ADVERTISEMENT FOR SELECTION OF CONSTRUCTION MANAGER AT-RISK ON BEHALF OF THE PUBLIC BUILDING AUTHORITY OF THE CITY OF MARYVILLE, TENNESSEE

The Public Building Authority of the City of Maryville, Tennessee (Owner) is seeking a Construction Manager at-Risk (CMAR) for construction of the Regional Wastewater Treatment Plant – 2026 Expansion (Project). The Owner invites statements of qualifications (SOQs) from interested and qualified parties. The SOQs will be evaluated to select a short list of up to three respondents. After evaluating respondents' SOQs, the Owner intends to issue a request for proposals (RFP) to the short-listed respondents for evaluation, selection, and award of the Construction Management at-Risk (CMAR) Agreement.

Interested parties shall review the Request for Qualifications (RFQ) documents and respondents shall prepare and submit an SOQ in accordance with the RFQ instructions and requirements. The RFQ documents may be obtained from the following websites:

https://www.maryvillegov.com/pba.html

Statements of Qualifications must be received by 2:00 p.m., local time, on the 25th day of July, 2025. SOQs received after the specified time will not be considered.

Regional Wastewater Treatment Plant

2026 Expansion

REQUEST FOR QUALIFICATIONS

CONSTRUCTION MANAGEMENT AT-RISK (CMAR)

The Public Building Authority of the City of Maryville, Tennessee

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Request for Qualifications

1 Background

1.1. Introduction

This request for qualifications (RFQ) for the Regional Wastewater Treatment Plant - 2026 Expansion (Project) invites statements of qualifications (SOQs) according to the requirements set forth in this RFQ including the format and content guidelines in Section 5. The SOQs will be reviewed and evaluated to select a short list of up to three Respondents as described in Section 6. After evaluating Respondents' SOQs, the Public Building Authority of the City of Maryville, Tennessee (Owner) intends to issue a request for proposals (RFP) to the short-listed Respondents for award of the Construction Management at-Risk (CMAR) Agreement see Attachment B Draft CMAR Agreement. The capitalized terms in this RFQ have the meanings as first used in the text of this RFQ and/or as defined in Attachment A (Definition of Terms).

The Project is to be designed and constructed in two phases using the CMAR delivery method:

- **Phase I preconstruction services,** encompass constructability reviews, value engineering, estimating, and scheduling activities to support the Owner's chosen Design Engineer in completing the design. During this phase, the Design Engineer will advance the design to the level of completion necessary to define the project and will provide construction-ready documents prior to the initiation of the construction phase services. When Design Engineer's design reaches 90% completion, the CMAR Firm will present a construction schedule and an open book guaranteed maximum price (GMP) proposal to the Owner.
- **Phase II construction services**, in which the CMAR assumes the general contractor role, encompass further design review, procurement of subcontractors and vendors, self-performance of certain elements of the construction (where permitted and at the Owner's discretion), and full construction and commissioning.

This RFQ is subject to revision after the date of issuance via written addenda. Any such addenda will be posted as described in Section 7.5 of this RFQ; addenda will not be distributed directly to potential Respondents. It is each Respondent's responsibility to obtain all RFQ addenda prior to submitting its SOQ.

In no event will the Owner be liable for any costs incurred by any Respondent or any other party in developing or submitting an SOQ.

1.2. Owner's Objectives

By selecting the CMAR delivery method for this Project, the Owner expects the CMAR to collaborate closely with the Owner and its Design Engineer during Phase I to develop a design that achieves the Owner's objectives at a mutually agreeable open-book GMP for delivery of the Project. The Owner also expects the CMAR to construct the Project, as designed, within the agreed-on price and schedule, through commissioning and startup. The following Project-specific

objectives are provided to give Respondents a better understanding of the Project and the work to be performed.

- **Collaborative Partnership** – Develop a collaborative partnership between the Owner, Design Engineer, and the CMAR Firm to beneficially promote the project and Owner's goals and objectives.
- **Align to Owner's Core Values** – The CMAR Firm shall align with the Owner's core values including upholding integrity, exemplify professionalism, champion innovation, provide extraordinary service, and build unity.
- **Quality** – Deliver the proposed facilities consistent with the project design and specifications.
- **Cost** – Minimize initial capital construction costs as well as total project life-cycle costs. The intent is to provide the best overall project value to the Owner as well as to minimize cost uncertainties.
- **Schedule** – Meet the project schedule, as identified in this RFQ, or as modified based on future collaboration between Owner and CMAR, while minimizing disruptions to operations and allowing for continuous regulatory compliance.
- **Risk** – Achieve an optimal balance of risk allocation between the Owner and the CMAR Firm.
- **Safety** – Implement a comprehensive safety program that incorporates industry's best practices.
- **Maintenance of Plant Operations** – Avoid or reduce impacts to existing operations and maintenance due to construction activity. Maintain operation of treatment plant within compliance of treated wastewater requirements throughout construction.

2 Project Overview

2.1 Project Site and Location

Maryville Regional Wastewater Treatment Plant (WWTP) is located at 4541 Wheeler Road, Louisville, TN 37777. The WWTP consists of the following major processes:

- Influent screening consisting of drum screens and stacked tray grit removal units.
- Secondary treatment consists of two oxidation ditches and five clarifiers, two (larger) of which are in service at all times and three (smaller) of which are in service during peak flow events.
- Biosolids treatment consists of sludge holding tanks, autothermal thermophilic aerobic digestion (ATAD), storage nitrification denitrification reactor (SNDR), gravity belt thickeners, and belt filter presses. Dewatered biosolids are incorporated in the facility's composting operation.
- Ultraviolet disinfection system.

See exhibit below for layout of the existing WWTP site.

2.2 Project Scope

The proposed improvements have been developed to expand and upgrade the WWTP to increase capacity and prepare for future permit limitations. The improvements will also provide redundancy and improve operations. The recommended improvements are listed below:

- Liquids Phase Treatment Facility Improvements:
    - New bioreactor flow division structure (distributes water to the five plug flow reactors).
    - A new plug flow reactor.
    - Conversion of the existing oxidation ditches to four plug flow reactors.
    - A new blower building and blowers.
    - Clarifier Splitter structure (new or modifications to existing, if required).
    - Existing return activated sludge and waste activated sludge (RAS/WAS) pump room modifications (conversion to a pipe gallery).
    - A new RAS/WAS pump station.
- Solids Phase Treatment Facility Improvements:
    - An expanded solids thickening building with two new gravity belt thickeners.
    - Two new ATAD and SNDR reactors.
    - A new belt filter press and building with two new belt filter presses, conveyor, and load out bay and canopy.
- Support Facility Improvements:
    - Electrical buildings (to be confirmed during design).
    - Stand-by generators (to be confirmed during design).
    - New plant drain and septage receiving pump station(s).
    - Replace scum pumps with new scum pumps in existing basin.
    - Civil site work.
    - Yard Piping.
    - Electrical site work.
    - Instrumentation and Controls.

The exhibit below shows major elements of the Project. The size and location of new facilities is subject to change based on detailed design. Some facilities are not shown (e.g. electrical buildings and smaller elements of the Project).

Additional information specific to the Project is described in Attachment C (Index of Project Background Documents).

2.3 Project Budget and Funding

The estimated cost for Phase II CMAR services is $90,000,000, based upon the Design Engineer's AACE Class 5 Opinion of Probable Construction Cost, reflecting an accuracy range of -30% to +50%. This figure does not include Owner's other Project costs, such as design services, professional advisory services, property or access rights, site investigations, environmental studies, certain governmental approvals. The Owner intends to use revenue bonds to provide the capital funding needed for the Project.

2.4 Project Schedule

As indicated in Section 4, it is anticipated that the CMAR Agreement will be executed on or about October 2025. Project milestones to be delivered by the CMAR Firm shall be developed and submitted in the CMAR Firm's Proposal based on the identified scope of work. The following schedule is anticipated but may be modified as required by the Owner or by the CMAR firm's proposal and input during collaboration:

- October 2025 – Execution of CMAR Agreement, Notice to Proceed for Phase 1 Preconstruction Phase Services.
- November 2025 – 30% Design Documents (Basis of Design Report) completed and available for CMAR review to include review meeting with Design Engineer and Owner.
- April 2026 – 60% Design Documents completed and available for CMAR review followed by review meeting with Design Engineer and Owner.
- June 2026 – Early Works design documents completed (if necessary and beneficial). CMAR begin developing Early Works GMP.
- September 2026 – 90% Design Documents completed and available for CMAR review and development of GMP.
- October 2026 – Early Works GMP approved and Notice to Proceed (if necessary and beneficial).
- November 2026 – Final Design Documents completed.
- December 2026 – Phase 2 Construction Services GMP submitted by CMAR.
- January 2027 - Approval of mutually agreed upon GMP. Notice to Proceed for Balance of Work GMP. Preconstruction phase services will conclude at the execution of the GMP.
- May 2030 – Targeted completion date when construction of Project is complete.

3 CMAR Services

3.1 General

As noted in Section 1, the CMAR will provide services in two distinct phases. A Draft Scope of CMAR Services will be provided with the RFP and more fully describe the anticipated CMAR services. The following generally describes the scope of services to be provided by the CMAR Firm:

Phase I, Preconstruction phase services:

- Develop the project management plan, including project schedule.
- Develop the construction management plan for the construction phase, including a subcontracting and procurement plan.
- Perform value engineering, constructability reviews, and formal peer review on 60% design development submittals in conjunction with the Owner and Design Engineer.

- Prepare and maintain a project cost model and project schedule, and submit detailed, open-book cost estimates as the design is advanced.
- Prepare, implement and maintain a Project risk management plan.
- Submit and negotiate a GMP proposal for the construction phase.
- Identify Project construction permitting requirements and determine when certain construction permitting activities should be initiated.

Phase II, Construction phase services:

- Procure and manage equipment and subcontractors, including any early procurement equipment or materials.
- Self-perform elements of the Project scope, if approved by the Owner and allowed by law.
- Secure necessary construction permits.
- Construct the Project.
- Mitigate Project risks.
- Conduct startup, commissioning and performance testing.
- Provide operator training and Operations and Maintenance Manuals.
- Provide asset workbook information.
- Provide warranty coverage for constructed work.

3.2 Roles and Responsibilities

Table 2 below generally describes the roles and responsibilities of the Owner and CMAR to ensure Project success.

TABLE 1 Roles and Responsibilities

ROLE	OWNER	CMAR
Project Management	• Make day-to-day decisions • Approve design and construction plans • Manage contracts with Owner Advisor, Design Engineer, and CMAR • Provide Project funding • Approve scope changes • Coordinate with Owner operations	• Single point of contact with the Owner's Project Manager for construction-related items • Develop and implement Project management and quality management plans • Perform risk management and mitigation activities • Establish and maintain change order management plan • Develop and implement Project health and safety practices • Facilitate resolution of Project issues and challenges

ROLE	OWNER	CMAR
Preconstruction Services	• Manage interface between design and construction teams • Review Phase I deliverables and submissions • Furnish existing studies and data including record drawings, preliminary studies, etc. • Provide access to site/easements • Obtain government approvals and permits for which the Owner is responsible • Review Phase II Construction Price Proposal; negotiate Phase II Construction Price Amendment in good faith	• Prepare and maintain a Project cost model and Project schedule • Provide constructability input during Phase I • Prepare equipment and subcontract procurement plan • Develop Phase II Construction Price Proposal, negotiate Phase II Construction Price Amendment in good faith • Provide additional Owner-requested, Project-specific services necessary for Project success
Construction Services	• Participate in construction Project meetings • Monitor construction activities • Coordinate engineering services during construction • Ensure timely responses to construction submittals (e.g., submittals, requests for information, notices) as defined in the contract	• Deliver constructed work • Manage self-performing and subcontracted work • Manage craft labor • Maintain site safety and security • Coordinate with Design Engineer • Obtain government approvals and permits for which the CMAR is responsible • Provide warranty coverage for constructed work
Commissioning and Startup	• Lead the team in the early development of the facility commissioning plan with responsibilities clearly delineated • Manage Design Engineer's preparation of facility O&M manual • Engage meaningfully in commissioning, startup, and training activities and prepare for handoff from CMAR	• Coordinate construction activities with and lead assigned testing, commissioning, startup, and training activities, coordinating with Owner's O&M staff to minimize impacts • Provide timely and complete submission of manufacturer's equipment O&M materials

Roles and responsibilities are more fully described in Attachment B Draft CMAR Agreement.

4 Procurement Process

4.1 Communications and Owner Contact

Kevin Stoltenberg (Owner representative) and John Perry, P.E. (Owner's Advisor representative) will act as points of contact for this RFQ and shall administer the RFQ process. All questions should be submitted, in writing via email, to Kevin Stoltenberg (pba@maryville-tn.gov) and John Perry (john.perry7@jacobs.com) no later than 5:00 p.m. EST on July 16, 2025.

Please format your e-mail to include: "Regional Wastewater Treatment Plant – 2026 Expansion – RFQ Questions" in the subject line. Questions received after this deadline may not be answered. Responses to all questions submitted before the deadline will be addressed in an addendum and posted to the following websites:

https://www.maryvillegov.com/pba.html

No oral communications from the Owner or Owner's Advisor or other individuals are binding. No contact with Owner staff, Owner's Advisor, or any public officials concerning the Project during the procurement process outside of written questions, as described above, and formal procurement meetings is allowed. A violation of this provision may result in disqualification of Respondent.

4.2 Procurement Schedule

The anticipated procurement schedule is as follows:

TABLE 2 Procurement Schedule

Schedule Item	Date
Issue RFQ	6/26/2025
Pre-SOQ submittal meeting	7/7/2025
Deadline for questions	7/16/2025
Final Addendum	7/18/2025
Submit SOQ	7/25/2025
SOQ evaluation and short-list selection	8/8/2025
Issue RFP	8/8/2025
Proprietary Meetings	8/21/2025
Submit Proposal	8/29/2025
Interviews	9/9/2025
Selection Notification	9/12/2025
Award Pre-Construction Services Contract	10/24/2025

4.3 Pre-SOQ Meeting and Site Tour

A voluntary Pre-SOQ meeting will be held in person at the Maryville Operations Center located at 332 Home Avenue, Maryville, Tennessee on July 7, 2025 starting at 9:00 a.m. EST. After the meeting, for interested parties, a site tour will be held at the Regional Wastewater Treatment Plant located at 4541 Wheeler Road, Louisville, TN 37777. Attendees will have the opportunity to tour the Project site to familiarize themselves with site conditions and constraints. Due to space constraints, each Respondent is limited to three attendees.

5 SOQ Submission Requirements

5.1 Submittal Place and Deadline

Respondents must submit an electronic version of the SOQ in PDF format no later than 2:00 p.m. EST July 25, 2025. Note that Appendix B (Supporting Financial and Company Documentation) must be submitted as a separate PDF.

All Statements of Qualification must be submitted electronically via email to pba@maryville-tn.gov Hard copy submittals will not be accepted.

Each Respondent assumes full responsibility for the successful delivery of its SOQ. **Any SOQ received after the submittal deadline will be deemed nonresponsive.**

5.2 Submission Format

The SOQ shall be formatted as follows:

- Electronic PDF format.
- The SOQ must not exceed 15 total pages, excluding the transmittal letter, index or table of contents, front and back covers, title pages/separation tabs, and appendices.
- The submitted PDF must contain bookmarks for each section listed in Section 5.3.
- Front Cover Page: SOQ front cover shall be labeled:

  (RESPONDENT NAME)

  Construction Manager at-Risk for Regional Wastewater Treatment Plant 2026 Expansion

  Statement of Qualifications

  (DATE OF SUBMITTAL)

5.3 Submission Content

The content requirements set forth in this RFQ represent the minimum content requirements for the SOQ. It is the Respondent's responsibility to include information in its SOQ to present all relevant qualifications and other materials. The SOQ, however, should not contain standard marketing or other general materials. It is the Respondent's responsibility to modify such materials so that only directly relevant information is included in the SOQ.

The SOQ must include the following information in the order listed:

- Cover Page
- Transmittal Letter
- Index of Evaluation Criteria (Table 3)
- Part 1—CMAR Profile and Key Firms

- Part 2—Project Team Structure and Key Personnel
- Part 3—Relevant Project Experience
- Appendix A—Forms for Affirmation of Compliance
- Appendix B—Supporting Financial and Company Documentation
- Appendix C—Resumes (key personnel only)
- Appendix D—Draft CMAR Agreement Comments (optional)

5.3.1 Transmittal Letter

Respondents must submit a transmittal letter (maximum two pages) on the Respondent's letterhead. It must be signed by a representative of the Respondent who is authorized to sign such material and to commit the Respondent to the obligations contained in the SOQ. The transmittal letter must include the name, address, phone number, and email address for the Respondent representative and must specify who would be the CMAR's signatory to any contract documents executed with the Owner. The transmittal letter may include other information deemed relevant by the Respondent.

The transmittal letter must affirm compliance with the forms included in Appendix A (Forms for Affirmation of Compliance), based on the forms in RFQ Attachment D (Forms for Affirmation of Compliance), and confirm receipt of all addenda.

5.3.2 Index of Evaluation Criteria

Provide an index matching the evaluation criteria shown in Table 3, indicating which section and page number(s) of the SOQ addresses the information relevant to the criteria.

5.3.3 Part 1 - CMAR Profile and Key Firms

A detailed and complete description of the CMAR and Key Firms must be provided in Part 2 of the SOQ.

<u>CMAR Profile</u>

Required information applies to the CMAR and not to Key Firms (subconsultants/subcontractors). In the case of a joint venture, both parties must provide requested information. The CMAR profile must include the following information:

- General Information. Provide general information about the CMAR, such as lines of business and service offerings, locations of home and other offices, number of employees (professional and nonprofessional), years in business, and evidence of required licenses. Provide licenses in Appendix B (Supporting Financial and Company Documentation) of the SOQ.

- CMAR Legal Structure. Identify whether the CMAR is organized as a corporation, limited liability company (LLC), general partnership, joint venture, limited partnership, or other form of legal entity. Describe how the CMAR has used this structure, or a similar structure, to deliver similar projects. As applicable, identify the owners of the CMAR (e.g., shareholders, members, partners, and the like) who hold an interest of 10% or more in Appendix B (Supporting Financial and Company Documentation).
- Project Office Location. Identify where the CMAR intends to maintain its Project office(s) and the location where the construction management work will be performed.
- Safety. Provide a summary description of the CMAR's corporate safety program and include safety statistics or records indicating categories of accidents and their incidence or frequency rates for the past three years (include records in Appendix B). The following safety records must be provided for the CMAR for the current and past three years:
    - The experience modification rate (EMR) calculated by the National Council on Compensation Insurance or similar rating bureau. (The EMR is also referred to as the experience modification rating, experience modification factor, experience modifier, or X-mod.) Where this value is greater than the industry average of 1.0, Respondent may provide mitigating information to explain the reasons for the EMR rating in Appendix B (Supporting Financial and Company Documentation).
    - The days-away-from-work injury incidence rate. A day-away-from-work injury is an injury that prevents an employee from returning to their next regularly scheduled shift. The incidence rate is calculated by multiplying the number of days-away-from-work injuries for the particular year by 200,000 and then dividing the product by the person-hours worked for that year.

The SOQ must provide the following additional information pertaining to factors or events that have the potential to adversely impact the CMAR's ability to perform its contractual commitments. If any of the questions below are answered in a manner that indicates that any of these unfavorable factors or events are present, it is the Respondent's responsibility to (1) describe in detail the unfavorable factor or event, and (2) provide sufficient information to demonstrate that the unfavorable factor or event will not adversely impact the Respondent's ability to perform its contractual commitments. Include the following information in Appendix B (Supporting Financial and Company Documentation):

- Financial Condition. Provide financial statements for the CMAR for the past three years and quarterly financial statements, certified by the chief financial officer, for the current year. For publicly traded companies, reference to US Securities and Exchange Commission 10-K filings and any recent 10-Q findings are adequate. For entities that are not publicly traded, provide audited financial statements for the same period. If the CMAR is a joint venture, LLC, or partnership, such financial statements must be provided for each partner or member.

- Payment and Performance Bonds. Provide a letter issued by the CMAR's surety company to verify the availability of payment and performance bonds of at least $90 million each for this Project. The surety must be authorized by law to do business in Tennessee. The surety company must be listed in the US Department of Treasury's Circular 570.
- Insurance. Provide a letter from the CMAR's insurance company or broker stating its ability to acquire and provide the minimum limits for the required insurance provided in Attachment B Draft CMAR Agreement. The required insurance must be obtained and maintained from insurance companies that are duly licensed or authorized in Tennessee.
- Legal Proceedings and Judgments. List and briefly describe any pending or past (within five years) legal proceedings and judgments, or any contingent liability that could adversely affect the financial position or ability to perform contractual commitments to Owner. If no such proceedings or judgments are listed, provide a sworn statement to that effect from the CMAR's general counsel.
- Completion of Contracts. Has the CMAR failed to complete any contract, or has any contract been terminated due to alleged poor performance or default within the past 15 years? If so, describe the circumstances.
- Debarred from Bidding. Has the CMAR been debarred or ineligible from entering into contracts with the federal government, or any agency or local public body of the State of Tennessee, or in receipt of a notice of proposed debarment from any federal agency or agency or local public body of the State of Tennessee? If so, describe the circumstances.

Key Firms

Identify and provide general information for any Key Firms (such as subcontractors and subconsultants) included on the Project Team. Include EMR safety records for the current and past three years for each Key Firm anticipated to be responsible for construction activities (include records in Appendix B).

5.3.4 Part 2 - Project Team Structure and Key Personnel

Describe the structure and management of the Project Team. Note that any change in the Key Firms or Key Personnel included in the SOQ are subject to the provisions outlined in Section 7.5 (Obligation to Keep Project Team Intact), which requires Owner approval of such changes.

Project Team Structure

Describe the scope of the CMAR's and each Key Firm's services and responsibilities.

Include organizational chart(s) showing reporting relationships and responsibilities of the CMAR and Key Firms during Phases I and II.

Key Personnel Experience and Qualifications

- Include organizational chart(s) identifying all Key Personnel (and their firm affiliations) and showing reporting relationships of all Key Personnel (along with their firm affiliations) during Phases I and II.
- Describe Key Personnel individual qualifications and experience and how it aligns with their proposed role. Specifically discuss Project Manager's experience leading similar teams.
- Provide resumes for all Key Personnel in Appendix C (Resumes). Resumes must be limited to two pages per individual and include:
    - Academic and professional qualifications.
    - Professional registration (as applicable).
    - Tenure with organization and industry.
    - Experience as it relates to the Project and to the individual's specified role on the Project.

5.3.5 Part 3 - Relevant Project Experience

- Describe the performance history and experience of the Project Team on similar projects, including a description of past working relationships.
- The Respondent shall submit a minimum of 5 reference project descriptions to demonstrate relevant experience with projects of similar scope and scale for municipal clients in the United States, completed in the last 15 years, with a preference for collaborative delivery projects. Each project description shall contain at least the following information:
    - Project name and location.
    - Name of owner.
    - Owner reference and contact information.
    - Delivery model.
    - Role of Respondent and/or Key Firm(s).
    - Initial and final contract value and reason for change.
    - Scheduled and actual completion dates.
    - Description of the project showing relevance to this Project.
    - Names of Key Personnel that participated in project and are included in this SOQ, along with a clear description of the roles and responsibilities of each.
- Provide a one-page summary table to cross-reference the Project Team (CMAR, Key Firms, and Key Personnel) with participation in the reference projects.

5.3.6 Appendix A— Forms for Affirmation of Compliance

Appendix A must include executed forms, affirming that Respondent is in compliance with the required policies, based on the forms in RFQ Attachment D (Forms for Affirmation of Compliance).

5.3.7 Appendix B—Supporting Financial and Company Documentation (SUBMIT UNDER SEPARATE COVER)

Appendix B must include all information indicated in 5.3.3.

5.3.8 Appendix C—Resumes

Appendix C must include resumes for all Key Personnel in SOQ, per requirements of 5.3.4.

5.3.9 Appendix D—Draft CMAR Agreement Comments (optional)

Respondents may include a detailed markup of the Draft CMAR Agreement included in RFQ Attachment B.

Appendix D (if included) must explain the rationale for proposed revisions and the associated benefits to the Owner. Respondents are encouraged to suggest revisions that would more efficiently allocate risk, improve the parties' understanding of risk allocation, and improve clarity of any terms of the Draft CMAR Agreement where ambiguities or uncertainties may arise in their application or interpretation.

Any such comments will not be scored and will be considered by the Owner before issuance of the RFP.

6 SOQ Evaluation and Selection

6.1 General

The SOQs will be reviewed and evaluated by the Owner's selection committee (with assistance provided by outside advisors if desired by Owner) according to the requirements and criteria outlined in this Section 6. During the SOQ evaluation process, written questions or requests for clarifications may be submitted to one or more Respondents regarding its SOQ or related matters. Failure to respond in a timely manner to any such questions or requests may be grounds for elimination of a Respondent from further consideration.

6.2 Responsiveness

Each SOQ will be reviewed to determine whether it is responsive to the RFQ. Failure to comply with the requirements of this RFQ may result in rejection of the SOQ as nonresponsive. At its sole discretion, however, the selection committee may waive any such failure to meet a requirement of this RFQ and may request clarification or additional information to remedy a deficiency.

6.3 Minimum Requirements (Pass/Fail)

Each responsive SOQ will be reviewed to determine whether it meets the minimum requirements outlined in this subsection. At its sole discretion, the selection committee may waive any failure to satisfy such requirements and may request clarification or additional information to address any questions that may arise in this regard. Any SOQ that does not satisfy all of the following minimum requirements may be rejected.

- Financial condition of CMAR.
- Ability of the CMAR to demonstrate it has a minimum bonding capacity in the amount of $90 million for both the payment bond and the performance bond.
- Ability of the CMAR to demonstrate it can provide the required insurance coverage.
- Legal proceedings and judgments.
- Completion of contracts.
- Debarment status.
- The CMAR and other Key Firms included in the SOQ must be licensed in Tennessee for the type of work to be performed.

6.4 Evaluation Criteria

The selection committee will evaluate and rank the responsive SOQs that satisfy the minimum requirements by applying the weighted comparative evaluation criteria set forth below. Respondents will also be required to demonstrate they meet certain minimum qualifications indicated as pass/fail elements.

TABLE 3 Statement of Qualifications Evaluation Criteria

PART	POINTS	CRITERIA
Transmittal Letter and Index	Not Scored	N/A

Part 1 – CMAR Profile and Key Firms	10	<u>Scored Criteria</u>
		- CMAR Profile
		  o General information
		  o CMAR legal structure
		  o Project office location
		  o Safety
		- Key Firms
		  o General information
		  o Safety
		<u>Pass/Fail Criteria</u>
		- Financial condition
		- Performance and payment bonds
		- Insurance
		- Legal proceedings and judgments
		- Completion of contracts
		- Debarment
		- Licenses

PART	POINTS	CRITERIA
Part 2 – Project Team Structure and Key Personnel	40	- Project team structure - Key Personnel experience and qualifications
Part 3 – Relevant Project Experience	50	- Performance history and experience - Relevant project experience
Appendix A – Forms for Affirmation of Compliance	Pass/Fail	- Financial condition - Ability to secure performance and payment bonds - Ability to provide required insurance - Legal proceedings and judgements - Completion of contracts - Debarment - Licenses
Appendix B – Supporting Financial and Company Documentation	-	Scored with Part 2
Appendix C – Resumes	-	Scored with Part 3
Appendix D – Draft CMAR Agreement Comments (optional)	Not Scored	Proposed contract revisions are subject to negotiation and acceptance by Owner following evaluation of SOQs

6.5 Selection of Short List

After the evaluation process is complete, the Owner will notify Respondents of the rankings. The top-ranked Respondents will be selected for inclusion in the short list of up to three Respondents who will receive the RFP. The RFP will include additional information for the committee to evaluate including the project approach, and a cost proposal. During the RFP evaluation, firms will be required to attend an interview with key personnel.

6.6 RFP Selection Process/Timeframe

Once the selection committee has short-listed the three most qualified firms, an RFP will be issued only to those selected firms. The RFP will contain detailed instructions for submittal. It is anticipated that the SOQ selection process will take 2 weeks, and the RFP will be issued upon selection.

7 Conditions for Respondents

7.1 Conflict of Interest

Tennessee Code Annotated (T.C.A.) § 12-3-1208 mandates the public disclosure of certain information concerning persons doing business or seeking to do business with the Owner, including affiliations and business and financial relationships such persons may have with Owner officers.

7.2 Proprietary Information

All materials submitted to the Owner become public property and are subject to the Tennessee Public Records Act (the "Act"). If the SOQ contains proprietary information that the Respondent does not want disclosed, each page containing such information must be identified and marked "PROPRIETARY" at the time of submittal. Owner will, to the extent provided by law, endeavor to protect such information from disclosure. The final decision on what information must be disclosed, however, lies with the Owner. Failure to identify proprietary information will result in all unmarked sections being deemed nonproprietary and available upon public request. Respondents shall not be permitted to mark the entire SOQ as proprietary.

7.3 Rights of the Owner

In connection with this procurement process, including the receipt and evaluation of SOQs and development of the short list, the Owner reserves to itself (at its sole discretion) all rights available to it under applicable law, including without limitation, with or without cause, and with or without notice, the right to:

- Cancel, withdraw, postpone, or extend this RFQ, in whole or in part, at any time prior to the execution of the CMAR Contract, without incurring any obligations or liabilities.
- Modify the procurement schedule.
- Waive deficiencies, informalities, and irregularities in an SOQ and accept and review a nonconforming SOQ.
- Suspend and terminate the procurement process or terminate evaluations of SOQs received.
- Permit corrections to data submitted with any SOQ.
- Hold meetings and interviews, and conduct discussions and correspondence, with one or more of the Respondents to seek an improved understanding of any information contained in an SOQ.
- Seek or obtain, from any source, data that has the potential to improve the understanding and evaluation of the SOQs.
- Seek clarification from any Respondent to fully understand information provided in the SOQ and to help evaluate and rank the Respondents.
- Reject an SOQ containing exceptions, additions, qualifications, or conditions not called for in the RFQ or otherwise not acceptable to the Owner.
- Conduct an independent investigation of any information, including experience, included in an SOQ by contacting Project references, accessing public information, contacting independent parties, or any other means.
- Request additional information from a Respondent during the evaluation of its SOQ.

7.4 Obligation to Keep Project Team Intact

Owner expects all firms and Key Personnel proposed to be available to provide services for this Project. Respondents are advised that all Key Firms and Key Personnel identified in the SOQ shall remain on the Project Team for the duration of the procurement process and execution of the Project. Following announcement of the short list, Respondents shall not substitute a Key Firm or an individual filling a Key Personnel position, except in unavoidable circumstances. In such circumstances the Respondents shall notify the Owner in writing, and the Owner may rescore, and re-rank, and thereafter decide whether the Respondent may continue to compete in the selection process.

Key Personnel are committed to the Project and changes may not be accepted, unless they no longer work for the firm or Owner otherwise agrees that a change is appropriate. (The anticipated dates for award of the CMAR Agreement and for completion of the Project are set forth in Subsection 2.4 of this RFQ.) If extraordinary circumstances require a change, it must be submitted in writing to the Owner contact, who, at its sole discretion, will determine whether to authorize a change, recognizing that certain circumstances (such as termination of employment) may occur that are beyond the CMAR's control. Unauthorized changes to the Project Team at any time during the procurement process may result in elimination of the Respondent from further consideration.

7.5 Addenda

If any revisions to the RFQ or procurement process become necessary or desirable (at the Owner's sole discretion), the Owner may issue written addenda. The Owner will issue any such addenda in writing, and will post the addenda on the following websites: https://www.maryvillegov.com/pba.html. It is each Respondent's responsibility to obtain all addenda prior to submitting its SOQ.

7.6 Protests

Any protest to an Owner's action in connection with this procurement must be filed in writing no later than 7 business days following such action and must be in accordance with T.C.A. § 12-3-514 (b). The protest shall be addressed as follows:

The Public Building Authority of the City of Maryville, Tennessee
Attn: Kevin Stoltenberg
410 W. Broadway
Maryville, TN 37801
PROTEST

The protest shall contain at a minimum the following;

- The name and address of the protesting party;
- A clear statement of the reason(s) for the protest detailing the provisions believed to have been violated;
- Details concerning the facts which support the protest;

- A statement of when knowledge of the facts or occurrences giving rise to the protest occurred;
- Attachments of any written evidence available to substantiate the claims of the protest; and
- A statement specifying the ruling requested.

Attachment A—Definition of Terms

The definitions of some of the terms used in this RFQ are presented below:

CMAR - Both the construction management at-risk delivery method and the entity that will enter into the CMAR Agreement with the Owner and that will be the single point of accountability to the Owner for delivery of the services and the Project. The term "CMAR" can refer to either a single entity or a joint venture.

Design Engineer - The engineering firm that will provide professional design services and have responsible charge of the design, including preparation of the construction documents. Jacobs Engineering Group Inc. is the Design Engineer.

Draft CMAR Agreement - The draft agreement (contract), including all of its exhibits, presented as RFQ Attachment B Draft CMAR Agreement.

Key Firms - Firms fulfilling the key roles that must be identified in Respondent's SOQ and are committed to work on the Project if Respondent is selected as the CMAR.

Key Personnel - The individuals employed by the CMAR or Key Firms included on the Project Team who would fill certain key roles in delivery of the Project and related services, including the positions described in the RFQ.

Minimum Requirements - The requirements set forth in Subsection 6.3 of this RFQ that, at a minimum, must be satisfied (or waived by the Owner) in order for the SOQ to be evaluated and ranked according to the comparative evaluation criteria.

Owner - The Public Building Authority of the City of Maryville, Tennessee.

Owner Advisor - Jacobs Engineering Group Inc.

Project - Regional Wastewater Treatment Plant – 2026 Expansion.

Project Team - The CMAR, Key Firms (such as subcontractors and subconsultants), and Key Personnel identified in the Respondent's SOQ.

Request for Qualifications (RFQ) - This request for qualifications document.

Respondent - The CMAR entity responding to this RFQ by submitting an SOQ.

Statement of Qualifications (SOQ) - A response to this RFQ, submitted by a Respondent for the Project.

Tennessee Code Annotated (TCA) - Compilation of Tennessee state laws.

WWTP - City of Maryville Regional Wastewater Treatment Plant.

Attachment B—Draft CMAR Agreement

Contents:

Draft CMAR Agreement

Draft Exhibit A of the Agreement – General Conditions to the Agreement

Draft Exhibit E of the Agreement – Phase II Construction Price Amendment

Attachment 16 to Exhibit E of the Agreement – Insurance and Bond Requirements

Attachment C—Index of Project Background Documents

Respondents shall review the index of Project background documents to support SOQ development. The Owner may also update the index of Project background documents from time to time with new information via addenda to the RFQ, RFP, or during Phase I. Project documents listed below for the RFQ-RFP phase will be available at the following website address: https://www.maryvillegov.com/pba.html

The project background documents are being provided to assist the respondents with project understanding and development of responses.

Document Number	Document Title
01	Maryville Consent Order WPC23-0156 CAPER November 2024

Attachment D—Forms for Affirmation of Compliance

Drug Free Workplace Affidavit

Title VI Disclosure

Iran Divestment Act Form

Non-Boycott of Israel Form

Non-Collusion Affidavit

Debarment Certification Form

ATTACHMENT B

CMAR AGREEMENT

Regional Wastewater Treatment Plant
2026 Expansion

DRAFT

CONSTRUCTION MANAGEMENT AT-RISK (CMAR) AGREEMENT

The Public Building Authority
of the City of Maryville, Tennessee

TABLE OF CONTENTS

Regional Wastewater Treatment Plan – 2026 Expansion
Agreement Between Owner and Construction Manager at-Risk (CMAR)

This Agreement is made this _____ day of _____ in the year 20___ (the "Contract Date"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by and between the

OWNER
The Public Building Authority of the City of Maryville, Tennessee
410 W. Broadway
Maryville, TN 37801

and

CONSTRUCTION MANAGER AT-RISK (CMAR):
Company Name
Address
City, State, Zip

for services in connection with the following Project:

PROJECT NAME: Regional Wastewater Treatment Plant – 2026 Expansion

PROJECT LOCATION: 4541 Wheeler Road, Louisville, TN

PROJECT SUMMARY: Improvements for the expansion of treatment capacity at the City of Maryville's Regional Wastewater Treatment Plant

PROJECT PHASING: The Project will consist of Phase I Pre-Construction Services and Phase II Construction Phase Services. An Early Works Package may be included, if it is deemed beneficial to the Owner.

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

Accordingly, the Parties hereto hereby agree as follows.

1 ARTICLE 1 — Definitions

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

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

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

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

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

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

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

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

1.9. The "CMAR" is [NAME].

1.10. The "CMAR Representative" is [NAME].

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

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

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

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

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

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

1.17. The term "Day" or "day" shall mean calendar day unless otherwise specifically defined.

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

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

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

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

1.22. "Engineer" means the licensed Engineer and its consultants, retained by Owner to perform design services for the Project. The Engineer for the Project is Jacobs Engineering Group Inc.

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

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

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

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

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

1.28. The “General Conditions" to the Agreement is included as Exhibit A.

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

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

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

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

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

1.34. "Owner" is The Public Building Authority of the City of Maryville, Tennessee and includes the Owner's representative and any other Owner authorized person or entity.

1.35. "Owner's Approved Budget" means the sum of $90,000,000.00.

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

1.37. The Owner's authorized representative is Jacobs Engineering Group Inc. (the "Owner's Representative").

1.38. "Phase I" means the Pre-construction Phase.

1.39. "Phase II" means the Construction Phase Services performed by CMAR pursuant to this Agreement and the other Contract Documents.

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

1.41. "Phase II Construction Price Amendment" has the meaning given to it in Exhibit E, Paragraph 1.15.

1.42. "Phase II Construction Price Proposal" has the meaning given to it in Exhibit E, Paragraph 1.15.2.

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

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

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

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

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

1.48. "Specifications" means the documents prepared by Owner, Engineer, or other consultant of Owner consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work and performance of related services.

1.49. A "Subcontractor" is a person or entity retained by the CMAR as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The Subcontractor obligations within this Agreement shall also apply to the CMAR for all self-perform trade work.

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

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

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

1.53. "Worksite" means the location of the Project as identified in Article 1 where the Work is to be performed.

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

2 ARTICLE 2 — CMAR Responsibilities

2.1 Phase 1 Preconstruction Phase Services

2.1.1 Commencement. Preconstruction Phase Services, as described in **Exhibit B** attached hereto, shall commence no later than 7 calendar days following the Owner's issuance of a Phase I Notice to Proceed in substantially the form of **Exhibit C** attached hereto and incorporated herein by this reference with the appropriate box checked. For the performance of the Preconstruction Phase Services CMAR shall be paid the Preconstruction Phase Services fees in the amount and in the manner set forth in Paragraph 6.1.

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

2.1.3 Completion. CMAR's Preconstruction Phase Services shall be deemed to have been completed upon mutual execution of a Phase II Construction Price Amendment for the Work, hereto attached as **Exhibit E**, covered by the Construction Phase Services. If the Owner and CMAR are unable to reach a written agreement on a Phase II Construction Price Amendment, the Owner may terminate this Agreement for convenience on 7 business days' written notice to the CMAR in accordance with Paragraph 10.3 of the General Conditions. In the event of such termination for convenience, the CMAR shall be compensated for (1) the portion of the CMAR's Preconstruction or Construction Phase Services, if any, performed to the date of such termination, but the CMAR shall not be entitled to compensation for Work not performed, plus (2) reasonable demobilization costs, if any, which shall include, but not be limited to, reasonable cost(s) incurred by CMAR to break contractual obligations with Subcontractors, Subconsultants, Suppliers, Vendors, and Materialmen entered prior to Subcontractor's receipt of the notice of termination. In such event, the CMAR shall have no obligation to perform the Scope of Work covered by such unexecuted Phase II Construction Price Amendment.

2.2 Phase II Construction Phase Services

2.2.1 Commencement. Unless otherwise provided to the contrary elsewhere in this Agreement or the other Contract Documents, CMAR's Construction Phase Services shall commence within 14 days of the Phase II Notice to Proceed.

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

2.2.2.1 The CMAR may seek to perform portions of the Work itself, other than minor work that may be included in the CMAR's Construction General Conditions Costs, if the CMAR or CMAR team member submits its proposal and is awarded for those portions of Work in the same manner as all other Subcontractors. If the CMAR intends to submit a proposal for such Work, it shall notify Owner prior to soliciting Proposals and all such proposals shall be submitted directly to the Owner in accordance with **Exhibit B**. If the Owner determines that the CMAR's bid or CMAR team member's proposal provides the best value, based on cost and relevant experience for the Owner, the CMAR or CMAR team member may be awarded that portion of the Work.

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

2.2.2.3 Work identified pursuant to **Exhibit B** and performed directly by the CMAR shall be limited to 100% of the Phase II Construction Price unless a lower or higher percentage is requested and approved by the Owner. For any Work that will be performed by the CMAR, bids or request for proposal shall be submitted to and reviewed by the Owner's Representative or any other neutral party as determined by the Owner to avoid a conflict of interest.

3 ARTICLE 3 — Owner Responsibilities

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

4 ARTICLE 4 — Subcontracts and Labor Relations

4.1 Subcontractors. The work not performed by the CMAR with its own forces shall be performed by Subcontractors. All subcontracts shall be issued on a Lump-Sum basis unless the Owner has given prior written approval of a different method of payment to the Subcontractor. Owner may require CMAR to competitively bid subcontracts for services or supplies that are over $10,000. CMAR may subcontract any services or supplies that are under $10,000 without the approval or competitive requirement to Subcontractors.

4.2 Labor Relations

4.2.1 Prevailing Wages (not applicable)

4.2.2 CMAR shall comply with the requirements of Title VI of the Civil Rights Act of 1964.

5 ARTICLE 5 — Time

5.1 Performance of the Work

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

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

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

5.2 Schedule of the Work

5.2.1 Owner will timely review the baseline Schedule submitted by CMAR. If the Owner determines that additional supporting data are necessary to fully evaluate the Schedule, the Owner will request additional supporting data in writing. Such data shall be furnished no later than 7 days after the date of such request. Owner will render a decision promptly and in any case within 14 days after the latter of the receipt of the Schedule update or the deadline for furnishing such additional supporting data. Owner shall review, approve, and/or provide comments in a reasonable time.

5.2.2 Contemporaneously with CMAR's submission of its Phase II Construction Price Proposal in accordance with Phase II Construction Price Amendment, the CMAR shall submit to the Owner and, if directed, the Engineer, a schedule update, in compliance with the requirements of paragraph 5.2 of the General Conditions, **Exhibit B**, and the requirements of this Paragraph 5.2, that shall show the dates on which the CMAR plans to commence and complete various parts of the Work, including dates on which information and approvals are required from the Owner.

5.3 Contract Time, Delays, and Extensions of Time

5.3.1 The Contract Time for Phase 1 Pre-Construction Phase Services is 460 days. Where possible, the Owner, Engineer, and CMAR will seek to shorten this duration. The Contract Time for Phase 2 Construction Phase Services is 1190 days. Phase 1 Pre-Construction Phase Services

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

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

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

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

5.4 Liquidated Damages

5.4.1 Substantial Completion. The Owner and the CMAR agree that this Agreement shall provide for the imposition of liquidated damages for any CMAR delay not excused by Paragraph 5.3 hereof or elsewhere in this Agreement. Liquidated damages applies to Phase 2 Construction Phase Services.

5.4.1.1 The CMAR agrees that if the Work of the Project is not Substantially Completed on or before the Substantial Completion Date applicable to the Project or related Bid Package, the CMAR shall pay the Owner as liquidated damages and not as a penalty the sum of $4,000 per day of unexcused delay past the Substantial Completion Date. The liquidated damages provided herein shall be the sole and exclusive remedy for any unexcused delay in the performance of CMAR's obligations hereunder and shall be in lieu of any and all other liability to the Owner for extra costs, losses, expenses, claims, penalties and any other damages of whatever nature (whether actual, compensatory, direct, indirect, special, consequential, punitive, or otherwise) incurred by the Owner and which are caused by any unexcused CMAR delay in timely achieving Substantial Completion on or before the Substantial Completion Date. The Parties acknowledge and agree that it would be extremely difficult, if not impossible, to quantify the economic loss

incurred by the Owner as a result of such unexcused delay, that the liquidated damages contemplated herein are reasonable and represent a fair approximation of the economic loss to be incurred by Owner as a result of such unexcused delay, and that such liquidated damages shall be enforceable to the maximum extent permitted under Applicable Law.

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

5.4.2.1 The CMAR agrees that if the Work of the Project is not Finally Completed on or before the Final Completion Date applicable to the Project or related Bid Package, the CMAR shall pay the Owner as liquidated damages and not as a penalty the sum of $2,500 per day for each day of unexcused delay past the Final Completion Date. The liquidated damages provided herein shall be the sole and exclusive remedy for any unexcused delay in the performance of CMAR's obligations hereunder and shall be in lieu of any and all other liability to the Owner for extra costs, losses, expenses, claims, penalties and any other damages of whatever nature (whether actual, compensatory, direct, indirect, special, consequential, punitive, or otherwise) incurred by the Owner and which are caused by any unexcused CMAR delay in timely achieving Final Completion on or before the Final Completion Date. The Parties acknowledge and agree that it would be extremely difficult, if not impossible, to quantify the economic loss incurred by the Owner as a result of such unexcused delay, that the liquidated damages contemplated herein are reasonable and represent a fair approximation of the economic loss to be incurred by Owner as a result of such unexcused delay, and that such liquidated damages shall be enforceable to the maximum extent permitted under Applicable Law.

6 ARTICLE 6 — Compensation

6.1 CMAR's Compensation for Preconstruction Phase I Services

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

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

6.2.1 The Owner shall compensate the CMAR for Work performed and described in an Early Works price amendment on the basis of either a Lump-Sum or Guaranteed Maximum Price, in each case as set forth in such amendment and General Conditions.

6.3 CMAR's Compensation for Construction Phase II Services

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

7 ARTICLE 7 — Changes

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

8 ARTICLE 8 — Payment Compensation

8.1 Preconstruction Phase I. Payments for Preconstruction Phase I Services shall be made monthly in proportion to services performed unless otherwise agreed, in writing, by Owner and CMAR. Payments are due and payable upon presentation of the CMAR's request for payment. Amounts unpaid more than 45 days after the invoice date shall bear interest at the rate of 1.5% per month.

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

9 ARTICLE 9 — Liability

9.1 Waiver of Consequential Damages

9.1.1 Except for (a) damages mutually agreed upon by the Parties as liquidated damages in Paragraph 5.4 hereof, and (b) subject to the following provisions set forth in this Paragraph 9.1, notwithstanding anything else herein to the contrary, the Owner and the CMAR agree to waive all claims against each other for any consequential or other special damages that may arise out of or relate to this agreement. The Owner agrees to waive consequential or other special damages including, but not limited to, the Owner's loss of use of the Project, any rental expenses incurred, loss of tax abatements or credits, cost of substitute facilities or services, cost of purchased or replacement product or claims from customers or suppliers of Owner, loss of income, profit, or revenue related to the Project,

as well as the loss of business, opportunity, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of reputation or goodwill and/or insolvency regardless of whether any of the foregoing are found to be direct or indirect. The CMAR agrees to waive consequential damages including, but not limited to, loss of business, loss of financing, loss of profits not related to this Project, loss of bonding capacity, loss of reputation and / or insolvency. The provisions of this paragraph shall also apply to the termination of this Agreement and shall survive such termination.

9.2 CMAR's Limitation of Liability

9.2.1 Notwithstanding anything to the contrary contained herein or in the other Contract Documents, the maximum liability, in the aggregate, of the CMAR, its Subcontractors, sureties (if any) and their respective officers, directors, shareholders, employees, agents, successors and assigns to Owner and anyone claiming by, through, or under Owner for any loss, damage, suit, action, liability, claim, or expense caused by, resulting from, or arising out of or relating in any way to this Agreement or the Project from any cause whatsoever, including, without limitation, the negligence, breach of contract, strict liability, express or implied warranty, indemnity, professional errors or omissions, or any other cause arising at law or in equity, shall in all events be limited to and not exceed 100% of the Phase II Construction Price. This limitation has been freely bargained for by the Parties for valuable consideration and shall be enforceable to the maximum extent permitted by applicable law.

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

10 ARTICLE 10 — Dispute Mitigation and Resolution

10.1 Claims Procedures

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

10.2 Preconstruction Phase I Services

10.2.1 If, during the Preconstruction Phase Services the Parties cannot reach resolution on a matter relating to or arising out of the Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) business days from the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within

five (5) business days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) days from the date of first discussion, the Parties shall submit such matter to the mediation procedures identified in Paragraph 11.2.2 of the General Conditions as a condition precedent to any judicial forum or voluntary binding alternative dispute resolution proceeding subsequently agreed to by the Parties.

10.3 Construction Phase II Services

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

11 ARTICLE 11 — Miscellaneous Provisions

11.1 Governing Law

11.1.1 This Agreement shall be governed by the law in effect at the location of the Project.

11.2 Severability

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

11.3 No Waiver of Performance

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

11.4 Titles and Groupings

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

11.5 Joint Drafting

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

11.6 Counterparts; Electronic Signatures

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

11.7 Attorneys' Fees

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

11.8 Exhibits, Schedules, and Addenda

11.8.1 Exhibits, schedules, and addenda bearing on the payment and performance of the Construction Phase Services will be attached to the Phase II Construction Price Amendment for such Construction Phase Services. The following exhibits pertaining to the Phase I Preconstruction Phase Services are attached hereto and incorporated herein by this reference:

Exhibit A General Conditions to Agreement

Exhibit B CMAR Phase I Preconstruction Scope of Services [Provided with RFP]

Exhibit C Phase I Notice to Proceed [Provided with RFP]

Exhibit D Not Used

Exhibit E Phase II Construction Price Amendment

11.9 Other Provisions

11.9.1 [INSERT OTHER PROVISIONS, IF ANY, THAT PERTAIN TO THIS AGREEMENT.]

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

OWNER: The Public Building Authority of the City of Maryville, Tennessee

BY: .....

PRINT NAME _____

PRINT TITLE _____

CONSTRUCTION MANAGER AT-RISK (CMAR): [NAME]

BY: .....

PRINT NAME _____

PRINT TITLE _____

Regional Wastewater Treatment Plant
2026 Expansion

Exhibit A – General Conditions to Agreement

The Public Building Authority

of the City of Maryville, Tennessee

CONTENTS

Regional Wastewater Treatment Plant – 2026 Expansion
General Conditions to Agreement Dated _____, 20____ ("Agreement")

Between

The Public Building Authority of the City of Maryville, Tennessee, as Owner ("Owner"), whose address is:

410 W Broadway
Maryville, TN 37801
_____
_____

and

_____, as Construction Manager at-Risk ("CMAR"), whose address is:

_____
_____
_____
_____

For the following Project ("Project"):

Regional Wastewater Treatment Plant – 2026 Expansion

In which Jacobs Engineering Group Inc. is the Engineer ("Engineer").

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

ARTICLE 1— General Provisions

1.1 Contract; Order of Precedence

The Contract Documents are enumerated in the Agreement and consist of the Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, addenda issued prior to execution of the Agreement, other documents or exhibits listed in or attached to the Agreement, and Modifications issued after execution of the Agreement. A "Modification" is (a) a written amendment to the Agreement signed by both the Owner and the CMAR (each a "Party" and collectively, the "Parties"), (b) a Change Order, (c) an Owner Change Directive, or (d) a written order for a minor change in the Work issued by the Engineer. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, instructions to

bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the CMAR's bid or proposal, or portions of addenda relating to bidding or proposal requirements. Conflicts, ambiguities, or inconsistencies between or amongst the Contract Documents are governed by and subject to the order of precedence set forth in Paragraph 1.1.5 hereof.

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

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

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

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

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

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

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

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

1.1.5.4 These General Conditions;

1.1.5.5 Specifications and Drawings; and

1.1.5.6 Notice to Proceed.

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

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

1.2 Relationship of Parties

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

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

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

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

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

1.2.5 The CMAR Representative shall possess full authority to receive instructions from the Owner and to act on those instructions. The CMAR shall notify the Owner in writing of a change in the designation of the CMAR Representative. Upon such notice, the Owner will have 14 Calendar Days to approve or reject the change in designation. Should the Owner reject the CMAR Representative, the CMAR and Owner shall meet within 1 Business Day to decide on who will serve as the CMAR Representative.

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

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

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

1.3 Engineer

The Owner, through its Engineer, shall provide all engineering and other design services necessary for the completion of the Work, with the exception of Professional Services to be provided by the CMAR as indicated in the Contract Documents and as described in Section 2.1.6.

ARTICLE 2 — CMAR Preconstruction Phase and Construction Phase Responsibilities

2.1 General Responsibilities

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

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

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

2.1.4 The CMAR and its Subcontractors shall review and compare each of the Contract Documents with the others and with information furnished or made available by Owner and shall, subject to limitations set forth in Subparagraph 2.1.2 hereof, promptly report in writing to Owner's Representative any errors, inconsistencies, or omissions it discovers in

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

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

2.1.6 Professional Services. The CMAR may be required to procure professional services to carry out its responsibilities for construction means, methods, techniques, sequences, and procedures or as such services are specifically called for by the Contract Documents. The CMAR shall obtain these professional services and any design certifications required from licensed design professionals. All Drawings, Specifications, calculations, certifications, and submittals prepared by such design professionals shall bear the signature and seal of such design professionals, registered in the State of Tennessee, and the Owner and the Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of such design services. If professional services are specifically required by the Contract Documents, the Owner, through the Engineer, shall indicate all required performance and design criteria. The CMAR shall not be responsible for the adequacy of such performance and design criteria. The CMAR shall not be required to provide such services in violation of Applicable Law in the jurisdiction where the Project is located. Should the CMAR refuse to provide services based on the inadequacy of design criteria or because of a violation of existing Applicable Law, the CMAR shall provide notice and an explanation to Owner within 14 Business Days of the CMAR becoming aware of the issue. The CMAR shall work with Owner to mitigate the issue.

2.2 Preconstruction Phase Services

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

2.3 Construction Phase Services

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

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

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

shall preserve all such records for a period of three years after the Final Payment in accordance with Paragraph 8.9 hereof or longer where required by law.

2.3.4 Construction Personnel and Supervision

2.3.4.1 The CMAR shall provide competent supervision for the performance of the Work at all times. Before commencing the Work, the CMAR shall notify the Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager so the Owner may review the individual's qualifications. If, for reasonable cause, the Owner refuses to approve the individual, or withdraws its approval after once giving it, the CMAR shall name a different superintendent for the Owner's review. Any disapproved superintendent shall not perform in that capacity thereafter at the Worksite. The CMAR shall not replace the Superintendent without providing 48 hours written notice to the Owner, except under extraordinary circumstances. The CMAR shall submit a resume and the qualifications of the proposed substitute Superintendent along with the written notification and the Owner shall review and approve or deny the proposed substitute. The Superintendent will be the CMAR'S representative at the Site and shall have authority to act on behalf of the CMAR. All communications given to Superintendent shall be as binding as if given to the CMAR.

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

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

2.3.5 Submittals

2.3.5.1 The CMAR shall be responsible to the Owner for the accuracy and conformity of its submittals to the Contract Documents. The CMAR shall prepare and deliver its submittals to the Owner and Engineer in such time and sequence so as not to delay the performance of the Work or the work of the Owner and Others. When the CMAR delivers its submittals to the Owner, the CMAR shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The review and approval of any CMAR submittal shall not be deemed to authorize changes, deviations, or substitutions from the requirements of the Contract Documents unless express written approval is obtained from the Owner specifically authorizing such deviation, substitution, or change. To the extent a change, deviation or

substitution causes an impact to the Phase II Construction Price or Contract Time, such approval shall be promptly memorialized in a Change Order. Further, the Owner shall not make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to the CMAR. If the Contract Documents do not contain submittal requirements pertaining to the Work, the CMAR agrees upon request to submit in a timely fashion to the Owner for review and approval any submittals, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by the Owner.

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

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

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

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

2.3.6 Cooperation with Work of Owners and Others

2.3.6.1 The Owner may perform work at the Worksite directly or by Others. Any agreements with Others to perform construction or operations related to the Project shall include provisions pertaining to insurance, indemnification, waiver of subrogation, coordination, interference, cleanup, and safety which are substantively the same as the corresponding provisions of this Agreement.

2.3.6.2 If the Owner elects to perform work at the Worksite directly or by Others, the CMAR and Owner shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. The Owner shall require each separate contractor to cooperate with the CMAR and assist with the coordination of activities and the review of construction schedules and operations. The Phase II Construction Price

or the Date of Substantial Completion or the Date of Final Completion may be equitably adjusted, as mutually agreed by the Parties, for changes made necessary by the coordination of construction activities, and the Schedule of the Work shall be revised accordingly. The CMAR, Owner, and Others shall adhere to the revised Schedule of the Work until it may subsequently be revised.

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

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

2.3.7 Cutting, Fitting, and Patching

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

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

2.3.8 Cleaning Up

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

construction equipment, tools, surplus materials, waste materials, and debris created by the CMAR and its Subcontractors.

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

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

2.3.10 Materials Furnished by the Owner or Others

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

2.3.11 Tests and Inspections

2.3.11.1 The CMAR shall schedule all required tests, approvals, and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other Work related to the Project. The CMAR shall give proper notice to all required Parties of such tests, approvals, and inspections. If feasible, the Owner and Others may timely observe the tests at the normal place of testing. Except as provided in Subparagraph 2.3.11.3 below or unless otherwise required by the Contract Documents, the Owner shall bear all expenses associated with tests, inspections, and approvals required by the Contract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by the Owner. Unless otherwise required by the Contract Documents, required certificates of testing, approval, or inspection shall be secured by the CMAR and promptly delivered to the Owner.

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

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

2.4 Warranty

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

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

2.5 Correction of Defective Work

2.5.1 If prior to Substantial Completion and within one year after the date of Substantial Completion of the Work any Defective Work is found, the Owner shall promptly notify the CMAR in writing. Unless the Owner provides written acceptance of the condition, the CMAR shall promptly correct the Defective Work. If the Owner discovers a defect, the Owner shall notify the CMAR promptly after the date of discovery. Work that is found not to conform to the requirements of the Agreement prior to Substantial Completion but does not

prevent achievement of Substantial Completion may be corrected prior to Final Completion.

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

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

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

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

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

2.5.7 Prior to Final Payment, at the Owner's option and with the CMAR's agreement, the Owner may elect to accept Defective Work rather than require its removal and correction. In such cases, the Phase II Construction Price may be equitably adjusted for any diminution in the value of the Project, if any, caused by such Defective Work.

2.6 Correction of Covered Work

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

uncovered Work proves to be defective, the CMAR shall pay the costs of uncovering and replacement.

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

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

2.7 Safety of Persons and Property

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

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

2.7.2.1 Its employees and other persons at the Worksite;

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

2.7.2.3 Property located at the Worksite and adjacent to Work areas, whether the property is part of the Work.

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

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

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

2.8 Emergencies

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

2.9 Hazardous Materials

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

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

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

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

removed or rendered harmless and only after approval, if necessary, of the Governmental Authority with jurisdiction.

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

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

2.9.7 Removal of Hazardous Materials

2.9.7.1 To the extent the Hazardous Materials not the subject of Subparagraph 2.9.6 above are identified in other applicable provisions above of this Paragraph 2.9, the CMAR shall proceed with remediation and removal of such Hazardous Materials as agent for the Owner in accordance with this Subparagraph 2.9.8.

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

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

2.10 Materials Brought to the Worksite

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

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

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

2.11 Differing Site Conditions

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

2.12 Permits And Taxes

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

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

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

2.13 Confidentiality

2.13.1 The CMAR shall treat as confidential and shall not use for its own benefit nor disclose to third persons, except as is necessary for the performance of the Work, any of the Owner's confidential information, know-how, discoveries, production methods, and the like that may be disclosed to the CMAR or which the CMAR may acquire in connection with the Work. To the extent permitted by law, the Owner shall treat as confidential information all of the CMAR's estimating systems and historical and parameter cost data and identified related proprietary information that may be disclosed to the Owner in connection with the performance of this Agreement.

2.13.2 The Owner and the CMAR shall each specify those items to be treated as confidential and shall mark them as "Confidential." The provisions of this Subparagraph. 2.13.1 shall survive the termination or completion of this Agreement and the transactions contemplated hereby.

ARTICLE 3 — Owner's Responsibilities

3.1 Adequate Funding for Project

At the CMAR's request following execution of the Phase II Construction Price Amendment and prior to the Owner's issuance of a Notice to Proceed with the Construction Phase Services, the Owner shall promptly furnish reasonable evidence satisfactory to the CMAR that the Owner has adequate funds committed to fulfill all of the Owner's payment obligations under the Contract Documents. If the Owner fails to furnish such financial information in a timely manner, the CMAR may stop Work under Section 10.4 of the General Conditions or exercise any other right permitted under the Contract Documents. Following the Owner's issuance of the Phase II Notice to Proceed, so long as the Owner satisfies its payment obligations under the Agreement and other Contract Documents, the Owner shall not be required to furnish any further financial evidence of its ability to satisfy its payment obligations under the Contract Documents.

3.2 Owner's Representative

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

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

3.3 Information And Services

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

3.4 Worksite Information

Except to the extent that the CMAR knows of any inaccuracy, the CMAR is entitled to rely on the following Project information furnished by the Owner pursuant to this Paragraph 3.4. To the extent the Owner has obtained, or is required elsewhere in the Contract Documents to obtain, the following Project information, the Owner shall provide such information to the CMAR at the Owner's expense and with reasonable promptness so as not to delay the Schedule:

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

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

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

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

3.5 Engineer

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

3.6 Contract Documents

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

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

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

3.8 Submittals

CMAR will provide submittals in accordance with Submittal Procedures provided in the Contract Documents. The Owner shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay and shall cause the Engineer to respond to such submittals and to either approve or reject the same no later than 30 days following Engineer's receipt of same, unless an earlier or later response deadline is provided elsewhere in the Contract Documents.

3.9 Access

The Owner shall provide the CMAR and its Subcontractors and Materials Suppliers at all tiers with appropriate physical and legal access to the Project Site and other areas necessary for the proper and timely performance and completion of the Work.

ARTICLE 4 — Subcontracts

4.1 Subcontractors

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

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

4.2.1 As soon after the execution of this Agreement as possible, the CMAR shall provide the Owner and, if directed, the Engineer with a written list of the proposed Subcontractors and significant Material Suppliers. If the Owner has a reasonable objection to any proposed Subcontractor or Material Supplier, the Owner shall notify the CMAR in writing. Failure to promptly object shall constitute acceptance. Subcontractors shall be secured by the CMAR in accordance with the Subcontractor Procurement Plan.

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

The CMAR agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its Subcontractors and Material Suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractors' and Material Suppliers' portions of the Work. CMAR shall be fully responsible for all acts and omissions of Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that he is responsible for the acts and omissions of persons directly employed by him. Nothing in the Contract Documents shall create any contractual relationship between Owner or Engineer and any Subcontractor or other person or organization having a direct contract with the CMAR, nor shall it create any obligation on the part of Owner or Engineer to pay or to see to the payment of any monies due any Subcontractor or other person or organization, except as may otherwise be required by law.

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

4.3 Contingent Assignment of Subcontracts

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

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

ARTICLE 5 — Time

5.1 Performance of the Work

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

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

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

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

5.2 Schedule of the Work

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

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

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

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

5.3 Delays and Extensions of Time

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

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

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

Any adjustments made pursuant to Sections 5.3.1.1 or 5.3.1.2 shall be subject to limitations set forth in Article 7 hereof of these General Conditions and the provisions of Paragraphs 5.6 and 5.7 of these General Conditions. The CMAR shall not be entitled to an adjustment in the Phase II Construction Price or the Contract Time for CMAR Delays.

5.4 Other Terms Defined

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

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

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

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

(The following list is an example definition of Force Majeure events. The Owner and the CMAR shall determine the applicable conditions or occurrences that are defined as events of Force Majeure.)

5.4.1.3.1 Damage or destruction by fire or casualty.

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

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

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

5.4.1.3.5 Strike or other labor dispute not specifically directed at the CMAR or any person or entity for whom the CMAR is responsible under the Contract Documents.

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

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

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

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

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

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

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

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

(The following list is an example definition of Owner Delay events. The Owner and the CMAR shall determine the applicable conditions or occurrences that are defined as events of Owner Delay.)

5.4.1.4.1 Any Change in the Work initiated by the Owner.

5.4.1.4.2 The Owner's failure to timely approve or disapprove any item for which Owner approval is required under the Contract Documents except to the extent that the Owner's failure is deemed to mean approval pursuant to the terms of the Agreement and except to the extent that the Owner cures such failure within 7 Business Days after receipt of written notice from the CMAR of such failure.

5.4.1.4.3 Any failure of the Owner to (a) comply with the CMAR's reasonable requirements relative to access to areas of the Work reasonably necessary for the performance of Work, including, without limitation, the hoist, freight elevators, and/or defined path of travel established with respect to the Work; (b) utilize labor which can work in harmony with labor employed by the CMAR and its Subcontractors; (c) comply with the CMAR's safety rules; or (c) comply with all requirements applicable to the Owner's separate work for the Project undertaken by the Owner or its separate Contractors and Subcontractors at any tier in each case to the extent any such failure is not cured within 5 Business Days after written notice is given by the CMAR to the Owner and only to the extent any such failure actually impacts the CMAR's already scheduled Work.

5.4.1.4.4 Failure by the Owner to comply with its obligations under this Agreement.

5.4.1.4.5 Any defects, delay, or impacts from the Owner's separate work for the Project undertaken or failed to be undertaken by the Owner or its separate Contractors and Subcontractors at any tier, or which delays the Work or the issuance of a certificate of occupancy or another applicable certificate of completion for the Work by any governmental entity having jurisdiction over the Project or the Work, in each case to the extent not cured within 5 Business Days after written notice is given by the CMAR to the Owner.

5.4.1.4.6 Any other event or circumstance caused by or attributable to the Owner.

5.5 Claims / Modifications for Excusable Delays

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

5.6 Construction General Conditions Costs

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

5.7 Monitoring Progress and Costs

Following acceptance by the Owner of the Phase II Construction Price, the CMAR and the Owner shall establish a process for monitoring costs against the Phase II Construction Price and actual progress against the Schedule of Work. The CMAR shall provide written reports to the Owner at monthly intervals on the status of the Work, showing variances between costs and the Phase II Construction Price and actual progress as compared to the Project Construction Schedule, including estimates of future costs and recovery programs if actual progress indicates that the Dates of Substantial Completion or Final Completion may not be met.

5.8 Owner Approval

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

ARTICLE 6 — Compensation

6.1 CMAR's Compensation for Preconstruction Phase Services

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

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

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

6.3 CMAR's Compensation for Construction Phase Services

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

6.4 Contingency and Allowances

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

ARTICLE 7 — Changes

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

7.1 Change Order

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

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

7.2 Owner Change Directives and Field Orders

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

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

of the costs. Contingency funds may only be used for Owner Change Directives upon written agreement of the Parties.

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

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

7.3 Determination of Cost

7.3.1 An increase or decrease in the Phase II Construction Price established in a Phase II Construction Price Amendment (whether based on a GMP or Lump Sum Phase II Construction Price) or changes to the Project Construction Schedule or the Schedule/Contract Time resulting from a change in the Work that affect the Phase II Construction Price shall, in each case, be determined by one or more of the following methods:

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

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

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

7.3.1.4 If an increase or decrease cannot be agreed to as set forth in Clauses 7.3.1.1 through 7.3.1.3 above, and the Owner issues an Owner Change Directive, the cost of the change in the Work shall be determined by the reasonable actual expense and savings of the performance of the Work resulting from the change. Where applicable, if there is a net increase or decrease in the GMP, the CMAR's Fee shall be adjusted accordingly. The CMAR shall maintain a documented, itemized accounting evidencing the expenses and savings.

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

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

ARTICLE 8 — Payment

8.1 Schedule of Values

Concurrently with the CMAR's preparation and delivery to the Owner of any cost model or progressive cost model as required for the Phase I Preconstruction Services Scope of Work through and including the date on which a Phase II Construction Price Amendment for any portion of the Work is executed by the CMAR, the CMAR shall prepare and submit to the Owner and, if directed, the Engineer, a Schedule of Values apportioned to the various divisions or phases of the Work in increasing level of detail. At the time a Phase II Construction Price Amendment is executed for the Work or any portion thereof, each line item contained in the Schedule of Values shall be assigned a value such that the total of all items shall equal the Phase II Construction Price for such Work or portion thereof.

8.2 Progress Payments for Preconstruction Phase Services

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

8.3 Progress Payments for Construction Phase Services

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

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

8.3.2 Lien Waivers and Liens.

8.3.2.1 Partial Lien Waivers and Affidavits. If requested by the Owner, as a prerequisite for payment, but subject to the CMAR's receipt of payment, the CMAR shall provide partial conditional payment lien waivers in the amount of the application for payment and affidavits from its Subcontractors and Material Suppliers for the Work completed during the period covered by the current application for payment and partial unconditional payment lien waivers from the CMAR and all Subcontractors and Material Suppliers paid from the previous month's application payment. In no event shall the CMAR be required to sign an unconditional waiver of lien or claim, either partial or final, prior to receiving payment nor shall the CMAR be required to execute or deliver any lien waiver for the Work not covered by such lien waiver or in an amount more than what it has been paid.

8.3.2.2 Responsibility for Liens. The CMAR shall, within 30 days after written notice of filing, cause the removal or bonding over of any liens filed against the premises by any Party or Parties performing labor or services or supplying materials in connection with the Work by, among other things, securing a bond around the lien. If the CMAR fails to take such action on a lien, the Owner may cause the lien, after 30 days written notice, to be removed at the CMAR's expense, including bond costs and reasonable attorneys' fees. This Clause shall not apply if there is a dispute pursuant to Article 11 relating to the subject matter of the lien.

8.3.3 Retainage. Retainage shall be withheld and disbursed in accordance with the terms and provisions of the Phase II Construction Price Amendment.

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

8.4 Adjustment of CMAR's Payment Application

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

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

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

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

8.4.4 Defective Work not corrected in a timely fashion.

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

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

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

No later than 20 days after receipt of an application for payment, the Owner shall give written notice to the CMAR, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by the CMAR in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

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

8.5 Acceptance of Work

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

8.6 Payment Delay

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

8.7 Substantial Completion

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

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

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

8.8 Partial Occupancy or Beneficial Use

8.8.1 The Owner may occupy, or use completed or partially completed portions of the Work, beneficially when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) public authorities authorize the occupancy or use. The CMAR shall not unreasonably

withhold consent to partial occupancy or use. The Owner shall not unreasonably refuse to accept partial occupancy. Partial occupancy or Substantial Completion will not be requested by CMAR or accepted by Owner if such occupancy would adversely impact any portion of the Work for which CMAR has not been granted Substantial Completion.

8.9 Final Completion and Final Payment

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

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

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

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

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

8.9.3.3 Releases or waivers of any liens, conditioned on Final Payment being received.

8.9.3.4 Consent of any surety, if applicable.

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

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

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

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

8.10 Late Payment

Payments due but unpaid shall bear interest until paid at the rate set forth in Article 9 of the Phase II Construction Price Amendment.

8.11 Change Of Payment

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

ARTICLE 9 — Indemnity, Insurance, Waivers, and Bonds

9.1 Indemnity

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

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

9.1.3 In all claims against the Owner Indemnitees by any employee of the CMAR, anyone directly or indirectly employed by the CMAR or anyone for whose acts the CMAR may be liable, the indemnification obligation set forth in Paragraph 9.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits

payable by or for the CMAR under workers' compensation acts, disability benefit acts, or other employee benefit acts.

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

9.2 CMAR's Insurance

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

9.3 Property Insurance

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

9.4 Risk Of Loss

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

9.5 Adjustment of Loss

A loss insured under the Builder's Risk Insurance Policy required pursuant to the Phase II Construction Price Amendment to the Agreement shall be adjusted by the Party obtaining such Builder's Risk Insurance and made payable to such Party for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause, the Phase II Construction Price Amendment, and Paragraph 9.6 hereof. The CMAR shall pay Subcontractors their just shares of insurance proceeds received by the CMAR, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

9.6 Insurance Payouts

If required in writing by a Party in interest, the Party obtaining such Builder's Risk Insurance shall, upon occurrence of an insured loss, give bond for proper performance of such Party's duties. The cost of required bonds shall be charged against proceeds received by each Party. Such Party shall deposit in a separate account proceeds so received, which such Party shall distribute in accordance with such agreement as the Parties in interest may reach, or in accordance with Article 11 of these General Conditions. The CMAR shall not be required to repair or replace lost or damaged Work until a mutually acceptable Change Order, in accordance with Article 7, is executed and funds are available to pay for such loss or damage.

9.7 Bonds

Payment and performance bonds or other forms of substitute security, if any, shall be required as set forth in the Phase II Construction Price Amendment, Attachment 16, Insurance and Bond Requirements.

9.8 Royalties, Patents, and Copyrights

The CMAR shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by the CMAR and incorporated in the Work. The CMAR shall indemnify and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection.

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

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

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

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

10.2 Owner Termination

10.2.1 The Owner may Terminate Agreement upon the occurrence of any one or more of the following events:

10.2.1.1 If sufficient appropriations are not provided by the Owner, this Contract may be terminated at the end of Owner's then current fiscal year upon written notice given by Owner to the CMAR. Such event shall not constitute an event of default and all payment obligations of Owner and all of its interest in this Contract will cease upon the date of termination. Owner's determination regarding appropriations shall be accepted by the CMAR and shall be final.

10.2.1.2 If the CMAR commences a voluntary case under any chapter of the Bankruptcy Code, as now or hereafter in effect, or if the CMAR takes any equivalent or similar action by filing a petition or otherwise under any federal or state law in effect at such time relating to the bankruptcy or insolvency.

10.2.1.3 If the CMAR is adjudged a bankrupt or insolvent.

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

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

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

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

10.2.1.8 If the CMAR, without justification, repeatedly fails to make timely payments to Subcontractors or Material Suppliers for labor, materials, or equipment.

10.2.1.9 Upon Debarment or loss of necessary license of the CMAR by Owner or an agency of the federal government or the State of Tennessee or a local public body of the State.

10.2.2 The Owner may, without prejudice to any other right or remedy, serve written notice upon the CMAR and the CMAR's surety of the Owner's intention to terminate the Agreement for any breach set forth in this Paragraph 10.2. Said notice to contain the reasons for such intention to terminate the Agreement and provide that unless within 30 days after the service of such notice all such violations have been corrected and remedied, the Contract Documents shall cease and terminate, and the CMAR shall be excluded from the site. In such case, the CMAR shall not be entitled to receive any further payment until the Work is finished by Others.

10.2.2.1 The foregoing notwithstanding, if the nature of the alleged reason for termination is not capable of being corrected or remedied within 30 days, such correction or remedy shall commence and be completed with reasonable diligence and in no event later than 45 days following the occurrence of such default.

10.2.3 In the event of any such termination, the Owner shall immediately serve written notice thereof upon the surety and the CMAR, and the surety shall have the right to take over and perform the Contract Documents, provided, however, that if the surety, within 30 days after the serving upon it of a notice of termination, does not give the Owner written notice of their intention to take over and perform the Contract Documents, or does not commence performance thereof within 45 days from the date of serving said notice, Owner may take possession of the Work incorporate in the Work all materials and equipment stored at the site or for which Owner has paid the CMAR but which are stored elsewhere that were intended to be incorporated into the Work, and finish the Work as Owner may deem expedient for the account and at the expense of the CMAR. The CMAR's surety shall be liable to the Owner for any excess costs or other damage occasioned the Owner thereby. If the unpaid Balance of the Phase II Construction Price exceeds the direct and indirect costs of completing the Work, including but not limited to, compensation for additional professional services and all costs generated to insure or bond the Work of substituted Contractors or Subcontractors utilized to complete the Work, such excess shall be paid to the CMAR. If such costs exceed the unpaid balance, the CMAR shall pay the difference to the Owner promptly upon demand; on failure of the CMAR to pay, the surety shall pay on demand by Owner. Any portion of such difference not paid by the CMAR or surety within 30 days following the mailing of a demand for such costs by the Owner shall earn interest rate authorized by state law. Such costs incurred by the Owner shall be verified by the Owner's Representative and incorporated in a Change Order, but in finishing the Work, the Owner shall have the obligation to mitigate its damages, but not be required to obtain the lowest figure for the Work performed. Any dispute under this section shall be addressed in accordance with Article 11 in this Agreement.

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

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

10.3 Upon 60 days written notice to the CMAR, the Owner may, without cause and without prejudice to any other right or remedy of the Owner, terminate the Agreement for convenience. In such case, the CMAR shall be paid for (without duplication of any items):

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

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

10.3.3 Other reasonable expenses directly attributable to termination, including demobilization costs, cancellation charges and fees, and costs incurred to prepare a termination for convenience cost proposal and cancellation costs related to material and equipment subcontracts.

10.3.4 The amount of profit, if any, on such uncompleted Work agreed to by the Owner and the CMAR as set forth in the Phase II Construction Price Amendment for Construction Phase Services. Unless mutually agreed to by the Owner and the CMAR in a written amendment to the Agreement, no profit on uncompleted Work for Preconstruction Phase Services shall be due or payable for any termination for convenience exercised by the Owner or the CMAR during the Preconstruction Phase Services in accordance with the Contract Documents.

10.4 CMAR Termination

If, through no act or fault of the CMAR, the Work is suspended for a period of more than 90 days in the aggregate by the Owner or under an order of court or other public authority, or the Owner fails to pay within 90 days to the CMAR any undisputed amounts due, or the Owner breaches any other material provision of the Agreement and the same is not cured within 60 days following the Owner's receipt of written notice thereof from the CMAR, then the CMAR may, upon 30 days written notice to the Owner, terminate the Agreement and recover from the Owner payment for all Work executed and any expense sustained plus reasonable termination expenses, provided the Owner does not remedy such suspension or failure within that time. In addition, and in lieu of terminating the Contract Documents, if the Owner has failed to make any payment as aforesaid of undisputed amounts, the CMAR may, upon 90 days written notice to the Owner, stop the Work until payment of all amounts then due.

10.4.1 In addition to, and without limiting the generality of the CMAR's suspension and termination rights under Paragraph 10.4, if the Owner directs the CMAR or its Subcontractors or Material Suppliers at any tier to perform Work that the CMAR informs the Owner is illegal or involves an imminent danger to human health, the environment, or the Owner's property or other nearby or adjoining properties, the CMAR shall have the right to notify the Owner, in writing, of such illegality or danger and the Owner shall meet with the CMAR within 7 days following the Owner's receipt of such notice to review and discuss such concerns and work cooperatively and in good faith with the CMAR to resolve them. Any resolution shall include an appropriate adjustment in the Phase II Construction Price and Project Construction Schedule to account for the added cost and time to the CMAR in objecting to and attempting to resolve such concerns. If the Owner fails to respond to the CMAR within 14 days following the CMAR's notification of such concerns, or the Parties, after meeting to discuss the same are unable, within an additional 30 days to resolve the

concerns to the CMAR's reasonable, good faith satisfaction, the CMAR shall thereafter have the right to terminate this Agreement for convenience and without cause upon an additional 30 days' written notice to the Owner. In such event, the Owner shall pay the CMAR the same amounts owing to the CMAR for an Owner's termination for convenience pursuant to Paragraph 10.3.

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

11.1 Claims for Additional Cost or Time

Except as provided in any applicable Phase II Construction Price Amendment, for any claim for an increase in the Phase II Construction Price or the change in or extension to the Date of Substantial Completion or Date of Final Completion (each a "Claim"), the CMAR shall give the Owner written notice of the Claim within 7 days after the CMAR has become aware of the occurrence giving rise to the Claim. Except in an emergency, notice shall be given before proceeding with the Work. Any change in the Phase II Construction Price or the Date of Substantial Completion or Date of Final Completion resulting from such Claim shall be authorized by Change Order.

11.1.1 Claims Procedures

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

11.1.2 Notice of Claim

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

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

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

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

If to: Owner	The Public Building Authority of the City of Maryville, Tennessee Attn: Sherri Phillips 410 W. Broadway Maryville, TN 37801
If to: CMAR:	CMAR Address

11.1.2.3 Claims pertaining to decisions or such other determinations by the Owner relating to any Claim from the CMAR shall be communicated by the CMAR with the Owner in writing within 30 days following receipt of such decision.

11.1.2.4 All other Claims by the CMAR shall be filed in writing within 7 days after the event or occurrence giving rise to the Claim.

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

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

11.1.3 Records of Extra Work

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

11.1.3.2 Daily extra work reports shall:

11.1.3.2.1 Be signed by the CMAR or the CMAR Representative.

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

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

11.1.3.2.4 Substantiate material charges with attached valid copies of vendor's invoices and, if not available, the invoices shall be submitted within 7 days after the date of delivery of the material or within 7 days after the acceptance of the Contract Documents, whichever occurs first.

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

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

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

11.1.3.4 The CMAR's and Subcontractor's records pertaining to the Project shall be open to inspection or audit by representatives of the Owner, during the life of the Agreement, and for a period of three (3) years after the date of acceptance thereof, and the CMAR and all Subcontractors shall retain those records for that period. Such audit shall not include the CMAR's proprietary information, including, but not limited to, the CMAR's formula or other data or communications used in calculating pricing.

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

11.1.3.4.2 If an audit is to be commenced more than 30 days after the acceptance date of the Agreement, the CMAR will be given a reasonable notice of the time when the audit is to begin.

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

11.1.3.5.1 The Owner Representative or any designated Claim investigator or auditor shall have access to those records and any other records as may be required by the Owner Representative to determine the facts or contentions involved in the Claims.

11.1.3.6 The Owner, or its authorized representatives, shall have access, upon reasonable notice, during normal business hours, to the CMAR and Subcontractors' books, documents, and accounting records, including, but not limited to, bid worksheets, bids, Subcontractor bids and proposals, estimates, cost accounting data, accounting records, payroll records, time sheets, canceled checks, profit and loss statements, balance sheets, project correspondence including, but not limited to, correspondence between the CMAR and its sureties and Subcontractors/Vendors, project files, scheduling information, and other records of the CMAR and Subcontractors directly or indirectly pertinent to the Work, original as well as change and Claimed extra Work, to verify and evaluate the accuracy of cost and pricing data submitted with any Change Order, prospective or completed, or any Claim for which additional compensation has been requested or Claim has been tendered.

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

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

11.2 Dispute Resolution

11.2.1 **Direct Discussions**. If the Parties cannot reach resolution on a matter relating to or arising out of the Agreement or the Project, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within 30 Business Days from the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within 15 Business Days to endeavor to reach resolution. If the dispute remains unresolved after 60 days from the date of first discussion, the Parties shall submit such matter to the dispute resolution procedures selected herein.

11.2.2 Mediation. Unless otherwise provided to the contrary in the Phase II Construction Price Amendment, Claims and other disputes or matters in controversy arising out of or related to the Agreement or Project that are not resolved pursuant to other provisions of this Article 11 shall be mediated prior to recourse to litigation. Such mediation shall, unless the Parties mutually agree otherwise, be conducted by a mediator mutually agreeable to the Parties in the city or town nearest where the Project is located. A request for mediation shall be made in writing, delivered to the other Party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of litigation o, and, in such event, mediation shall proceed at an appropriate time mutually agreed upon by the Parties or as directed by the court. Disputes that are not resolved through mediation in accordance with this Paragraph 11.2.2 shall be resolved in the manner selected by the Parties in Paragraph 11.2.3 below.

11.2.3 Dispute Resolution. If the matter remains unresolved after submission of the matter to direct management discussions or mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below (***check one box***):

11.2.3.1 * By litigation. Litigation shall commence in any state court having jurisdiction over the Project site. **THEREFORE, THE PARTIES TO THIS AGREEMENT, INCLUDING ANY ASSIGNEES, HEREBY KNOWINGLY, VOLUNTARILY, AND IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY.**

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

11.3 Venue

The venue of any binding dispute resolution procedure shall be the location of the Project unless the Parties agree on a mutually convenient location. The Parties waive any objection to such venue on the basis of inconvenient form.

11.4 Multiparty Proceeding

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

11.5 Lien Rights

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

ARTICLE 12 — Miscellaneous Provisions

12.1 Assignment

Neither the Owner nor the CMAR shall assign its interest in the Agreement or the other Contract Documents without the written consent of the other except as to the assignment of proceeds. The terms and conditions of the Agreement and the other Contract Documents shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party to the Agreement or the other Contract Documents shall assign the Agreement without written consent of the other except that the Owner may assign the Agreement to a wholly owned subsidiary of the Owner or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to the CMAR than the Agreement. In the event of such assignment, the CMAR shall execute any consent reasonably required. In such event, the wholly owned subsidiary or lender shall assume the Owner's rights and obligations under the Contract Documents and the CMAR shall not be obligated to perform for such wholly owned subsidiary or lender unless the CMAR is fully paid for its Work under the Agreement in accordance with the terms and provision thereof. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under the Agreement, unless otherwise agreed by the other Party.

12.2 Severability

If any part, term or provision of this Agreement is held invalid or unenforceable under applicable law, such provision will be deemed severed from this Agreement, and the remainder of this Agreement will remain in full force and effect unless its essential purpose is frustrated by such severance.

Regional Wastewater Treatment Plant
2026 Expansion

DRAFT

EXHIBIT E – PHASE II CONSTRUCTION PRICE AMENDMENT

The Public Building Authority
of the City of Maryville, Tennessee

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Exhibit E
Phase II Construction Price Amendment

Effective Date of this Amendment:	
Effective Date of CMAR Construction Agreement and General Conditions:	
Owner:	The Public Building Authority of the City of Maryville, Tennessee
CMAR:	
Facility:	City of Maryville Regional Wastewater Treatment Plant
Project:	Regional Wastewater Treatment Plant – 2026 Expansion
Project No.:	
Contract No.:	

This Phase II Construction Price Amendment (this "Amendment") is entered into pursuant to Paragraph 1.15 of Exhibit B of that certain Construction Agreement with an Effective Date referenced above (the "Agreement"), by and between the Owner and the CMAR, for the Project identified in the Agreement. The Agreement is supplemented by, among other things, the General Conditions between the Owner and the CMAR dated the Effective Date and attached to the Agreement (the "General Conditions"). The Owner and CMAR desire to establish a Phase II Construction Price for the Work defined and described below and in the other Contract Documents relating to such Work. This Amendment, when accepted by the Owner, shall be a Contract Document and part of the Agreement for all purposes. To the extent there exists any conflict between this Amendment and the Agreement, this Amendment shall govern and control the respective rights, duties, and obligations of the Parties hereto with regard to the Scope of the Work, Phase II Construction Price (including Cost of the Work and CMAR's Fee where applicable), Owner's Contingency and CMAR's Contingency (where applicable; such CMAR Contingency being a part of the Cost of the Work), Owner Allowances, and the terms, provisions, and conditions of Attachments 1-23 attached hereto and incorporated herein by this reference, including any CMAR exclusions mutually agreed upon by the CMAR and the Owner. Capitalized terms used herein but not defined herein shall have the meanings given in the Agreement, General Conditions, and other Contract Documents.

1. ARTICLE 1 — Phase II Construction Price Amendment

This Phase II Construction Price Amendment includes the following documents attached hereto and incorporated by this reference:

Attachment 1 Scope of the Work

Attachment 2 Phase II Construction Price and Construction General Conditions Cost Summaries in a Form Developed by Owner and CMAR

Attachment 3 Schedule of Values

Attachment 4 Project Construction Schedule

Attachment 5 Construction Drawings and Specifications for the Work

Attachment 6 List of Allowances

Attachment 7 Subcontractor Procurement Plan

Attachment 8 Performance Testing Protocols

Attachment 9 Commissioning Protocols

Attachment 10 Phase II Notice to Proceed

Attachment 11 Project Technical Performance Requirements

Attachment 12 Phase II Technical Scheduling Requirements

Attachment 13 Submittal Specifications

Attachment 14 CMAR's Hourly Rate Schedule

Attachment 15 Escrow Agreement

Attachment 16 Insurance and Bond Requirements

Attachment 16.1 Owner's/Contractor's Controlled Insurance Program

Attachment 17 Payment Bond Form

Attachment 17.1 Performance Bond Form

Attachment 18 Supplemental Conditions

Attachment 19 Federal, State, or Local Procurement Guidelines

Attachment 20 Insurance Certificates

Attachment 21 CMAR Schedule of Qualifications, Assumptions, Clarifications, and Exclusions

Attachment 22 Sales, Consumer, Use, and Similar Taxes for the Work included in the Phase II Construction Price

Attachment 23 Equipment Rates

2. ARTICLE 2 — The Work

The Work to be performed under this Amendment is limited to the construction and completion of the Work and improvements described in **Attachment 5** attached hereto, in strict accordance with the Contract Documents, subject only to the CMAR's Schedule of Qualifications, Assumptions, Clarifications, and Exclusions attached as **Attachment 21** hereto.

3. ARTICLE 3 — Contract Time

3.1. Substantial and Final Completion

The CMAR shall achieve Substantial Completion of all Work under the Contract Documents within 1190 days (the "Contract Time") from the Commencement Date. The "Commencement Date" shall be the later of: (a) the issuance of a Phase II Notice to Proceed by the Owner with the Construction Phase Work, or (b) the Effective Date of this Amendment. The final day of the Contract Time shall be the "Substantial Completion Date." The CMAR shall achieve Final Completion of all Work and the Punch List within 30 days after the Substantial Completion Date (the "Close-Out Period"). The final day of the Close-Out Period shall be the "Final Completion Date." The Contract Time, Commencement Date, Substantial and Final Completion Dates, and other milestones for performance of the Work, including critical path items, are more particularly described in the Project Construction Schedule attached hereto as **Attachment 4**.

3.2. Notwithstanding Paragraph 3.1 of this Amendment, the Owner may designate separate periods of time and dates of Substantial Completion of discrete phases of the Project, in which case, each phase shall have a separate number of days from the Commencement Date to achieve Substantial Completion, and a separate Final Completion Date, and designated Close-Out Period.

4. ARTICLE 4 — Phase II Construction Price

4.1. As full consideration for performance and furnishing of the Work, and subject to the other terms and conditions of the Contract Documents, the Owner shall pay the CMAR the following (the "Phase II Construction Price") **(check applicable box)**:

4.1.1. ☐ GMP based on a LUMP SUM of $[NUMBER]; subject to Change Orders and other applicable provisions of the Contract Documents and this Amendment that permit or require an increase in the Lump-Sum Contract amount.

4.1.2. ☐ GMP based on the Cost of the Work (defined below) plus the CMAR's Fee (defined below) paid in proportion to the Work performed, provided, however, the CMAR guarantees that the sum of the Cost of the Work and the CMAR's Fee shall not exceed $[NUMBER] (the "GMP" or "Guaranteed Maximum Price"). The Guaranteed Maximum Price is the amount beyond which the Phase II Construction Price may not exceed, subject to Change Orders and other applicable provisions of the Contract Documents and this Amendment that permit or require an increase in the GMP.

4.1.3. ☐ Any authorized amount of Allowances as detailed in Attachment 6 of this Phase II Construction Price Amendment.

4.2. The compensation to be paid shall be limited to the Phase II Construction Price established pursuant to this Amendment, as the same may be adjusted under applicable provisions of the Contract Documents and this Amendment. To the extent the CMAR's cost to complete the Work exceeds the Lump-Sum Contract amount described in Paragraph 4.1.1 above (in cases where a Lump Sum Phase II Construction Price has been selected by the Parties) or the Cost of the Work plus the CMAR's Fee exceeds the Guaranteed Maximum Price (in cases where a GMP Phase II Construction Price has been selected by the Parties in accordance with Paragraph 4.1.2 above), as modified, the CMAR shall bear such costs in excess of the applicable Phase II Construction Price without reimbursement or additional compensation from the Owner.

4.2.1. Payment for Work performed shall be as set forth in Article 8 of the General Conditions.

4.3. CMAR Fee

☐ **Check if applicable.** ☐ **Check if not applicable.** The Fee ("CMAR's Fee" or "Fee") payable by the Owner to the CMAR equals $[NUMBER] or [NUMBER]% of the Cost of the Work and is included in, and a part of, the Phase II Construction Contract Price agreed upon by the Owner and the CMAR pursuant of this Amendment. The CMAR's Fee includes all the CMAR's home office overhead and profit. Construction General Conditions Costs are an element of the Cost of Work and are not included in the CMAR's home office overhead.

4.3.1. Adjustment in the CMAR's Fee shall be made as follows pursuant to written agreement by both parties:

4.3.1.1. The CMAR's Fee of [NUMBER]% of the Cost of the Work shall be multiplied by the Cost of the Work included in additive changes in the Work as provided in Article 7 of the Agreement and Article 7 of the General Conditions, and such CMAR Fee, together with the Cost of the Work reflected in such additive change in the Work shall be added to the GMP. Deductive Change Orders shall result in a corresponding decrease in the CMAR's Fee.

4.3.1.2. For delays in the Work not caused by the CMAR, except as provided in Paragraph 5.3 of the Agreement and Article 5 of the General Conditions, in all situations in which (a) the Phase II Construction Price is based on the Cost of the Work plus the CMAR's Fee (with or without a GMP), the Phase II Construction Price shall be increased by the increase in the Cost of the Work (including Construction General Conditions Costs [hereinafter defined]) resulting from such delay, plus CMAR's Fee on such increased Cost of the Work; and (b) the Phase II Construction Price is based on a Lump-Sum Contract amount, there may be an equitable adjustment in the Phase II Construction Price resulting from such delay, including an increase in the Cost of the Work impacted by such delay, increased Construction

General Conditions Costs thereon, and CMAR's overhead and profit on such increased costs.

4.3.1.3. In the event the Owner issues a Field Order or Owner Change Directive, as defined in Article 1 of the Agreement, compensation to the CMAR will be as follows:

4.3.1.3.1. Lump sum, with appropriate documentation, if agreed to by the Parties; or

4.3.1.3.2. In the absence of such an agreement, Cost of the Work plus a Fee of [NUMBER]%.

4.3.1.4. For the CMAR's Contingency used as provided for in Article 10 of this Amendment, the CMAR's Fee of [NUMBER]% will be applied but only after the time such CMAR Contingency is used and not beforehand.

5. ARTICLE 5 — Cost of the Work

The Cost of the Work ("Cost of the Work"), when determining the Phase II Construction Price based on a GMP, consists of all costs incurred in connection with the Work, including, without limitation, the following, unless such items are expressly stated to be excluded costs:

5.1. Wages and salaries including payroll taxes and benefits paid for labor in the direct employ of the CMAR in the performance of the Work, including compensation for craft or trade labor performed by CMAR's personnel.

5.2. Construction General Conditions Costs, as negotiated between the Owner and the CMAR.

5.3. Without duplication of the Construction General Conditions Costs, cost of all employee benefits and taxes, including, but not limited to, workers' compensation, unemployment compensation, Social Security, health, welfare, training, drug testing, and other nonprofit sharing or non-retirement benefits as required by law, labor agreements, or paid under the CMAR's standard personnel policy, to the extent such costs are based on wages and salaries of CMAR's employees included in the Cost of the Work under Paragraphs 5.1 and 5.2 hereof. Holidays and vacations are excluded from payroll taxes and other employee benefits and shall be billed directly to the Project and considered reimbursable under the terms of the Contract Documents. Payroll taxes, insurance, and other benefits of the CMAR's non-exempt hourly employees are not included in the CMAR's hourly rate schedule, attached to this Amendment as **Attachment 14**.

5.4. Cost of all materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by the Owner; transportation, storage, and handling.

5.5. Payments made by the CMAR to Subcontractors for work performed under the Contract Documents.

5.6. Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are used or consumed

in the performance of the Work, less salvage value or residual value; and cost less salvage value on such items used, but not consumed, that remain the property of the CMAR.

5.7. Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether provided by the CMAR or rented from Others, in each case agreed-upon rates in effect in the market in which the Project is located and including installation, repair, and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed at the aforementioned agreed-upon rate(s). In the case equipment is provided by CMAR rates shall be included in **Attachment 23** - Equipment Rates.

5.8. Cost of the premiums for all insurance and surety bonds which the CMAR is required to procure or deems necessary, including major Subcontractors and equipment system suppliers, and as approved by the Owner, including any additional premium incurred because of any increase in the GMP.

5.9. Sales, use, gross receipts, or other taxes, tariffs, duties, or impositions or exactions related to the Work for which the CMAR is liable.

5.10. Permits, fees, licenses, tests, royalties, damages for infringement of patents or copyrights, including costs of defending related suits for which the CMAR is not responsible as set forth in Paragraphs 3.4.4 and 9.8 of the General Conditions, and deposits lost for causes other than the CMAR's negligence.

5.11. Losses, expenses, or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work during the Construction Phase and for a period of 30 days following the Date of Substantial Completion, provided that such losses, expenses, damages, or corrective work did not arise from the gross negligence or willful misconduct of the CMAR.

5.12. All costs associated with establishing, equipping, operating, maintaining, and demobilizing the field office.

5.13. All costs associated with demobilizing and remobilizing the field office and the CMAR's workforce, including Subcontractor workforces, because of a suspension of the Work by the Owner.

5.14. Reproduction costs, photographs, data processing costs and services, postage, express delivery charges, data transmission, telephone (including cell phone) service, and computer-related costs at the Worksite to the extent such items are used and consumed in the performance of the Work or are not capable of use after completion of the Work.

5.15. All water, power, heating, fuel, chemicals for commissioning, and other utility costs necessary for the Work.

5.16. Cost of removal of all nonhazardous substances, debris, and waste materials.

5.17. Costs incurred due to an emergency affecting the safety of persons or property.

5.18. Costs related to the Work for safety, OSHA, EEO, and other regulatory reporting as well as Project time, personnel, and data records and reports. Payment of OSHA fines of the CMAR or its Subcontractors is not an allowable Cost of Work.

5.19. Additional costs resulting from laws, ordinances, rules, regulations, and taxes enacted after the date of the Contract Documents.

5.20. Self-insured retentions and deductibles resulting from any insured loss or casualty.

5.21. All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the CMAR's fee as set forth in Article 4.

5.22. Any Contingencies identified and selected in Article 10 hereof, excluding, however, any Owner Contingency.

5.23. Allowances, when authorized, become a part of the Cost of the Work. Allowances are not included in the CMAR's Contingency. If an Allowance is projected to be exceeded, the Owner shall be required to fund the additional incremental cost and the Contract Price shall be adjusted accordingly. The initial list of Allowances is included as **Attachment 6** of this Phase II Construction Price Amendment.

6. ARTICLE 6 — Excluded Costs

The Cost of the Work, when determining the Phase II Construction Price based on a GMP, does not include:

6.1. Salaries and other compensation of CMAR's personnel stationed at CMAR's principal office or offices other than the Site office, except as specifically provided in Paragraph 5.3 and/or other costs and expenses that are not necessary to execute, or do not otherwise support, the Work.

6.2. Except only to the extent that the costs enumerated in this Paragraph 6.2 are covered by the Builder's Risk Policy of insurance required by the Contract Documents and the proceeds of such policy are actually paid to the Owner on account of such costs.

6.3. Costs incurred due to the gross negligence or willful misconduct by the CMAR, any Subcontractor, anyone directly or indirectly employed by them, or anyone for whom they are liable, or to the failure of the CMAR to fulfill a specific responsibility to the Owner set forth in the Contract Documents.

6.4. Legal, mediation, and arbitration fees and costs arising from disputes between the Owner and the CMAR.

6.5. Costs that would cause the Guaranteed Maximum Price to be exceeded.

7. ARTICLE 7 — Discounts

☐ **Check if applicable** (only applies to GMP Contract pricing). All discounts for prompt payment shall accrue to the Owner to the extent such payments are made directly by the Owner.

8. ARTICLE 8 — Schedule of Values

The Phase II Construction Price shall be broken out on the Schedule of Values, to be attached to this Amendment as **Attachment 3**, and shall reflect all requirements of the Contract Documents.

9. ARTICLE 9 — Interest on Past Due Payments

Amounts unpaid more than 45 days after the invoice date shall bear interest at 10% interest rate in effect on the date hereof in the state in which the Project is located unless otherwise agreed to by the Owner and the CMAR pursuant to a written Change Order.

10. ARTICLE 10 — Contingency

The following Contingencies are hereby established by the Owner and the CMAR, shall be included in the Cost of the Work (where applicable), and shall be held, used, and disbursed in accordance with this Article 10 **(check applicable box[es])**:

10.1. ☐ Not Used

10.2. ☐ Separate Owner Contingency and CMAR Contingency. The amount of the CMAR Contingency and, where applicable, Owner Contingency, shall be as follows:

10.2.1. For Owner Contingency, the sum of [$NUMBER] [NUMBER% OF THE COST OF THE WORK].

10.2.2. For CMAR Contingency, the sum of [$NUMBER] [NUMBER% OF THE COST OF THE WORK], which is available for the CMAR's exclusive use, including for unanticipated costs it has incurred that are not the basis for a Change Order.

10.2.3. The status of the CMAR Contingency and Owner Contingency shall be reported by the CMAR to the Owner at the following Schedule milestones: [_____].

10.3. The status of the CMAR Contingency and Owner Contingency shall be reported by the CMAR to the Owner at the following Schedule milestones: [_____].

10.4. Unused CMAR Contingency on Work remaining at Final Completion of the Work shall be treated as follows: [_____].

10.5. As used in this Article 10, "Owner Contingency" means the dollar amounts set forth in the Preconstruction Phase and Construction Phase budgets for the Project and is outside of and not included in the Phase II Construction Price and used and controlled solely and exclusively by the Owner for the Owner's sole and exclusive use on the Project.

10.6. As used in this Article 10, the "CMAR Contingency" means the dollar amount set forth in Paragraph 10.1 or Paragraph 10.2.2 hereof for cost the CMAR incurs as a result of any unforeseen event or circumstance that are not the basis for a Change Order, and other costs and expenses not included in a Change Order but reimbursable as a Cost of the Work or

Lump Sum Phase II Construction Price, as applicable. Adjustments to the amount of the CMAR Contingency and the milestones, if any, for release of unused CMAR Contingency, if any, are as set forth in Paragraph 10.5.1. In no event shall the CMAR Contingency be used for Owner-directed changes in the Scope of the Work or the design for the Project.

10.6.1. The CMAR shall track, report, and reconcile the CMAR Contingency and any savings (where applicable) to the Owner on each pay application. Where applicable, at each of the milestones described in Paragraph 10.2.3 above or as follows: [_____] **(complete or state "N/A" as applicable)**, any savings realized by the CMAR in the Cost of the Work and other services provided by the CMAR hereunder for the period covered thereby shall be added to the CMAR's Contingency and a report shall be prepared and provided by the CMAR to the Owner identifying the amount of savings and any additions or subtractions made to the CMAR's Contingency, in each case in accordance with this Amendment. Unless otherwise provided to the contrary herein, the CMAR Contingency does not include the CMAR's Fee (where applicable), which shall be added to the CMAR Contingency to reach the GMP. The CMAR Contingency will be allocated to specific line items in the Schedule of Values through the use of a Contingency Expenditure (each a "Contingency Expenditure") signed by the Owner and the CMAR, including a description of the items covered by the CMAR Contingency Expenditure. The allocation of the CMAR Contingency shall not increase the GMP or Lump Sum Phase II Construction Price, as applicable, and in no event shall the CMAR be entitled to any increase in the GMP or Lump Sum Phase II Construction Price, as applicable, for any phase or the Project as a whole beyond that established by this Amendment in any case or circumstance where the CMAR has exhausted the entire CMAR Contingency and has not previously obtained the Owner's prior written agreement to any such increase.

10.6.2. The Owner shall not unreasonably withhold approval of a Contingency Expenditure to use the CMAR Contingency so long as (a) the Contingency amount accessed does not cause the GMP or Lump Sum Phase II Construction Price, as applicable, to be exceeded, and (b) the CMAR uses the CMAR Contingency for items required for the Project that are recoverable as part of the Work under the Contract Documents, but do not justify an increase in the GMP or Lump Sum Phase II Construction Price, as applicable.

10.6.3. Any unused CMAR Contingency remaining at Substantial Completion of the Project shall be treated as follows: [_____

_____].

11. ARTICLE 11 — Savings

☐ **Check if applicable.** ☐ **Check if not applicable.** Where a GMP has been selected by the Parties in accordance with Paragraph 4.1.2 hereof, if the sum of the actual Cost of the Work and the CMAR'S Fee is less than the GMP, as such GMP may have been adjusted over the course of the Project, the net positive difference ("savings") shall be shared as follows: [NUMBER]% to CMAR and [NUMBER]% to the Owner. In such event, savings shall be calculated and paid as part of the

Final Payment under Article 14 of this Amendment and Paragraph 8.9 of the General Conditions, with the understanding that to the extent the CMAR incurs costs after Final Completion that would have been payable to the CMAR as a Cost of the Work, the Parties shall recalculate the savings considering the costs so incurred, and the CMAR shall be paid by the Owner accordingly. Unless otherwise agreed to in writing by the Owner and the CMAR, unused CMAR Contingency remaining at Final Completion of the Work shall be disbursed in accordance with Paragraph 10.3 hereof.

12. ARTICLE 12 — Early Completion Bonus

☐ **Check if applicable.** ☐ **Check if not applicable.** If the CMAR substantially completes the Work prior to the Substantial Completion Date in accordance with the terms and provisions of the Agreement and other Contract Documents, the CMAR shall be paid on the Final Completion Date an early completion bonus in the amount of $[NUMBER] per day for each day the Project was completed prior to the Substantial Completion Date. Such bonus shall be subject to a maximum cap of $[NUMBER].

13. ARTICLE 13 — Retainage

13.1. Owner will make progress payments on account of the Contract Price on the basis of Contactor's Application for Payment on the date of each month as established in the preconstruction conference during performance of the Work. All payments shall be measured by the Schedule of Values as described in Paragraph 8.1 herein.

13.1.1. 95 percent of Work completed (with the balance being retainage).

13.1.2. 95 percent of cost of materials and equipment not incorporated in the Work (with balance being retainage).

13.2. Retainage Escrow Agreement: In accordance with TCA 66-11-144, retainage will be held in an interest-bearing escrow account until satisfactory completion upon which Owner will provide written release of funds.

13.3. Deposit of Securities in Lieu of Retainage: Contractor may withdraw retainage by depositing specific securities as provided in TCA 12-4-108.

13.4. Owner will pay retainage after receipt of occupancy permit, Substantial Completion certificate, or begins to use constructed portion as provided in TCA 66-34-204.

14. ARTICLE 14 — Final Payment

Final payment of the balance of the Phase II Construction Price ("Final Payment") shall be made to the CMAR within [NUMBER] days after the CMAR has applied for Final Payment, including submissions required under Subparagraph 8.9.3 of the General Conditions.

15. ARTICLE 15 — Fee for Termination for Convenience

Check applicable box.

15.1. ☐ A fixed termination fee in the amount of [NUMBER]% of the Phase II Construction Price.

15.2. ☐ A termination fee calculated as follows: [_____

_____].

15.3. ☐ No termination fee shall be due or payable.

16. ARTICLE 16 — Dispute Resolution

The method of dispute resolution shall be as selected in the General Conditions.

17. ARTICLE 17 — Miscellaneous

Except as modified herein, the Agreement remains in full force and effect.

17.1. This Amendment may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. Facsimile or electronic signatures hereon shall be deemed originals for all purposes.

Executed as of the Effective Date.

OWNER	CMAR
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Dated: _____	Dated: _____

Attachment 1—Scope of the Work

Attachment 2—Phase II Construction Price and Construction General Conditions Cost Summaries

Attachment 3—Schedule of Values

Attachment 4—Project Construction Schedule

Attachment 5— Construction Drawings and Specifications for the Work

Attachment 6—List of Allowances

Attachment 7—Subcontractor Procurement Plan

Attachment 8—Performance Testing Protocols

Attachment 9—Commissioning Protocols

Attachment 10—Phase II Notice to Proceed

Attachment 11—Project Technical Performance Requirements

Attachment 12—Phase II Technical Scheduling Requirements

Attachment 13—Submittal Specifications

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Attachment 16—Insurance and Bond Requirements

Attachment 16.1—Owner's/Contractor's Controlled Insurance Program

Attachment 17—Payment Bond Form

Attachment 17.1—Performance Bond Form

Attachment 18—Supplemental Conditions

Attachment 19— Federal, State, or Local Procurement Guidelines

Attachment 20— Insurance Certificates

Attachment 21— CMAR Schedule of Qualifications, Assumptions, Clarifications, and Exclusions

Attachment 22— Sales, Consumer, Use, and Similar Taxes for the Work Included in the Phase II Construction Price

Attachment 23— Equipment Rates

Regional Wastewater Treatment Plant
2026 Expansion

ATTACHMENT 16 TO EXHIBIT E

INSURANCE AND BOND REQUIREMENTS

The Public Building Authority
of the City of Maryville, Tennessee

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Attachment 16
Insurance and Bond Requirements

This **Attachment 16**, Insurance and Bond Requirements, is attached to that certain Phase II Construction Price Amendment dated _____, 20_____ executed by The Public Building Authority of the City of Maryville, Tennessee ("Owner") and _____ ("CMAR") in connection with that certain Construction Agreement dated _____, 20___ (as amended, the "Agreement") previously executed by and between the Owner and the CMAR for the Project identified in the Agreement. The Agreement is supplemented by, among other things, the Amendment and the General Conditions between the Owner and the CMAR dated the Effective Date and attached to the Agreement (the "General Conditions"). Capitalized terms used herein but not defined herein have the meanings given them in the Agreement, Amendment, General Conditions, and other Contract Documents. In the event of any conflict between this **Attachment 16** and the Amendment, Agreement, or General Conditions, the provisions of this **Attachment 16** shall govern and control.

1. ARTICLE 1 — General

During the Construction Phase, the Owner and the CMAR shall purchase and maintain insurance, and provide bonds, in each case upon and subject to the terms and conditions of this **Attachment 16**.

2. ARTICLE 2 — CMAR's Insurance

2.1. Prior to the start of the Work covered by the Phase II Construction Price Amendment, the CMAR shall procure and maintain in force Workers' Compensation Insurance, Employer's Liability Insurance, Commercial Automobile Liability Insurance, and Commercial General Liability Insurance and Excess Liability (CGL/XS). The CGL/XS policies shall include coverage for liability arising from premises, operations, products-completed operations, personal injury, and advertising injury. The CMAR's Employer's Liability, Commercial Automobile Liability, Commercial General Liability, and Excess Liability Insurance policies, as required in this article, shall be written with at least the following limits of liability:

2.1.1. Commercial General and Excess Liability Insurance with limits of liability as shown below. Such coverage shall provide an extended completed operations period of three (3) years from the date of Substantial Completion of the Project.

a. $10,000,000 Each Occurrence

b. $20,000,000 General Aggregate

c. $20,000,000 Products/Completed Operations Aggregate

d. $5,000,000 Personal and Advertising Injury Limit

2.1.2. Employer's Liability

a. $2,000,000 Bodily Injury by Accident Each Accident and General Aggregate

b. $10,000,000 Bodily Injury by Disease Policy Limit

c. $2,000,000 Bodily Injury by Disease Each Employee

2.1.3. Business Automobile Liability Insurance

a. $2,000,000 Each Accident, $4,000,000 Combined Annual Aggregate

Commercial General Liability, Employer's Liability, and Commercial Automobile Liability coverages required under Subparagraphs 2.1.1, 2.1.2 and 2.1.3 may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess or Umbrella Liability policies.

2.1.4. Workers' Compensation Insurance in the required statutory minimum amounts.

2.1.5. The policies of insurance required under Paragraph 2.1 shall contain a provision that the coverages afforded under the policies will not be cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner. Prior to commencement of the Work, the CMAR shall furnish the Owner with certificates evidencing the required coverages.

3. ARTICLE 3 — Property and Terrorism Insurance

Builder's Risk Insurance shall be obtained and maintained by the CMAR for the Project upon and subject to the terms and conditions of this article. This insurance shall be written as a Builder's Risk Policy or equivalent form to cover all risks of direct physical loss or damage to property insured, in the amount of not less than the full replacement cost and shall insure at least against the perils of fire, lightning, explosion, windstorm, and hail, smoke, wildfire, aircraft (except aircraft, including helicopter, operated by or on behalf of named insured and vehicles), riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement as defined by the Builder's Risk Policy, water damage, wind, testing if applicable, collapse, subsidence and damage resulting from defective design, workmanship, or material. The CMAR shall be solely responsible for any deductible amounts or coinsurance penalties. This policy shall name the Owner, CMAR and the City of Maryville, Tennessee, [CMAR], and Subcontractors of all tiers as additional insureds. This policy shall provide for a waiver of subrogation in favor of the Owner and the CMAR, Subcontractors, and Sub-subcontractors. This insurance shall remain in effect from the first arrival of permanent materials on the Site until Substantial Completion and acceptance. The policy shall permit partial occupancy or use of the Work. Prior to commencement of the Work, the Party obligated to provide such Builder's Risk Insurance shall provide a certificate of insurance evidencing such coverage to the other Party. Before the start of the Work, the CMAR shall obtain and maintain a Builder's Risk Policy upon the entire Project including stored material and material in transit, for the full cost of replacement at the time of loss. This insurance shall also name the Owner, Subcontractors, and Sub-subcontractors as named insureds.

CMAR is to obtain insurance to cover the risk of direct physical loss or damage resulting from terrorism. CMAR shall then provide insurance to protect its interests and the interests of the Owner, the City of Maryville, Tennessee, Subcontractors, and Sub-subcontractors against such risk of loss. The CMAR is responsible for deductibles and the cost of this insurance shall be charged to the Owner.

The Owner and the CMAR waive all rights against each other and their respective employees, CMAR's Subcontractors, and Sub-subcontractors for damages caused by risks covered by the property insurance provided under this Article 3, except such rights as either Party may have for the failure of the Party to obtain and maintain property insurance in compliance with this Article 3.

4. ARTICLE 4 — Additional Required Coverages for CMAR

4.1. Additional Liability Coverage

☐ **Check if applicable.** The CMAR shall provide an Owner's and CMAR's Protective Liability Insurance ("OCPP") policy with limits equal to the limits on Commercial General Liability Insurance specified or limits as otherwise required by the Owner. See **Attachment 16.1** to the Phase II Construction Price Amendment.

4.2. Professional Liability Insurance

*☒ **Check if applicable.** In any circumstances where, as part of the Work, the CMAR is required to perform either through its own forces or though the services of consultants retained by the CMAR, professional services of architects or engineers, the CMAR shall obtain professional liability insurance for claims arising from the negligent performance of the CMAR of such professional design or engineering services under this Agreement, with a company reasonably satisfactory to the Owner, including coverage for all professional liability, subject to policy terms, conditions, definitions, and exclusions, in each case caused by the CMAR or any of the CMAR's consultants, and written for $10,000,000 per claim and in the aggregate. The premiums and deductibles for such professional liability insurance shall be paid by the CMAR. A combined Professional and Pollution Liability Insurance policy may be used to satisfy this requirement.

4.3. Environmental or Pollution Liability Insurance

☐ **Check if applicable.** If the CMAR's or any Subcontractor or Supplier of any tier's Scope of Work requires asbestos or other toxic or hazardous material remediation, removal, abatement, storage, or disposal work, including, but not limited to, demolition work, the CMAR shall provide Contractor's Pollution Liability Insurance for protection from claims and suits arising out of the performance of any work involving such materials or operations. Coverage shall be continuously maintained in effect during the performance of such operations and Work and for not less than three (3) years following Final Completion of the Work or the expiration of the application Statute of Repose, whichever is later, on an "occurrence form" basis, shall cover bodily injury or death, and property damage liability, defense costs, and cleanup costs. The limits of liability for this insurance shall be

$[NUMBER] each occurrence and $[NUMBER] annual aggregate. Such policies shall include a definition of "property damage" that includes diminution in value of third-party properties; a statement that such insurance is primary and non-contributory, including, but not limited to, as to any surety contracts or bonds; a statement that the insured's rights will not be prejudiced if a failure to give notice due to the insured's belief that the occurrence was not covered; coverage for products brought onto the Project Site where Work or services are being performed; a definition of stop loss or cleanup cost cap that includes monitoring activities; a definition of cleanup costs that includes any costs associated with natural resources damages; and a statement that exclusions for modification of remedial action plans shall not include changes required by regulatory agencies.

5. ARTICLE 5 — Policy Requirements for Required CMAR Insurance

5.1. Each of the insurance coverages required to be maintained by the CMAR in accordance with this **Attachment 16** shall be endorsed to provide that it shall not be terminated, be permitted to expire, or be subject to nonrenewal except on thirty (30) days' prior written notice to the Owner (ten [10] days' prior written notice for nonpayment of premiums). All of the insurance required to be maintained by the CMAR in accordance with this **Attachment 16** shall be maintained with insurers, and on forms reasonably acceptable to the Owner and, for all policies, except for Employer's Liability Insurance, Workers' Compensation, and any Professional Liability Insurance policies required under this **Attachment 16**, shall continuously name the Owner, the City of Maryville, Tennessee, the Owner's affiliated officers, directors, and employees, and other Parties as may be designated by the Owner in writing at any time and as may be changed from time to time (collectively, with the Owner, the "Owner Parties") as additional insureds on a primary and noncontributing basis, with coverage provided to such additional insureds at least as broad as provided to the named insured and as provided by unmodified ISO endorsement form number CG 20 10 04 13. All insurance policies and certificates must reference the specific property address (including suite number, if applicable).

5.2. All insurance policies required to be maintained by the CMAR shall be issued by companies licensed in the jurisdiction in which the Project is located and who maintain a current Policyholder Alphabetic Category Rating of not less than "A-" and Financial Size Category Rating of not less than "VII" according to the latest edition of Best's Key Rating Guide. Prior to the CMAR commencing the Work, the CMAR shall furnish the Owner with Certificates of Insurance, on forms reasonably acceptable to the Owner, evidencing that the required insurance policies are in full force and effect and that the same provide the required coverages and amounts of insurance listed in this **Attachment 16** and confirming that the additional insured coverage, the primary and noncontributing endorsement and the waiver of subrogation endorsement are each in effect and have been provided to the Owner Parties. The CMAR's current Certificates of Insurance are attached to the Phase II Construction Price Amendment as **Attachment 22**. At the Owner's request, the CMAR shall provide the Owner with copies of each insurance policy.

5.3. All Commercial General Liability insurance carried by or available to any Owner Parties, which may be applicable, shall be deemed to be excess insurance and the CMAR's Commercial General Liability insurance shall contain a provision that it is deemed primary and noncontributing with any Commercial General Liability insurance carried by or available to the Owner Parties. Each required insurance policy where the Owner is an additional insured shall provide for full Separation of Insureds such that the insurance applies separately to each insured against whom a claim or suit is asserted and the policies, except for Professional Liability, shall not contain any limitation or exclusion for claims or suits by one insured against another.

5.4. The Commercial General Liability and Commercial Auto Insurance may be provided on a combination of primary and umbrella/follow form excess insurance policies. Any such umbrella/follow form excess insurance policies shall provide that the coverage "follows form" to the underlying insurance and that such policy provides substantially equivalent or broader coverage than that provided by such underlying insurance, including the coverage for all required additional insureds; provided, however, that any material changes shall be subject to the Owner's approval.

5.5. The CMAR shall report immediately to the Owner and confirm in writing any injury, loss, or damage incurred or caused by the CMAR or any Subcontractors or Suppliers of any tier, or its receipt or notice of any claim by a third party, or any occurrence that might give rise to such claim. The CMAR shall, upon completion of the Work, submit to the Owner a recap of all such injuries, losses, damage, notices of third-party claims, and occurrences that might give rise to such claims.

5.6. To the fullest extent permitted by law, the CMAR hereby waives all rights of recovery against Owner Parties on account of loss or damage occasioned to the CMAR or Others under the CMAR's control or for whom it is responsible to the extent such loss or damage is insured against under any of the CMAR's insurance policies which may be in force at the time of the loss or damage or would have been so insured against if the CMAR had complied with its obligations under this **Attachment 16**. In addition, all of the insurance policies and coverages required to be obtained, pursuant to the provisions of this **Attachment 16**, by the CMAR shall provide for or be endorsed to provide a waiver of rights of recovery (including, but not limited to, subrogation) against the Owner Parties.

5.7. If the CMAR fails to comply with any of the provisions of this **Attachment 16**, the CMAR, at its own cost, shall, to the fullest extent permitted by law, defend, indemnify, protect, and hold harmless the Owner Parties from and against any and all Claims (including, but not limited to, Claims arising or resulting from the death or injury to any person or damage to any property) to the extent that the Owner would have been protected by any and all insurance arrangements made by the CMAR, or any third party, had the CMAR complied with all of the provisions of Article 8 of this Attachment 16.

5.8. In the case of policies expiring while Work is in progress, a renewal certificate with all applicable endorsements must be received at the business office of the Owner prior to the expiration of the existing policy or policies. The failure of the CMAR or any Subcontractor or Supplier of any tier to start Work, continue Work, or the releasing of any progress payment prior to or without, in each case, first complying with any of the requirements of this **Attachment 16**, shall not constitute a waiver of, or estoppel to assert, any such requirements. If at any time the CMAR's insurance fails to meet the requirements stated herein, all payments may be held until the noncompliance has been corrected to the Owner's satisfaction.

5.9. None of the requirements contained in this **Attachment 16** as to types, limits, and acceptability of insurance coverage to be maintained by the CMAR and Subcontractors and Suppliers of any tier are intended to, and shall not in any manner limit or qualify the liabilities and obligations assumed by the CMAR or any Subcontractor or Supplier of any tier under the Agreement or other Contract Document, or at law, including, without limitation, such Parties' indemnification obligations and liability in excess of the limits of the coverages required herein. Neither receipt of certificates, endorsements, or policies showing less or different coverage than required, nor any other forbearance or omission by the Owner, shall be deemed a waiver of, or estoppel to assert, any right or obligation regarding the insurance requirements herein. The CMAR and Subcontractors and Suppliers of any tier shall be solely responsible to pay any amount that lies within the deductible(s) or self-insured retention(s) of such Parties' policies, regardless of the amount of the deductible(s) or self-insured retention(s) and regardless of the cause of the loss or damage.

5.10. None of the insurance requirements contained herein or elsewhere in the Contract Documents shall relieve the CMAR or any Subcontractor or Supplier of any tier of their respective obligations to exercise due care in the performance of their duties in connection with the Work or to complete the Work in strict compliance with the Contract Documents.

5.11. The CMAR shall immediately notify the Owner in writing upon receipt by the CMAR, or its insurance broker or agent, of any notice of cancellation, nonrenewal, or rescission of any policy required to be maintained by the CMAR pursuant to this paragraph.

All insurance policies and certificates must reference the specific property address (including suite number if applicable) and must include the Owner Parties as additional insureds on a form acceptable to the Owner, except the Workers' Compensation policy, Employer's Liability policy and any Professional Liability Insurance policies required by the Agreement.

6. ARTICLE 6 — Bonds

6.1. Payment and Performance Bonds are required of the CMAR

6.2. All bonds required hereunder shall name the Owner and the City of Maryville, Tennessee as the obligee and its lender(s), if any, as dual obligees (using mutually agreeable dual obligee form). Bonds required hereunder shall be written by surety companies with an Alphabetic Category Rating of not less than "A-" and Financial Size Category Rating of not less than "VII" according to the latest edition of Best's Key Rating Guide. Any bonds required pursuant to this Article 6 shall be issued by a surety admitted in the state in which the Project is located and must be reasonably acceptable to the Owner. The penal sum of the bonds shall be 100% of the Phase II Construction Price. Any increase in the Phase II Construction Price that exceeds 10% in the aggregate shall require a rider to the bonds increasing penal sums accordingly. Up to such 10% amount, the penal sum of the bond shall remain equal to 100% of the original Phase II Construction Price. The CMAR shall endeavor to keep its surety advised of changes potentially impacting the Phase II Construction Price and Contract Time. The CMAR's payment bond for the Project, if any, shall be made available by the Owner for review and copying. The Owner's acceptance shall not be unreasonably withheld. If payment and performance bonds are required, such bonds shall be in substantially the forms of **Attachment 17** and **Attachment 17.1** to the Phase II Construction Price Amendment, respectively.

7. ARTICLE 7 — Owner's Insurance

7.1. Business Income Insurance

The Owner may procure and maintain insurance against loss of use of the Owner's property caused by fire or other casualty loss. The Owner waives all rights of action against the CMAR, its Subcontractors, and Sub-subcontractors for loss of use of the Owner's property, including consequential damages and losses, such as, but not limited to, loss of use, lost profits, and loss of income and revenue and other special damages due to fire or other hazards however caused.

7.2. Owner's Liability Insurance

The Owner shall either self-insure or obtain and maintain its own Liability Insurance for protection against claims arising out of the performance of this Agreement, including, without limitation, loss of use and claims, losses, and expenses arising out of the Owner's errors or omissions.

8. ARTICLE 8 — Special Provisions

Describe:_____
_____
_____.

(Remainder of page left intentionally blank.)

ATTACHMENT C

INDEX OF PROJECT BACKGROUND DOCUMENTS

City of Maryville, Tennessee Corrective Action Plan/Engineering Report

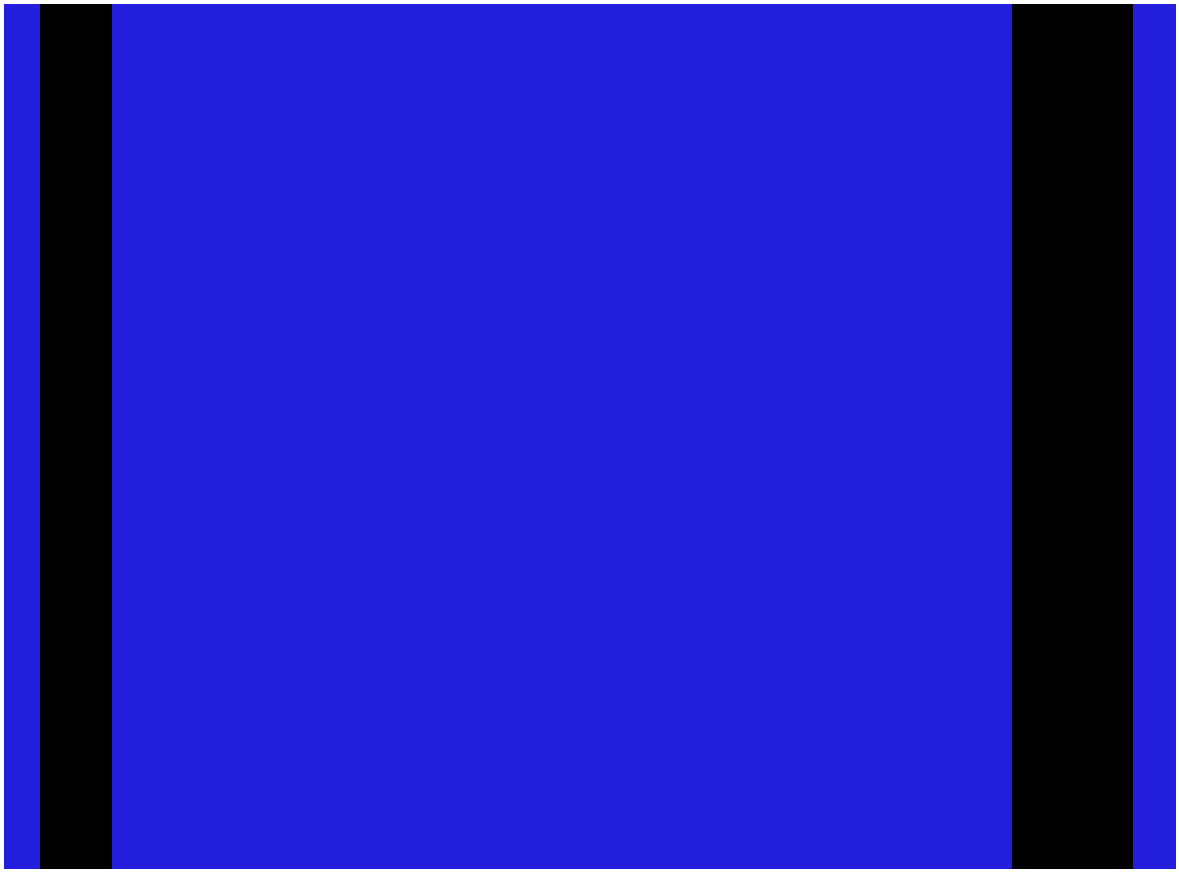
Consent Order WPC23-0156

November 11, 2024

JOHN CAMERON PERRY
REGISTERED ENGINEER
AGRICULTURE
COMMERCE
No. 113170
STATE OF TENNESSEE

John Perry

Digitally signed by John Perry
DN: cn=John Perry, c=US, o=Jacobs, email=john.perry7@jacobs.com
Date: 2024.11.11 14:43:01 -05'00'



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Acronyms and Abbreviations

AA	Annual Average
ATAD	Autothermal Thermophilic Aerobic Digestion
AGS	Aerobic Granular Sludge
BFP	Belt Filter Press
BOD_5	5-Day Biochemical Oxygen Demand
CAP	Corrective Action Plan
CCTV	Closed-Circuit Television
$CBOD_5$	5-Day Carbonaceous Biological Oxygen Demand
ER	Engineering Report
GBT	Gravity Belt Thickener
lbs/day	pounds per day
MGD	Million Gallons per Day
mg/L	Milligrams per Liter
NH_3-N	Ammonia-Nitrogen
NOAA	National Oceanic and Atmospheric Administration
NOV	Notice of Violation
O&M	Operation and Maintenance
RAS	Return Activated Sludge
RWWTP	Regional Wastewater Treatment Plant
SCADA	Supervisory Control and Data Acquisition
SNDR	Simultaneous Nitrification-Denitrification Reactor
SSES	Sanitary Sewer Evaluation Surveys
SVI	Sludge Volume Index
TDEC	Tennessee Department of Environment and Conservation
TKN	Total Kjeldahl Nitrogen
TP	Total Phosphorus
TSS	Total Suspended Solids
UV	Ultraviolet
WAS	Waste Activated Sludge
WWTP	Wastewater Treatment Plant

1. Introduction

The City of Maryville owns and operates the Regional Wastewater Treatment Plant (RWWTP) located at 4541 Wheeler Road in Blount County, Tennessee. The effective National Pollutant Discharge Elimination System (NPDES) permit number is TN0020079, which authorizes discharge of treated municipal wastewater from Outfall 002 to mile 5 of the Little River Embayment. Discharge to Outfall 001 to mile 637 of the Tennessee River is reserved as a backup.

The City of Maryville entered into Consent Order, Case No. WPC23-0156, on February 7, 2024. The Consent Order listed 66 effluent limitation exceedances at the RWWTP from November 2021 through October 2023 as well as 10 sanitary sewer overflows in the same period. The Consent Order directs and assesses the following summarized items (refer to the Consent Order for complete descriptions):

1. Civil penalty of $28,560; $5,712 upfront and the remainder contingent upon compliance with ordered items.
2. Collection System Audit, to be completed within 180 days of the Consent Order. [Completed and submitted to Tennessee Department of Environment and Conservation (TDEC) on August 5, 2024]
3. Submit a Corrective Action Plan/Engineering Report (CAP/ER) no later than November 15, 2024.
4. Completion of each measure identified in the CAP/ER no later than the date in the approved schedule. Quarterly reports are required through the duration of the corrective actions.
5. Submit a Final Report within 180 days of the completion of all measures identified in the CAP/ER.
6. Maintain substantial compliance with the NPDES permit for 1 year following approval of the Final Report. If the City of Maryville fails to comply with this item, it will be assessed a penalty of $5,000 for each Notice of Violation (NOV), not to exceed a total of $15,000.

This report is to satisfy the requirements of the Consent Order Part XI Item 3, the CAP/ER.

2. RWWTP Evaluation

The RWWTP permit exceedances noted in the Consent Order, and also in a NOV letter dated May 16, 2023, were related to two primary issues. One is equipment failures, as addressed in the City of Maryville's NOV response letter dated June 7, 2023, and which have been addressed as described in Section 2.5, Interim Measures. The other issue is the load capacity of the plant. During peak flow events at the plant, given capacity limitations, permit exceedances can occur. While plant staff can maintain and operate the plant within acceptable permit ranges, in part due to operational schemes for peak flow events as discussed in Section 2.5, there is little margin during peak wet weather flow events and when an equipment failure occurs in a critical process. To address these issues at the plant and to assess plant capacity limitations, the City of Maryville selected Jacobs to provide wastewater plant evaluation in late 2023.

Jacobs worked with the City of Maryville to conduct a treatment plant evaluation, which included projecting 20-year (2045) growth requirements for the RWWTP. The evaluation: (1) assessed the historical flows and loads to the treatment plant, (2) assessed the capacity of individual unit processes relative to current flows and loads, (3) evaluated treatment alternatives for expanding the plant to meet future flow and load capacity requirements, and (4) selected a preferred alternative for improvements/expansion at the plant. The evaluation was conducted in three parts: Flows and Loads Evaluation, Capacity Assessment of the existing RWWTP, and Alternatives Evaluation and Preferred Alternative Selection.

2.1 Flows and Loads Evaluation

Historical data for the Maryville RWWTP were compiled from the last 10 years (January 2014 through December 2023) to show trend in flows and loads over time. Data consisted of monthly operating reports and solids process data provided by plant staff. These data were compared with the original design flows and load criteria as presented in the *Supplement to Engineering Report for the Wastewater Treatment Plant Expansion for Maryville, TN* (J.R. Wauford & Company Consulting Engineers, 2005/2006). In addition, a supplemental sampling campaign was conducted between December 12, 2023 and December 30, 2023, to characterize the influent wastewater fractions for evaluating facility sizing and projected nutrient removal performance. The 10-year trends for flows and loads were used to project 2045 flows and loads (20-year growth projections). Findings from the flows and loads evaluation are summarized as follows.

2.1.1 Influent Flow Analysis

- The Maryville RWWTP began exceeding its winter maximum month rated capacity of 17 million gallons per day (MGD) in 2018.
- Peak flows are impacted by wet weather and appear to be correlated with National Oceanic and Atmospheric Administration (NOAA) precipitation data (McGhee Tyson Airport rain gauge data).
- The historical trend is expected to continue with the plant projected to reach an annual average flow rate of 17.2 MGD, a maximum month flow rate of 28.2 MGD, and a maximum day flow rate of 54.7 MGD in 2045.

2.1.2 $CBOD_5$ and TSS Loading Analysis:

- The maximum month, 5-Day carbonaceous biological oxygen demand ($CBOD_5$) and total suspended solids (TSS) loadings increased by 28% and 37%, respectively, from 2014 through 2023, signifying population growth in the service area.
- For $CBOD_5$ loading, the plant has been operating at or above winter design capacity for 3 of the last 5 years, and at or above summer design capacity 5 of the last 6 years.
- For TSS loading, the plant has been operating at or above winter design capacity for the last 4 years; the last 8 years have been at or above summer design capacity.
- $CBOD_5$ is projected to reach a maximum month loading of 34,800 pounds per day (lbs/day) and an annual average day loading of 26,500 lbs/day in 2045.
  - The supplemental sampling identified a significant difference in the inhibited $CBOD_5$ and the true 5-day biochemical oxygen demand (BOD_5). Normally, the inhibited difference is 0.15 to 0.2. An inhibition correction factor of 0.25 was used for future design considerations such that the 2045 MMADF BOD_5 is 46,400 lbs/day and the annual average is 35,400 lbs/day.
- TSS is projected to reach a maximum month loading of 47,200 lbs/day and an annual average day loading of 33,300 lbs/day in 2045.

2.1.3 Nutrient Loading Analysis:

- There was limited influent nutrient sampling in the historical dataset. To address this issue, the supplemental sampling campaign was used to establish an influent total phosphorus (TP):$CBOD_5$ ratio of 0.032. Therefore, with the 2023 influent average $CBOD_5$, an average TP loading of 433 lbs/day was estimated. This is above the summer and winter TP design capacity.
- A historical average ammonia-nitrogen (NH_3-N) loading of 1,560 lbs/day was calculated from the historical dataset.
- Total Kjeldahl nitrogen (TKN) was not sampled prior to the special sampling campaign. To determine TKN loading, an NH_3:TKN ratio of 0.662 was established using the results of the supplemental sampling campaign. Therefore, a historical TKN loading of 2,363 lbs/day was calculated, which is below the design capacities of 2,919 lbs/day in the summer and 3,119 lbs/day.

2.1.4 Plant Recycles Analysis:

- Plant recycles from thickening and dewatering were estimated to contribute approximately 57.9 lbs/day of TSS and 7.7 lbs/day of TP loading from 0.189 MGD of recycle flow.
- The side stream contributions are low enough that they do not make a major impact on the plant's overall influent flow rate and loading.

2.2 Capacity Assessment of the Existing RWWTP

The capacity of the treatment plant was evaluated based on current flows and loads. Each unit process in the plant was evaluated for liquid and biosolids treatment capacity by comparing its current rated/documented capacity to current flows and loads as well as redundancy requirements defined by TDEC and/or best practices. Summarized findings from the capacity evaluation are listed in the following subsections.

2.2.1 Headworks

- The peak flow to the facility is limited by the Russell Branch Pump Station capacity of 43.2 MGD.
- The existing influent screening system consists of three drum screens that provide a total rated capacity of 43.2 MGD. The existing screens do not meet the firm capacity requirements set by TDEC that dictate peak capacity can be met with the largest unit out of service; however, a bypass pipe is provided.
- The existing stacked tray grit removal units, along with the bypass channel, meet the required firm capacity for the maximum flow.

2.2.2 Secondary Treatment

- The two oxidation ditches and clarifiers are estimated to have the capacity to reliably treat up to only 13.5 MGD maximum month flow, equivalent to 8.3 MGD annual average flow, which is less than the current flows. The secondary treatment system is limited by the installed aeration capacity. The existing bioreactors and clarifiers, ignoring the aeration limitation and assuming sufficient oxygen is provided, are estimated to have capacity to treat up to 20.3 MGD.
- It is important to note that the evaluation of secondary treatment capacity did not consider redundancy. With only two oxidation ditches, each equipped with two aerators, in conjunction with two secondary clarifiers, there is limited redundancy because if any of the units go offline, the facility could lose upwards of 50% of its treatment capacity.

2.2.3 Biosolids Treatment

- Assuming a 9.5-foot operating depth, the sludge holding tanks can provide 5.6 days of hydraulic storage for current maximum month solids production.
- The existing autothermal thermophilic aerobic digestion (ATAD) system has a rated hydraulic capacity to meet current maximum month conditions.
- On solids loading basis, the capacity assessment indicated that if the ATAD process tanks were operated in parallel, then the ATAD process tanks should have capacity to handle current maximum month conditions and operate near 93% of their capacity. However, operations staff currently need to operate the system in series to achieve Class A standards. This suggests that there may be physical issues (maintenance) within the ATAD units. Unfortunately, staff cannot take a unit offline to investigate and diagnose without compromising biosolids quality.
- The gravity belt thickener (GBT) feed pumps and GBTs have the capacity to handle existing maximum month waste activated sludge (WAS) production. However, the thickened sludge transfer pumps are limited and do not have adequate capacity to meet current WAS flows and loads and should be replaced with larger pumps.
- The belt filter press (BFP) and dewatered cake cleated belt conveyor have capacity to handle current dewatering feed rates. However, the BFP is nearing capacity as it is currently loaded at approximately 95% of its rated capacity at current maximum month conditions. The BFP feed pumps are limiting and do not have the capacity to pump digested biosolids to the BFP during maximum month conditions and should be replaced with a larger pump.

2.2.4 Disinfection

- The newly installed ultraviolet (UV) system is sized to provide 43 MGD of total disinfection capacity using both treatment units to meet compliance and does not have any treatment redundancy although each channel is rated to pass 43 MGD, hydraulically.
- The UV system is currently still in startup.

2.2.5 Plant Hydraulics

Jacobs developed a Replica™ hydraulic model, using ExtendSim software, for the Maryville RWWTP expansion project to evaluate any hydraulic restrictions under current average daily flow and peak hour flow conditions. City of Maryville plant staff collected field measurements of water surface elevations at seven locations throughout the plant, primarily at critical weirs, and provided corresponding flow values (influent and effluent flow meter measurements) to assist with calibration and validation of the model. Key findings from the plant hydraulic model evaluation are as follows:

- The existing Maryville RWWTP model shows that the plant currently does not experience any hydraulic restrictions at maximum plant capacity of 43.2 MGD. However, as flows approach 44.5 MGD, the post-aeration weir becomes submerged; the UV system overflows at 50 MGD plant influent flow.
- If flows approach 50 MGD in the future at the Maryville RWWTP, the hydraulic capacity of the UV system will need to be expanded to accommodate the increased flows. Additionally, the drum screens and grit systems would need to be upgraded, expanded, or bypassed at flows higher than 44.1 MGD and 43 MGD, respectively. The existing Outfall 002 diffuser will also need to be upgraded to reduce head loss and prevent submerging the post-aeration weir at flows exceeding 44.5 MGD.

2.3 Alternatives Evaluation and Preferred Alternative Selection

Secondary treatment alternatives for expanding the plant to meeting 2045 flows and loads were evaluated, beginning with a preliminary screening exercise. From the breadth of treatment approaches available, a shortlist of eight alternatives was generated for consideration. Jacobs and Maryville then reviewed these alternatives and identified the following three secondary treatment alternatives for detailed evaluation:

1. Upgrade existing oxidation ditches for aeration redundancy and construct a new parallel oxidation ditch.
2. Convert existing ditches to plug flow reactors using one of two methods:

   2a – Install primary filters and convert existing ditches to plug flow bioreactors

   2b – Construct new parallel plug flow bioreactor and convert existing ditches to plug flow bioreactors
3. Upgrade existing oxidation ditches for aeration redundancy and construct new parallel Aerobic Granular Sludge (AGS) treatment process.

An in-depth evaluation of biosolids treatment alternatives was not performed given the existing approaches to thickening (GBTs), sludge stabilization/digestion (ATAD), and dewatering (BFP), followed by composting and disposal to end users will be expanded in-kind, as required for each secondary treatment alternative. Common elements to each alternative were included; however, a detailed alternative study was not performed. These included headworks, tertiary filtration, UV expansion, and new/upsized Outfall 002 pipe and diffuser.

Alternatives were evaluated and processes were selected and sized for each, with Jacobs facilitating a monetary and non-monetary evaluation process for selection of the preferred alternative. For the monetary portion, estimated construction costs were developed for each alternative, including liquids and solids treatment and common elements. Allowances, determined as a percentage of construction cost, were used for certain construction items (for example, yard piping, electrical, and SCADA), contractor markups, contingency for unknowns and uncertainties at this high-level stage of evaluation, and non-construction costs (for example, permitting and engineering). For the non-monetary portion, Jacobs and the City of Maryville identified and assigned weightings to evaluation criteria; scores were assigned and an overall non-monetary score for each was determined. Monetary and non-monetary scoring was combined to facilitate the selection of the preferred alternative. Based on this evaluation, the City of Maryville selected Alternative 2a - "Construct new parallel plug flow bioreactor and convert existing ditches to plug flow bioreactors."

2.4 Preferred Alternative Summary

The required upgrades, modifications, and additions for the selected alternative include the following:

- Retrofit the existing two oxidation ditches to four plug flow reactors. Install fine bubble diffusers and nitrate recycle pump in each basin
- Construct a fifth plug flow basin identical in volume and configuration to the retrofitted plug flow basins
- Construct a blower building and install blowers
- A new return activated sludge (RAS) splitting structure
- A new RAS/WAS pump station with greater capacity and redundancy
- Install hydrocyclone system to enhance sludge quality
- Two new GBTs of similar capacity to the existing two
- Two new ATAD/Simultaneous Nitrification-Denitrification Reactor (SNDR) systems
- Two new 3-belt BFPs in a new building
- One new biofilter

In addition to the treatment upgrades previously mentioned, the following enhancements are also necessary to ensure reliable operations at the facility, accommodating the planned increased capacity of the Russell Branch Pump Station to meet the anticipated peak flow in 2045:

- A new headworks to meet the planned upgraded capacity of the RBPS
- A third UV disinfection channel for capacity and treatment redundancy
- Upsized or new outfall pipe with diffusers to avoid flooding UV disinfection at flows above 43 MGD (Outfall 002)

Additional improvements are included to address future nutrient limits and to replace aging infrastructure.

- Construct a common, expanded anaerobic zone equipped with mixers
- Tertiary filtration to meet future total nitrogen (TN) and TP nutrient discharge limits
- New septage receiving station and submersible pump station to replace the existing process that has reached the end of its useful life

The above reflect improvements that are necessary to meet the 2045 projected flows and loads. The City will evaluate reasonable phasing alternatives for implementation of these improvements. The initial phase of the improvements will address the permit exceedances noted in the Consent Order.

The expansion of the MRWWTP will require a permit modification as the treatment capacity will increase from 14 MGD (summer) and 17 MGD (winter) to 28.2 MGD. The existing NPDES permit (TN0020079) includes monthly average concentration based and load based limits for $CBOD_5$, TSS, and NH_3-N. With the expansion to 28.2 MGD, the load-based limits will need to be re-evaluated by TDEC, as they are based upon the documented plant capacity. Should these load limits remain constant to avoid anti-backsliding rules, then the future summer concentration-based limits would be cut by 50% ($CBOD_5$ = 5 milligrams per liter [mg/L]; NH_3-N = 0.5 mg/L) while the winter limits would reduce by 40% (CBOD5 = 9 mg/L; NH3-N = 0.6 mg/L).

2.5 Interim Measures to Maintain RWWTP Permit Compliance

In the period between now and before the initial phase of the plant expansion is complete and online, the City will employ two interim measures to avoid permit limit exceedances.

First, the City has expanded their spare parts inventory to mitigate the impact of equipment failures. Major equipment that has been added to the spare parts inventory include, but is not limited to, the following:

- Spare Gear Box & Drum Screen for Headworks
- Spare Grit Pump (2)
- Spare Anoxic Mixer
- Spare Gear Box & Motor for Ox. Ditch
- Spare Ox. Ditch VFD
- Spare RAS Motor & Pump
- Spare Pumps for ATAD
- Spare Transfer Pump for SNDR
- Spare Belts for Belt Press

Second, the City of Maryville plant operators employ a wet weather operational procedure. Plant staff monitor incoming weather and prepare for increased incoming flows. As flows go above 15 to 17 MGD, plant staff monitor the blanket levels in the secondary clarifiers. When blankets begin to rise (which is tied to the current sludge settleability measured by the Sludge Volume Index), then plant staff begin a wet weather mode of operation. During this mode, the recycle gates on the ditches are closed, with the mixers turned off, such that solids are concentrated in the anaerobic and anoxic zones. In the aerobic ditch portion, the aerators are cycled on and off (typically 4 hours on, 2 hours off; but adjusted as needed) to maintain aerobic conditions while keeping solids only partially suspended to reduce the loading to the secondary clarifiers. The success of this wet weather strategy is contingent upon the duration of the wet weather event and the settleability of the mixed liquor suspended solid. As the duration of the event increases (e.g., hours vs. days), it becomes more critical for the sludge settleability to be low (e.g., well settling). This operational procedure has been successfully implemented for peak wet weather flow events above 38 MGD average daily flow.

3. Collection System Evaluation and Interim Measures

The Consent Order lists 10 sanitary sewer overflows. Eight of the overflows occurred at manholes in the collection system, and two occurred at the wastewater plant site. For collection system overflows, the City of Maryville's standard response is to eliminate the overflow, use closed-circuit television (CCTV) to check the line to determine the cause, and make repairs (if needed), or, based on inspection observations, implement further investigations, if appropriate. If repeated overflows occur in an area, then that area is prioritized for further investigation, which may lead to prioritization for sanitary sewer evaluation survey (SSES) investigations and subsequent sewer rehabilitation in the area/basin. Two of the overflows occurred at the wastewater treatment plant. Table 1 addresses each overflow listed in the Consent Order and the actions taken by the City of Maryville. No further action is planned at this time.

Table 1. Sanitary Sewer Overflows

Location/Date	Cause of Overflow	Remedial Action/Interim Measure
Four Manholes: 47B-21 47B-22 47B-24 47A-11 February 23, 2022	4.5 inches of rain fell in 3 days on and preceding the overflow event. This area does not exhibit capacity issues; no previous wet weather overflows have been reported in this area. The City of Maryville investigated the area and did not identify any blockages. Operations staff concluded a temporary blockage cleared itself and staff do not anticipate further instances in this area.	The City of Maryville collection system O&M team will monitor this area and if additional overflows occur, it will be prioritized for further investigation.
Manhole 68L-23 February 25, 2022	Blockage in sewer line	City of Maryville collection system O&M staff cleared the blockage by jet rodding the sewer line. CCTV was performed to determine no further action required.
Manhole 68M-22 March 9, 2022	Blockage in sewer line	City of Maryville collection system O&M staff cleared the blockage (mop head) by jet rodding the sewer line. CCTV was performed to determine no further action required.
Manhole 58P-20 January 29, 2023	Blockage in sewer line	City of Maryville collection system O&M staff cleared the blockage (wipes) by jet rodding the sewer line. CCTV was performed to determine no further action required.

Location/Date	Cause of Overflow	Remedial Action/Interim Measure
Manhole 18G-1 adjacent February 23, 2022	Overflow occurred through the flap gate at the constructed emergency outfall that is connected to MH 18G-1.	City maintenance staff permanently sealed the flap gate closed.
RWWTP September 23, 2022	During the construction phase of the recent upgrades project, the contractor cut a line thought to be abandoned. It was an active line, connecting the SNDR to the BFP, and was discovered the next day during digested sludge dewatering operations.	The contractor was notified and immediately repaired the line.
RWWTP July 19, 2023	Pump repairs to the On-Site Pump Station were being made, and during bypass pumping operation a bypass pipe failure occurred, causing the overflow.	The contractor immediately repaired the bypass piping.

O&M = Operation and Maintenance

4. Initial Phase RWWTP Expansion/Improvements and Schedule

The City of Maryville will evaluate phasing options for the improvements identified in the Preferred Alternative Summary (Section 2.4). The initial phase will be focused on eliminating the permit exceedances noted in the Consent Order and will consist primarily of liquids and solids phase treatment improvements. Subsequent phases will be implemented in accordance with City of Maryville priorities and permit requirements. The schedule of improvements for the initial phase of improvements at the RWWTP is summarized in Table 2.

Table 2. RWWTP Schedule of Improvements (Initial Phase)

Milestone	Date
Begin Design	April 1, 2025
Preliminary Engineering Report (Basis of Design Report)	November 17, 2025
Final Design Plans and Specifications	January 12, 2027
Bid Award	June 8, 2027
Start Construction	July 20, 2027
End Construction	January 21, 2030
Final Report	July 19, 2030

This schedule is dependent on the City of Maryville self-funding (bond funds) the improvements. If an alternative, or contributing, funding source is identified and selected, funding application cycles and other requirements may impact the schedule and an update will be submitted to TDEC.

ATTACHMENT D

FORMS FOR
AFFIRMATION OF COMPLIANCE

DRUG-FREE WORKPLACE AFFIDAVIT

STATE OF_____

COUNTY OF_____

The undersigned, principal officer of_____, an employer of five (5) or employees contracting with_____County government to provide construction services states under oath as follows:

1. The undersigned is a principal officer of_____(hereinafter referred to as the "Company"), and is duly authorized to execute this Affidavit on behalf of the Company.
2. The Company submits this Affidavit pursuant to T.C.A. § 50-9-113, which requires each employer with no less than five *(5)* employees receiving pay who contracts with the state or any local government to provide construction services to submit an affidavit stating that such employer has a drug-free workplace program that complies with Title *50,* Chapter 9, of the *Tennessee Code Annotated.*
3. The Company is in compliance with T.C.A. § 50-9-113. Further affiant saith not.

Principal Officer

STATE OF_____

COUNTY OF_____

Before me personally appeared with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that such person executed the foregoing affidavit for the purposes therein contained.
Witness my hand and seal at office this ___ day of 20__

Notary Public
My commission expires:

TITLE VI DISCLOSURE

NOTE TO BIDDERS: To assist the City of Maryville's compliance with Title VI of the Civil Rights Act of 1964, you are required to complete the following information and attach it to the submitted bid.

Name/Address of Firm:

_____ Telephone: ( ) _____ - _____

_____ Fax: ( ) _____ - _____

_____

Are you a tax-exempt corporation? Yes _____ No _____

Exemption Number _____

Is your company a small business as defined by the U.S. Small Business Administration?

Yes _____ No _____

Are you incorporated? Yes _____ No _____

If yes, are you publicly traded? Yes _____ No _____

Owner's Gender: Male ____ Female _____

Identify company classification:

American Indian or Alaska Native _____ Hispanic or Latino _____

Asian _____ Native Hawaiian/Pacific Islander _____

Black or African American _____ Caucasian _____

Is your business classified as a Disadvantaged Business? Yes _____ No _____ Other _____

Names of Officers:

President: _____

Vice-President: _____

Contact Person for this bid: _____

Contact Telephone: _____

STATE OF TENNESSEE

IRAN DIVESTMENT ACT CERTIFICATION

SUBJECT CONTRACT NUMBER(S):	
CONTRACTOR LEGAL ENTITY NAME:	
EDISON SUPPLIER IDENTIFICATION NUMBER:	

The Iran Divestment Act, Tenn. Code Ann. § 12-12-101 et. seq. requires a person that attempts to contract with the state, including a contract renewal or assumption, to certify at the time the bid is submitted or the contract is entered into, renewed, or assigned, that the person or the assignee is not identified on a list created pursuant to § 12-12-106.

Currently, the list is available online at the following website: https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-/public-information-library.html

The Contractor, identified above, certifies by signature below that it is not included on the list of persons created pursuant to Tenn. Code Ann. § 12-12-106 of the Iran Divestment Act.

CONTRACTOR SIGNATURE

NOTICE: This certification MUST be signed by an individual with legal capacity to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE

STATE OF TENNESSEE

NON-BOYCOTT OF ISRAEL CERTIFICATION

The Bidder certifies that it is not currently engaged in, and will not for the duration of the contract engage in, a boycott of Israel as defined by Tenn. Code Ann. § 12-4-119. This provision shall not apply to contracts with a total value of less than two hundred fifty thousand dollars ($250,000) or to contractors with less than ten (10) employees.

According to the law, a boycott of Israel means engaging in refusals to deal, terminating business activities, or other commercial actions that are intended to limit commercial relations with Israel, or companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or persons or entities doing business in Israel, when such actions are taken:

1) In compliance with, or adherence to, calls for a boycott of Israel, or

2) In a manner that discriminates on the basis of nationality, national origin, religion, or other unreasonable basis, and is not based on a valid business reason. Tenn. Code Ann. § 12-4-119.

Signature of Authorized Representative	**Date**
Printed Name	**Phone Number / Email Address**

NONCOLLUSION AFFIDAVIT

Each Bidder shall complete the following statement

STATE OF_____}
} ss
COUNTY OF_____}

That (s)he is the agent authorized by the Bidder to submit the attached Bid. Affiant further states that the Bidder has not been a party to any collusion among Bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding; or with any State, County, or City official or employee as to quantity, quality, or price in the prospective Contract, or any other terms of said prospective contract; or in any discussions between Bidders and any State, County, or City official concerning exchange of money or other thing of value for special consideration in the letting of a contract.

Affiant further warrants that no person or selling agency has been employed or retained to solicit or secure such contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

_____
Name of Contractor

_____
Bidder (Affiant)

Subscribed and sworn to before me this _____ day of _____ , 20 _____

My commission expires: _____

_____ Notary Public

END OF SECTION

STATE OF TENNESSEE

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSBILITY MATTERS

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

☐ Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

☐ Have not within a three-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statues or
commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

☐ Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

☐ Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to $10,000 or imprisonment for up to 5 years, or both.

Signature of Authorized Representative	**Date**
Printed Name	**Phone Number / Email Address**

☐ I am unable to certify to the above statements. Explanation is attached.