exhibit N: Scope of Work
- Exhibit O: Schedule of Values

## **Exhibit A Sample CMAR Agreement**

### **Section 9. Notices**

A. All notices required or made pursuant to this Contract by Construction Manager to Owner shall be in writing and may be given either (i) by mailing same by United States mail with proper postage affixed thereto, certified, return receipt requested, or (ii) by sending same by Federal Express, UPS or other nationally recognized mail or package delivery service, or (iii) by hand delivery to the appropriate address as herein provided. Notices required hereunder shall be directed to the following address:

**CITY OF NAPLES**

**\_\_ Division**

Naples, Florida  
ATTENTION:  
Email and Phone:

B. All notices required or made pursuant to this Contract by Owner to Construction Manager shall be made in writing and may be given either (i) by mailing same by United States mail with proper postage affixed thereto, certified, return receipt requested, or (ii) by sending same by Federal Express, UPS or other nationally recognized mail or package delivery service, or (iii) by hand delivery to the appropriate address as herein provided. Notices required hereunder shall be directed to the following address:

**[CMAR name]**  
**[CMAR address]**  
ATTENTION: **[CMAR Notice]**  
Email and Phone:

Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this Section.

### **Section 10. Modification**

No modification or amendment to the Contract shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

### **Section 11. Successors and Assigns**

Subject to other provisions hereof, the Contract shall be binding upon and shall inure to the benefit of the successors and assigns of the parties to the Contract.



## **Exhibit A Sample CMAR Agreement**

### **Section 12. Governing Law**

The Contract shall be interpreted under and its performance governed by the laws of the State of Florida.

### **Section 13. No Waiver**

The failure of Owner to enforce at any time or for any period of time any one or more of the provisions of the Contract shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.

### **Section 14. Entire Agreement**

Each of the parties hereto agrees and represents that the Contract comprises the full and entire agreement between the parties affecting the Work contemplated, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations, acts, work performed, or payments made prior to the execution hereof shall be deemed merged in, integrated, and superseded by the Contract.

### **Section 15. Severability**

Should any provision of the Contract be determined by a court to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.

### **Section 16. Construction**

Unless the context of this Contract otherwise clearly requires, references to the plural include the singular, references to the singular include the plural. The term “including” is not limiting, and the terms “hereof”, “herein”, “hereunder”, and similar terms in this Contract refer to this Contract as a whole and not to any particular provision of this Contract, unless stated otherwise. Additionally, the parties hereto acknowledge that they have carefully reviewed this Contract and have had the opportunity to be advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Contract shall not be construed more strongly against any party hereto, regardless of who is responsible for its preparation.

### **Section 17. Public Records**

Construction Manager shall keep all records and supporting documentation, which concern or relate to the Work hereunder for a minimum of five (5) years from the date of termination of this Contract or the date the Project is completed or such longer period as may be required by law, whichever is later, pursuant to Florida Public Records Law Chapter 119 and comply with specifically those contractual requirements in 119.0701(2)(a)-(b) as follows:

**IF THE CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSTRUCTION MANAGER’S DUTY TO**

**Exhibit A Sample CMAR Agreement**

**PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT,  
CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**Division of Communications, Government and Public Affairs  
3299 Tamiami Trail East, Suite 102  
Naples, FL 34112-5746  
Telephone: (239) 252-8999  
Email: [PublicRecordRequest@colliercountyfl.gov](mailto:PublicRecordRequest@colliercountyfl.gov)**

The Construction Manager must specifically comply with the Florida Public Records Law to:

1. Keep and maintain public records required by the public agency to perform the service.
2. Upon request from the public agency's custodian of public records, provide the public agency 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 this chapter or as otherwise provided by law.
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 Construction Manager does not transfer the records to the public agency.
4. Upon completion of the Contract, transfer, at no cost, to the public agency all public records in possession of the Construction Manager or keep and maintain public records required by the public agency to perform the service. If the Construction Manager transfers all public records to the public agency upon completion of the Contract, the Construction Manager shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Construction Manager keeps and maintains public records upon completion of the Contract, the Construction Manager shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

If the Construction Manager refuses to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Construction Manager in conjunction with this Contract, then the Owner may, without prejudice to any right or remedy and after giving the Construction Manager seven (7) days written notice, during which period Construction Manager still fails to allow access, terminate the employment of the Construction Manager and take possession of the site and of all materials,



## **Exhibit A Sample CMAR Agreement**

equipment, tools, construction equipment and machinery thereon, owned by the Construction Manager, and may finish the Project by whatever method it may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall it be relieved from its continuing obligations hereunder.

### **Section 18. E-Verify**

The Owner shall consider Construction Manager's employment of unauthorized aliens a violation of section 274A(e) of the Immigration and Nationalization Act, as may be amended. Such violation shall be cause for unilateral cancellation of this Contract.

Immigration and E-Verify: By executing and entering into this Contract, the Construction Manager is formally acknowledging without exception or stipulation that it is fully responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 as located at 8 U.S.C. 1324, et seq. and regulations relating thereto, as either may be amended. Failure by the Construction Manager to comply with the laws referenced herein shall constitute a breach of this Contract and the Owner shall have the discretion to unilaterally terminate this Contract immediately.

Statutes and executive orders require employers to abide by the immigration laws of the United States and to employ only individuals who are eligible to work in the United States including the requirements set forth in Florida Statute, §448.095.

The Employment Eligibility Verification System (E-Verify) operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA), provides an Internet-based means of verifying employment eligibility of workers in the United States; it is not a substitute for any other employment eligibility verification requirements. The program is to be used for formal Invitations to Bid ("ITB") and Request for Proposals ("RFP") including professional services and construction services.

The only exceptions to the program:

- Commodity based procurement where no services are provided.
- Where the requirement for the affidavit is waived by the City of Naples.

Contractors / Bidders are required to enroll in the E-Verify program, and provide acceptable evidence of their enrollment, at the time of the submission of the Contractor's/bidder's proposal. Acceptable evidence consists of a copy of the properly completed E-Verify Company Profile page or a copy of the fully executed E-Verify Memorandum of Understanding for the company. The Construction Manager is also required to provide the City of Naples Procurement Services Division an executed affidavit certifying that it shall comply with the E-Verify Program.

## **Exhibit A Sample CMAR Agreement**

Additionally, the Construction Manager shall require all subcontracted contractors to use the E-Verify system for all purchases not covered under the “Exceptions to the program” clause above.

For additional information regarding the Employment Eligibility Verification System (E-Verify) program visit the following website: <http://www.dhs.gov/E-Verify>. It shall be the Construction Manager’s responsibility to familiarize themselves with all rules and regulations governing this program.

Construction Manager acknowledges, and without exception or stipulation, any firm(s) receiving an award shall be fully responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 as located at 8 U.S.C. 1324, et seq. and regulations relating thereto, as either may be amended and with the provisions contained herein. Failure by the Construction Manager to comply with the laws referenced herein shall constitute a breach of the Contract and the Owner shall have the discretion to unilaterally terminate said Contract immediately.

[REMAINDER OF PAGE LEFT BLANK]

**Exhibit A Sample CMAR Agreement**

**IN WITNESS WHEREOF**, the parties hereto, have each, respectively, by an authorized person or agent, have executed this Agreement on the date and year first written above.

ATTEST:

Patricia L. Rambosk, City Clerk

OWNER:  
CITY OF NAPLES, FLORIDA  
A Municipal Corporation

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

By: \_\_\_\_\_  
**Jay Boodheshwar, City Manager**

Dated: \_\_\_\_\_

(SEAL)

CONSTRUCTION MANAGER’S  
WITNESSES:

CONSTRUCTION MANAGER:  
**[CMAR name]:**

\_\_\_\_\_  
First Witness

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

\_\_\_\_\_  
Type/print witness name

Print Name:  
Title:

\_\_\_\_\_  
Second Witness

\_\_\_\_\_  
Type/print witness name

Approved as to Form and Legality:

\_\_\_\_\_  
City Attorney

**EXHIBIT A**  
**GENERAL TERMS AND CONDITIONS**

**1. INTENT OF CONTRACT DOCUMENTS**

1.1 It is the intent of the Contract Documents to describe a functionally complete project (or portion thereof) to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for in the Contract Documents. If the Contract Documents include words or terms that have a generally accepted technical or industry meaning, then such words or terms shall be interpreted to have such standard meaning unless otherwise expressly noted in the Contract Documents. Reference to standard specifications, manuals or codes of any technical society, organization or association or to the laws or regulations of any governmental authority having jurisdiction over the Project, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, law or regulation in affect at the time the Work is performed, except as may be otherwise specifically stated herein. Provided, however, in the event the standard specification, manual, code, law or regulation is changed after the GMP Amendment has been executed by the parties, Construction Manager shall be entitled to a Change Order equitably adjusting the Contract Amount and/or Contract Time to the extent such change materially impacts the Contract Time and/or Contract Amount.

1.2 If during the performance of the Work Construction Manager discovers a conflict, error or discrepancy in the Contract Documents, Construction Manager immediately shall report same to Design Professional in writing, and before proceeding with the Work affected thereby, shall obtain a written interpretation or clarification from Design Professional. Prior to commencing each portion of the Work, Construction Manager shall first take all necessary field measurements and verify the applicable field conditions. After taking such measurements and verifying such conditions, Construction Manager shall carefully compare such measurements and conditions with the requirements of the Contract Documents, taking into consideration all other relevant information known to Construction Manager, for the purpose of identifying and bringing to Owner's attention all conflicts or discrepancies with the Contract Documents.

1.3 Drawings are intended to show general arrangements, design and extent of Work and are not intended to serve as shop drawings. Specifications are separated into divisions for convenience of reference only and shall not be interpreted as establishing divisions for the Work, trades, subcontracts or extent of any part of the Work. In the event of a discrepancy between or among the drawings, specifications or other Contract Document provisions, Construction Manager shall be required to comply with the provision which is the more restrictive or stringent requirement upon Construction Manager, as determined by Owner. Unless otherwise specifically mentioned, all anchors, bolts, screws, fittings, fillers, hardware, accessories, trim and other parts required in connection with any portion of the Work to make a complete, serviceable, finished and first quality installation shall be furnished and installed as part of the Work, whether or not called for by the Contract Documents.

## **2. INVESTIGATION AND UTILITIES**

2.1 Construction Manager shall have the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, legal disposal, handling and storage of materials; availability and quality of labor; water and electric power; availability and condition of roads; work area; living facilities; climatic conditions and seasons; physical conditions at the work-site and the Project area as a whole; topography and ground surface conditions; nature and quantity of the surface materials to be encountered; subsurface conditions; equipment and facilities needed preliminary to and during performance of the Work; and all other costs associated with such performance. The failure of Construction Manager to acquaint itself with any applicable conditions shall not relieve Construction Manager from any of its responsibilities to perform under the Contract Documents, nor shall it be considered the basis for any claim for additional time or compensation.

2.2 Construction Manager shall locate all existing roadways, railways, drainage facilities and utility services above, upon, or under the Project site, said roadways, railways, drainage facilities and utilities being referred to in this Section 2 as the “Utilities”. Construction Manager shall contact the owners of all Utilities to determine the necessity for relocating or temporarily interrupting any Utilities during the construction of the Project. Construction Manager shall schedule and coordinate its Work around any such relocation or temporary service interruption. Construction Manager shall be responsible for properly shoring, supporting, and protecting all Utilities at all times during the course of the Work.

2.3 If during the performance of the Work, Construction Manager or any subcontractor, sub-subcontractor, agent, employee or anyone else for whom Construction Manager is legally liable, causes a disruption to any Utilities service to other facilities or customers within the Project area, Construction Manager shall take all actions necessary and required to immediately restore such Utilities service. If Construction Manager fails to take such immediate actions Owner shall have the right to take whatever actions it deems necessary and required to immediately restore the disrupted services, and all costs incurred by Owner as a result thereof shall be reimbursed to Owner by Construction Manager within five (5) business days of written demand for same from Owner.

## **3. SCHEDULE.**

3.1 Construction Manager shall prepare and provide the various schedules set forth in Exhibit B to the Agreement. Said schedules shall include but not be limited to an overall progress schedule for the Project which not only includes the Pre-Construction Phase and Construction Phase Services to be provided by Construction Manager hereunder, but also shall include Design Professional’s performance schedules (“Master Project Schedule”).

3.2 The Master Project Schedule and all other schedules required hereunder shall be updated by Construction Manager as often as is specified in Exhibit B to the Agreement. The Master Project Schedule and all updates to it shall be subject to Owner’s and Design Professional’s review and comment. Construction Manager’s submittal of a satisfactory Master

## Exhibit A Sample CMAR Agreement

Project Schedule and updates thereto and Owner's acceptance of same shall be a condition precedent to Owner's obligation to pay Construction Manager.

### 4. PROGRESS PAYMENTS.

4.1 Construction Manager's monthly Applications for Payment shall be in such form and contain such detail and backup as Owner reasonably may require. The first Application for Payment shall be submitted no earlier than thirty (30) days after the Pre- Construction Phase Commencement Date and shall be submitted each month to the Design Professional along with a completed and notarized copy of the Application for Payment form attached to the Agreement as Exhibit G. Payment to the Construction Manager for the Pre-Construction Phase services shall be based upon the verified completion of the percentage of deliverables on the Project as more specifically identified in Exhibit N, Task 3.

4.2 At the time it submits its GMP proposal to Owner, Construction Manager also shall submit to Owner and Design Professional, for their review, a Schedule of Values based upon the GMP proposal; all in C.S.I. format, listing the major elements of the Work and the dollar value for each element. The Schedule of Values, as further revised to reflect the final negotiated GMP amount and as approved by Owner, will be attached to the GMP Amendment, and shall be used as the basis for Construction Manager's monthly Applications for Payment thereafter. The Schedule of Values shall be updated for any current Change Orders and Construction Change Directives and submitted each month to the Design Professional along with a completed and notarized copy of the Application for Payment form attached to the Agreement as Exhibit G.

4.3 If payment is requested on the basis of materials and equipment not incorporated into the Project, but delivered and suitably stored at the site, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances, together with evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which shall be subject to Owner's satisfaction. Owner has the discretion whether or not to pay for such unincorporated materials.

4.4 Construction Manager shall submit its monthly Application for Payment to Design Professional on or before the 25th day of each month for Work performed during the previous month. Invoices received after the 25th day of each month shall be considered for payment as part of the next month's application. Within seven (7) calendar days after receipt of each Application for Payment, Design Professional shall submit to Owner a Certificate for Payment in the amount recommended by Design Professional as being due and owing Construction Manager. Owner shall pay Construction Manager that portion of Design Professional's Certificate for Payment which Owner approves as being due and owing Construction Manager within twenty-five (25) calendar days of Owner's receipt of the Certificate for Payment.

4.5 Owner shall withhold retainage on the gross amount of each monthly progress payment in the amount of five percent (5%), as permitted by Section 218.735, Florida Statutes. The foregoing does not prohibit Owner from withholding retainage at a rate less than five percent (5%) of each monthly progress payment as otherwise allowable under Section 218.735, Florida Statutes. Any reduction in retainage below the maximum amount set forth in Section 218.735, Florida Statutes, shall be at the sole discretion of the Owner. Such retainage shall be accumulated and not released



## **Exhibit A Sample CMAR Agreement**

to Contractor until final payment is due unless otherwise agreed to by the Owner in accordance with Section 255.077, Florida Statutes. Any interest earned on retainage shall accrue to the benefit of the Owner. Provided, however, nothing in this Section 4.5 shall preclude or limit the Owner's right to withhold payment as otherwise permitted by the terms of the Contract Documents or as permitted by law.

4.6 Monthly payments to Construction Manager shall in no way imply approval or acceptance of Construction Manager's work.

4.7 Each Application for Payment shall be accompanied by a Release and Affidavit, in the form attached to the Agreement as Exhibit F, showing that all materials, labor, equipment and other bills associated with that portion of the Work payment is being requested on have been paid in full through the previous month's Application for Payment. Additionally, Construction Manager shall provide appropriate waivers and releases of lien/claims against the bonds from all subcontractors and suppliers. Owner shall not be required to make payment until and unless these affidavits are furnished by Construction Manager. Further, if Construction Manager is withholding any portion of a payment to any subcontractor for any labor, services, or materials for which Owner has paid Construction Manager, Construction Manager agrees to refund such money to Owner.

### **5. PAYMENTS WITHHELD**

5.1 Design Professional shall review each Application for Payment submitted by Construction Manager and shall make recommendations to Owner as to the proper amounts, if any, which may be owed Construction Manager under the Application for Payment. Design Professional's payment recommendation shall be evidenced by a Certificate for Payment issued by Design Professional to Owner. All Certificates for Payment are subject to Owner's review and approval. Both Design Professional and Owner shall have the right to refuse to certify or approve for payment any amounts, or portions thereof, requested by Construction Manager in an Application for Payment, or rescind any amount previously certified and approved in a Certificate for Payment, and Owner may withhold any payments otherwise due Construction Manager under this Contract or any other agreement between Owner and Construction Manager, to the extent it is reasonably necessary, to protect Owner from any expense, cost or loss attributable to: (a) defective or deficient Work not properly remedied in accordance with the terms of the Contract Documents; (b) the filing or reasonable evidence indicating the probable filing of third party claims against Owner attributable to the fault or neglect of Construction Manager; (c) Construction Manager's failure to make timely and proper payments to all subcontractors and suppliers; (d) reasonable evidence that the remaining Work cannot be completed for the unpaid Contract Amount balance; (e) reasonable evidence indicating that the remaining Work cannot be completed within the remaining Contract Time; (f) Construction Manager's failure to satisfactorily prosecute the Work in accordance with the requirements of the Contract Documents; or (g) any other material breach of the requirements of the Contract Documents by Construction Manager. Owner shall have the right, but not the obligation, to take any corrective action Owner deems appropriate to cure any of the above noted items, at Construction Manager's expense, if such items are not cured by Construction Manager to Owner's reasonable satisfaction within three (3) days after Construction Manager's receipt of written notice from Owner.

## **6. FINAL PAYMENT**

6.1 Owner shall make final payment to Construction Manager within sixty (60) calendar days after the Work is finally accepted by Owner in accordance with Paragraph 23.2 herein, provided that Construction Manager first, and as an explicit condition precedent to the accrual of Construction Manager's right to final payment, shall have furnished Owner with a properly executed and notarized final release (conditioned only upon receipt of final payment) in the form of the Release and Affidavit attached to the Agreement as Exhibit F, as well as, a duly executed checklist in the form of the Final Payment Checklist attached to the Agreement as Exhibit M, copy of the surety's consent to final payment, appropriate waivers and releases of lien/claims against the bonds from all subcontractors and suppliers, and such other documentation that may be required by the Contract Documents or Owner.

6.2 Construction Manager's acceptance of final payment shall constitute a full waiver of any and all claims by Construction Manager against Owner arising out of this Contract or otherwise relating to the Project, except those identified in writing by Construction Manager as unsettled in the final Application for Payment. Neither the acceptance of the Work nor payment by Owner shall be deemed to be a waiver of Owner's right to enforce any obligations of Construction Manager hereunder or to the recovery of damages for defective Work not discovered by Owner or Design Professional at the time of final inspection.

## **7. SUBMITTALS AND SUBSTITUTIONS**

7.1 Construction Manager shall carefully examine the Contract Documents for all requirements for approval of materials to be submitted such as shop drawings, data, test results, schedules, and samples. Construction Manager shall submit all such materials at its own expense and in such form and manner as required by the Contract Documents in sufficient time to prevent any delay in the delivery of such materials and the installation thereof. Construction Manager shall also carefully review and certify for accuracy and completeness all shop drawings and other submittals and then forward the same to Design Professional for review and action. Design Professional will transmit them back to Construction Manager who will then issue the submittals to the affected subcontractor for fabrication or revision. Construction Manager shall maintain a suspense control system to promote the expeditious handling of shop drawings and all other submittals. Construction Manager shall request Design Professional to make interpretations of the drawings or specifications requested of it by the subcontractors. Construction Manager shall advise Design Professional in writing which submittals or requests for clarification have the greatest urgency; the purpose being to enable Design Professional to prioritize requests coming from Construction Manager. Construction Manager shall advise Owner and Design Professional in writing when timely response is not occurring on any of the above.



## **Exhibit A Sample CMAR Agreement**

7.2 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other suppliers may be accepted by Owner and Design Professional if sufficient information is submitted by Construction Manager to allow Owner and Design Professional to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and equipment will not be accepted by Owner from anyone other than Construction Manager. All such requests, to the extent possible, should be submitted by Construction Manager to Design Professional prior to the setting of the GMP.

7.3 If Construction Manager wishes to furnish or use a substitute item of material or equipment, Construction Manager shall make application to Design Professional for acceptance thereof, certifying that the proposed substitute shall perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Construction Manager's achievement of substantial completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for the Project) to adapt the design to the proposed substitute and whether or not incorporation or use by the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service shall be indicated. The application also shall contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by Design Professional in evaluating the proposed substitute. Design Professional may require Construction Manager to furnish at Construction Manager's expense additional data about the proposed substitute.

7.4 If a specific means, method, technique, sequence or procedure of construction is indicated in or required by Contract Documents, Construction Manager may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to Design Professional, if Construction Manager submits sufficient information to allow Design Professional to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by Design Professional shall be the same as those provided herein for substitute materials and equipment.

7.5 Design Professional shall be allowed a reasonable time within which to evaluate each proposed substitute. Design Professional and Owner shall be the sole judges of the acceptability of any substitute. No substitute shall be ordered, installed or utilized without Owner's and Design Professional's prior written acceptance which shall be evidenced by either a Change Order or an approved submittal. Owner may require Construction Manager to furnish at Construction Manager's expense a special performance guarantee or other surety with respect to any substitute. If Owner rejects the proposed substitute, at Owner's discretion, Owner may require Construction Manager to reimburse Owner for the charges of Design Professional and Design Professional's consultants for evaluating the proposed substitute.

## **8. PRE-CONSTRUCTION PHASE SERVICES**

Construction Manager shall provide the following review and commentary services, in addition to any other Pre-Construction Phase Services required by the terms of this Contract:

8.1 Review, Recommendations and Warranty: Construction Manager shall familiarize itself thoroughly with the evolving architectural, civil, mechanical, plumbing, electrical and structural plans and specifications and shall follow the development of design from Schematic Pre-Construction Phase through Construction Documents Phase (as those phases are defined in the Design Agreement). Construction Manager shall make recommendations with respect to the selection of systems and materials, and cost-reducing alternatives including assistance to Design Professional and Owner in evaluating alternative comparisons versus long term cost effects. The evaluation shall address the benefits of the speed of erection and early completion of the Work. Construction Manager shall furnish pertinent information as to the availability of materials and labor that will be required. Construction Manager shall submit to Owner and Design Professional such comments as may be appropriate concerning construction feasibility and practicality. Construction Manager shall call to Owner's and Design Professional's attention any defects in the design, drawings and specifications or other documents of which it is aware. Construction Manager shall prepare estimates of the construction cost utilizing the unit quantity survey method in the CSI format. These estimates shall be performed at the completion of the Program Verification Phase and shall be called the Program Estimate, followed by a Schematic Design Estimate, which shall be followed by the Design Development Estimate, which shall be followed by a 50% Construction Document Estimate, which shall be followed by the setting of the GMP. These estimates shall be performed at or as otherwise detailed in a specific preconstruction scope attachment or exhibit.

8.2 Review Reports: Within ten (10) days after receiving the documents produced by Design Professional, Construction Manager shall perform a specific review thereof, focused upon factors of a nature encompassed in Paragraph 8.1 above and on factors set out in Paragraphs 8.3 and 8.4 below. Within the same ten (10) day period, Construction Manager shall submit to Owner, with copies to Design Professional, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as Construction Manager may deem appropriate, and all actions taken by Design Professional with respect to same, any comments Construction Manager may deem to be appropriate with respect to separating the Work into separate subcontracts, alternative materials, and any other appropriate or required comments.

AT THE TIME THE GMP IS MUTUALLY ESTABLISHED, EXCEPT ONLY AS TO SPECIFIC MATTERS AS MAY BE IDENTIFIED IN THE GMP AMENDMENT, THE CONSTRUCTION MANAGER SHALL BE DEEMED TO HAVE WARRANTED TO OWNER, WITHOUT ASSUMING ANY ARCHITECTURAL OR ENGINEERING RESPONSIBILITY, THAT THE CONSTRUCTION DOCUMENTS ARE CONSISTENT WITH EACH OTHER, PRACTICAL, FEASIBLE AND CONSTRUCTABLE. FURTHER, THE CONSTRUCTION MANAGER SHALL BE DEEMED TO HAVE WARRANTED TO OWNER THAT THE WORK DESCRIBED IN THE CONSTRUCTION DOCUMENTS FOR THE VARIOUS BIDDING PACKAGES IS CONSTRUCTABLE WITHIN THE CONTRACT TIME.

## **Exhibit A Sample CMAR Agreement**

8.3 Long Lead Procurement: Construction Manager shall review the Project design for the purpose of identifying long lead procurement items (machinery, equipment, materials, and supplies) and consult with Design Professional concerning same. When each item is identified, Construction Manager shall notify the subcontractors, Owner and Design Professional of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. Construction Manager shall keep itself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items, and advise Owner and Design Professional of any problems or possible delays in delivery.

### **8.4 Interfacing:**

8.4.1 Construction Manager shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate procurement of long lead items, the separate construction subcontractors and the general conditions items without duplication or overlap, and sequenced to maintain completion of all Work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the Work included in that particular separate subcontract, its schedule for start and completion and its relationship to the other separate subcontractors.

8.4.2 Without assuming any design responsibilities of Design Professional, Construction Manager shall include in the reports required under Paragraph 8.2 above, comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that Design Professional may arrange for necessary corrections.

## **9. CONSTRUCTION PHASE SERVICES**

Construction Manager shall provide the following services in addition to any other Construction Phase Services required by the terms of this Contract:

9.1 Construction Manager shall arrange for all job-site facilities as required by Owner and necessary to enable Construction Manager and Design Professional to perform their respective duties and to accommodate any representatives of Owner which Owner may choose to have present on the job, the description of such facilities to be finalized prior to the establishment of the GMP.

9.1.1 Tangible personal property, otherwise referred to as job-site facilities, include, but are not limited to such things as trailers, toilets, typewriters, computers, and any other equipment necessary to carry on the Work. The method of acquiring such job-site facilities, which are planned to become the property of Owner at the conclusion of the Work, shall be evaluated based on their cost over the life of the Project. Owning versus leasing shall be considered by Construction Manager, obtaining at least three (3) proposals for leasing and at least three (3) proposals for purchasing and then analyzing which is least expensive over the usable life of the item. Construction Manager shall present its evaluation with recommendation to Owner for approval.

9.1.2 When Construction Manager wishes to supply job-site facilities from its own equipment pool, it shall first evaluate buy versus lease as discussed in subparagraph

## Exhibit A Sample CMAR Agreement

9.1.1 above. If leasing is found to be the least expensive approach, then it may lease such job-site facilities from its own equipment pool at a price not greater than the lowest of the three (3) lease proposals obtained.

9.1.3 For all such job-site facilities purchased, which may become the property of Owner at the conclusion of the Work, Construction Manager shall maintain ownership responsibilities of such facilities until final acceptance of the Work. Reimbursement for cost of such equipment will be made at the conclusion of the Work at the documented purchase price. At that time, Construction Manager shall provide Owner with a complete inventory for each unit of equipment. The inventory shall describe the equipment and identify the purchase price, serial number, model number and condition. Where said equipment has a title, said title shall be properly transferred to Owner or to its designee.

9.1.4 Construction Manager is responsible for proper care and maintenance of all equipment while in its control. At the time of transfer to Owner, Owner may refuse acceptance of the equipment if Owner determines, in its sole discretion, that the equipment has not been properly cared for by Construction Manager or that such acquisition would not otherwise be in the best interest of Owner. In such event, Construction Manager will be reimbursed for such item in accordance with Section 5 of the Agreement.

9.2 Construction Manager's administration of the Work shall include the following:

9.2.1 Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.

9.2.2 Maintain a roster of companies on the Project with names and telephone numbers of key personnel.

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

9.2.4 Provide labor relations management for a harmonious, productive Project.

9.3 Construction Manager also shall provide job site administration functions during construction to assure proper documentation, including but not limited to the following:

9.3.1 Job Meetings: Conduct a preconstruction conference with each subcontractor after award of the subcontract and prior to the start of its portion of the Work. Hold weekly progress and coordination meetings, or more frequently if required by Work progress, to provide for the timely completion of the Work. In addition, Construction Manager shall arrange and conduct regular monthly Project status meetings with Design Professional and Owner.

Construction Manager shall use the job site meetings as a tool for the preplanning of Work and enforcing schedules, and for establishing procedures, responsibilities, and identification of authority for all parties to clearly understand. During these meetings, Construction Manager shall identify the party or parties responsible for following up on any problems, delay items or questions, and Construction Manager shall note the action to be taken by such party or parties. Construction Manager shall revisit each pending item at each subsequent

## Exhibit A Sample CMAR Agreement

meeting until resolution is achieved. Construction Manager shall attempt to obtain from all present any problems or delaying event known to them for appropriate attention and resolution.

9.3.2 Shop Drawing Submittals/Approvals: Provide staff to review and approve shop drawings and other submittals and to implement procedures for transmittal to Design Professional of such submittals for action, and closely monitor their review process.

9.3.3 Material and Equipment Expediting: Provide staff to closely monitor material and equipment deliveries, check and follow-up on supplier commitments for all subcontractors and maintain a material and equipment expediting log.

9.3.4 Payments to Subcontractors: Develop and implement a procedure for the review, processing, and payment of applications by subcontractors for progress and final payments.

9.3.5 Document Interpretation: Refer all questions for interpretation of the Contract Documents to Design Professional in writing.

9.3.6 Reports and Project Site Documents: Record the progress of the Work. Submit written progress reports to Owner and Design Professional, including information on subcontractors' Work, and the percentage of completion. Keep a daily log available to Owner, Design Professional, and any permitting authority inspectors.

9.3.7 Subcontractors Progress: Prepare periodic punch lists for subcontractors' work including unsatisfactory or incomplete items and schedules for their completion.

9.3.8 Substantial Completion: Pursuant to the provisions of Paragraph 23.1 of these General Terms and Conditions, ascertain when the Work or designated portions thereof are ready for Design Professional's Substantial Completion inspections. From the punch lists of incomplete or unsatisfactory items prepared by Construction Manager and reviewed and supplemented by Design Professional, prepare a schedule for their completion indicating completion dates for Owner's review.

9.3.9 Final Completion: Monitor the subcontractors' performance on the completion of the Work and provide notice to Owner and Design Professional when the Work is ready for final inspection. Secure, review and certify compliance with the Contract Documents, then transmit to Owner, through Design Professional, all required guarantees, warranties, affidavits, releases, bonds, waivers, manuals, record drawings, and maintenance books.

9.3.10 Start-Up: With Owner's personnel, direct the check-out of utilities, operations, systems, and equipment for readiness and assist in their initial start-up and testing by the subcontractors.

## Exhibit A Sample CMAR Agreement

9.3.11 Record Drawings: Pursuant to the terms of Paragraph 10.2 hereafter, Construction Manager shall monitor the progress of its own forces and its subcontractors on marked up field prints which shall be developed by Construction Manager into the final record drawings.

9.4 Construction Manager shall maintain at the Project site, originals or copies of, on a current basis, all Project files and records, including, but not limited to, the following administrative records:

- 9.4.1 Subcontracts and Purchase Orders
- 9.4.2 Subcontractor Licenses
- 9.4.3 Shop Drawing Submittal/Approval Logs
- 9.4.4 Equipment Purchase/Delivery Logs
- 9.4.5 Contract Drawings and Specifications with Addenda
- 9.4.6 Warranties and Guarantees
- 9.4.7 Cost Accounting Records
- 9.4.8 Labor Costs
- 9.4.9 Material Costs
- 9.4.10 Equipment Costs
- 9.4.11 Cost Proposal Request
- 9.4.12 Payment Request Records
- 9.4.13 Meeting Minutes
- 9.4.14 Cost-Estimates
- 9.4.15 Bulletin Quotations
- 9.4.16 Lab Test Reports
- 9.4.17 Insurance Certificates and Bonds
- 9.4.18 Contract Changes
- 9.4.19 Permits
- 9.4.20 Material Purchase Delivery Logs



## **Exhibit A Sample CMAR Agreement**

- 9.4.21 Technical Standards
- 9.4.22 Design Handbooks
- 9.4.23 “As-Built” Marked Prints
- 9.4.24 Operating & Maintenance Instruction
- 9.4.25 Daily Progress Reports
- 9.4.26 Monthly Progress Reports
- 9.4.27 Correspondence Files
- 9.4.28 Transmittal Records
- 9.4.29 Inspection Reports
- 9.4.30 Bid/Award Information
- 9.4.31 Bid Analysis and Negotiations
- 9.4.32 Punch Lists
- 9.4.33 PMIS Schedule and Updates
- 9.4.34 Suspense (Tickler) Files of Outstanding Requirements
- 9.4.35 Policy and Procedure Manual

The Project files and records shall be available at all times to Owner and Design Professional or their designees for reference, review or copying.

9.5 Construction Manager shall provide the following services with respect to the Work, to facilitate the smooth, successful, and timely occupancy of the Project by Owner:

9.5.1 Construction Manager shall provide consultation and Project management to facilitate Owner’s occupancy of the Project and provide transitional services to place the Work “on line” in such conditions as will satisfy Owner’s operations requirements. The services include Construction Manager’s coordination of the delivery of Owner supplied furniture, fixtures, and equipment for the Project.

9.5.2 Construction Manager shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to Owner in such a manner as to promote their usability. Construction Manager shall provide Owner’s operations and maintenance personnel with operations and maintenance training with respect to the equipment and systems being provided as part of the Work. This training may be videotaped by Owner for subsequent presentation to Owner’s operations and maintenance personnel.

## Exhibit A Sample CMAR Agreement

9.5.3 Construction Manager shall secure required guarantees and warranties, and shall assemble and deliver same to Owner in the manner required by Owner.

### 10. DAILY REPORTS, RECORD CONTRACT DOCUMENTS AND MEETINGS

10.1 Construction Manager shall prepare, maintain, and submit to Design Professional and Owner, for their review and approval, the various logs, reports, and schedules set forth in Exhibit B to the Agreement. Construction Manager's complete performance of its obligation to prepare, maintain and submit those logs, reports, and schedules is a condition precedent to Owner's obligation hereunder to make any payments to Construction Manager. These logs, reports and schedules shall not constitute nor take the place of any notice required to be given by Construction Manager to Owner or Design Professional pursuant to the Contract Documents.

10.2 Construction Manager shall maintain in a safe place at the Project site one record copy and one permit set of the Contract Documents, including, but not limited to, all drawings, specifications, addenda, amendments, Change Orders, Construction Change Directive and Field Orders, as well as all written interpretations and clarifications issued by Design Professional, in good order and annotated to show all changes made during construction. The record Contract Documents shall be continuously updated by Construction Manager throughout the prosecution of the Work to accurately reflect all field changes that are made to adapt the Work to field conditions, changes resulting from Change Orders, Construction Change Directive and Field Orders, and all concealed and buried installations of piping, conduit, and utility services. Construction Manager shall certify the accuracy of the updated record Contract Documents. As a condition precedent to Owner's obligation to pay Construction Manager, Construction Manager shall provide evidence, satisfactory to Owner and Design Professional, that Construction Manager is fulfilling its obligation to continuously update the record Contract Documents. All buried and concealed items, both inside and outside the Project site, shall be accurately located on the record Contract Documents as to depth and in relationship to not less than two (2) permanent features (e.g., interior or exterior wall faces). The record Contract Documents shall be clean, and all changes, corrections and dimensions shall be given in a neat and legible manner in red. The record Contract Documents, together with all approved samples and a counterpart of all approved shop drawings shall be available to Owner and Design Professional for reference. Upon completion of the Work and as a condition precedent to Construction Manager's entitlement to final payment, the record Contract Documents, samples and shop drawings shall be delivered to Design Professional by Construction Manager for Owner.

10.3 Construction Manager shall advise Owner, its representatives, and Design Professional of their requested or required participation in any meeting or inspection giving each at least one week written notice unless such notice is made impossible by conditions beyond Construction Manager's fault and control, in which case at least 48 hours prior written notice must be given.



## **11. CONTRACT TIME AND TIME EXTENSIONS**

11.1 Construction Manager shall diligently pursue the completion of the Work and coordinate the Work being done on the Project by its subcontractors and materialmen, as well as coordinating its Work with all work of others at the Project site, so that its Work or the work of others shall not be delayed or impaired by any act or omission by Construction Manager or anyone for whom Construction Manager is liable. Unless expressly noted otherwise in the Contract Documents, Construction Manager shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, as well as coordination of all portions of the Work under the Contract Documents, and the coordination of Owner's suppliers and contractors as set forth in Section 14 herein.

11.2 Should Construction Manager be obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of Construction Manager, and not due to its fault or neglect, including but not restricted to acts of God or of the public enemy, acts of government, fires, floods, epidemics, quarantine regulation, strikes, lockouts, unusually severe weather conditions by comparison with the ten-year City of Naples, Florida, average not reasonably anticipatable, Construction Manager shall notify Owner and Design Professional in writing within seven (7) calendar days after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Construction Manager may have had to request a time extension.

11.2.1 Owner shall have the right, at any time, whether or not Construction Manager is behind schedule, to order Construction Manager to accelerate its Work. In the event that Owner orders Construction Manager to accelerate its Work and Construction Manager (i) is not behind schedule and (ii) believes that acceleration will increase the cost of performance, Construction Manager, shall be required to submit a Claim for increase pursuant to Section 13 of this Agreement. Any such claim shall be based exclusively and solely on actual and direct increased field costs associated with the acceleration.

11.3 If Construction Manager encounters on the Project site any materials reasonably believed by Construction Manager to be petroleum or petroleum related products or other hazardous or toxic substances which have not been rendered harmless, Construction Manager immediately shall (i) stop Work in the area affected and (ii) report the condition to Owner in writing. If the Work is so stopped and hazardous material is found, the Work in the affected area shall not thereafter be resumed except by Change Order. Any such Change Order shall include, but not be limited to, an adjustment to the Contract Time as appropriate. If no hazardous material is found after the Work is stopped, no Change Order is required to resume the Work in the affected area. Further, if the hazardous material was generated or caused by Construction Manager or any of its employees, agents, subcontractors, or material suppliers, no Change Order will be required for an adjustment in the Contract Time and Construction Manager shall indemnify Owner and hold Owner harmless for any costs incurred by Owner with respect to such hazardous material.

11.4 No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever, including those for which

## Exhibit A Sample CMAR Agreement

Owner and Design Professional may be responsible, in whole or in part, shall relieve Construction Manager of its duty to perform or give rise to any right to damages or additional compensation from Owner. Construction Manager expressly acknowledges and agrees that it shall receive no damages for delay. Construction Manager's sole remedy, if any, against Owner will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This paragraph shall expressly apply to claims for early completion, as well as to claims based on late completion.

11.5 In no event shall any approval by Owner authorizing Construction Manager to continue performing Work under this Agreement or any payment issued by Owner to Construction Manager be deemed a waiver of any right or claim Owner may have against Construction Manager for delay damages hereunder.

### 12. CHANGES IN THE WORK

12.1 Owner shall have the right at any time during the progress of the Work to increase or decrease the Work. Promptly after being notified of a change, but in no event more than fourteen (14) days after its receipt of such notification (unless Owner has agreed in writing to a longer period of time), Construction Manager shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. Except in an emergency endangering life or property, or for minor changes ordered by Design Professional, no addition or changes to the Work shall be made except upon written order of Owner, and Owner shall not be liable to Construction Manager for any increased compensation or adjustment to the Contract Time without such written order. No officer, employee or agent of Owner is authorized to direct any extra or changed work orally.

12.2 A Change Order, in the form attached as Exhibit H to the Agreement, shall be prepared by Construction Manager, reviewed by Design Professional and Owner, and executed promptly by the parties after an agreement is reached between Construction Manager and Owner concerning the requested changes. Construction Manager shall promptly perform changes authorized by duly executed Change Orders. The Contract Amount and Contract Time shall be adjusted in the Change Order in the manner as Owner and Construction Manager shall mutually agree.

12.3 If Owner and Construction Manager are unable to agree on a Change Order for the requested change, Construction Manager shall, nevertheless, promptly perform the change as directed by Owner in a written Construction Change Directive. In that event, the Contract Amount and Contract Time shall be adjusted as directed by Owner. If Construction Manager disagrees with Owner's adjustment determination, Construction Manager must make a claim pursuant to Section 13 of these General Conditions or else be deemed to have waived any claim it might otherwise have had on that matter.

12.4 In the event a requested change is approved by Owner which results in either an increase or decrease to the Contract Amount, a Change Order shall be issued which increases or decreases the GMP by the amount of Construction Manager's actual and reasonable direct Cost of the Work (including bond premiums). In the event such change Work is performed by

## **Exhibit A Sample CMAR Agreement**

subcontractors or sub-subcontractors, a maximum ten percent (10%) markup shall be permitted for all overhead and profit on those subcontractors' and sub-subcontractors' direct labor, material and actual equipment costs. Work performed directly by the Construction Manager shall not be entitled to any mark-up for Change Order work.

12.5 Owner shall have the right to conduct an audit of Construction Manager's books and records, as well as those of its subcontractors and suppliers, to verify the accuracy of Construction Manager's claim with respect to Construction Manager's costs associated with any Change Order or Construction Change Directive.

12.6 Design Professional may direct Construction Manager to make nonmaterial changes to the Work, so long as such changes do not require or result in any adjustment to the Contract Amount, Contract Time or Project quality, and are generally within the scope of the Work. All such changes must be evidenced by a written order from Design Professional to Construction Manager, with a copy to Owner. Construction Manager shall comply with all such orders.

### **13. CLAIMS AND DISPUTES**

13.1 The term "Claim" as used herein shall mean any and all demands made by one party hereunder against the other party, whether such demand be for money, time or the assertion of any right or obligation that arises out of the Contract Documents.

13.2 Initial notice of Claims by Construction Manager shall be made in writing to Owner and Design Professional within seven (7) calendar days after the Construction Manager knew or should have known of the event giving rise to such Claim or else Construction Manager shall be deemed to have waived the Claim. Written supporting data shall be submitted to Owner and Design Professional within thirty (30) calendar days after the occurrence of the event, unless Owner grants additional time in writing, or else Construction Manager shall be deemed to have waived the Claim. All Claims shall be priced in accordance with the provisions of Paragraph 12.4 hereof.

13.3 Construction Manager shall proceed diligently with its performance as directed by Owner, regardless of any pending Claim, unless otherwise agreed to by Owner in writing. Owner shall continue to make payments in accordance with the Contract Documents during the pendency of any Claim.

13.4 Prior to the initiation of any action or proceeding permitted by this Contract to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation between representatives with decision-making power. Failing resolution, and prior to the commencement of depositions in any litigation between the parties with respect to the Project, the parties shall attempt to resolve the dispute through mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. Should either party fail to submit to mediation as required hereunder, the other party may request a court of law to order mediation under Florida Statutes Section 44.102.

## **Exhibit A Sample CMAR Agreement**

13.5 Any litigation between Owner and Construction Manager (which term for the purposes of this subparagraph shall include Construction Manager's surety), whether arising out of any Claim or arising out of the Contract or any breach thereof, shall be brought, maintained and pursued only in the appropriate State courts of the State of Florida; and Owner and Construction Manager each hereby waive and renounce any and all rights and options which they, or either of them, have or might have to bring or maintain any such litigation or action in the Federal Court system of the United States or in any United States Federal District Court. Venue of any such litigation between Owner and Construction Manager shall lie and be only in the appropriate State courts of the State of Florida in and for City of Naples, Florida. Construction Manager consents and submits to the jurisdiction of any such court and agrees to accept service of process from the State of Florida in any matter to be submitted to any such court.

### **14. OTHER WORK**

14.1 Owner may perform other work related to the Project at the site by Owner's own forces, have other work performed by utility owners or let other direct contracts. If the fact that such other work is to be performed is not noted in the Contract Documents, written notice thereof will be given to Construction Manager prior to starting any such other work. If Construction Manager believes that such performance will involve additional expense to Construction Manager or require additional time, Construction Manager shall send written notice of that fact to Owner and Design Professional within seven (7) calendar days of being notified of the other work. If Construction Manager fails to send the above required seven (7) calendar days' notice, Construction Manager will be deemed to have waived any rights it otherwise may have had to seek an extension to the Contract Time or adjustment to the Contract Amount.

14.2 Construction Manager shall afford each utility owner and other contractor who is a party to such a direct contract (or Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work and shall properly connect and coordinate its Work with theirs. Construction Manager shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Construction Manager shall be responsible for all damage to the work of others caused by the performance of its Work. Further, Construction Manager shall not in any way cut or alter the work of others without first receiving the written consent of that other person and Design Professional.

14.3 If any part of Construction Manager's Work depends for proper execution or results upon the work of any other contractor or utility owner (or Owner), Construction Manager shall inspect and promptly report to Design Professional in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. Such report must be made within seven (7) calendar days of the time Construction Manager first became aware of the delay, defect or deficiency or by the scheduled commencement of Construction Manager's dependent Work, whichever occurs first. Construction Manager's failure to report within the allotted time will constitute an acceptance of the other work as fit and proper for integration with Construction Manager's Work.

## 15. INSURANCE

15.1 Construction Manager shall procure and maintain insurance as identified in Exhibit E to the Agreement.

## 16. WAIVER OF SUBROGATION

16.1 Owner and Construction Manager waive all rights of subrogation against each other, Design Professional, the Program Manager (if any), and the City, directors, officers, agents, employees, subconsultants and subcontractors of any of them, for damages or injuries caused by perils covered by any insurance maintained by a party hereunder, to the extent such damages or injuries are covered by such insurance, except no party hereto waives any rights they may have to the proceeds of such insurance held by another party. Construction Manager shall require similar waivers from all its subcontractors.

16.2 If any policies of insurance referred to in this Section require an endorsement to provide any waiver of subrogation referenced above, the owners of such policies will cause them to be so endorsed.

## 17. INDEMNIFICATION

17.1 To the maximum extent permitted by Florida law, Construction Manager shall defend, indemnify and hold harmless Owner and its officers and employees from any and all liabilities, claims, damages, penalties, demands, judgments, actions, proceedings, losses or costs, including, but not limited to, reasonable attorneys' fees and paralegals' fees, whether resulting from any claimed breach of this Agreement by Construction Manager or from personal injury, property damage, or loss of use thereof, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Construction Manager or anyone employed or utilized by the Construction Manager in the performance of this Agreement.

17.2 The duty to defend under this Article 17 is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of the Construction Manager, Owner, and any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Construction Manager. Construction Manager's obligation to indemnify and defend under this Article 17 will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the Owner or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

## 18. CLEANUP AND PROTECTIONS

18.1 Construction Manager agrees to keep the Project site clean at all times of debris, rubbish and waste materials arising out of the Work. If Construction Manager fails to keep the Project site clean, Owner has the right, after providing a twenty-four (24) hour written notice, to perform any required clean up and to back charge Construction Manager for the costs of such clean up. At the completion of the Work, Construction Manager shall remove all debris, rubbish, and waste materials from and about the Project site, as well as all tools, appliances,



## Exhibit A Sample CMAR Agreement

construction equipment and machinery and surface materials, and shall leave the Project site clean and ready for occupancy by Owner.

18.2 Any existing surface or subsurface improvements, including, but not limited to, pavements, curbs, sidewalks, pipes, utilities, footings, structures, trees and shrubbery, not indicated in the Contract Documents to be removed or altered, shall be protected by Construction Manager from damage during the prosecution of the Work. Any such improvements so damaged shall be restored by Construction Manager to condition at least equal to that existing at the time of Construction Manager's commencement of the Work.

### 19. ASSIGNMENT

19.1 Construction Manager shall not assign this Contract or any part thereof, without the prior consent in writing of Owner. If Construction Manager does, with approval, assign this Contract or any part thereof, it shall require that its assignee be bound to it and to assume toward Construction Manager all of the obligations and responsibilities that Construction Manager has assumed toward Owner.

### 20. PERMITS, LICENSES AND TAXES

20.1 All permits and licenses necessary for the prosecution of the Work shall be procured and paid for by Construction Manager. Permits and licenses to be acquired by Construction Manager with the assistance of Design Professional include, but are not limited to, building, site and utility permits, as well as all Health Department (DER) permits required for the construction or relocation of City of Naples water and/or sanitary sewer lines and facilities, to the extent such water and/or sewer work is included in this Contract. If Construction Manager performs any Work without obtaining, or contrary to, such permits or licenses, Construction Manager shall bear all costs arising therefrom. Construction Manager shall pay all governmental charges and inspection fees necessary for the prosecution of the Work. All costs incurred by Construction Manager with respect to performing its obligations under this Paragraph 20.1 shall be considered a direct cost item and shall be considered reimbursable as Cost of the Work as provided for in the Agreement. Owner shall fully cooperate with Construction Manager where necessary.

20.2 Construction Manager shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work. Additionally, Construction Manager shall comply with and fully implement the sales tax savings program with respect to the Work, as set forth below in Paragraph 20.3.

20.3 Sales Tax Savings and Direct Purchase Program. Construction Manager shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work. No markup shall be applied to sales tax. Construction Manager shall comply with and fully implement the sales tax savings program with respect to the Work, as set forth in Paragraph 20.3.1 below.

20.3.1 Notwithstanding anything herein to the contrary, because Owner is exempt from sales tax and may wish to generate sales tax savings for the Project, Owner reserves the right to make direct purchases of various construction materials and equipment

## **Exhibit A Sample CMAR Agreement**

included in the Work ("Direct Purchase"). Owner shall prepare purchase orders to vendors selected by Construction Manager, for execution by Owner, on forms provided by Owner. Construction Manager shall allow two (2) weeks for execution of all such purchase orders by Owner. Construction Manager represents and warrants that it will use its best efforts to cooperate with Owner in implementing this sales tax savings program in order to maximize cost savings for the Project. Adjustments to the Contract Amount will be made by appropriate Change Orders for the amounts of each Owner Direct Purchase, plus the saved sales taxes. A Change Order shall be processed promptly before each Direct Purchase, or group of similar or related Direct Purchases, unless otherwise mutually agreed upon between Owner and Construction Manager. With respect to all Direct Purchases by Owner, Construction Manager shall remain responsible for coordinating, ordering, inspecting, accepting delivery, storing, handling, installing, warranting and quality control for all Direct Purchases. Notwithstanding anything herein to the contrary, Construction Manager expressly acknowledges and agrees that all Direct Purchases shall be included within and covered by Construction Manager's warranty to Owner to the same extent as all other warranties provided by Construction Manager pursuant to the terms of the Contract Documents. In the event Owner makes a demand against Construction Manager with respect to any Direct Purchase and Construction Manager wishes to make claim against the manufacturer or supplier of such Direct Purchase, upon request from Construction Manager Owner shall assign to Construction Manager any and all warranties and Contract rights Owner may have from any manufacturer or supplier of any such Direct Purchase by Owner.

20.3.2 Construction Manager represents and warrants that it is aware of its statutory responsibilities for sales tax under Chapter 212, Florida Statutes, and for its responsibilities for Federal excise taxes. Owner is exempt from the payment of Florida Sales Tax under F.S. Chapter 212 and can provide the Construction Manager a copy of its Certificate of Exemption upon request.

20.3.3 The GMP shall only include those taxes that are legally enacted at the time the GMP is established and are the lawful responsibility of the Owner.

20.3.4 Any and all administrative costs incurred by the Construction Manager to administer the purchase in the name of the Owner shall be considered to be included in the GMP as part of the staff cost included in the General Conditions. No addition shall be added to the Contract Amount because of the service provided by Construction Manager in the purchase of property, materials, etc., in the name of the Owner.

20.3.5 The Owner's sales tax savings program shall be administered in accordance with the terms and conditions provided herein. Construction Manager's contracts with trade subcontractors shall include the provisions for the Owner's sales tax savings program.

20.3.6 Construction Manager shall be responsible for negotiating, coordinating production schedules with vendor(s), inspecting, accepting delivery, storing, handling, installing, and quality control for the materials/equipment purchased hereunder. Without limiting the generality of the foregoing, the purchase of material/equipment by Owner



## **Exhibit A Sample CMAR Agreement**

shall not amend, alter or modify the obligations of Construction Manager under this Agreement with respect to scheduling, inspecting, accepting deliveries, storing, handling, installing and quality control of the direct purchase materials/equipment.

20.3.7 Within sixty (60) days of Construction Manager and Owner agreeing on the GMP, Construction Manager shall provide Owner's Representative with a written list of vendors, materials/equipment, quantities and costs for items which Construction Manager proposes Owner purchase directly pursuant to the terms hereof. Construction Manager shall select qualified vendors as part of the GMP/trade package review process for all such direct purchase materials/equipment.

20.3.8 Owner's Representative will review the list provided by Construction Manager and inform Construction Manager of the acceptability of individual items and of Owner's intention to proceed or not proceed with direct purchases. If Owner intends to proceed with direct purchases, Construction Manager will provide a revised list (if necessary) to the Owner's Representative's satisfaction and shall assist Owner's staff, designees, and key personnel in preparing and issuing purchase orders for the direct purchase items.

20.3.9 Purchase orders for direct purchase items shall be prepared by Owner and issued directly to the vendor(s) within two (2) weeks after request from Construction Manager.

20.3.10 Before the issuance of each purchase order for material/equipment, the Construction Manager shall issue a corresponding deductive Change Order(s) reducing the GMP by an amount equal to the cost of the material/equipment, including sales tax, included in the original GMP and to avoid project delays, such deductive Change Orders will not require approval by the City.

20.3.11 Construction Manager will quantify ordering, coordinate submittals, fabrication, and delivery of all direct purchase items. Construction Manager will inspect, receive, and store all direct purchase items at the Project site. Upon inspection and possession by the Construction Manager, the direct purchase items shall be deemed incorporated into the Project and become the full responsibility of the Construction Manager.

20.3.12 Owner's Representative will have each vendor forward to Construction Manager a duplicate invoice for direct purchases. Upon receipt of such invoice, Construction Manager shall promptly review and approve or reject (with reason in writing for such rejection). The Construction Manager will document receipt of goods received within five (5) business days to Owner.

20.3.13 Title to any materials/equipment purchased pursuant to the terms hereof shall vest in the Owner upon receipt from a vendor. Owner shall bear risk of loss for any materials purchased pursuant to the terms hereof commencing upon delivery of the materials to the Owner by the vendor and terminating when the materials/equipment are incorporated into the Project. Upon incorporation into the Project of such materials,

## Exhibit A Sample CMAR Agreement

Construction Manager shall bear sole cost and responsibility for remedy of defective materials or damage during the course of construction.

20.3.14 Owner shall obtain such insurance as the Owner deems necessary, at the Owner's sole cost and expense, to insure the Owner for the full replacement cost of any materials purchased by the Owner pursuant to the terms hereof until such materials are incorporated in the Project.

20.3.15 Construction Manager shall be entitled to a Construction Manager's Fee for the value of all direct purchase materials and equipment purchased by Owner under this Paragraph 20.3, plus any General Conditions costs and insurance premiums associated therewith.

20.3.16 Upon incorporation into the Project by Construction Manager, all direct purchase materials equipment purchased by Owner pursuant to this Paragraph 20.3 shall be subject to and covered by the insurance, bonds and warranties provided by Construction Manager to Owner under this Agreement and all warranties provided under purchase orders.

20.3.17 Nothing contained within this Paragraph 20.3 shall create or be construed as creating a partnership between the Owner and Construction Manager or to constitute the Construction Manager as an agent of the Owner.

### 21. TERMINATION FOR DEFAULT

21.1 Construction Manager shall be considered in material default of the Contract and such default shall be considered cause for Owner to terminate the Contract, in whole or in part, as further set forth in this Article, if Construction Manager: (1) fails to begin the Work under the Contract Documents within the time specified herein; or (2) fails to properly and timely perform the Work as directed by Owner or Design Professional or as provided for in the approved Master Project Schedule; or (3) performs the Work unsuitably or neglects or refuses to remove materials or to correct or replace such Work as may be rejected as unacceptable or unsuitable; or (4) discontinues the prosecution of the Work contrary to the requirements of the Contract; or (5) fails to resume Work which has been suspended within a reasonable time after being notified to do so; or (6) becomes insolvent or is declared bankrupt, or commits any act of bankruptcy; or (7) allows any final judgment to stand against it unsatisfied for more than ten (10) days; or (8) makes an assignment for the benefit of creditors; or (9) fails to obey any applicable codes, laws, ordinances, rules or regulations with respect to the Work; or (10) fails to promptly pay its subcontractors and suppliers; or (11) materially breaches any other provision of the Contract Documents.

21.2 If Owner determines that Construction Manager is in default under this Contract, Owner shall notify Construction Manager in writing of Construction Manager's default(s). If Owner determines that Construction Manager has not remedied and cured the default(s) within seven (7) calendar days following receipt by Construction Manager of said written notice, then Owner, at its option, without releasing or waiving its rights and remedies against Construction Manager's sureties and without prejudice to any other right or remedy it

## **Exhibit A Sample CMAR Agreement**

may be entitled to hereunder or by law, may terminate Construction Manager's right to proceed under the Contract, in whole or in part, and take possession of all or any portion of the Work and any materials, tools, equipment, and appliances of Construction Manager, take assignments of any of Construction Manager's subcontracts and purchase orders that Owner may designate, and complete all or any portion of Construction Manager's Work by whatever means, method or agency which Owner, in its sole discretion, may choose. In making either the initial determination that Construction Manager is in default under this Contract or the subsequent determination that Construction Manager has failed to satisfactorily cure its default, Owner may rely solely upon Design Professional's certification to Owner that in Design Professional's opinion Construction Manager is in default or has failed to satisfactorily cure its default.

21.3 If Owner deems any of the foregoing remedies necessary, Construction Manager agrees that it shall not be entitled to receive any further payments hereunder until after the Work is completed. All monies expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses (including Design Professional and attorneys' fees) or damages incurred by Owner incident to such completion, shall be deducted from the unpaid balance of the Contract Amount, and if such expenditures exceed the unpaid balance of the Contract Amount, Construction Manager agrees to pay promptly to Owner on demand the full amount of such excess, including costs of collection, attorney's fees (including appeals) and interest thereon at the maximum legal rate of interest until paid. If the unpaid balance of the Contract Amount exceeds all such costs, expenditures and damages incurred by Owner to complete the Work, Construction Manager shall not be entitled to any portion of such excess, except for the unpaid portion of the Construction Management Fee earned and the Cost of Work incurred prior to Construction Manager's right to continue performance under this Contract being terminated. Any amounts to be paid to Owner by Construction Manager pursuant to this Paragraph 21.3 shall be certified by Design Professional, upon application, and this obligation for payment shall survive termination of the Contract.

21.4 The liability of Construction Manager hereunder shall extend to and include the full amount of any and all sums paid, expenses and losses incurred, damages sustained, and obligations assumed by Owner in good faith under the belief that such payments or assumptions were necessary or required, in completing the Work and providing labor, materials, equipment, supplies, and other items therefor or re-letting the Work, and in settlement, discharge or compromise of any claims, demands, suits, and judgments pertaining to or arising out of the Work hereunder. Further, in the event Owner has exercised its right to terminate due to Construction Manager's default, Construction Manager shall be prohibited from bidding or otherwise seeking additional work from Owner in accordance with Owner's then current debarment policy.

21.5 If, after notice of termination of Construction Manager's right to proceed pursuant to this Article, it is determined for any reason that Construction Manager was not in default, or that its default was excusable, or that Owner is not entitled to the remedies against Construction Manager provided herein, then such termination shall be deemed a termination for Owner's convenience and Construction Manager's remedies against Owner shall be the same as and limited to those afforded Construction Manager under Paragraph 22.1 below.

## **22. TERMINATION FOR CONVENIENCE AND RIGHT OF SUSPENSION**

22.1 Owner shall have the right to terminate this Contract without cause upon seven (7) calendar days written notice to Construction Manager. In the event of such termination for convenience, Construction Manager's recovery against Owner shall be limited to that portion of the Contract Amount earned through the date of termination, together with any retainage withheld and reasonable termination expenses incurred, but Construction Manager shall not be entitled to any other or further recovery against Owner, including, but not limited to, damages or any anticipated profit on portions of the Work not performed.

22.2 Owner shall have the right to suspend all or any portions of the Work upon giving Construction Manager two (2) calendar days' prior written notice of such suspension. If all or any portion of the Work is so suspended, Construction Manager's sole and exclusive remedy shall be to seek an extension to the Contract Time in accordance with the procedures set forth in the Contract Documents. In no event shall Construction Manager be entitled to any additional compensation or damages except as otherwise expressly provided for in the Contract Documents. Provided, however, if the ordered suspension exceeds ninety (90) calendar days, Construction Manager shall have the right to terminate the Contract with respect to that portion of the Work which is subject to the ordered suspension.

## **23. COMPLETION**

23.1 When the entire Work (or any portion thereof designated in writing by Owner) is ready for its intended use, Construction Manager shall notify Owner and Design Professional in writing that the entire Work (or such designated portion) is substantially complete and request that Design Professional issue a Certificate of Substantial Completion (or Certificate of Partial Substantial Completion). Said written notice from Construction Manager shall include a proposed punch list of all items of Work to be completed or corrected by Construction Manager. Within a reasonable time thereafter, Owner, Construction Manager and Design Professional shall make an inspection of the Work (or designated portion thereof) to determine the status of completion. If Owner and Design Professional do not consider the Work (or designated portion) substantially complete, Design Professional shall notify Construction Manager in writing giving the reasons therefor. In such case, Construction Manager shall pay the costs of all additional Substantial Completion inspections. If Owner and Design Professional consider the Work (or designated portion) substantially complete, Design Professional shall prepare and deliver to Construction Manager a Certificate of Substantial Completion (or Certificate of Partial Substantial Completion) which shall fix the date Substantial Completion for the entire Work (or designated portion thereof) is actually achieved by Construction Manager and include a final punch list of items to be completed or corrected by Construction Manager before final payment. Such final punch list shall be in compliance with the Contract Documents and all applicable laws. Accordingly, Design Professional shall provide the final punch list to Construction Manager within seven calendar days after Construction Manager has achieved Substantial Completion. Construction Manager acknowledges and agrees that the failure to include any corrective work or pending items not yet completed on the punch list does not alter the responsibility of Construction Manager to complete all the Work required under this Contract and does not waive Owner's right to demand completion of the item pursuant to the Contract Documents prior to or after final payment. Additionally, if this Agreement involves Work on more than one building or

## Exhibit A Sample CMAR Agreement

structure, or involves a multi-phased Project, a punch list shall be developed in accordance with the timelines set forth in this paragraph for each building, structure, or phase of the Project. Owner shall have the right to exclude Construction Manager from the Work and Project site (or designated portion thereof) after the date of Substantial Completion (or Partial Substantial Completion), but Owner shall allow Construction Manager reasonable access to complete or correct items on the final punch list.

23.2 When Construction Manager believes it has fully performed all of the Work, including all punch list items, Construction Manager shall deliver to Owner a written affidavit from Construction Manager certifying that all Work has been completed in accordance with the requirements of the Contract Documents. That written affidavit shall be delivered to Owner by Construction Manager at the same time it submits its final Application for Payment. After receipt of such affidavit, the final Application for Payment and all other documents required for Project close-out, Design Professional and Owner shall promptly inspect the Work to determine if all of the Work has been completed and is ready for final acceptance by Owner. If Owner and Design Professional determine Construction Manager has completed the entire Work, Design Professional shall promptly issue a final Certificate for Payment, stating that, to the best of its knowledge, information and belief, and on the basis of its observations and inspections: (i) all of the Work has been completed in accordance with the requirements of the Contract Documents; (ii) the final balance due Construction Manager, as noted in the final Certificate for Payment, is due and payable; and (iii) all conditions precedent to Construction Manager's entitlement to final payment have been satisfied. Neither the final payment nor the retainage shall become due and payable until Construction Manager submits: (1) the final Release and Affidavit in the form attached to the Agreement as Exhibit F, along with waivers and releases of lien/claims against bonds from all subcontractors and suppliers, (2) consent of surety to final payment, and (3) if required by Owner, other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens, arising out of the Contract Documents, to the extent and in such form as may be designated by Owner. Owner reserves the right to inspect the Work and make an independent determination as to the Work's acceptability, even though Design Professional may have issued its recommendations. Unless and until Owner is completely satisfied, neither the final payment nor the retainage shall become due and payable.

## 24. WARRANTY

24.1 Construction Manager shall obtain and assign to Owner all express warranties given to Construction Manager by any subcontractors or by any materialmen supplying materials, equipment or fixtures to be incorporated into the Project. Construction Manager expressly warrants to Owner that all materials and equipment to be incorporated into the Work shall be new unless otherwise specified. Further, Construction Manager expressly warrants to Owner that all Work shall be of good quality, free from all defects and in conformance with the Contract Documents. Construction Manager further warrants to Owner that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers or processors except as otherwise provided for in the Contract Documents. Further, any special warranty to be provided will be in such form as is acceptable to Owner and shall not include any exclusions, exceptions or modifications except to the extent approved by Owner in its sole discretion. In addition to all other rights and remedies available to Owner at law



## **Exhibit A Sample CMAR Agreement**

or in equity, including any implied warranties Owner may be entitled to as a matter of law, Construction Manager expressly warrants to Owner that it shall promptly correct, upon receipt of written notice from Owner, any portion of the Work which is found to be defective or otherwise not in conformance with the requirements of the Contract Documents. In the event that any defective or non-conforming work is deemed by Owner in its sole discretion to present an immediate threat to safety or security, Owner shall be entitled to correct and fix such defective or non-conforming portions of the Work, and Construction Manager shall reimburse Owner for all costs and expenses incurred by Owner in performing such Work. This obligation to correct defective or nonconforming Work shall run for a period of one year (or such longer period of time as may otherwise be specified in the Contract Documents) commencing from the date Substantial Completion is achieved. With respect to the correction of any defective or nonconforming Work, Construction Manager shall be liable for all damage to any part of the Work itself and to any adjacent property which is caused by such corrective work. Construction Manager shall conduct, jointly with Owner and Design Professional, a warranty inspection at six (6) months and eleven (11) months after the date Substantial Completion is achieved. Construction Manager's warranty excludes remedy for damage or defect caused by Owner's abuse, modifications not performed by Construction Manager, improper or insufficient maintenance by Owner (unless such maintenance was performed in accordance with the directions from Construction Manager), improper operation by Owner (unless such operations were performed in accordance with the directions from Construction Manager), or normal wear and tear under normal usage.

### **25. TESTS AND INSPECTIONS**

25.1 Owner, Design Professional, their respective representatives, agents and employees, and governmental agencies with jurisdiction over the Project shall have access at all times to the Work, whether the Work is being performed on or off of the Project site, for their observation, inspection, and testing. Construction Manager shall provide proper, safe conditions for such access. Construction Manager shall provide Design Professional and Owner's Uniform Building Construction Inspector with timely prior written notice (at least 48 hours) of the readiness of the Work for all required inspections, tests or approvals.

25.2 If the Contract Documents or any codes, laws, ordinances, rules or regulations of any public authority having jurisdiction over the Project requires any portion of the Work to be specifically inspected, tested or approved, Construction Manager shall assume full responsibility therefore, pay all costs in connection therewith and furnish Design Professional the required certificates of inspection, testing or approval. All inspections, tests or approvals shall be performed in a manner and by organizations acceptable to Owner and Design Professional.

25.3 If any Work that is to be inspected, tested or approved pursuant to the Contract Documents is covered without such inspection, testing or approval having been satisfactorily obtained by Construction Manager and without obtaining the written concurrence from Design Professional, such Work must, if requested by Design Professional, be uncovered for observation. Such uncovering shall be at Construction Manager's expense unless Construction Manager has given Design Professional 48 hours written notice of Construction Manager's intention to cover the same and has requested written concurrence by Design Professional and Design Professional has not acted with reasonable promptness to respond to such notice and request. If any Work is covered contrary to written directions from Design Professional, such Work must, if

## Exhibit A Sample CMAR Agreement

requested by Design Professional, be uncovered for Design Professional's observation and be replaced at Construction Manager's sole expense.

25.4 Owner shall charge to Construction Manager and may deduct from any payments due Construction Manager all engineering and inspection expenses incurred by Owner in connection with any overtime work unless such overtime work was expressly requested by Owner and Construction Manager was on schedule. Such overtime work consisting of any work during the construction period beyond the regular eight (8) hour day and for any work performed on Saturday, Sunday or holidays.

25.5 Neither observations by Design Professional or Owner, nor inspections, tests or approvals by others shall relieve Construction Manager from Construction Manager's obligations to perform the Work in accordance with the Contract Documents.

25.6 Construction Manager is responsible, without reimbursement from Owner, for re-inspection fees and costs, to the extent such re-inspections are due to the fault or neglect of Construction Manager.

25.7 Construction Manager shall only use a certified independent testing and balancing services contractor to perform "Test and Balance" (T&B) services for this project. The T&B contractor shall be completely independent of the Construction Manager's mechanical and ventilating subcontractor(s). Construction Manager shall be responsible for coordinating mechanical/ventilating (HVAC) work, including HVAC control systems and T&B work.

25.8 T&B Submittal Requirement: Completed T&B report shall be delivered by Construction Manager to Owner at Substantial Completion.

25.9 In addition to all other inspection obligations of Construction Manager under the Contract Documents, Construction Manager shall provide structural inspections on threshold buildings pursuant to a structural inspection plan prepared by the Design Professional. The term "threshold building" as used herein shall have the meaning prescribed in the Florida Building Code. The purpose of the structural inspection plan is to provide specific inspection requirements, procedures and schedules so the building's structure can be adequately inspected for compliance with the applicable Contract Documents. Inspection of the shoring and reshoring for conformance with the shoring and reshoring plans is also required. The threshold building inspection shall be performed by a threshold inspector, certified by the State of Florida, and approved by Owner. Construction Manager shall promptly provide to Owner and Design Professional copies of all threshold building inspection reports.

## 26. DEFECTIVE WORK

26.1 Work not conforming to the requirements of the Contract Documents shall be deemed defective Work. If required by Owner or Design Professional, Construction Manager shall, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the defective Work has been rejected by Owner or Design Professional, remove it from the site and replace it with non-defective Work. Construction Manager shall bear all direct, indirect and consequential costs of such correction or removal (including, but not limited



## **Exhibit A Sample CMAR Agreement**

to fees and charges of engineers, architects, attorneys, and other professionals) made necessary thereby, and shall hold Owner and Design Professional harmless for same.

26.2 If Owner or Design Professional consider it necessary or advisable that covered Work be observed by Design Professional or inspected or tested by others, Construction Manager, at Design Professional's or Owner's request, shall uncover, expose or otherwise make available for observation, inspection or tests as Owner or Design Professional may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, Construction Manager shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals), and Owner shall be entitled to an appropriate decrease in the Contract Amount. If, however, such Work is not found to be defective, Construction Manager shall be allowed an increase in the Contract Amount and/or an extension to the Contract Time, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

26.3 Owner shall have the right to order Construction Manager to stop all or any portion of the Work if at any time Owner reasonably determines that Construction Manager's performance of the Work is not in compliance with the requirements of the Contract Documents. Such noncompliance shall include, but is not limited to, Construction Manager's failure to provide adequate labor, materials or equipment to satisfactorily maintain the various Project schedules (including the Master Project Schedule). This right to stop the Work shall be exercised, if at all, solely for Owner's benefit and nothing herein shall be construed as obligating Owner to exercise this right for the benefit of Construction Manager or any other person.

26.4 Should Owner determine, at its sole opinion, it is in Owner's best interest to accept defective Work, Owner may do so. Construction Manager shall bear all direct, indirect and consequential costs attributable to Owner's evaluation of and determination to accept defective Work. If such determination is rendered prior to final payment, a Change Order shall be executed evidencing such acceptance of such defective Work, incorporating the necessary revisions in the Contract Documents and reflecting an appropriate decrease in the Contract Amount. If Owner accepts such defective Work after final payment, Construction Manager shall promptly pay Owner an appropriate amount determined by Owner to adequately compensate Owner for its acceptance of the defective Work.

26.5 If Construction Manager fails, within a reasonable time after the written notice from Owner or Design Professional, to correct defective Work or to remove and replace rejected defective Work as required by Owner or Design Professional, or if Construction Manager fails to perform the Work in accordance with the Contract Documents, or if Construction Manager fails to comply with any of the provisions of the Contract Documents, Owner may, after seven (7) days' written notice to Construction Manager, correct and remedy any such deficiency. To the extent necessary to complete corrective and remedial action, Owner may exclude Construction Manager from any or all of the Project site, take possession of all or any part of the Work, and suspend Construction Manager's services related thereto, take possession of Construction Manager's tools, appliances, construction equipment and machinery at the Project site and incorporate in the Work all materials and equipment stored at the Project site or for which Owner

has paid Construction Manager but which are stored elsewhere. Construction Manager shall allow Owner, Design Professional and their respective representatives, agents, and employees such access to the Project site as may be necessary to enable Owner to exercise the rights and remedies under this Paragraph. All direct, indirect and consequential costs of Owner in exercising such rights and remedies shall be charged against Construction Manager, and a Change Order or a Construction Change Directive shall be issued, incorporating the necessary revisions to the Contract Documents, including an appropriate decrease to the Contract Amount. Such direct, indirect and consequential costs shall include, but not be limited to, fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of Construction Manager's defective Work. Construction Manager shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by Owner of Owner's rights and remedies hereunder.

## **27. SUPERVISION AND CONSTRUCTION MANAGER'S REPRESENTATIVE**

27.1 Construction Manager is responsible for supervising, coordinating and performing the Work with such care and skill as would be provided by a contractor with extensive and special expertise in the type of work required under the Contract Documents. Construction Manager is responsible for completing the Work so that it complies accurately and completely with the requirements of the Contract Documents. Construction Manager shall keep on the Work at all times during its progress a competent resident representative who shall not be replaced without prior written notice to Owner and Design Professional except under extraordinary circumstances. The representative shall have authority to act on behalf of Construction Manager. All communications given to the representative shall be as binding as if given to Construction Manager. Owner shall have the right to direct Construction Manager to remove and replace its Project representative or any other employee of Construction Manager or any employee of any subcontractor from this Project, with or without cause.

27.2 Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of Construction Manager to coordinate, inspect and provide general direction of the Work and progress of the subcontractors. Construction Manager shall provide no less than those personnel during the respective phases of construction that are set forth in Exhibit J to the Agreement. Construction Manager shall not change any of those persons identified in Exhibit J unless mutually agreed to in writing by Owner and Construction Manager. In such case, Owner shall have the right to approve the replacement personnel.

27.3 Construction Manager shall establish and maintain lines of authority for its personnel, and shall provide this information to Owner and all other affected parties, such as the code inspectors of any permitting authority, the subcontractors, and Design Professional. Owner and Design Professional may attend meetings between Construction Manager and its subcontractors; however, such attendance is optional and shall not diminish either the authority or responsibility of Construction Manager to administer the subcontracts.

27.4 Construction Manager shall be responsible to Owner for the acts and omissions of its employees and agents and its subcontractors, their agents and employees, and all other

## **Exhibit A Sample CMAR Agreement**

persons performing any of the Work or supplying materials under a contract to Construction Manager. Construction Manager shall develop and maintain a program, acceptable to Owner and Design Professional, to assure quality control of the Work. Construction Manager shall supervise the Work of all subcontractors, providing instructions to each when their portion of the Work does not conform to the requirements of the Contract Documents and Construction Manager shall continue to exert its influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Work. Should a disagreement occur between Construction Manager and Design Professional over the acceptability of the Work, Owner, in its sole discretion, shall have the right to determine the acceptability.

27.5 Construction Manager shall not employ on this Project any person who has been convicted of a felony or misdemeanor-level criminal charge regarding sexual abuse or misconduct, nor permit any subcontractor to assign any employee of it to this Project who has been convicted of a felony or misdemeanor-level criminal charge regarding sexual abuse or misconduct.

### **28. PROTECTION OF WORK**

28.1 Construction Manager shall fully protect the Work and adjacent property from loss or damage and shall bear the cost of any such loss or damage until Substantial Completion is achieved. If Construction Manager or anyone for whom Construction Manager is legally liable is responsible for any loss or damage to the Work, or other work or materials of Owner or Owner's separate contractors, Construction Manager shall be charged with the same, and any monies necessary to replace such loss or damage shall be deducted from any amounts due Construction Manager.

28.2 Construction Manager shall ascertain what temporary enclosures, if any, of building areas, including existing facilities, should be provided for and may be provided as a practical matter, in order to assure orderly progress of the Work and to protect and secure the Work and existing facilities, in periods when extreme weather conditions are likely to be experienced.

28.3 Construction Manager shall not permit any unsafe loading of any structure at the Project site, nor shall Construction Manager subject any part of the Work or adjacent property to any forces that will endanger it.

28.4 Construction Manager shall not disturb any benchmark established by Owner with respect to the Project. If Construction Manager, or its subcontractors, agents or anyone for whom Construction Manager is legally liable, disturbs Owner's benchmarks, Construction Manager shall immediately notify Owner and Design Professional. Owner shall have the benchmarks reestablished and Construction Manager shall be liable for all costs incurred by Owner associated therewith.

### **29. EMERGENCIES**

29.1 Construction Manager shall take immediate action to prevent injury to any person or damage to any property (including the Work and any adjacent property) which

## **Exhibit A Sample CMAR Agreement**

otherwise might arise from an emergency event at the Project site. Construction Manager shall give Design Professional written notice within forty-eight (48) hours after the occurrence of the emergency, if Construction Manager believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Design Professional determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order shall be issued to document the consequences of the changes or variations. If Construction Manager fails to provide the forty-eight (48) hour written notice noted above, Construction Manager shall be deemed to have waived any right it otherwise may have had to seek an adjustment to the Contract Amount or an extension to the Contract Time. Construction Manager is obligated to promptly report in writing to Owner all accidents relating to the Work that result in any personal injury or property damage.

### **30. USE OF PREMISES**

30.1 At all times during the performance of the Work, Construction Manager shall keep all of its operations, (including, but not limited to, the use and storage of all equipment and materials), within the Project site or such other areas as may be permitted by the Contract Documents. Construction Manager shall not use the Project site in any manner that is unreasonably burdensome or otherwise inconsistent with Owner's interest. Construction Manager is responsible for any damage to any such area, or to the owner or occupant thereof, or any areas contiguous thereto, resulting from the performance of the Work.

30.2 Except as required by the Contract Documents or otherwise required in order for Construction Manager to satisfy its safety and security obligations under the Contract Documents, Construction Manager shall not erect or install, nor shall it permit any of its subcontractors, suppliers, subconsultants or any other party for whom it is legally responsible to erect or install, any signage upon the Project site or any other property of Owner, unless such signage has been expressly approved in writing by Owner, which approval may be withheld by Owner in its sole discretion.

30.3 Construction Manager acknowledges that Work may be performed at a particular Project site where Owner simultaneously is conducting and continuing its operations upon the same site. In such event, Construction Manager shall coordinate its Work so as to cause no unreasonable interference with or disruption to Owner's operations.

30.4 Owner may take early occupancy of all or any portions of the Work, at Owner's election, by designating in writing to Construction Manager the specific portions of the Work to be occupied and the date such occupancy shall commence. If any such specific early occupancy was not expressly identified at the time the GMP was established and such early occupancy negatively impacts Construction Manager's cost or time of performance, Construction Manager shall be entitled to an equitable adjustment to the Contract Amount and the Contract Time, all in accordance with the other terms and conditions of the Contract Documents.

### **31. SAFETY**

31.1 Construction Manager is responsible for the safety and protection of all persons and property on or about the Project site during the progress of the Work. Further, it is

## Exhibit A Sample CMAR Agreement

Construction Manager's responsibility to protect from damage or loss all material and equipment to be incorporated into the Work which may be stored off the Project site. Construction Manager shall develop and implement, in accordance with the requirements of the Contract Documents, (including those contained within the various documents identified in Exhibit E to the Agreement), a safety plan for the Work.

31.2 Construction Manager shall comply with all applicable codes, laws, ordinances, rules and regulations of Owner and any public body having jurisdiction over the Work, including all of their safety codes, laws, ordinances, rules, and regulations. Construction Manager shall notify owners of adjacent property and of any underground structures or improvements and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation or replacement of their property. Construction Manager's duties and responsibilities for the safety and protection of the Work shall continue until such time as the Work is completed and final acceptance of same by Owner has occurred.

31.3 At all times during the performance of the Work at the Project site, Construction Manager shall have designated, and located on a full time basis at the Project site, a qualified individual whose responsibility shall be to monitor and enforce Construction Manager's safety program at the Project site. Construction Manager hereby designates its superintendent as that safety representative. Construction Manager may designate by written notice to Owner another individual, reasonably acceptable to Owner, who shall be Construction Manager's safety representative at the Project site.

31.4 Alcohol, drugs, and all illegal substances are strictly prohibited on any Owner property. All employees of Construction Manager, as well as those of all subcontractors and those of any other person or entity for whom Construction Manager is legally liable (collectively referred to herein as "Employees"), shall not possess or be under the influence of any such substances while on any Owner property. Further, Employees shall not bring on to any Owner property any gun, rifle or other firearm, or explosives of any kind.

31.5 Construction Manager acknowledges that the Work may be progressing on a Project site which is located upon or adjacent to an existing Owner facility. In such event, Construction Manager shall comply with the following:

31.5.1 All Owner facilities are smoke free. Smoking is strictly prohibited;

31.5.2 All Employees shall be provided an identification badge by Construction Manager. Such identification badge must be prominently displayed on the outside of the Employees' clothing at all times. All Employees working at the Project site must sign in and out with Construction Manager each day;

31.5.3 Construction Manager shall strictly limit its operations to the designated work areas and shall not permit any Employees to enter any other portions of Owner's property without Owner's expressed prior written consent;

31.5.4 All Employees are prohibited from distributing any papers or other materials upon Owner's property, and are strictly prohibited from using any of Owner's telephones or other office equipment;



## **Exhibit A Sample CMAR Agreement**

31.5.5 All Employees shall at all times comply with OSHA regulations with respect to dress and conduct at the Project site. Further, all Employees shall comply with the dress, conduct and facility regulations issued by Owner's officials onsite, as said regulations may be changed from time to time;

31.5.6 All Employees shall enter and leave Owner's facilities only through the ingress and egress points identified in the site utilization plan approved by Owner or as otherwise designated, from time to time, by Owner in writing;

31.5.7 When requested, Construction Manager shall cooperate with any ongoing Owner investigation involving personal injury, economic loss or damage to Owner's facilities or personal property therein;

31.5.8 The Employees may not solicit, distribute or sell products while on Owner's property. Friends, family members or other visitors of the Employees are not permitted on Owner's property; and

31.5.9 At all times Construction Manager shall adhere to Owner's safety and security regulations, and shall comply with all security requirements at Owner's facilities, as said regulations and requirements may be modified or changed by Owner from time to time.

### **32. PROJECT MEETINGS**

32.1 Prior to the commencement of Work, Construction Manager shall attend a preconstruction conference with Owner and Design Professional and others as appropriate to discuss the Master Project Schedule, procedures for handling shop drawings and other submittals, and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work. During the prosecution of the Work, Construction Manager shall attend any and all meetings convened by Owner or Design Professional with respect to the Project, when directed to do so by Owner or Design Professional. Construction Manager shall have its subcontractors and suppliers attend all such meetings (including the preconstruction conference) as may be directed by Owner or Design Professional.

### **33. MATERIAL SAFETY DATA SHEET**

33.1 If any chemicals, materials, or products containing toxic substances, as defined by 29 C.F.R. 1910, Subpart Z or any local, state or federal statutes or regulations, are contained in the products used on site or incorporated into the construction by Construction Manager or any of its subcontractors, Construction Manager shall provide to Design Professional and Owner a Material Safety Data Sheet at the time of each delivery or prior to each new use of such product.

### **34. AUDITING RIGHTS**

34.1 Construction Manager shall keep all records and supporting documentation which concern or relate to the Work hereunder for a minimum of three (3) years from the date of termination of this Contract or the date the Project is completed, whichever is later or such longer period of time as may be required by law. Construction Manager shall require all of its

## **Exhibit A Sample CMAR Agreement**

subcontractors to likewise retain all of their Project records and supporting documentation. Owner, and any duly authorized agents or representatives of Owner, shall be provided access to all such records and supporting documentation at any and all times during normal business hours upon request by Owner. Further, Owner, and any duly authorized agents or representatives of Owner, shall have the right to audit, inspect and copy all of Construction Manager's and any subcontractor's Project records and documentation as often as they deem necessary and Construction Manager shall cooperate in any audit, inspection, or copying of the documents. These access, inspection, copying and auditing rights shall survive the termination of this Contract.

34.2 If at any time, Owner conducts such an audit of Construction Manager's records and documentation and finds that Construction Manager overcharged Owner, Construction Manager shall pay to Owner the Overcharged Amount which is defined as the total aggregate overcharged amount together with interest thereon (such interest to be established at the rate of 12% annum). If the Overcharged Amount is equal to or greater than \$10,000.00, Construction Manager shall pay to Owner the Overcharged Amount and the Audit Amount which is defined as the total aggregate of Owner's reasonable audit costs incurred as a result of its audit of Construction Manager. Owner may recover the Overcharged Amount and the Audit Amount, as applicable, from any amount due or owing Construction Manager with regard to the Project or under any other agreement between Construction Manager and Owner. If such amounts owed Construction Manager are insufficient to cover the Overcharged Amount and Audit Amount, as applicable, then Construction Manager hereby acknowledges and agrees that it shall pay such remaining amounts to Owner within seven (7) business days of its receipt of Owner's invoice for such remaining amounts. In no event shall the Overcharged Amount or the Audit Amount be deemed a reimbursable Cost of the Work.

34.3 This Article 34, including all access, inspection, copying, auditing, reimbursement and repayment rights shall survive the termination of this Contract.

### **35. COMPLIANCE WITH LAWS**

35.1 Construction Manager agrees to comply, at its own expense, with all federal, state and local laws, codes, statutes, ordinances, rules, administrative orders, regulations and requirements applicable to the Project, including but not limited to those dealing with safety (including, but not limited to, the Trench Safety Act, Chapter 553, Florida Statutes). If Construction Manager observes that the Contract Documents are at variance therewith, it shall promptly notify Owner and Design Professional in writing.

35.2 For federally funded projects, Construction Manager must comply with all federal rules and regulations including but not limited to those defined in the Davis Bacon Wage Rate Act.

### **36. SUBCONTRACTS**

36.1 Construction Manager shall review the design and shall determine how it desires to divide the sequence of construction activities. Construction Manager will determine the breakdown and composition of bid packages for award of subcontracts, based on the current



## Exhibit A Sample CMAR Agreement

Master Project Schedule, and shall supply a copy of that breakdown and composition to Owner and Design Professional for their review and approval. Construction Manager shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and costs.

36.2 A subcontractor is any person or entity who is performing, furnishing, supplying or providing any portion of the Work pursuant to a contract with Construction Manager. Construction Manager shall be solely responsible for and have control over the subcontractors. Construction Manager shall negotiate all Change Orders, Construction Change Directive, Field Orders and Request for Proposals, with all affected subcontractors and shall review the costs of those proposals and advise Owner and Design Professional of their validity and reasonableness, acting in Owner's best interest, prior to requesting approval of each Change Order from Owner.

36.3 When Construction Manager submits its guaranteed maximum price proposal to Owner, Construction Manager also shall submit to Owner a list of the names, addresses, licensing information and phone numbers of the subcontractors Construction Manager intends to use for each portion of the Work, as well as identifying in writing those portions of the Work it intends to perform with its own employees. The list identifying each subcontractor cannot be modified, changed, or amended without prior written approval from Owner. Any and all work to be self-performed by Construction Manager must be approved in writing by Owner in its sole discretion prior to commencement of such work. Construction Manager shall continuously update that subcontractor list, so that it remains current and accurate throughout the entire performance of the Work. Construction Manager shall not enter into a subcontract with any subcontractor, if Owner reasonably objects to that subcontractor. Construction Manager shall not be required to contract with anyone it reasonably objects to. As part of the Project document file to be maintained by Construction Manager at the Project site, Construction Manager shall keep on file a copy of the license for every subcontractor and sub-subcontractor performing any portion of the Work, as well as maintain a log of all such licenses. All subcontracts between Construction Manager and its subcontractors shall be in writing and are subject to Owner's approval. Further, all subcontracts shall (1) require each subcontractor to be bound to Construction Manager to the same extent Construction Manager is bound to Owner by the terms of the Contract Documents, as those terms may apply to the portion of the Work to be performed by the subcontractor, (2) provide for the assignment of the subcontracts from Construction Manager to Owner at the election of Owner upon termination of Construction Manager, (3) provide that Owner will be an additional indemnified party of the subcontract, (4) provide that Owner will be an additional insured on all insurance policies required to be provided by the subcontractor except workers' compensation, (5) assign all warranties directly to Owner, (6) identify Owner as an intended third-party beneficiary of the subcontract, and (7) incorporate Exhibit E into all of its subcontracts (and require similar incorporation into all sub-subcontracts). Construction Manager shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this Paragraph 36.3 and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each subcontractor shall similarly make copies of such documents available to its sub-subcontractors.

## **Exhibit A Sample CMAR Agreement**

36.4 The subcontractor must agree to provide field (on-site) supervision through a named superintendent for each trade (e.g., general concrete forming and placement, masonry, mechanical, plumbing, electrical and roofing) included in the subcontract. In addition, the subcontractor shall assign and name a qualified employee for scheduling direction for its work. The supervisory employees of the subcontractor (including field superintendent, foreman and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent level on a similar project for at least two years within the last five years. The subcontractor shall include a resume of experience for each employee identified by it to supervise and schedule its work.

36.5 Unless otherwise expressly agreed to by Owner in writing, all subcontracts shall provide:

36.5.1 On all subcontracts where the bid exceeds \$200,000, the Construction Manager shall require subcontractors to provide a 100% performance bond and a 100% labor and material payment bond from a surety company authorized to do business in the State of Florida by the Department of Insurance. If the Construction Manager wishes to award subcontracts to subcontractors unable to supply this bonding, it may request special authorization to do so. Upon providing justifiable background information, such authorization shall not be unreasonably withheld. Construction Manager shall include in the GMP the value applied to all subcontract values to cover the cost of subcontractor bonds, or at the option of the Construction Manager, the use of Subcontractor Default Insurance (SDI) acceptable to the Owner. If a subcontractor is used that cannot qualify for Construction Manager's SDI Program, that subcontractor will be required to provide bonds as stipulated above. For those subcontractors not enrolled in SDI, the actual cost of the subcontractor bonds shall be charged to the Project and the SDI cost will not apply.

36.5.2 On all subcontracts where the bid exceeds \$200,000.00, each subcontractor must submit a completed experience questionnaire and financial statement. The subcontractor's financial condition must demonstrate that adequate fixed and liquid assets and equipment are available to properly perform the subcontract.

36.5.3 Subcontractor experience - The subcontractor must have successfully completed no less than two projects of similar size and complexity within the last five years.

### **36.5.4 LIMITATION OF REMEDIES - NO DAMAGES FOR DELAY**

That the subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by Owner or Design Professional or attributable to Owner or Design Professional and including claims based on breach of contract or negligence, shall be an extension of its contract time.

In the event of a change in the work, the subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus no more than 10% for overhead and profit.

## Exhibit A Sample CMAR Agreement

The subcontract shall require the subcontractor expressly agree that the foregoing constitute its sole and exclusive remedies for delays and changes in the Work and thus eliminate any other remedies for claim for increase in the subcontract price, damages, losses or additional compensation. Further, Construction Manager shall incorporate terms of Paragraph 11.4 in all of its subcontracts and require all subcontractors to similarly incorporate such terms into their sub-subcontracts.

36.5.5 Each subcontract shall require that any claims by subcontractor for delay or additional cost must be submitted to Construction Manager within the time and in the manner in which Construction Manager must submit such claims to Owner, and that failure to comply with such conditions for giving notice and submitting claims shall result in the waiver of such claims.

### 37. MARKET ANALYSIS AND SOLICITATION OF BIDS

37.1 The purpose of this Paragraph is to insure that Construction Manager makes a genuine effort to stimulate subcontractor interest in the Project and maximize participation of potential qualified subcontractors in the bidding process. At all times Owner shall have access to and the right to require copies of all correspondence, records, files and other bid documents (including all bid responses) with respect to the bidding process. Further, Construction Manager shall notify Owner of the date, time and place of all bid openings and Owner shall have the right to attend any and all such bid openings. All bid openings shall be conducted in City of Naples, Florida. Finally, Construction Manager shall develop in writing subcontract bidding procedures for Owner's review and approval. Once those procedures have been approved by Owner, Construction Manager shall not deviate from such procedures without obtaining Owner's prior written consent.

37.1.1 Construction Manager shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the Work; Construction Manager shall make an analysis as necessary to (i) determine and report on availability of labor, materials, equipment, potential bidders, and possible impact of any shortages or surpluses of labor or material, and (ii) in light of such determination, make recommendations and take action as may be appropriate with respect to long lead procurement, separation of construction into bid packages, sequencing of Work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the Contract Time.

37.1.2 Within thirty (30) days after execution of this Contract, Construction Manager shall submit a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders. As various bid packages are prepared for bidding, Construction Manager shall submit to Owner and Design Professional a list of potential bidders for their review and approval. Construction Manager shall be responsible for promoting and encouraging bid competition.

## Exhibit A Sample CMAR Agreement

37.1.3 Construction Manager shall carry out an active program of stimulating interest of qualified subcontractors in bidding on the Work and of familiarizing those bidders with the requirements of this Project.

### 37.2 Solicitation of Bids.

37.2.1 Construction Manager shall prepare invitations for bids, or requests for proposal when applicable (collectively referred to herein as “bids”), for all procurements of long lead items, materials and services, and for subcontractor contracts. Such invitations for bids shall be prepared in accordance with the following guidelines. Award of bid shall be given to the lowest, qualified, responsive vendor. In the event that the Construction Manager determines the lowest, qualified, responsive vendor should not be Awarded the bid, written justification shall be provided to, and approved by, the Owner prior to awarding an alternate qualified, responsive, vendor.

(1) Contracts not exceeding \$15,000 may be entered into by the Construction Manager with the firm, which submits the lowest responsive and responsible verbal bid. The Construction Manager shall obtain a minimum of three (3) verbal bids. These quotations shall be entered on a bid tabulation sheet and a copy of such bid tabulation shall be sent to the Owner, Design Professional and to each firm. The successful bid shall be confirmed by written contract or purchase order to the firm defining the scope and quality of work to be provided.

(2) Contracts exceeding \$15,000 but not exceeding \$50,000 may be entered into by the Construction Manager with the firm who is qualified and submits the lowest responsive and responsible bid. The Construction Manager shall request at least three (3) firms to submit sealed written bids based on approved plans and specifications. The bids shall be entered on a bid tabulation sheet and shall be furnished to the Owner, Design Professional and to each firm. The successful bid shall be confirmed by written contract or purchase order to the firm defining the scope and quality of work to be provided.

(3) Contracts exceeding \$50,000 but not exceeding \$200,000 may be entered into by the Construction Manager with the firm who is qualified and submits the lowest responsible and responsive bid. The Construction Manager shall advertise these projects at least once with the last advertisement appearing at least ten (10) calendar days prior to the established bid opening date. These bids shall be based on approved plans and specifications. The bids shall be entered on a bid tabulation sheet and shall be furnished to the Owner, Design Professional and to each firm. The written bids shall be submitted to the owner and to the Design Professional for approval. The successful bid shall be confirmed by written contract or purchase order to the firm defining the scope and quality of work to be provided. Should the Construction Manager receive less than three (3) bids/proposals, it may proceed only if the Design Professional certifies to the Owner that the recommended pricing is reasonable, and representative of the market and the Owner agrees.

## Exhibit A Sample CMAR Agreement

(4) Contracts exceeding \$200,000 shall be treated the same as described under item (3) above, except that the advertisement shall run for at least thirty (30) days prior to the established bid opening and at least five (5) days prior to any scheduled pre-bid conference. In obtaining bids, the Construction Manager shall seek to ensure that its award practices provide fair and equitable opportunities for vendors/contractors to responds to Owner's needs.

(5) Site utilities may be acquired at market rates from the entity(ies) providing such in the service area.

(6) Bidding shall not be required for change order work with subcontractors that the Construction Manager is already under subcontract.

(7) Construction Manager hereby discloses that it has a relationship to the following entities: None. Owner acknowledges that these entities are not disqualified from the subcontractor bidding process or from being awarded a subcontract solely because of this relationship.

37.2.2 As part of such preparation, the Construction Manager shall review the specifications and drawings prepared by the Design Professional. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the Construction Manager shall be brought to the attention of Owner's Representative and Design Professional in written form.

37.2.3 For each separate construction subcontract, the Construction Manager shall, unless waived by Owner, conduct a pre-bid conference with prospective bidders, the Design Professional and Owner's Representative. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation to bid (or other solicitation mechanism), the Construction Manager shall transmit these to the Design Professional and upon receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.

37.2.4 The Construction Manager shall establish a qualification procedure for applicable subcontract trades.

37.2.5 Prior to awarding any subcontract for an amount over \$25,000, the Construction Manager shall conduct a pre-award conference with the lowest responsive qualified bidder after the receipt of subcontractor bids. The Design Professional and the Owner's Representative shall be invited to all such meetings. At the pre-award meeting, the Construction Manager and prospective subcontractor shall review all aspects of the scope of the work to assess the capability of the subcontractor to fulfill the needs of the Project including the subcontractor qualification information required above. Subjects covered may include schedule, manufacturers used in bidding the work, manpower, supervisory personnel, value engineering suggestions, etc. Within forty-eight (48) hours of the pre-award conference, the Construction Manager shall decide whether to accept



## Exhibit A Sample CMAR Agreement

or reject the lowest responsive bidder and to enter into the same process with the next lowest bidder. The Construction Manager shall make sure that the Design Professional and the Owner are in agreement with the Construction Manager when choosing not to accept the lowest bidder due to his professional opinion that the low bidder will not be able to meet the quality desired, schedule, or other factors identified by the Construction Manager. The GMP approved in this contract will reflect that the parties agree with the selection of subcontractors.

### 38. PARTNERING

38.1 Construction Manager, prior to commencement of the Construction Phase Services, shall prepare and submit for Owner's approval a proposed Partnering Program for the Project. The Partnering Program shall contain, at a minimum, procedures for the enhancement of communication and cooperation between Owner, Construction Manager, Design Professional, separate contractors, inspectors and other consultants and subcontractors on the Project, as well as procedures for the speedy and efficient resolution of problems and disagreements during construction. Upon approval by Owner, the Partnering Program shall be implemented and coordinated by Construction Manager throughout the remainder of the Project.

### 39. SECURING AGREEMENT

39.1 Construction Manager warrants that Construction Manager has not employed or retained any company or person, other than a bona fide employee working solely for Construction Manager, to solicit or secure this Contract and that Construction Manager has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Construction Manager, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Contract. At the time this Contract is executed, Construction Manager shall sign and deliver to Owner the Truth-in-Negotiation Certificate attached hereto and made a part hereof as Exhibit L. Construction Manager's compensation shall be adjusted to exclude any sums by which Owner determines the compensation was increased due to inaccurate, incomplete, or non-current wage rates or other factual unit costs.

### 40. PUBLIC ENTITY CRIMES

40.1 By its execution of this Agreement, Construction Manager acknowledges that it has been informed by OWNER of the terms of Section 287.133(2)(a) of the Florida Statutes which read as follows:

"A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a

## **Exhibit A Sample CMAR Agreement**

period of 36 months from the date of being placed on the convicted vendor list."

### **41. EQUAL EMPLOYMENT OPPORTUNITY/NON-DISCRIMINATION/MWBE/LDB AND APPRENTICESHIP PROGRAM**

41.1 In performing all services to be provided hereunder, Construction Manager shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Construction Manager shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such actions shall include, but not be limited to, the following: (i) employment, upgrading, demotion or transfer; (ii) recruitment or recruitment advertising; (iii) layoff or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training, including apprenticeship. Construction Manager shall post in conspicuous places, available to all employees and applicants for employment notices setting forth the terms of this Equal Employment Opportunity Non-Discrimination Clause and stating that all qualified candidates will receive consideration for employment without regard to race, color, religion, sex or national origin.

### **42. CHANGED CONDITIONS**

42.1 Notwithstanding anything in the Contract Documents to the contrary, if conditions are encountered at the Project site which are (i) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (ii) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, and which reasonably should not have been discovered by Construction Manager as part of its scope of site investigative services required pursuant to the terms of the Contract Documents, then Construction Manager shall provide Owner with prompt written notice thereof before conditions are disturbed and in no event later than seven (7) calendar days after first observance of such conditions. Owner and Design Professional shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Construction Manager's cost of, or time required for, performance of any part of the Work, Owner will acknowledge and agree to an equitable adjustment to the Contract Amount or Contract Time, or both, for such Work. If Owner determines that the conditions at the site are not materially different from those indicated in the Contract Document or not of an unusual nature or should have been discovered by Construction Manager as part of its investigative services, and that no change in the terms of the Contract is justified, Owner shall so notify Construction Manager in writing, stating its reasons. Claims by Construction Manager in opposition to such determination by Owner must be made within seven (7) calendar days after Construction Manager's receipt of Owner's written determination notice. If Owner and Construction Manager cannot agree on an adjustment to the Contract Amount or Contract Time, the dispute resolution procedure set forth in the Contract Documents shall be complied with by the parties.

**[END OF GENERAL TERMS AND CONDITIONS]**



**EXHIBIT B**  
**SUPPLEMENTAL TERMS AND CONDITIONS**

The following Supplemental Terms and Conditions hereby amend, modify and supersede in the event of a conflict the terms of the Agreement and the General Terms and Conditions attached thereto as Exhibit A.

A. Construction Manager shall provide Owner, its representatives and Design Professional with copies of a Policy and Procedure Manual (total number of copies not to exceed 5) developed and updated in accordance with the following requirements:

1. Upon execution of the Agreement, and if required by Owner's Representative, Construction Manager shall develop a draft of the comprehensive Policy and Procedure Manual describing the services to be provided by Construction Manager per the Contract Documents. This shall provide a plan for the control, direction, coordination and evaluation of the Work performed throughout the Project; the Project organization including identification of key personnel, responsibilities of Construction Manager, Owner and Design Professional; Workflow diagrams; and strategy for bidding and subcontracting the Work. Owner shall have the right to review the Policy and Procedure Manual and to approve its content and format. The Policy and Procedure Manual may be updated as necessary throughout the Pre-Construction and Construction Phases, but substantive changes will not be made without Owner's prior written concurrence. An electronic copy of the Policy and Procedure Manual and any updates shall be submitted to Owner and Design Professional, with one hard copy being maintained on the work site. In developing the Policy and Procedure Manual, Construction Manager shall coordinate and consult with Owner and Design Professional. The initial manual shall be submitted to Owner for approval.
2. Contents of Policy and Procedure Manual: The Policy and Procedure Manual shall describe in detail the procedures for executing the Work and the organizations participating. The Policy and Procedure Manual shall include, as a minimum, the following sections:
  - 2.1 Project Definition: The known characteristics of the Project and sub-projects shall be described in general terms which will provide the participants a basic understanding of the Project and sub-projects.
  - 2.2 Project Goals: The schedule, budget, physical, technical and other objectives for the Project shall be defined.
  - 2.3 Project Strategy: A narrative description of the Project delivery methods which shall be utilized to accomplish the Project goals.

## Exhibit A Sample CMAR Agreement

- 2.4 Project Work Plan: A matrix display of the Work to be performed by Construction Manager, as well as the services and items to be furnished by Design Professional and Owner during each phase of the Project.
  - 2.5 Project Organization: A summary organization chart showing the interrelationships between Owner, Construction Manager and Design Professional, and other supporting organizations and permitting review agencies. Detailed charts, one each for Construction Manager and Design Professional, showing organizational elements participating in the Project shall be included.
  - 2.6 Responsibility Performance Chart: A detailed matrix showing the specific responsibilities and interrelationships of Owner, Design Professional, and Construction Manager. The Responsibility Performance Chart shall indicate major responsibility, and minor responsibility, for each specific task required to deliver the Project. Construction Manager shall develop a similar chart for the personnel within its own organization who are assigned to the Project, as well as for Design Professional's and Owner's personnel assigned to the Project from data supplied by them.
  - 2.7 Flow Diagrams: These charts shall display the flow of information and the decision process for the review and approval of shop drawings and submittals, progress, and change orders.
  - 2.8 Written Procedure: The Construction Manager will provide written procedures for communications and coordination required between Construction Manager, Design Professional and Owner throughout the Project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews, and other necessary communications.
  - 2.9 Emergency Contact List: A complete list of the names, company affiliation and emergency contact phone numbers (both day and night) for all key Project personnel from Owner, Construction Manager and Design Professional, as well as from all subcontractors, subconsultants and suppliers of any of them. This list shall be continuously updated by Construction Manager throughout the Project duration, with Construction Manager distributing a copy of all updates to Owner and Design Professional.
3. This Policy and Procedure Manual shall be completed and submitted to Design Professional and Owner for their review and Owner's approval as

## Exhibit A Sample CMAR Agreement

a condition precedent to payment by Owner to Construction Manager for any services provided in the Construction Phase under this Contract.

4. This Policy and Procedure Manual is merely an amplification and clarification of this Contract. Any conflicts between the Policy and Procedure Manual and this Contract shall be governed by the latter.

~~B. Construction Manager shall utilize the County's online Project Management Information System ("PMIS"), (Procore) and utilize all tools including Requests for Information (RFIs), Submittals, Daily Log, Photos, Drawings, Specification, Meetings, Schedule, Transmittals, Inspections, Incidents, Budget, Documents and Directory, and other tools as required by Collier County. The Construction Manager will be given full access to Procore and will be responsible for managing the RFI and Submittal workflows, document management, drawing meeting management and all other project management tools to ensure an efficient project. The Construction Manager will be able to invite subcontractors to the project to ensure full participation. This system shall be in place for both the Pre Construction Phase and Construction Phase services pursuant to this Contract.~~

1. General:

- 1.1 The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the Work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions.
- 1.2 The above reports shall be submitted at least on a monthly basis, if requested by Owner.

2. Narrative Reporting Subsystem.

- ~~2.1 Construction Manager shall prepare written reports as described hereunder utilizing Collier County's Procore system.~~
- 2.2 The Narrative Reporting Subsystem shall include the following reports:
  - 2.2.1 Monthly Executive Summary which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations found by any permitting authority.
  - 2.2.2 Monthly Cost Narrative describing the current construction cost estimate status of the Project.
  - 2.2.3 A Monthly Scheduling Narrative summarizing the current status of the overall Master Project Schedule and an

## Exhibit A Sample CMAR Agreement

explanation of all variances from the plan. This report shall include an analysis of the various Project subschedules, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.

2.2.4 Monthly Accounting Narrative describing the current cost and payment status for the entire Project. This report shall relate current encumbrances and expenditures to the budget allocations. An explanation for all variances shall be provided.

2.2.5 A Monthly Construction Progress Report during the Construction Phase summarizing the Work of the various subcontractors. This report shall include information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations, programs, permits, construction problems and recommendations, and plans for the succeeding month.

2.2.6 Daily Construction Diary during the Construction Phase describing events and conditions on the site.

2.3 The Reports outlined in subparagraphs 2.2.1 through 2.2.5 above shall be bound with applicable computer schedule reports and submitted monthly during Design and Construction Phases and shall be current through the end of the preceding month. Copies shall be delivered to Owner and Design Professional. A copy of the complete diary shall be submitted to Owner at the conclusion of the Project in either a hard copy or electronic copy format, as requested by Owner.

### 3. Schedule Control Subsystem.

3.1 Master Project Schedule: Prior to the submittal of its first application for payment, Construction Manager shall submit to Owner and Design Professional for their review and approval a Master Project Schedule covering the planning and design approvals, construction, and Owner occupancy of the Project. This schedule shall conform to the format outlined in Paragraph 3.4 below. This schedule shall serve as the framework for the subsequent development of all detailed schedules and shall be updated monthly by Construction Manager throughout the Project. Within fifteen (15) calendar days of Construction Manager's submittal, Owner and Design Professional shall review the schedule and provide Construction Manager a written list of corrections needed to approve the schedule. Construction

## Exhibit A Sample CMAR Agreement

Contractor must make all corrections and resolve all comments within thirty (30) calendar days after its receipt of Owner's and Design Professional's comments. If the schedule is not approved within said thirty (30) calendar days, Owner and Design Professional will withhold all Contract payments until the schedule is approved. The acceptance of the schedule by Owner and Design Professional in no way attests to the validity of the assumptions, logic constraints, dependency relationships, resource allocations, manpower and equipment, and any other aspect of the proposed schedule. Construction Manager is and shall remain solely responsible for the planning and execution of all Work in order to meet Project milestones or Contract completion dates.

3.2 Construction Schedule: Construction Manager shall prepare and submit to Owner and Design Professional, for their review and approval, a Construction Schedule. This schedule shall conform to the format outlined in Paragraph 3.4 below. The approved Construction Schedule shall be attached to the GMP Amendment. The Construction Schedule shall be integrated into the Master Project Schedule.

3.2.1 Following development and approval of the Construction Schedule as aforesaid, Construction Manager shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the Project, or at such earlier intervals as circumstances may require, update and/or revise the Construction Schedule which shall be submitted to Owner in duplicate. No additional compensation will be due Construction Manager for making such updates. Failure of Construction Manager to update, revise, and submit the Construction Schedule as aforesaid shall be sufficient grounds for Owner to find Construction Manager in substantial default hereunder and that sufficient cause exists to terminate the Contract or to withhold payment to Construction Manager until a schedule or schedule update acceptable to Owner is submitted.

3.3 Construction Manager shall prepare and incorporate into the schedule database, at the required intervals, the following schedules:

3.3.1 Pre-Bid Schedules (Subnetworks): Construction Manager shall prepare a construction schedule for that portion of the Work encompassed in each bid package. The schedule shall be sufficiently detailed as to be suitable for inclusion in the bid package as a framework for subcontract

## Exhibit A Sample CMAR Agreement

completion by the successful bidder. It shall show the interrelationships between the Work of the successful bidder and that of other subcontractors, and shall establish milestones keyed to the Master Project Schedule.

3.3.2 Subcontractor Construction Schedules (Subnetworks): Upon the award of each subcontract, Construction Manager shall jointly with the subcontractor, develop a schedule which is more detailed than the pre-bid schedule included in the bid packages, taking into account the work schedule of the other subcontractors. The subcontractor's construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The subcontractor's construction schedule also shall show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.

3.3.3 Occupancy Schedule: Construction Manager shall jointly develop with Design Professional and Owner a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy and shall be integrated into the Master Project Schedule.

3.4 Schedule Format: The Master Project Schedule and the Construction Schedule shall be planned and recorded with a Critical Path Method (CPM) schedule in the form of an activity-on-node diagram. All activity-on-node diagrams shall include the Activity Identification, Activity Description, and the type of relationship between activities, including any lead or lag time, as well as being cost loaded. Further, both the Master Project Schedule and the Construction Schedule shall incorporate and be based upon the Project milestone dates set forth in Exhibit I to the Agreement.

3.4.1 If requested by Owner or Design Professional, Construction Manager shall furnish any information needed to justify the reasonableness of activity duration. Such information shall include, but not be limited to, estimated activity manpower, anticipated quantities, and production rates.



## Exhibit A Sample CMAR Agreement

- 3.4.2 Procurement shall be identified with at least two (2) activities: fabrication and delivery. Construction Manager shall insure that all Work activities that require a submittal are preceded by the appropriate submittal and approval activities.
- 3.4.3 Only contractual constraints shall be shown in the schedule logic. No other restraints are allowed unless approved in writing by Owner or Design Professional. This disallowance of constraints includes the use of any mandatory start or finish dates selected by Construction Manager.
- 3.4.4 Activities shall be identified by codes to reflect the responsible party for the accomplishment of each activity (only one party per activity), the Phase/Stage of the Project for each activity, and the Area/Location of each activity
- 3.4.5 The construction time for the Work, or any milestone, shall not exceed the specified Contract Time. Logic or activity durations shall be revised in the event that any milestone or Contract completion date is exceeded in the schedule.
- 3.4.6 Float is defined as the amount of time between when an activity “can start” (the early start) and when an activity “must start” (the late start). It is understood by Owner and Construction Manager that float is a shared commodity, not for the exclusive use or financial benefit of either party. Either party has the full use of the float until it is depleted.
- 3.4.7 The CPM schedules must be compatible with Procore. It is Construction Manager’s responsibility to ascertain the software compatibility with Owner or Design Professional.
- 3.4.8 Initial Schedule Submittal Requirements:
  - 3.4.8.1 Predecessor/Successor Sort
  - 3.4.8.2 Total Float/Early Start Sort
  - 3.4.8.3 Responsibility/Early Start Sort
  - 3.4.8.4 Area/Early Start Sort
  - 3.4.8.5 Logic Diagram: Upon request of Owner, Produce diagram with not more than 100 activities per ANSI D (24-inch x 36-inch) size sheet. Insure each sheet includes title, match data

## Exhibit A Sample CMAR Agreement

or diagram correlation, and key to identify all components used in the diagram.

3.4.8.6 Narrative discussing general approach to completion of the Work.

3.4.9 Schedule Update Requirements: Construction Manager shall update the schedules monthly to show actual, current progress. The schedule updates shall be submitted within seven (7) calendar days of the data dates. The updates shall include:

3.4.9.1 Dates of activities' actual starts and completions.

3.4.9.2 Percent of Work remaining for activities started but not completed as of the update date.

3.4.9.3 Narrative report including a listing of monthly progress, the activities that define the critical path and any changes to the path of critical activities from the previous update, sources of delay, any potential problems, requested logic changes, and Work planned for the next month.

3.4.9.4 Predecessor/Successor Sort

3.4.9.5 Total Float/Early Start Sort

3.4.9.6 Responsibility/Early Start Sort

3.4.9.7 Area/Early Start Sort

3.4.9.8 Upon request of Owner, Fragnet of logic diagram for all requested logic changes.

3.4.9.9 Updated logic diagram as required by Owner. At a minimum, Owner shall require a final logic diagram at the end of the Work showing the planned and actual starts and completions.

3.4.9.10 A bar chart comparison of the updated schedule to the initial schedule. This diagram shall show actual and planned performance dates for all completed activities.

3.4.9.11 All update information shall be an accurate representation of the actual Work progress.

## Exhibit A Sample CMAR Agreement

- 3.5 Recovery Schedule: If the initial schedule or any current updates fail to reflect the Work's actual plan or method of operation, or a contractual milestone date is more than fifteen (15) days behind, Owner may require that a recovery schedule for completion of the remaining Work be submitted. The Recovery Schedule must be submitted within seven (7) calendar days of Owner's request. The Recovery Schedule shall describe in detail Construction Manager's plan to complete the remaining Work by the required Contract milestone date. The Recovery Schedule submitted shall meet the same requirements as the original Construction Schedule. The narrative submitted with the Recovery Schedule should describe in detail all changes that have been made to meet the Contract milestone dates.
- 3.6 Change Orders: When a Change Order is proposed, Construction Manager must identify all logic and/or schedule changes as a result of the Change Order. The logic and/or schedule changes required by the Change Order will be considered incidental to Construction Manager's work. No separate payment will be made.
- 3.7 Cost Control Subsystem: The operation of this subsystem shall provide sufficient timely cost data and detail to permit Construction Manager to control and adjust the Project requirements, needs, materials, equipment and systems by building and site elements so that the Work will be completed at a cost which, together with the Construction Management Fee, will not exceed the GMP. Requirements of this subsystem include submissions at the following phases of the Project:
  - 3.8 Pre-Construction Phase Estimates; and
  - 3.9 At establishment of the GMP.
- 4. Project Accounting Subsystem: This subsystem shall enable Construction Manager to plan effectively and Owner to monitor and control the funds available for the Project, cash flow, costs, Change Orders, Construction Change Directives, payments, and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, and amounts payable, and also enable Owner to stay informed as to the overall Project status. All reports to be generated as part of this subsystem shall be consistent with the Project Funding Schedule (if any). This subsystem will be produced and updated monthly and includes the following reports:
  - 4.1 Costs Status Report representing the budget, estimate, and base commitment (awarded subcontracts and purchase orders) for any given subcontract or budget line item. It shall show approved

## Exhibit A Sample CMAR Agreement

Change Orders and Construction Change Directive for each subcontract which when added to the base commitment will become the total commitment. Pending Change Orders also will be shown to produce the total estimated probable cost to complete the Work.

- 4.2 A Payment Status Report showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.
- 4.3 A Detailed Status Report showing the complete activity history of each item in the Project accounting structure and includes an earned value graph. It shall include the budget, estimate, and base commitment figures for each subcontract. It shall give the Change Order history, including Change Order numbers, description, proposed and approved dollar amounts. It also shall show all pending or rejected Change Orders.
- 4.4 A Cash Flow Diagram showing the projected accumulation of cash payments against the Project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.
- 4.5 A Job Ledger shall be maintained as necessary to supplement the operation of the Project accounting subsystem. The job ledger will be used to provide construction cost accountability for general conditions work, on-site reimbursable expenses, and costs requiring accounting needs.

**[END OF SUPPLEMENTAL TERMS AND CONDITIONS]**

**Exhibit A Sample CMAR Agreement**

**EXHIBIT C**  
**FORM OF PAYMENT BOND**

BOND NO. \_\_\_\_\_

**PUBLIC PAYMENT BOND**

**KNOW ALL MEN BY THESE PRESENTS:** That \_\_\_\_\_  
as Principal, and \_\_\_\_\_, as Surety, located at  
\_\_\_\_\_ (Business Address) are held and firmly bound to  
\_\_\_\_\_, as Oblige in the sum of (\$\_\_\_\_\_) for the  
payment whereof we bind ourselves, our heirs, executors, personal representatives, successors and  
assigns, jointly and severally.

**WHEREAS,** Principal has entered into a contract dated as of the \_\_\_\_ day of  
\_\_\_\_\_, 20\_\_, with Oblige for \_\_\_\_\_

in accordance with drawings and specifications, which contract is incorporated by reference and  
made a part hereof, and is referred to as the Contract.

**THE CONDITION OF THIS BOND** is that if Principal:

Promptly makes payment to all claimants as defined in Section 255.05(1), Florida Statutes,  
supplying Principal with labor, services, materials or supplies, used directly or indirectly by  
Principal in the prosecution of the Work provided for in the Contract, then this bond is void;  
otherwise, it remains in full force.

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

The provisions of this bond are subject to the time limitations of Section 255.05(2). In no  
event will the Surety be liable in the aggregate to claimants for more than the penal sum of this  
Payment Bond, regardless of the number of suits that may be filed by claimants.

## Exhibit A Sample CMAR Agreement

**IN WITNESS WHEREOF**, the above parties have executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 2022, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered  
in the presence of:

**PRINCIPAL:**

\_\_\_\_\_  
\_\_\_\_\_  
Witnesses as to Principal

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of \_\_\_\_ physical presence or \_\_\_\_ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced \_\_\_\_\_ as identification.

My Commission Expires:

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
Notary Public (Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title or Rank)

\_\_\_\_\_  
(Serial Number, if any)

ATTEST:

SURETY:

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
Witnesses as to Surety



Exhibit A Sample CMAR Agreement

OR

\_\_\_\_\_  
\_\_\_\_\_  
Witnesses

As Attorney in Fact  
(Attach Power of Attorney)

\_\_\_\_\_  
(Business Address)  
\_\_\_\_\_  
(Printed Name)  
\_\_\_\_\_  
(Telephone Number)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of \_\_\_\_ physical  
presence or \_\_\_\_online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_, as \_\_\_\_\_ of  
\_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the  
corporation. He/she is personally known to me **OR** has produced \_\_\_\_\_  
as identification.

My Commission Expires:

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
Notary Public (Signature)  
\_\_\_\_\_  
(Printed Name)  
\_\_\_\_\_  
(Title or Rank)  
\_\_\_\_\_  
(Serial Number, if any)

## Exhibit A Sample CMAR Agreement

### EXHIBIT D FORM OF PERFORMANCE BOND

BOND NO. \_\_\_\_\_

#### PUBLIC PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_  
as Principal, and \_\_\_\_\_, as Surety, located at \_\_\_\_\_  
\_\_\_\_\_ (Business Address) are held and firmly bound to  
\_\_\_\_\_, as Oblige in the sum of  
\_\_\_\_\_ (\$\_\_\_\_\_) for the payment  
whereof we bind ourselves, our heirs, executors, personal representatives, successors and assigns,  
jointly and severally.

WHEREAS, Principal has entered into a contract dated as of the \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, 20\_\_\_\_, with Oblige for \_\_\_\_\_.

in accordance with drawings and specifications, which contract is incorporated by reference and  
made a part hereof, and is referred to as the Contract.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Contract at the times and in the manner prescribed in the Contract;  
and
2. Pays Oblige any and all losses, damages, expenses, costs and attorneys' fees,  
including appellate proceedings, that Oblige sustains because of any default by  
Principal under the Contract, including, but not limited to, all delay damages,  
whether liquidated or actual, incurred by Oblige; and
3. Performs the guarantee of all Work and materials furnished under the Contract for  
the time specified in the Contract,

then this bond is void; otherwise, it remains in full force.

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

The Surety, for value received, hereby stipulates and agrees that no changes, extensions of  
time, alterations or additions to the terms of the Contract or other Work to be performed hereunder,  
or the specifications referred to therein shall in anyway affect its obligations under this bond, and  
it does hereby waive notice of any such changes, extensions of time, alterations or additions to the  
terms of the Contract or to Work or to the specifications.

**Exhibit A Sample CMAR Agreement**

This instrument shall be construed in all respects as a common law bond. It is expressly understood that the time provisions and statute of limitations under Section 255.05, Florida Statutes, shall not apply to this bond.

In no event will the Surety be liable in the aggregate to Obligee for more than the penal sum of this Performance Bond regardless of the number of suits that may be filed by Obligee.

**IN WITNESS WHEREOF**, the above parties have executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered  
in the presence of:

**PRINCIPAL:**

Witnesses as to Principal

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of \_\_\_\_ physical presence or \_\_\_\_online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced \_\_\_\_\_ as identification.

My Commission Expires: \_\_\_\_\_

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
Notary Public (Signature)  
\_\_\_\_\_  
(Printed Name)  
\_\_\_\_\_  
(Title or Rank)  
\_\_\_\_\_  
(Serial Number, if any)

**Exhibit A Sample CMAR Agreement**

ATTEST:

SURETY:

\_\_\_\_\_

Witnesses as to Surety

\_\_\_\_\_

Witnesses

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Printed Name)

**OR**

As Attorney in Fact  
(Attach Power of Attorney)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Telephone Number)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of \_\_\_\_ physical presence or \_\_\_\_online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced \_\_\_\_\_ as identification.

My Commission Expires:

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
Notary Public (Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title or Rank)

\_\_\_\_\_  
(Serial Number, if any)

**EXHIBIT E**  
**INSURANCE REQUIREMENTS**

- (1) During the term of the Contract, the Construction Manager shall provide, pay for, and maintain, with companies satisfactory to the Owner, the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Florida and/or responsible risk retention group insurance companies registered with the State of Florida. The insurance coverage and limits required must be evidenced by properly executed Certificates of Insurance on an ACORD or equivalent form. The Certificates must be signed by an authorized representative of the insurance company/companies shown on the certificates with proof that he/she is an authorized representative thereof. In addition, copies of all insurance policies required shall be provided to the Owner, on a timely basis, if requested by the Owner. These certificates and policies shall contain provisions that thirty (30) days written notice by registered or certified mail, facsimile or e-mail shall be given the Owner of any cancellation, intent not to renew, or reduction in the policies' coverage. Construction Manager also shall notify Owner, in a like manner, within forty-eight (48) hours after receipt by the Construction Manager of the respective notices of expiration, cancellation, non-renewal or material change in coverage or limits received by Construction Manager from its insurer, and nothing contained herein shall relieve Construction Manager of this requirement to provide notice. In the event of a reduction in the aggregate limit of any policy, the Construction Manager shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy.
- (2) All insurance policies required by the Contract shall include the following provisions and conditions by endorsement to the policies:
  - (a) The term "City of Naples, Florida" shall include City of Naples, Florida, a Municipal Corporation and all Authorities, Departments and offices thereof and individual members and employees thereof in their official capacity, and/or while acting on behalf of City of Naples, Florida.
  - (b) All insurance policies provided by Construction Manager to meet the requirements of this Agreement shall name the City of Naples, Florida, as that name is defined in (2)(a) above, as an additional insured as to the operations of the Construction Manager under the Contract and shall contain a severability of interests provision.
  - (c) Companies issuing the insurance policy or policies shall have no recourse against Owner for payment of premiums or assessments for any deductibles, which all are at the sole responsibility and risk of Construction Manager.
  - (d) All insurance coverage of the Construction Manager shall be primary to any insurance or self-insurance program carried by the Owner applicable to the Project, and the "Other Insurance" provisions of any policies obtained by Construction Manager shall not apply to any insurance or self-insurance program carried by Owner applicable to the Project.

## Exhibit A Sample CMAR Agreement

- (3) The acceptance by the Owner of any Certificate of Insurance for the Project evidencing the insurance coverage and limits required in the Contract does not constitute approval or agreement by the Owner that the insurance requirements have been met or that the insurance policies shown on the Certificates of Insurance are in compliance with the requirements of the Contract.
- (4) No work shall commence at the Project site unless and until the required Certificates of Insurance are received and the written Notice to Proceed is issued to the Construction Manager by the Owner.
- (5) Before starting and until acceptance of the work by Owner, Construction Manager shall procure and maintain insurance of the types and to the limits specified below. Construction Manager shall require each of its subcontractors to procure and maintain, until the completion of that subcontractor's work, insurance of the types and to the limits specified below, unless such insurance requirement for the subcontractor is expressly waived in writing by the Owner. The following limits are applicable for only the Preconstruction Phase. The Construction Phase of the Project will require additional Insurance Requirements and will be set forth in the GMP Amendment.

### INSURANCE TYPE

### REQUIRED LIMITS

---

#### 1. Worker's Compensation

Statutory Limits of Florida Statutes, Chapter 440 and all Government Statutory Limits and Requirements. Policy must include Employers' Liability with a limit of \$1,000,000 each accident.

#### 2. Commercial General

Bodily Injury & Property Damage Liability  
Patterned after the current I.S.O.  
Occurrence Form.

\$2,000,000 Single Limit Per Occurrence; \$ aggregate for Bodily Injury Liability and Property Damage Liability. The General Aggregate Limit shall be endorsed to apply per project. This shall include Premises and Operations; Independent Contractors; Products and Completed Operations and Contractual Liability.

#### 3. Automobile Liability

\$\_\_\_\_\_ Each Occurrence  
Owned/Non-owned/Hired  
Automobile Included

#### 4. Other Insurance as indicated below:

a) Professional Liability      \$\_\_\_\_\_, if required by the Contract Documents

b) Pollution Insurance      \$\_\_\_\_\_, if required by the Contract Documents



## Exhibit A Sample CMAR Agreement

c) Umbrella Coverage \$\_\_\_\_\_, per occurrence

5. The Owner must purchase and maintain Builder's Risk property insurance for the duration of the construction project. The cost of this insurance shall be included in the GMP proposal.
  6. Construction Manager shall be solely responsible to parties with whom it shall deal in carrying out the terms of the Contract and shall indemnify and hold the Owner harmless against all claims arising from the negligent acts, errors or omissions of consultant by third parties. Construction Manager shall carry professional liability insurance in an amount not less than \$1,000,000, but only if the Contract Documents and Project require the Construction Manager to provide professional architectural, design or engineering services to Owner.
  7. Construction Manager shall ensure that all subcontractors comply with the same insurance requirements that it is required to meet. Construction Manager shall provide Owner with certificates of insurance meeting the required insurance provisions.
  8. Owner must be named as "**ADDITIONAL INSURED**" on the Insurance Certificate for all policies other than Workers' Compensation and/or Professional Liability using Additional Insured Endorsement ISO Form CG 20 10 11 85 or if not available, ISO Forms CG 20 10 10 01 and CG 20 37 10 01 or if not available, their equivalent acceptable to Owner.
  9. The City of Naples shall be named as the Certificate Holder.  
  
NOTE--The "Certificate Holder" should read as follows:  
City of Naples, Florida
  10. No County Division, Department, or individual name should appear on the Certificate. No other format will be acceptable.
  11. Thirty (30) Days Cancellation Notice is required.
  12. The Certificate must state the Project Number/Solicitation Number and Title of the Project.
  13. Owner's Insurance: No additional insurance provided.
- (6) If any insurance provided pursuant to the Contract expires prior to the completion of the Work, renewal Certificates of Insurance and, if requested by the Owner, copies of the renewal policies, shall be furnished to Owner thirty (30) days prior to the date of expiration.

## Exhibit A Sample CMAR Agreement

- (7) Should at any time the Construction Manager not maintain the insurance coverage required in the Contract, the Owner may cancel the Contract or at its sole discretion shall be authorized to purchase such coverage and charge the Construction Manager for such coverage purchased. If Construction Manager fails to reimburse Owner for such costs within thirty (30) days after demand, Owner has the right to offset these costs from any amount due Construction Manager under the Contract. The Owner shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverage purchased or the insurance company/companies used. The decision of the Owner to purchase such insurance coverage shall in no way be construed to be a waiver of its rights under the Contract.
- (8) Construction Manager shall submit within twenty-four (24) hours to Owner and Design Professional a copy of all accident reports arising out of any injuries to its employees or those of any firm or individual to whom it may have subcontracted a portion of the Work, or any personal injuries or property damages arising or alleged to have arisen on account of any work by Construction Manager under the Contract Documents.
- (9) The Owner shall be exempt from, and in no way liable for, any sums of money that may represent a deductible in any insurance policy except deductibles as agreed to by the Owner in obtaining Builder's Risk Property Insurance. The payment of such deductible shall be the sole responsibility of the Construction Manager and/or subcontractor providing such insurance.

**Exhibit A Sample CMAR Agreement**

**EXHIBIT F**  
**RELEASE AND AFFIDAVIT**

STATE OF FLORIDA       )  
COUNTY OF \_\_\_\_\_)

Before me, the undersigned authority, personally appeared \_\_\_\_\_, who after being duly sworn, deposes and says:

(1) In accordance with the Contract Documents and in consideration of \$\_\_\_\_\_ paid, [CMAR name] (“Construction Manager”) releases and waives for itself and its subcontractors, materialmen, successors and assigns, all claims demands, damages, costs and expenses, whether in contract or in tort, against The City of Naples, Florida, a Municipal Corporation (“Owner”) relating in any way to the performance of the Agreement between Construction Manager and Owner, dated \_\_\_\_\_, 20\_\_, for the period from \_\_\_\_\_ to \_\_\_\_.

(2) Construction Manager certifies for itself and its subcontractors, materialmen, successors and assigns, that all charges for labor, materials, supplies, lands, licenses and other expenses for which Owner might be sued or for which a lien or a demand against any payment bond might be filed, have been fully satisfied and paid.

(3) Construction Manager agrees to indemnify, defend and save harmless Owner from all demands or suits, actions, claims of liens or other charges filed or asserted against Owner arising out of the performance by Construction Manager of the Work covered by this Release and Affidavit.

(4) Construction Manager certifies that it has paid all its subcontractors and materialmen in full all amounts owed them from any previous payments received by Construction Manager from Owner and has not withheld any such amounts. In the event Construction Manager withholds any unpaid amounts due to its subcontractors and/or materialmen from the payment it receives from Owner with respect to the Application for Payment referenced in paragraph 5 below, Construction Manager agrees to immediately refund all such unpaid amounts to Owner.

(5) This Release and Affidavit is given in connection with Construction Manager’s [monthly/final] Application for Payment No.\_\_\_\_.

**Construction Manager:**  
**[CMAR name]**

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

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

\_\_\_\_\_  
Witness:

[Corporate Seal]

Exhibit A Sample CMAR Agreement

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of \_\_\_\_ physical presence or \_\_\_\_online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced \_\_\_\_\_ as identification.

My Commission Expires:

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
Notary Public (Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title or Rank)

\_\_\_\_\_  
(Serial Number, if any)

## Exhibit A Sample CMAR Agreement

### EXHIBIT G CONSTRUCTION MANAGER APPLICATION FOR PAYMENT

<i>City of Naples (the OWNER)</i>			
Owner's Project Manager's Name:		Bid No. Project No.	
County's Division Name		Purchase Order No.	
Submitted by Contractor Representative: Name		Application Date:	
Contractor's Name & Address:		Payment Application No.	
Original Contract Time:		Original Contract Price:	\$
Revised Contract Time:		Total Change Orders to Date:	\$
		Revised Contract Amount:	\$
		Total Value of Work Completed & Stored to Date:	\$
Retainage @5% through [Insert Date] _____	\$	Retainage @ 5% through [Insert date] _____	\$
Retainage @ _____% after [Insert date] _____	\$	Less Retainage	\$
		Total Earned Less Retainage	\$
		Less previous payment(s)	
Percent Work Completed to Date:	%	AMOUNT DUE THIS APPLICATION:	\$
Percent Contract Time Completed to Date:	%		
Liquidated Damages to Be Accrued	\$	Remaining Contract Balance	\$

ATTACH SCHEDULE OF VALUES AND ACCOMPANYING DOCUMENTATION TO THIS APPLICATION. CONTRACTOR'S CERTIFICATION:

The undersigned CONTRACTOR certifies that: (1) all previous progress payments received from OWNER on account of Work done under the Contract referred to above have been applied to discharge in full all obligations of CONTRACTOR incurred in connection with Work covered by prior Applications for Payment numbered 1 through \_\_\_\_ inclusive; (2) title to all materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to OWNER at time of payment free and clear of all liens, claims, security interests and encumbrances (except such as covered by Bond acceptable to OWNER); (3) all amounts have been paid for work which previous payments were issued and received from the OWNER and that current payment is now due; and (4) CONTRACTOR has only included amounts in this Application for Payment properly due and owing and CONTRACTOR has not included within the above referenced amount any claims for unauthorized or changed Work that has not been properly approved by Owner in writing and in advance of such Work.

Contractor's Name			
Contractor's Signature:		Date:	
Type Title:		<i>Shall be signed by an authorized representative of the Contractor.</i>	
<b>Payment to the CONTRACTOR for the above AMOUNT DUE THIS APPLICATION is recommended by:</b>			
Design Professional's Name:			
Signature:		Date:	
<b>Payment to the CONTRACTOR for the above AMOUNT DUE THIS APPLICATION is recommended by:</b>			
Owner's Project Manager Name:			
Signature:		Date:	

## Exhibit A Sample CMAR Agreement

**EXHIBIT G (continued)**[illegible]



## Exhibit A Sample CMAR Agreement

### EXHIBIT G (continued)

#### Consent of Surety

#### CONSENT OF SURETY TO FINAL PAYMENT

AIA DOCUMENT G707 -ELECTRONIC FORMAT

OWNER  
ARCHITECT  
CONTRACTOR  
SURETY  
OTHER

☐  
☐  
☐  
☐  
☐

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION. AUTHENTICATION OF THIS ELECTRONICALLY DRAFTED AIA DOCUMENT MAY BE MADE BY USING AIA DOCUMENT D401.

TO OWNER:  
(Name and address)

ARCHITECT'S PROJECT NO.:

PROJECT:  
(Name and address)

CONTRACT FOR:

CONTRACT DATED:

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the  
(Insert name and address of Surety)

on bond of  
(Insert name and address of Contractor)

, SURETY,

hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall not relieve the Surety of any of its obligations to  
(Insert name and address of Owner)

, CONTRACTOR,

as set forth in said Surety's bond.

, OWNER,

IN WITNESS WHEREOF, the Surety has hereunto set its hand on this date:  
(Insert in writing the month followed by the numeric date and year.)

\_\_\_\_\_  
(Surety)

Attest: \_\_\_\_\_

\_\_\_\_\_  
(Signature of authorized representative)

(Seal):

\_\_\_\_\_  
(Printed name and title)

© 1994 THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006-5292. AIA DOCUMENT G707 - CONSENT OF SURETY TO FINAL PAYMENT - 1994 EDITION - AIA® - WARNING: Unlicensed photocopying violates U.S. copyright laws and will subject the violator to legal prosecution. This document was electronically produced with permission of the AIA and can be reproduced in accordance with your license without violation until the date of expiration as noted below. User Document: g707mast.aia -- 1/7/2003. AIA License Number 1113723, which expires on 10/31/2003.

Electronic Format G707 - 1994  
1

## Exhibit A Sample CMAR Agreement

### EXHIBIT H CHANGE ORDER

#### Change Order Form

Contract #:  Change #:  Purchase Order #:  Project #:

Contractor/Firm Name:  Project Name:

Project Manager Name:  Department:

Original Contract/Work Order Amount			Original BCC Approval Date; Agenda Item #
Current BCC Approved Amount			Last BCC Approval Date; Agenda Item #
Current Contract/Work Order Amount			SAP Contract Expiration Date (Master)
Dollar Amount of this Change		#DIV/0!	Total Change from Original Amount
Revised Contract/Work Order Total	\$ 0.00	#DIV/0!	Change from Current BCC Approved Amount
Cumulative Changes	\$ 0.00	#DIV/0!	Change from Current Amount

#### Completion Date, Description of the Task(s) Change, and Rationale for the Change

Notice to Proceed Date:  Original Completion Date:  Last Approved Date:  Revised Date:  (Includes this change)

# of Days Added:  Select Tasks: ☐ Add new task(s) ☐ Delete task(s) ☐ Change task(s) ☐ Other (see below)

Provide a response to the following: 1.) detailed and specific explanation/rationale of the requested change(s) to the task(s) and / or the additional days added (if requested); 2.) why this change was not included in the original contract; and, 3.) describe the impact if this change is not processed. Attach additional information from the Design Professional and/or Contractor if needed.

Prepared by: \_\_\_\_\_ Date: \_\_\_\_\_  
(Project Manager Name and Department)

Acceptance of this Change Order shall constitute a modification to contract / work order identified above and will be subject to all the same terms and conditions as contained in the contract / work order indicated above, as fully as if the same were stated in this acceptance. The adjustment, if any, to the Contract shall constitute a full and final settlement of any and all claims of the Contractor / Vendor / Consultant / Design Professional arising out of or related to the change set forth herein, including claims for impact and delay costs.

Accepted by: \_\_\_\_\_ Date: \_\_\_\_\_  
(Contractor / Vendor / Consultant / Design Professional and Name of Firm, if project applicable)

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_  
(Design Professional and Name of Firm, if project applicable)

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_  
(Procurement Professional)

(Divisions who may require additional signatures may include on separate sheet.)

Revised: 10/28/2014

**EXHIBIT I**  
**MASTER PROJECT SCHEDULE MILESTONES**

TO FOLLOW THIS PAGE

SAMPLE

## Exhibit A Sample CMAR Agreement

I-2

SAMPLE

EXHIBIT J

CONSTRUCTION MANAGER’S STAFFING SCHEDULE

I. Pre-Construction Phase Services:

<u>Name</u>	<u>Title/Position</u>	<u>Company Affiliation</u>	<u>% Assigned to Project</u>	<u>Hourly Rate</u>

II Construction Phase Services:

<u>Name</u>	<u>Title/Position</u>	<u>Company Affiliation</u>	<u>% Assigned to Project</u>	<u>Hourly Rate</u>

## Exhibit A Sample CMAR Agreement

### EXHIBIT K GMP AMENDMENT TO AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

#### AMENDMENT NO. 1 TO AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER FOR \_\_\_\_\_ AGREEMENT NO. \_\_\_\_\_

Pursuant to Sections 4B and 7A of the Agreement, dated \_\_\_\_\_, between The City of Naples, Florida (“Owner”) and \_\_\_\_\_ (“Construction Manager”), with respect to the construction of the Owner’s \_\_\_\_\_ (“Project”), the Owner and Construction Manager hereby agree to amend and modify the Agreement by this Amendment and establish a Guaranteed Maximum Price and Contract Time for all the Work as set forth below:

#### ARTICLE 1 SCOPE OF WORK

The scope of the Work consists of the construction of a \_\_\_\_\_, in accordance with the Agreement, this Amendment and the other Contract Documents listed as Attachments 1 through \_\_\_\_ below, which are hereby incorporated into and made a part of the Amendment by this reference:

<u>Attachment No.</u>	<u>Description</u>	<u>Pages</u>	<u>Date</u>
1.	List of Drawings, Specifications, and Addendums	___ through ___	___
2.	Schedule of Values	___ through ___	___
3.	Itemized General Condition Expenses	___ through ___	___
4.	List of Alternates	___ through ___	___
5.	Assumptions and Clarifications	___ through ___	___
6.	Completion Schedule	___ through ___	___
7.	List of Subcontractors and Major Suppliers	___ through ___	___



## Exhibit A Sample CMAR Agreement

8. Allowance \_\_\_\_\_ through \_\_\_\_\_
9. Key Personnel \_\_\_\_\_ through \_\_\_\_\_

### **ARTICLE 2** **GUARANTEED MAXIMUM PRICE**

2.1 Construction Manager's Guaranteed Maximum Price ("GMP") for the Work, including the estimated Cost of the Work as defined in Section 5 of the Agreement and Construction Manager's Fee as defined in Section 4 of the Agreement, is \_\_\_\_\_ (\$\_\_\_\_\_).

2.2 The GMP includes material that may be purchased directly by the Owner ("Owner Direct Purchases"). The estimated value of materials that may be purchased directly by the Owner is (\$\_\_\_\_\_). Construction Manager will initially process one (1) deductive Change Order under this Agreement for the entire estimated amount of Owner Direct Purchases, inclusive of sales taxes. Prior to final payment, a final reconciliation of the Owner Direct Purchases against the GMP will be performed and such deductive Change Order will be prepared for the Owner's review and execution.

2.3 The Construction Manager's Fee for the entire Work anticipated on this Project is hereby established as a lump sum amount of \_\_\_\_\_ (\$\_\_\_\_\_), said lump sum amount is included within the above noted GMP, and is subject to adjustment in accordance with the Contract Documents.

2.4 The General Condition expenses for the entire Work anticipated on this Project are hereby established as a lump sum amount of \_\_\_\_\_ (\$\_\_\_\_\_), said lump sum amount is included within the above noted GMP. The items included as General Condition expenses are listed in the List of Itemized General Conditions attached hereto and incorporated herein as Attachment No. \_\_\_\_\_. Except as said lump sum amount for General Condition expenses may be expressly adjusted by Change Order or Construction Change Directive, Construction Manager acknowledges and agrees that Owner shall have no liability for any General Condition expenses beyond payment of the above noted lump sum amount and Construction Manager agrees that it shall not be entitled to receive any additional compensation from Owner for the General Conditions beyond the above lump sum amount.

2.5 Monthly installment payment of the Construction Manager's Fee and the General Condition expenses shall be based upon the percent completion of the designated portion of the Work for each particular month.

2.6 In order to efficiently and timely address any unknown or unanticipated conditions that are within the scope of the required Work and are otherwise reimbursable without duplication as a Cost of the Work, but excluding all items that are to be reimbursed under the lump sum General Condition expense amount noted in paragraph 2.4 above, the parties have agreed to establish a contingency within the GMP in an amount not-to-exceed amount of \_\_\_\_\_ (\$\_\_\_\_\_). Contingency funds shall

## Exhibit A Sample CMAR Agreement

be used to cover costs that may result from incomplete design and unanticipated costs that arise during construction that are not identified by the construction documents. Construction Manager shall not proceed with any portion of the Work which it intends to charge against this contingency without first obtaining Owner's express written authorization to proceed. The Construction Manager acknowledges and agrees that any work which is to be charged against the contingency allowance that does not receive such prior written approval from the Owner shall be deemed to be part of Construction Manager's basic Work compensated within the GMP and not chargeable against the Owner's Contingency Allowance. The Owner reserves the right, at its sole discretion, to withhold its consent on contingency expenditures. Further, any contingency expenditures become part of the Contract Documents and are incorporated by reference herein. Unused contingency remaining at the end of the job will be credited from the guaranteed maximum price. Construction Manager has no entitlement to any portion of any unused contingency.

2.7 The parties have agreed to establish an allowance within the GMP for \_\_\_\_\_ in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_). Construction Manager shall not proceed with any portion of the Work associated with the aforesaid allowance ("Allowance Work") without first obtaining Owner's express written authorization to proceed with said Allowance Work. Allowance Amounts are reflected in Attachments \_\_\_\_ through \_\_\_\_\_.

2.8 Construction Manager recognizes that this Contract includes work for trench excavation in excess of five feet deep. Construction Manager acknowledges the requirements set forth in Section 553.63 of the Florida Statutes titled Trench Safety Act. Construction Manager certifies that the required trench safety standards will be in effect during the period of construction of the Project and Construction Manager agrees to comply with all such required trench safety standards.

2.9 The amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) has been separately identified for the cost of compliance with the required trench safety standards; said amount is included within the GMP.

### **ARTICLE 3**

#### **CONTRACT TIME**

3.1 The Construction Phase Commencement Date for the Work is \_\_\_\_\_. The total period of time beginning with the Construction Phase Commencement Date through the date required for Substantial Completion of the Work is \_\_\_\_\_ (

**Exhibit A Sample CMAR Agreement**

\_\_\_\_\_) days ("Contract Time"). THE SUBSTANTIAL COMPLETION DATE IS  
THEREFORE ESTABLISHED AS \_\_\_\_\_.

3.2 Pursuant to this Agreement, the parties have established a liquidated damage rate for reasons stated therein, which the parties acknowledge and agree apply to this Amendment and Construction Manager's responsibility to complete the Work within the Contract Time as stated herein. Accordingly, the liquidated damage rate established in this Agreement in the amount of \$\_\_\_\_\_ shall be assessed from Construction Manager for each calendar day Construction Manager fails to achieve Substantial Completion for the Designated Work within the Contract Time.

**ARTICLE 4**

**MISCELLANEOUS**

4.1 Except as expressly modified herein, the terms and conditions of the Agreement remain unchanged. In the event of a conflict between the terms of this Amendment and those of the Agreement, Owner and Construction Manager agree that the terms of this Amendment shall prevail and control.

OWNER

Construction Manager

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

**Exhibit A Sample CMAR Agreement**

**Attachment 1**

**List of Drawings, Specifications, and Addendums**

**TO FOLLOW THIS PAGE**

**OR**

**NOT APPLICABLE**

SAMPLE

**Exhibit A Sample CMAR Agreement**

**Attachment 2**

**Schedule of Values**

**TO FOLLOW THIS PAGE**

**OR**

**NOT APPLICABLE**

SAMPLE

**Exhibit A Sample CMAR Agreement**

**Attachment 3**

**Itemized General Condition Expenses**

**TO FOLLOW THIS PAGE**

**OR**

**NOT APPLICABLE**

SAMPLE



**Exhibit A Sample CMAR Agreement**

**Attachment 4**

**List of Alternates**

**TO FOLLOW THIS PAGE**

**OR**

**NOT APPLICABLE**

SAMPLE

**Exhibit A Sample CMAR Agreement**

**Attachment 5**

**Assumptions and Clarifications**

**TO FOLLOW THIS PAGE**

**OR**

**NOT APPLICABLE**

SAMPLE

**Exhibit A Sample CMAR Agreement**

**Attachment 6**

**Completion Schedule**

**TO FOLLOW THIS PAGE**

**OR**

**NOT APPLICABLE**

SAMPLE

**Exhibit A Sample CMAR Agreement**

**Attachment 7**

**List of Subcontractors and Major Suppliers**

**TO FOLLOW THIS PAGE**

**OR**

**NOT APPLICABLE**

SAMPLE

**Exhibit A Sample CMAR Agreement**

**Attachment 8**

**Allowance**

**TO FOLLOW THIS PAGE**

**OR**

**NOT APPLICABLE**

SAMPLE

Exhibit A Sample CMAR Agreement

Attachment 9  
Key Personnel

Individual	Title	Construction Phase



**Exhibit A Sample CMAR Agreement**

**EXHIBIT L**  
**TRUTH-IN-NEGOTIATION CERTIFICATE**

In compliance with the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, [CMAR name] hereby certifies that wage rates and other factual unit costs supporting the compensation for the construction management services of CONSTRUCTION MANAGER to be provided under this Agreement, concerning RFP#[bid number] “[project name]” are accurate, complete, and current as of the time of contracting.

**CONSTRUCTION MANAGER:**  
[CMAR name]

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**EXHIBIT M**  
**FINAL PAYMENT CHECKLIST**

127025798.5

Exhibit A Sample CMAR Agreement

Acknowledgments:

By Contractor: \_\_\_\_\_ (Company Name)  
\_\_\_\_\_(Signature)  
\_\_\_\_\_(Typed Name & Title)

By Design Professional: \_\_\_\_\_ (Firm Name)  
\_\_\_\_\_(Signature)  
\_\_\_\_\_(Typed Name & Title)

By Owner: \_\_\_\_\_ (Department Name)  
\_\_\_\_\_(Signature)  
\_\_\_\_\_(Name & Title)

**Exhibit A Sample CMAR Agreement**

**EXHIBIT N**  
**SCOPE OF**  
**WORK**

SAMPLE

**EXHIBIT O**  
**SCHEDULE OF VALUES**

SAMPLE