



703.721.3500 | 1800 Limerick Street | Alexandria, Virginia 22314

AlexRenew.com f @ in

August 23, 2024

## **RFP-25-002: Construction Management Services Addendum No. 3**

Respondents shall acknowledge receipt of this Addendum on the RFP Checklist in Attachment C of the Request for Proposals (RFP) with submittal of the Proposal. Failure to do so may result in the rejection of the Proposal.

Addendum No. 3 to RFP-25-002 consists of following:

- One (1) pages of text; and
- Attachment A Sample Professional Services Agreement.

Respondents shall make the following changes to all pertinent sheets, pages, and paragraphs of RFP-25-002.

- A. **Replace** Attachment A in its entirety with the attached Attachment A Sample Professional Services Agreement.

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**Attachment A**  
**Sample Professional Services Agreement**

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PROFESSIONAL SERVICES AGREEMENT

NO. 25-002

FOR

CONSTRUCTION MANAGEMENT SERVICES

BY AND BETWEEN

ALEXRENEW  
1800 LIMERICK STREET  
ALEXANDRIA, VA 22314

AND

**[NAME OF CONSTRUCTION MANAGER]**

EFFECTIVE DATE [XXXX], 2024

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AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AS ADVISOR

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# AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AS ADVISOR

This Agreement is by and between the City of Alexandria, Virginia Sanitation Authority d/b/a AlexRenew (Owner) and **[Name of Construction Manager]** (Construction Manager). This Agreement sets forth the terms and conditions that govern the relationships and performance of Owner and Construction Manager with respect to the Project. Owner and Construction Manager hereby agree as follows:

## ARTICLE 1—THE PROGRAMS AND PROJECTS

### 1.01 Programs and Projects Descriptions

- A. Owner will be implementing major capital projects through its capital improvement program (CIP) to improve the reliability and performance of its solids, preliminary and primary, and tertiary processes, as well as implementing projects through an improvement, renewal, and replacement (IRR) program to address ongoing construction and maintenance needs to equipment and processes. The Construction Manager shall assist Owner with the management of the following Projects under the CIP and IRR program as set forth in this Agreement. The Projects consist of each individually-listed Project below:
  - 1. Solids Upgrade Program, under the CIP
  - 2. Preliminary and Primary Systems Upgrade Project, under the CIP
  - 3. Tertiary Systems Upgrade Project, under the CIP
  - 4. Centrate Pretreatment Project, under the CIP
  - 5. Job Order Contracts Task Orders, under the IRR program
- B. For the following Projects, Owner has retained the following as Engineer with respect to the Project's design and other engineering and technical matters (collectively, the "Engineers"):
  - 1. Solids Upgrade Program: Stantec Consulting Services, Inc.
  - 2. Preliminary and Primary Systems Upgrade Project: GHD, Inc.
  - 3. Centrate Pretreatment Project: Jacobs Engineering Group, Inc.
  - 4. Job Order Contracts Task Orders: Brown and Caldwell; GHD, Inc.; HDR Engineering, Inc.; Jacobs Engineering Group, Inc.; and any additional as identified in the future.
- C. For the following Project, Owner has retained the following as Owner's Advisor with respect to engineering and technical matters (collectively, the "Owner's Advisor"):
  - 1. Tertiary Systems Upgrade Project: TBD
- D. For each Project, Owner has retained the following as Contractor with respect to the Project's construction (collectively, the "Contractors"):
  - 1. Solids Upgrade Program: PC Construction
  - 2. Preliminary and Primary Systems Upgrade Project: Ulliman Schutte
  - 3. Tertiary Systems Upgrade Project: TBD
  - 4. Centrate Pretreatment Project: TBD
  - 5. Job Order Contracts: F.H. Paschen, S.N. Nielsen & Associates, LLC (FHP); PC Construction (PCEO); American Contracting & Environmental Services, Inc. (ACE); and any additional as identified in the future.

## ARTICLE 2—SERVICES OF CONSTRUCTION MANAGER

### 2.01 Scope

- A. Construction Manager shall provide, or cause to be provided, the services set forth herein and in Exhibit A. Annual authorizations for particular scopes of services for up to a one (1) year period, will be made by an amendment to this Agreement by July 1 of each year, including associated scope and not-to-exceed estimates for the costs of services during such period, as shown in Exhibit A Appendix 1 – First Year Scope and Exhibit J Appendix 2 – First Year Budget, respectively.
- B. Not used.
- C. Not used.
- D. Not used.
- E. At any time during the performance of this Agreement, the Owner shall have the right to make changes in, deletions from, or additions to the scope of services (referred to hereinafter as an “Amendment”). In the event that such changes require different and/or additional Services by the Construction Manager, prior to commencement of such Services per a change, the Construction Manager shall present to the Owner, and the Owner shall consider a proposal for an equitable increase in its compensation and/or schedule for Services rendered because of such change. Such proposal shall be supported by such data and information as the Owner reasonably may require. Any such proposal by the Construction Manager for an equitable change in compensation and/or schedule shall be mutually agreed to by Amendment prior to commencement of any services under the proposed change.

### 2.02 Not used.

## ARTICLE 3—OWNER’S RESPONSIBILITIES

### 3.01 Owner’s Responsibilities

- A. Owner shall:
  - 1. Pay Construction Manager as set forth in Article 5.
  - 2. Provide Construction Manager with all criteria and full information as to Owner’s requirements for each Project including Contract Documents, general schedules and completion requirements, reports, surveys, permits, record documents from related previous projects, and other information as required for Construction Manager to provide Services. Owner shall be responsible for, and Construction Manager may rely upon, the accuracy and completeness of all such criteria and information, and of any other programs, instructions, data, and other information furnished by Owner to Construction Manager pursuant to this Agreement. Construction Manager may use such criteria and information in performing or furnishing Construction Manager’s services.
  - 3. Provide reasonable assistance to Construction Manager in securing the release of documents and information held by private entities and by public agencies as needed to provide services required by this Agreement.
  - 4. Arrange for safe access to and make all provisions for Construction Manager to enter upon public and private property as required for Construction Manager to perform services.

5. Review Documents presented by Construction Manager, make decisions, and carry out Owner's other responsibilities in a timely manner so as not to delay the Construction Manager's performance of its services.
  6. Provide the services of attorneys, insurance consultants, financial advisors, and other professional advisors or consultants required for the Project, but not provided by the Construction Manager.
    - a. Advise Construction Manager of the identity and scope of services of any independent consultant, designer, contractor, or other construction manager employed by Owner to perform or furnish services in regard to each Project, including cost estimating, project peer reviews, value engineering, and constructability reviews.
    - b. Define and set forth the duties, responsibilities, and limitations of authority of these other parties as they relate to the duties, responsibilities, and authority of Construction Manager.
  7. Owner shall inform Construction Manager of the policies, procedures, and requirements of Owner that are applicable to Construction Manager's performance of services under this Agreement.
  8. Owner shall provide Construction Manager with Owner's budget for each Project, including type and source of funding to be used, and will promptly inform Construction Manager if the budget or funding sources change.
  9. Owner shall inform Construction Manager in writing of any safety or security programs that are applicable to the personnel of Construction Manager and the CM Subconsultants as they visit the Sites or otherwise perform services under this Agreement.
- B. Owner is not responsible for discovering deficiencies in the Construction Manager's services. Construction Manager will correct any deficiencies without additional compensation, except to the extent this corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. Owner is responsible for decisions made on interpretations or clarifications of the Contract Documents given by Owner to a Contractor without consultation and advice of Construction Manager.

#### **ARTICLE 4—SCHEDULE FOR RENDERING SERVICES**

##### **4.01 Commencement**

- A. Construction Manager is authorized to begin rendering services on the Effective Date.

##### **4.02 Time for Completion**

- A. Not used.
- B. The Construction Manager shall complete its obligations within a reasonable time.
- C. If, through no fault of Construction Manager, such periods of time or dates are changed, or the orderly and continuous progress of Construction Manager's services is impaired, or Construction Manager's services are delayed or suspended, then the time for completion of Construction Manager's services, and the rates and amounts of Construction Manager's compensation, will be adjusted equitably.

- D. If Owner authorizes changes in the scope, extent, or character of the Project or Construction Manager's services, then the time for completion of Construction Manager's services, and the rates and amounts of Construction Manager's compensation, will be adjusted equitably.
- E. If Construction Manager fails, for reasons within control of Construction Manager, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages to the extent, if any, resulting from such failure by Construction Manager.
- F. The durations of the Projects covered by this Agreement for which the Construction Manager will perform services will vary. The term of this Agreement shall commence on the Effective Date and run until the expiration of one (1) year following final completion of the longest Project duration for the Projects covered by this Agreement.

## ARTICLE 5—INVOICES AND PAYMENTS

### 5.01 Preparation and Submittal of Invoices

- A. Construction Manager shall prepare invoices in accordance with its standard invoicing practices, the progress reporting, and special invoicing requirements, if any, in Exhibit A and the terms of Exhibit J. Services for each Project shall be separately invoiced. Construction Manager shall submit its invoices to Owner on a monthly basis by the 15th day of each month. Invoices are due and payable within 30 days of receipt of a correct and complete invoice, which includes at a minimum all applicable information described in this Agreement, Exhibit A, and Exhibit J. Owner shall not be required to make any payment to Construction Manager until Construction Manager has provided Owner with its federal employer identification number.
- B. Not used.
- C. The Construction Manager will submit invoices and supporting documents in form and substance satisfactory to the Owner that provide, but are not limited the following:
  - 1. Project title and relevant purchase order number;
  - 2. Summary of scope performed by each employee including the employee's name, hourly rate, and hours worked; and
  - 3. Documentation of expenses.

### 5.02 Payments

- A. The Construction Manager's compensation is based on the development of scope and not-to-exceed budget for each fiscal year for the duration of the Project using Exhibit A, Appendix 1 and Exhibit J, Appendix 2.
  - 1. Compensation items and totals based in whole or in part on Hourly Rates, or Direct Labor are estimates only.
  - 2. Lump sum amounts incorporate Construction Manager's labor, overhead, profit, and CM Subconsultants' charges.
  - 3. Construction Manager shall prepare a draft scope and budget for each Fiscal Year that shall be submitted to Owner no later than May 1, with a final scope and budget that shall be submitted to Owner no later than June 1.

4. The updated Scope and Budget for each Fiscal Year shall be incorporated into this Agreement by mandatory Amendments to Exhibit A, Appendix 1 and Exhibit J, Appendix 2 respectively.
  5. To support Owner's budget planning process for each Fiscal Year, Construction Manager shall prepare a preliminary scope and budget for each Fiscal Year and submit to Owner no later than November 1.
  6. The total compensation amount established in Exhibit J, Appendix 2 represents the not-to-exceed amount due the Construction Manager for successful performance of the Scope. The Construction Manager may reallocate compensation among Projects, categories, and/or between tasks, providing the not-to-exceed amount for the year is not exceeded and such reallocation is approved, in writing, by mutual agreement of the Owner and the Construction Manager.
- B. Not used.
  - C. Owner may withhold only the contested portions of an invoice and must pay the undisputed portion of the invoice.
  - D. Sales or Use Taxes—If after the Effective Date of the Agreement any governmental entity takes an action that imposes additional sales or use taxes on Construction Manager's services or compensation under this Agreement, then Construction Manager may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Construction Manager for the cost of such invoiced additional sales or use taxes; such reimbursement will be in addition to the compensation to which Construction Manager is entitled under the terms of Paragraph 5.02.A.
  - E. Application to Interest and Principal—Payment will be credited first to any interest owed to Construction Manager and then to principal.
  - F. If Owner disputes an invoice, either as to amount or entitlement, then Owner shall advise Construction Manager in writing of the specific basis for doing so within 15 days after receipt of such invoice; may withhold only that portion so disputed; and must pay the undisputed portion, subject to the terms of Paragraph 5.02A. After a disputed item has been resolved, Construction Manager shall include the agreed-upon amount on a new invoice.
  - G. Construction Manager shall take one of the two following actions within 7 days after receipt of amounts paid to Construction Manager by Owner for services performed by CM Subconsultants:
    1. Pay the CM Subconsultant for the proportionate share of the total payment received from Owner attributable to the services performed by the CM Subconsultant; or
    2. Notify Owner and the CM Subconsultant, in writing, of Construction Manager's intention to withhold all or a part of the CM Subconsultant's payment with the reason for nonpayment.
  - H. Construction Manager shall pay interest to the CM Subconsultant on all amounts owed by Construction Manager that remain unpaid after 7 days following receipt by Construction Manager of payment from Owner for services performed by the CM Subconsultant, except for amounts withheld as allowed herein.
  - I. Construction Manager shall include in each of its subcontracts a provision requiring each CM Subconsultant to include or otherwise be subject to the same invoicing, payment and interest requirements with respect to each lower-tier subconsultant or subcontractor.

- J. Construction Manager's obligation to pay an interest charge to a CM Subconsultant pursuant to this Agreement shall not be construed to be an obligation of Owner. A contract modification shall not be made for providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.
- K. Nothing contained in this Agreement shall create any contractual relationship between any CM Subconsultants and Owner.
- L. Owner and Construction Manager acknowledge that Projects may establish a non-linear, non-sequential plan for design and construction using fast-tracking, early work packages, and early work package amendments. The Construction Manager's schedule and compensation established in this Agreement are based on preliminary, limited assumptions regarding the design and construction process. As additional information becomes available, Owner may agree to, to the extent the Construction Manager is impacted by such, to make an equitable adjustment of schedule and compensation with the Construction Manager.

## **ARTICLE 6—OPINIONS OF COST OF THE WORK**

### **6.01 Opinions of Probable Cost of the Work**

- A. To the extent that a Contractor renders opinions regarding probable cost of the Work, Construction Manager assumes no responsibility for the accuracy of such opinions.
- B. Construction Manager's opinions of probable cost of the Work and reviews of the Contractors' cost of work are to be made on the basis of Construction Manager's experience, qualifications, and general familiarity with the construction industry. However, because Construction Manager has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Construction Manager cannot and does not guarantee that proposals, bids, or actual cost of the Work will not vary from opinions of probable cost of the Work prepared by Construction Manager, if any.
- C. If Owner requires greater assurance as to probable cost of the Work than the opinions, if any, provided by Construction Manager, then Owner agrees to obtain an independent cost estimate.

### **6.02 Opinions of Total Project Costs**

- A. The services, if any, of Construction Manager with respect to the total cost of a Project will be limited to assisting the Owner in tabulating the various categories that comprise total Project costs. Construction Manager assumes no responsibility for the accuracy of any opinions of total Project costs.

## **ARTICLE 7—GENERAL CONSIDERATIONS**

### **7.01 Standards of Performance**

- A. The Construction Manager serves as an advisor to the Owner in providing the services described in this Agreement. Nothing in this Agreement is to be construed to mean that the Construction Manager is a fiduciary of the Owner.
- B. The standard of care for all professional services performed or furnished by Construction Manager under this Agreement will be the care and skill ordinarily used by members of the construction management profession providing similar services under similar

circumstances. Construction Manager and the CM Subconsultants are to comply with applicable professional licensing requirements. Construction Manager makes no warranties, express or implied, under this Agreement or otherwise, in connection with Construction Manager's services.

- C. Construction Manager may employ such CM Subconsultants as Construction Manager deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner. Construction Manager is responsible to Owner for the acts and omissions of any CM Subconsultants performing or furnishing services under this Agreement.
- D. Construction Manager shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor will Construction Manager have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Construction Manager shall not be responsible for the acts or omissions of any Constructor.
- E. Construction Manager neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work in accordance with the Contract Documents.
- F. While at the Site, Construction Manager, the CM Subconsultants, and their employees and representatives will comply with the applicable requirements of any Contractor's and Owner's safety programs of which Construction Manager has been informed in writing.
- G. Owner will make the services of each Engineer and the Owner's Advisor available to Construction Manager for consultation regarding engineering and technical matters applicable to a Project during construction, including but not limited to (1) consultations regarding the interpretation or design intent of Drawings and Specifications prepared or furnished by such Engineer and (2) the compliance of the Work (whether completed or in progress) with the requirements of the Contract Documents. If the services of such Engineer are not made available during the construction phase of the applicable Project, Owner will assume all responsibility for interpretation of the Contract Documents and other engineering and technical obligations, and waives any claims against Construction Manager relating to such matters.
- H. Compliance with Laws and Regulations, and Policies and Procedures
  - 1. Construction Manager and Owner shall comply with applicable Laws and Regulations.
  - 2. This Agreement is based on Laws and Regulations and Owner-mandated standards as of the Effective Date of the Agreement. Changes to these requirements after the Effective Date of the Agreement may be the basis for modifications to Owner's responsibilities or to Construction Manager's scope of services, times of performance, and compensation.

#### 7.02 Ownership and Use of Documents

- A. All Documents are instruments of service, and Construction Manager owns the Documents, including all associated copyrights and the right of reuse at the discretion of the Construction Manager, subject to the following provisions:
  - 1. Upon receipt by Construction Manager of payment due and owing for services relating to preparation of the Documents through the time such payment is due and subject

to the express exclusions that follow, Construction Manager and any CM Subconsultants will grant to Owner the ownership of the Documents, including all associated copyrights and the right of reuse.

2. When requested by Owner, Construction Manager will perform any clerical or administrative acts reasonably necessary to confirm or record the transfer of Construction Manager's interests in the Documents to the Owner, and Owner will reimburse the Construction Manager for its reasonable, verifiable costs to comply with the transfer request.
  3. Construction Manager shall have and retain the ownership, title, and property rights, including copyright, patent, intellectual property, and common law rights, in any design elements, including but not limited to standard details, drawings, plans, specifications, methodologies, and engineering computations, used in the Documents, but developed by Construction Manager or its CM Subconsultants previous to or independent of this Agreement ("Previously/Independently Created Works"). Construction Manager shall provide appropriate verification of such previous or independent development upon Owner's request.
  4. Upon receipt by Construction Manager of payment due and owing for services relating to preparation of the Documents through the time such payment is due, Construction Manager will issue to Owner a royalty-free, nonexclusive, and irrevocable license to use such Previously/Independently Created Works on the Project to which they relate or on any extension of that Project.
  5. Owner acknowledges that the Documents are not intended or represented to be suitable for use on the Project to which they relate unless completed by Construction Manager, or for use or reuse by Owner or others on extensions of that Project, on any other project, or for any other use or purpose, without written verification or adaptation by Construction Manager.
  6. Any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Construction Manager, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Construction Manager or to its officers, directors, members, partners, agents, employees, and Subconsultants.
  7. Not used.
  8. Such limited license to Owner shall not create any rights in third parties.
  9. Nothing herein limits the Construction Manager's right of use or reuse of Previously/Independently Created Works or any of Construction Manager's non-Document work product.
- B. If Construction Manager at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project to which they relate or for any other purpose, then Owner shall compensate Construction Manager at rates or in an amount to be agreed upon by Owner and Construction Manager.
- C. Construction Manager shall inform Owner if Construction Manager is aware of any invention, design, process, product, or device specified in the Documents that is subject to payment, whether by Owner or a Contractor, of any license fee or royalty to others, as required by patent rights or copyrights. If Construction Manager's good-faith inclusion in the Documents of new, innovative, or non-standard technologies, for the benefit of Owner and the Project, results in third-party claims of infringement or violation of intellectual



property rights, then Owner and Construction Manager shall share equally the costs of defending against, settling, or paying such claims.

- D. Construction Manager will obtain Owner's consent, which will not be unreasonably withheld, prior to releasing any publicity, including news and press releases, promotional publications, conference abstracts and presentations, award and prize competition submittals, and other advertising regarding the subject matter of this Agreement. Nothing herein will limit the Construction Manager's right to include information in statements of qualifications and proposals to others accurately describing its participation and participation of employees in the Project.

7.03 Not used.

7.04 Not used.

7.05 Electronic Transmittals

- A. To the fullest extent practical, Owner and Construction Manager agree to transmit, and accept, for each Project, all Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Each Project shall have its own secure website.
  - 1. Compliance with any electronic documents protocol by Construction Manager shall be considered a Basic Service and no direct or separate compensation will be paid to Construction Manager for such compliance unless provisions for separate compensation are expressly set forth in an electronic documents protocol attached hereto as an exhibit or adopted as an Amendment to this Agreement.
  - 2. Construction Manager's costs directly attributable to changes in Construction Manager's electronic documents obligations, after the effective date of this Agreement, necessitated by revisions to an electronic documents protocol, delayed adoption of an electronic documents protocol, or implementation of other electronic Documents protocols, will be compensated as Additional Services.
- B. If this Agreement does not include Exhibit F or otherwise does not establish or include protocols for transmittal of electronic documents by electronic means, then Owner and Construction Manager may operate without specific protocols or may jointly develop such protocols at a later date.
- C. Except as stated otherwise in Exhibit F, if included in this Agreement, when transmitting electronic documents by electronic means, the transmitting party makes no representations as to long term compatibility, usability, or readability of the electronic documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the electronic documents, or from those established in applicable protocols.
- D. This Agreement, including any electronic documents protocol, is not intended to create obligations for Owner or Construction Manager with respect to transmittals to or from third parties, except as expressly stated in the electronic documents protocol.

7.06 Insurance

- A. Construction Manager shall obtain and maintain, at its own cost and expense, the insurance coverages specified in Exhibit G to the Agreement, which insurance shall be in accordance with this Paragraph 7.06.

- B. All insurance required by this Paragraph 7.06 shall be from insurance companies that are duly licensed or authorized to do business in the Commonwealth of Virginia and have a current policyholder's management and financial size category rating of not less than "A:VIII" according to A.M. Best's Financial Strength and Financial Size Category.
- C. Construction Manager shall deliver to Owner, with copies to each additional insured identified in Paragraph 7.06.L below, the following:
  - 1. Certificates of insurance and endorsements establishing that Construction Manager has obtained and is maintaining the policies and coverages required hereunder, with the understanding that updated, compliant certificates of insurance and endorsements shall be delivered annually, at least ten (10) days prior to the expiration of any policy, to evidence renewal of the required insurance coverages.
  - 2. Upon request by Owner or any additional insured, other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Construction Manager and CM Subconsultants, if any. In any documentation furnished under this provision, Construction Manager and CM Subconsultants may block out (redact) any confidential premium or pricing information or other information not applicable to this Agreement.
- D. Failure of Owner or additional insured to demand the documents required by Paragraph 7.06.C, or failure of Owner to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the obligation of the relevant party (i.e., Construction Manager or CM Subconsultant) to obtain and maintain such insurance.
- E. Construction Manager shall require CM Subconsultants to purchase and maintain the insurance coverages specified under Exhibit G to the Agreement.
- F. Without prejudice to any other right or remedy, if Construction Manager has failed to obtain required insurance, Owner may elect (but is in no way obligated) to obtain equivalent insurance to protect Owner and additional insureds' interests at the expense of Construction Manager, and any payments to the Construction Manager will be adjusted accordingly.
- G. Owner does not represent that insurance coverage and limits established in Exhibit G to the Agreement will be adequate to protect the interests of Construction Manager and/or the CM Subconsultants. Each such party is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that the Construction Manager deems necessary.
- H. The insurance and insurance limits required under this Agreement are minimums and shall not be deemed as a limitation on Construction Manager's liability, or that of the CM Subconsultants, under the indemnities granted to Owner, additional insured and other individuals and entities in the Contract or otherwise.
- I. If in any instance the Construction Manager has not performed its obligations respecting obtaining and maintaining insurance coverage required hereunder, or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the insurance policies, then for purposes of determining Construction Manager's liability and the limits thereon or determining reductions in compensation due from Owner to Construction Manager on account of available insurance, Construction Manager shall be treated as if it has elected to self-insure up to the full amount of insurance coverage

that would have been available had the Construction Manager performed such obligations and not committed such failure.

- J. Construction Manager and any CM Subconsultants shall be solely responsible for any and all deductibles or self-insured retentions that shall apply under any required, or otherwise purchased, insurances and shall have no recourse against Owner for any such costs.
- K. All policies of insurance that Construction Manager is required to purchase and maintain under this Contract shall:
  - 1. Contain a provision requiring the insurer to give not less than thirty (30) days' prior notice to Owner whenever the insurer gives Construction Manager a notice of cancellation or non-renewal with respect to the policy (except in the case of any non-premium payment, not less than ten (10) days' prior notice, which the insurer shall be obligated to give to Owner simultaneously with providing such notice to Construction Manager). The provision required by the preceding sentence shall not be deemed to infer a right of cancellation that would otherwise not exist in the absence of such provision. Should the Construction Manager's insurers be unable to provide notice in compliance with the above-noted requirement, in the alternative, Owner will accept a commitment from Construction Manager or Construction Manager's insurance broker to provide such timely notice.
  - 2. Contain coverage terms and conditions that reflect the industry standard for undertakings of a similar size, scope, and nature of this Project that the commercial market will provide and support as of the date of such insurance procurement and any subsequent renewals.
  - 3. Other than for workers compensation/employer's liability and professional liability insurance, include cross-liability clauses allowing one insured to bring a claim against another insured party.
  - 4. Be endorsed so that the insurer agrees to waive, to the extent permitted by law, all rights of subrogation or action that it may have or acquire against Owner or Owner Indemnitees.
  - 5. Other than for workers compensation/employer's liability insurance, and automobile liability insurance, contain a provision under which the insurer agrees that the failure of one insured to observe and fulfill the terms of the policy will not prejudice the coverage of the other insureds.
  - 6. Not include defense costs within the limits of coverage or permit erosion of coverage limits by defense costs, except that defense costs may be included within the limits of coverage of Construction Manager.
- L. Construction Manager's commercial general liability, automobile liability, and umbrella or excess liability policies must:
  - 1. Include and list as additional insureds Owner and Owner Indemnitees;
  - 2. Include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
  - 3. Afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
  - 4. Not seek contribution from insurance maintained by the additional insured; and
  - 5. As to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Construction Manager's acts or omissions, or

the acts and omissions of Construction Manager-related entities, in the performance of Construction Manager's operations.

## 7.07 Suspension and Termination

### A. Suspension

1. By Owner—Owner may suspend Construction Manager's services on any or all Projects, in whole or in part, for up to 90 days upon 7 days' written notice to Construction Manager.
2. By Construction Manager— Construction Manager may, after giving 15 days' written notice to Owner, suspend services for a Project under this Agreement:
  - a. if Owner has failed to pay Construction Manager for invoiced services and expenses related to such Project, as set forth in Paragraphs 5.02F;
  - b. in response to the presence of Constituents of Concern at the Site of that Project, as set forth in Paragraph 7.12.

### B. Termination for Cause

1. Either party may terminate the Agreement with respect to a Project, in whole or in part, for cause upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms of the Agreement with respect to such Project, through no fault of the terminating party.
  - a. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 7.07B.1 if the party receiving such notice begins, within 7 days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein will extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. In addition to its termination rights in Paragraph 7.07B.1, Construction Manager may terminate this Agreement with respect to a Project, in whole or in part, for cause upon 15 days' written notice:
  - a. if Owner demands that Construction Manager furnish or perform services for such Project contrary to Construction Manager's responsibilities as a licensed professional;
  - b. if Construction Manager's services for that Project are delayed or suspended for more than 90 days for reasons beyond Construction Manager's control and for which the Owner is responsible; or
  - c. as the result of the presence at or adjacent to the Site of that Project of undisclosed Constituents of Concern, as set forth in Paragraph 7.12.
3. Construction Manager will have no liability to Owner on account of any termination by Construction Manager for cause.

- ### C. Termination for Convenience—
- Owner may terminate this Agreement, in whole or in part, with respect to any or all Projects, for convenience, effective upon Construction Manager's receipt of notice from Owner. Additionally, because all payment obligations from Owner under this Agreement are subject to the availability of appropriations from Owner's Board

of Directors, in the event of non-appropriation of funds, irrespective of the source of funds, for the services under this Agreement, Owner may terminate this Agreement, in whole or in part, for those goods or services for which funds have not been appropriated. Written notice will be provided to Construction Manager as soon as possible after such action is completed.

- D. Extension of Effective Date of Termination—If Owner terminates the Agreement, in whole or in part, for cause or convenience, Owner may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Construction Manager to demobilize personnel and equipment from the applicable Project Site(s) to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files. Construction Manager shall be entitled to compensation for such tasks.
- E. Payments Upon Termination—In the event of any termination under Paragraph 7.07, Construction Manager will be entitled to invoice Owner and to receive full payment for all services performed or furnished for such Project(s) in accordance with this Agreement and all reimbursable expenses incurred for such Project(s) through the effective date of termination. Upon making such payment, Owner will have the right to the use of Documents subject to the provisions of Paragraph 7.02.
  - 1. If Owner has terminated the Agreement, in whole or in part, for cause and disputes Construction Manager's entitlement to compensation for services and reimbursement of expenses, then Construction Manager's entitlement to payment and Owner's rights to the use of the Documents will be resolved in accordance with the dispute resolution provisions of this Agreement or as otherwise agreed in writing.
  - 2. If Owner has terminated the Agreement, in whole or in part, for convenience, or if Construction Manager has terminated the Agreement, in whole or in part, for cause, then Construction Manager will be entitled, in addition to the payments identified above, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with CM Subconsultants, and other related close-out costs.

7.08 Not used.

7.09 Controlling Law

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.
- B. Venue for any exercise of rights at law will be the circuit courts of the City of Alexandria, Virginia.

7.10 Successors, Assigns, and Beneficiaries

- A. Owner, Construction Manager, and the partners, successors, executors, administrators, and legal representatives of Owner and Construction Manager, are bound to the other party and to their partners, successors, executors, administrators, and legal representatives and, to the extent permitted by Paragraph 7.10.B, to the assigns of Owner and Construction Manager, in respect of all covenants and obligations of this Agreement.
- B. Neither Owner nor Construction Manager may assign, sublet, or transfer any rights under or interest, including, but without limitation, money that is due or may become due, in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated by law. No assignment will release or

discharge the assignor from any duty or responsibility under this Agreement unless specifically stated to the contrary in any written consent to an assignment.

- C. Unless expressly provided otherwise in this Agreement:
  - 1. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Construction Manager and not for the benefit of any other party.
  - 2. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Construction Manager to any Constructor, including Contractor, other third-party individual or entity, or to any surety for or employee of any of them.
  - 3. Owner agrees that the substance of the provisions of this Paragraph 7.10.C shall appear in the Contract Documents prepared for any Project under this Agreement.

#### 7.11 Dispute Resolution

- A. Not used.
- B. Owner and Construction Manager shall resolve all disputes in the following manner:
  - 1. Construction Manager shall give notice to Owner, with a copy to Owner's designated representative, of any dispute arising out of or relating to this Agreement, in writing and within 10 days for the occurrence or beginning of the dispute. Owner and Construction Manager agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice, prior to invoking any other form of dispute resolution.
  - 2. If the Owner and Construction Manager are unable to resolve the dispute through good faith negotiation, then the Construction Manager shall submit a claim to Owner, with a copy to Owner's designated representative, detailing the dispute and requested resolution, in writing and within 10 days after the conclusion of the negotiation period set forth in Paragraph 7.11.B.1. Construction Manager's failure to timely submit such claim shall mean that Construction Manager has waived the claim and has no further right to pursue a remedy for such dispute. Owner's Chief Executive Officer shall consider Construction Manager's claim and shall render a final decision in writing on such claim within 60 days of Owner's receipt of the claim.
  - 3. If the Construction Manager disagrees with the Chief Executive Officer's final decision, or if the Chief Executive Officer fails to render a written final decision in within the time set forth in Paragraph 7.11.B.2, then the Construction Manager may pursue further action as follows. First, the Construction Manager shall request, in writing and within 10 days after the Chief Executive Officer's final decision (or time when the final decision should have been issued, as applicable), that the Owner agree to participate in voluntary, non-binding mediation of the dispute. If so agreed, Owner and Construction Manager agree to participate in the mediation process in good faith. The process will be conducted on a confidential basis and must be completed within 120 days. Each party shall bear its own costs of mediation and the parties shall split equally the costs and fees charged by the mutually agreeable mediator selected by the parties to conduct the mediation.
  - 4. If the parties fail to resolve a dispute through negotiations under Paragraph 7.11.B.1, Owner's Chief Executive Officer's review of the claim under Paragraph 7.11.B.2 or mediation under Paragraph 7.11.B.3 (if conducted), then:

- a. Construction Manager may institute legal action as provided under Section 2.2-4364 of the Code of Virginia, in the circuit courts of the City of Alexandria, Virginia, which the parties agree shall have exclusive jurisdiction over any disputes arising out of or relating to this Agreement. THE PARTIES AGREE TO WAIVE THEIR RIGHT TO TRIAL BY JURY AND AGREE TO HAVE ANY LITIGATION HEARD AND DECIDED BY A JUDGE SITTING WITHOUT A JURY.

#### 7.12 Environmental Condition of Site

- A. Owner has disclosed to Construction Manager in writing the existence of any known Constituents of Concern located at or adjacent to all Sites, including type, quantity, and location. Owner represents to Construction Manager that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Construction Manager, exist at any Site.
- B. If Construction Manager encounters an undisclosed Constituent of Concern, Construction Manager will notify Owner, and also will notify appropriate governmental officials if Construction Manager reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Construction Manager's scope of services does not include any services related to Constituents of Concern. If Construction Manager or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Construction Manager may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of a Project affected by the Constituents of Concern until Owner:
  1. Retains appropriate specialist(s), consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and
  2. Warrants that the specific site is in full compliance with applicable Laws and Regulations.
- D. If the presence at any Site of undisclosed Constituents of Concern adversely affects the performance of Construction Manager's services under this Agreement, then the Construction Manager has the option of:
  1. Accepting an equitable adjustment in its compensation or in the time of completion, or both, for the affected Project(s); or
  2. Terminating this Agreement for cause with respect to the Project(s) affected.
- E. Owner acknowledges that Construction Manager is performing professional services for Owner and that Construction Manager is and will not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of Constituents of Concern that may be encountered at or adjacent to any Site in connection with Construction Manager's activities under this Agreement.

#### 7.13 Indemnification and Waiver

- A. Indemnification by Construction Manager—To the fullest extent permitted by Laws and Regulations, Construction Manager shall indemnify and hold harmless Owner, each Engineer, each Contractor, the Owner's Advisor, and their officers, directors, members, partners, agents, and employees (the "Owner Indemnitees") from losses, damages and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the applicable Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness,

disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Construction Manager or Construction Manager's officers, directors, members, partners, agents, employees, or CM Subconsultants.

- B. No Defense Obligation—The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- C. Intentionally deleted.
- D. Percentage Share of Negligence—To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, will not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Construction Manager, Engineer, Owner Advisor and all other negligent entities and individuals.
- E. Waiver—To the fullest extent permitted by Laws and Regulations, Construction Manager waives against Owner, and Owner's officers, directors, members, partners, agents, employees, subconsultants, and insurers, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or any Project under this Agreement, from any cause or causes. Such excluded damages include but are not limited to loss of profits or revenue; loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; and cost of capital.,

#### 7.14 Miscellaneous Provisions

- A. Notices—Any notice required under this Agreement will be in writing and delivered: in person (by commercial courier or otherwise); by registered or certified mail; or by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line. All such notices are effective upon the date of receipt.
- B. Survival—Subject to applicable Laws or Regulations, all express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. Severability—Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Construction Manager.
- D. No Waiver—A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Agreement.
- E. Key Personnel—All Key Personnel identified in Exhibit A are committed to this Agreement for the duration of the Agreement, for so long as they remain employed by Construction Manager. Likewise, if a Key Personnel is identified in an amendment, such individual shall be committed for the remainder of the duration of the Agreement, for so long as they remain employed by Construction Manager. If extraordinary circumstances require a proposed change in Key Personnel under this Agreement, it must be submitted in writing to Owner's designated representative. In circumstances where the change is based on a Key Personnel leaving the employ of Construction Manager, qualifications information shall be provided on one or more proposed substitutes, and Owner's designated representative, at his/her reasonable discretion, will determine who will become the substitute and remain a Key Personnel going forward, and an amendment shall be



executed to reflect the approved change. In circumstances where the change concerns a Key Personnel who will remain in the employ of Construction Manager, information about the basis for the change request and qualifications information for one or more proposed substitutes will be provided and Owner's designated representative, at his/her reasonable discretion, will determine whether to authorize the proposed removal and, if approved, who shall become the substitute and remain a Key Personnel going forward and an amendment shall be executed to reflect the approved change.

- F. Non-Discrimination - Construction Manager will not discriminate against any employee or applicant for employment because of age, race, color, disability, religion, sex, national origin or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Construction Manager.
  - 1. Construction Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - 2. Construction Manager, in all solicitations or advertisements for employees placed by or on behalf of Construction Manager, will state that it is an equal opportunity employer. Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for meeting this requirement.
  - 3. Construction Manager will include the substance of this Paragraph 7.14.F in every subcontract or purchase order equal to or greater than \$10,000 in value unless exempted by rules, regulations, or orders of the U.S. Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, so that such provisions will be binding upon each CM Subconsultant.
- G. Non-Discrimination against Faith-Based Organizations - Owner does not discriminate against faith-based organizations and Construction Manager agrees not to discriminate against faith-based organizations.
- H. Federal Immigration Law - Construction Manager, CM Subconsultants, and any others it may employ do not, and will not during the term of this Agreement, knowingly employ an unauthorized alien as defined in the Federal Immigration and Reform and Control Act of 1986.
- I. Drug-Free Workplace - Throughout the term of this Agreement, Construction Manager agrees to:
  - 1. provide a drug-free workplace for Construction Manager's employees;
  - 2. post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Construction Manager's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
  - 3. state in all solicitations or advertisements for employees placed by or on behalf of Construction Manager that Construction Manager maintains a drug-free workplace; and

4. include the provisions of the foregoing clauses in every subcontract or purchase order equal to or greater than \$10,000 in value, so that the provisions will be binding upon each CM Subconsultant.

For the purposes of this provision, “drug-free workplace” means any site for the performance of services in connection with this Agreement, where the employees of Construction Manager are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana.

- J. Authorization to Conduct Business in the Commonwealth of Virginia – Construction Manager must, pursuant to Code of Virginia §2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the entire term of the Agreement, otherwise, the Agreement is voidable at the sole option of and no expense to Owner.
- K. Cybersecurity Compliance - Construction Manager shall comply with all applicable federal, state and local Laws and Regulations related to cybersecurity. Construction Manager also agrees to comply with all provisions of the Owner’s then-current cybersecurity and information technology policies and procedures, as are pertinent to Construction Manager’s operation. Construction Manager may, at any time, be required to execute and complete, for each individual Construction Manager’s employees or agents, additional forms which may include non-disclosure agreements to be signed by Construction Manager’s employees or agents acknowledging the confidentiality of Owner’s information entrusted with which such employees and agents while working on the Project. Any unauthorized release of proprietary or personal information by Construction Manager or an employee or agent of Construction Manager, including but not limited to CM Subconsultants, shall constitute a breach of its obligations under this Paragraph and the Agreement. Construction Manager shall immediately notify Owner, if applicable, of any “breach of security of the system” as that term is defined in Virginia Code 18.2-186.6, and other personal identifying information, such as personnel data or date of birth, provided by Owner to Construction Manager. Construction Manager shall provide Owner the opportunity to participate in the investigation of the breach and to exercise control over reporting the unauthorized disclosure, to the extent permitted by Laws and Regulations. Construction Manager shall indemnify and hold Owner harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable expenses suffered by, accrued against, or charged to or recoverable from Owner, on account of the failure of Construction Manager to perform its obligations pursuant to this Paragraph.
- L. Liens – Owner’s interest, whether in fee simple or easement, in any site at which the work or services under this Agreement is to be provided, cannot be subjected to a mechanic’s lien because mechanics liens cannot be placed on publicly-owned property rights in the Commonwealth of Virginia.
- M. Confidentiality - Each party shall (i) hold in strict confidence all confidential information of the other party, (ii) use the confidential information solely to perform or to exercise its rights under this Agreement, and (iii) not transfer, display, convey or otherwise disclose or make available all or any part of such confidential information to any third-party. However, parties may disclose the confidential information to such individuals that are bound by non-disclosure contracts. Each party shall take the same measures to protect against the disclosure or use of the confidential information as it takes to protect its own proprietary or confidential information (but in no event shall such measures be less than reasonable care).
  1. The term "confidential information" shall not include information that is:

- a. in the public domain through no fault of the receiving party or of any other person or entity that is similarly contractually or otherwise obligated;
  - b. obtained independently from a third-party without an obligation of confidentiality to the disclosing party and without breach of this Agreement;
  - c. developed independently by the receiving party without reference to the Confidential Information of the other party; or
  - d. required to be disclosed under the Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) or similar Laws or Regulations or pursuant to a court order.
2. Upon the termination or expiration of this Agreement or upon the earlier request of Owner, Construction Manager shall:
- a. at its own expense, (1) promptly return to Owner all tangible confidential information (and all copies thereof except the record required by Laws or Regulations), or (2) upon written request from Owner, destroy such confidential information and provide Owner with written certification of such destruction, and
  - b. cease all further use of Owner's confidential information, whether in tangible or intangible form.

Notwithstanding the requirements herein, Construction Manager may retain one (1) archival copy of the confidential information for its use in the performance of services hereunder, provided that such information is kept in strict confidence and Construction Manager employs prudent measures to maintain its integrity and nondisclosure.

Owner shall retain and dispose of Construction Manager's confidential information in accordance with the Commonwealth of Virginia's records retention policies.

3. Construction Manager shall not use the name of Owner or refer to Owner, directly or indirectly, in any press release, conference presentation, article, or formal advertisement without receiving prior written consent of Owner. In no event may Construction Manager use a proprietary mark of Owner without receiving a prior written consent of Owner. Construction Manager shall not make any communications on behalf of Owner with any federal, state or local government officials or news media without a prior written approval of Owner.

## ARTICLE 8—DEFINITIONS

### 8.01 Defined Terms

- A. Wherever used in this Agreement, terms with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below.
- 1. Not used.
  - 2. Agreement—This Agreement between Owner and Construction Manager as described in Article 9.
  - 3. Amendment—Written instrument used to modify the Agreement.
  - 4. Basic Services—Specified services to be performed for or furnished to Owner by Construction Manager in accordance with this Agreement, as set forth in Exhibit A.
  - 5. Not used.

6. CM Subconsultants—Individuals or entities having a contract with Construction Manager to furnish services, materials, or equipment with respect to the Project as Construction Manager’s independent professional associates, consultants, subcontractors, suppliers, or vendors.
7. Constituents of Concern—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
8. Construction Contract—The entire and integrated written contract between Owner and Contractor concerning the Work of a Project.
9. Constructor—Any person or entity (not including the Construction Manager, CM Subconsultants, Engineer, Owner Advisor or their employees, agents, representatives, or subconsultants, or Engineer’s or Owner Advisor’s subcontractors), performing or supporting construction activities relating to a Project, including but not limited to Contractors, subcontractors, suppliers, Owner’s work forces, utility companies, other contractors, other construction managers, design-builders, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
10. Contract Documents—Those items designated as “Contract Documents” in a Construction Contract, and which together comprise the Construction Contract for a particular Project. See also definition of “Front-End Construction Contract Documents” below.
11. Contractor—An individual or entity with which Owner enters into a Construction Contract for a Project.
12. Documents—Data, reports, record, forms, record drawings, and other deliverables, provided or furnished in appropriate phases by Construction Manager to Owner pursuant to this Agreement. Documents do not include those Contract Documents or other instruments of service prepared or provided by an Engineer.
13. Drawings—That part of the construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
14. Effective Date of the Agreement—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
15. Engineer—The individual or entity that has primary responsibility for preparing or furnishing the design, including the Drawings and Specifications, and providing engineering services to Owner with respect to a Project, and which is identified as an Engineer in Paragraph 1.01.B of this Agreement.
16. Fiscal Year—The twelve (12) month period over which Owner does its accounting, starting July 1 and ending June 30 of each year.
17. Front-End Construction Contract Documents—Those construction Contract Documents whose primary purpose is to establish legal and contractual terms and conditions, typically including the Owner-Contractor agreement, bonds, general conditions, and supplementary conditions. The term excludes the Drawings and

Specifications, and any Contract Documents delivered or issued after the effective date of the Construction Contract.

18. Laws and Regulations; Laws or Regulations—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
19. Owner Indemnitees – Includes Owner, each Engineer, each Contractor, the Owner Advisor, and their officers, directors, members, partners, agents, and employees
20. Reimbursable Expenses—The expenses incurred directly by Construction Manager in connection with the performing or furnishing of services for a Project.
21. Site—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work for a Project is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
22. Not used
23. Specifications—The part of the construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
24. Not used.
25. Not used
26. Work—The entire construction or the various separately identifiable parts thereof required to be provided under the construction Contract Documents for a Project. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents for a Project.

## ARTICLE 9—AGREEMENT AND EXHIBITS

### 9.01 Agreement

- A. This Agreement, together with the Exhibits identified in Paragraph 9.02, constitutes the entire agreement between Owner and Construction Manager and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

### 9.02 Exhibits

- A. The following exhibits are included and incorporated in the Agreement:
  1. Exhibit A, Construction Manager's Services.
  2. Exhibit B, Reserved.
  3. Exhibit C, Reserved.
  4. Exhibit D, Reserved.
  5. Exhibit E, Reserved.
  6. Exhibit F, Reserved.

7. Exhibit G, Insurance.
8. Exhibit H, Reserved.
9. Exhibit I, Reserved.
10. Exhibit J, Payments to Engineer for Services and Reimbursable Expenses.

#### 9.03 Construction Manager's Certifications

- A. Construction Manager certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 9.03:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
  3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.
- A. Construction Manager acknowledges that the ethics in public contracting provisions of Sections 2.2-4367 through 2.2-4377 of the Code of Virginia are applicable to all contracts entered into by Owner, including this Agreement, and certifies that it has complied with such provisions in connection with the procurement of this Agreement.
- B. Construction Manager acknowledges that it has no authority to contract for Owner in any way to bind, to commit Owner to any agreement of any kind, or to assume any liabilities of any nature in the name of or on behalf of Owner. Construction Manager certifies that under no circumstances shall Construction Manager, or any of its employees, hold itself out as or be considered an agent or an employee of Owner, and Owner shall not have any duty to provide or maintain any insurance or other employee benefits on behalf of the Construction Manager or its employees. Construction Manager certifies, represents and warrants that it is an independent contractor for purposes of federal, state and local employment taxes and agrees that Owner is not responsible to collect or withhold any federal, state or local employment taxes, including, but not limited to, income tax withholding and social security contributions, for Construction Manager. Any and all taxes, interest or penalties (including, but not limited to, any federal, state or local withholding or employment taxes, and any penalties related to health care or employee benefits laws) that are imposed, assessed or levied as a result of this Agreement or services performed pursuant to this Agreement shall be paid or withheld by Construction Manager or, if assessed against and paid by Owner, shall be reimbursed by Construction Manager upon demand by Owner.

#### 9.04 Conflict of Interest

- A. Nothing in this Agreement will be construed to create or impose any duty on the part of Construction Manager that would be in conflict with Construction Manager's paramount obligations to the public health, safety, and welfare under the professional practice requirements governing construction managers, and all licensed professionals employed by Construction Manager or CM Subconsultants.

- B. If during the term of this Agreement a potential or actual conflict of interest arises or is identified:
1. Construction Manager and Owner together will make reasonable, good faith efforts to avoid or eliminate the conflict of interest; to mitigate any adverse consequences of the conflict of interest; and, if necessary and feasible, to modify this Agreement to address the conflict of interest and its consequences, such that progress under the Agreement may continue.
  2. Such efforts will be governed by applicable Laws and Regulations and by any pertinent Owner's policies, procedures, and requirements, including any conflict-of-interest resolution methodologies, provided to Construction Manager under Paragraph 3.01 of this Agreement.

The Effective Date of the Agreement is **[date to be inserted at the time of execution]**.

Owner:

\_\_\_\_\_  
*(typed or printed name of organization)*

By: \_\_\_\_\_  
*(individual's signature)*

Date: \_\_\_\_\_  
*(date signed)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Construction Manager:

\_\_\_\_\_  
*(typed or printed name of organization)*

By: \_\_\_\_\_  
*(individual's signature)*

Date: \_\_\_\_\_  
*(date signed)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

*(If Construction Manager is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_

Designated Representative:

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address:

\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Designated Representative:

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address:

\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

License No.: \_\_\_\_\_  
*(where applicable)*

State: \_\_\_\_\_



## Exhibit A—CONSTRUCTION MANAGER’S SERVICES

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### ARTICLE 1—GENERAL

#### 1.01 General Scope

- A. Construction management as performed by a Construction Manager as Advisor consists of a series of core management tasks focused on the construction and commissioning phases of the Project. The Construction Manager’s services are provided to:
  - 1. Coordinate, monitor, and report on the Projects and activities associated with the Projects.
  - 2. Manage a construction management information system (CMIS) for use across the Projects for collecting, disseminating, and storing documents and information.
  - 3. Monitor the Projects to meet each Project’s goals and objectives.
  - 4. Recommend action to the Owner related to the management of the design and construction of the Projects.
  - 5. Develop schedule and cost control systems to monitor and report on the progress of the overall Projects.

#### 1.02 Basic Services

- A. This Exhibit A describes the scope of services to be provided by Construction Manager.
  - 1. Basic Services are services that are required for the Project and authorized by the execution of the Agreement.
  - 2. Not used.
- B. Not used.
- C. In this Exhibit A imperative sentences with respect to the performance of services are directives to the Construction Manager, unless expressly indicated otherwise.

#### 1.03 Key Personnel

- A. Key Personnel shall include: Construction Manager, CMIS Manager, Change Management Lead, [XXX], and [XXX].

### ARTICLE 2—BASIC SERVICES

#### 2.01 Construction Management Information System (CMIS)

- A. The CMIS is a web-based software package that shall be used for automated workflows as well as the management of the Projects’ documents and reporting. CMIS will be used by all stakeholders of the Projects including, but not limited to the Owner, the Construction Manager, the Engineers, the Owner’s Advisor, and the Contractors to facilitate communication and efficiently manage the Project.
- B. The Construction Manager shall assist the Owner in the selection, procurement, and evaluation of purchasing options with Owner, including purchase of a CMIS through the Construction Manager for use on the Projects.
- C. At the start of the Agreement, the Construction Manager shall coordinate with the Owner for Project setup (including understanding the Owner’s existing workflows and processes) and CMIS training.

- D. Throughout the Agreement, the Construction Manager will manage the administration of the CMIS for the Project, including onboarding and training, data management, and reporting functionality.

## 2.02 Procurement Phase Services

### A. Tertiary Systems Upgrade

- 1. The Construction Manager personnel, as appropriate, will participate in the proprietary meetings associated with the Tertiary Systems Upgrade Project procurement process. The Construction Manager shall review any pre-meeting submittals, attend all meetings, and provide post-meeting assessments of the approaches discussed.

### B. Centrate Pretreatment Project

- 1. Constructability Reviews to provide input, advice, and recommendations on constructability, materials, and equipment selection and availability. This review will consider operability and risk management.

## 2.03 Preconstruction and Design Phase Services

### A. The Construction Manager shall provide preconstruction and design phase services for the following Projects:

- 1. Solids Upgrade Program
- 2. Preliminary and Primary Systems Upgrade Project
- 3. Tertiary Systems Upgrade Project

### B. Services include:

- 1. Constructability Reviews to provide input, advice, and recommendations on constructability, materials and equipment selection, and availability. The review will consider operability and risk management.
- 2. Cost Estimating/Cost Management to develop independent cost estimates as needed and/or to conduct ongoing evaluations of the Owner's Project and budget requirements to determine if contractors will be able to construct the Project within the Owner's budget. Discuss such cost estimates and evaluations with Owner.
- 3. Schedule reviews to monitor the Project and milestone schedules and revise as necessary to determine the impact of scope and schedule changes. Compare actual with planned progress each month during the Project to determine if the Project is on schedule. Include information regarding overall schedule in monthly summary reports.

## 2.04 Construction Management Services

### A. The Construction Manager shall provide construction management oversight services for the following Projects:

- 1. Solids Upgrade Program
- 2. Preliminary and Primary Systems Upgrade Project
- 3. Tertiary Systems Upgrade Project
- 4. Centrate Pretreatment Project
- 5. Job Order Contracts

B. Oversight of Resident Engineers

1. Provide resident engineer oversight for contract compliance and reporting.
2. Provide field oversight during construction.
3. Participate in any Project progress meetings, operations and maintenance staff training, equipment and structure testing, and other coordination meetings with the Contractors, Owner, Engineer, and others on an as-needed basis over the Agreement.
4. Attend and actively participate in risk workshops, partnering workshops, and other workshops with Contractors, Owner, Engineer, and others on an as-needed basis over the Agreement.
5. Respond to Requests for Information (RFI) and provide technical input, as needed.
6. Review the Contractors submittals as determined by the resident engineers, including but not limited to Drawings, Specifications, shop drawings, samples, permit submissions, product data, personnel qualifications, reports, registers, plans, and studies for compliance with design and adherence to the Contract Documents.
7. Review of Contractor requested design changes as determined by the resident engineer, including scope, schedule, and cost implications and provide disposition.
8. Ensure the engineer of record reviews and approves all construction submittals related to elements of work for which they have design responsibilities
9. Participate in safety audits.

C. Change/Claim Management

1. Establish procedures for administering proposed modifications to the Contract Documents.
2. Prepare estimates of proposed changes to the Contract Documents for comparison with Contractor's pricing and for use in negotiating an equitable price for changes to the Construction Contract.
3. Receive and evaluate Contractor requests and change proposals seeking a change in the Contract Documents, and make recommendations to the Owner on the timeliness, merit, and value of the requests and change proposals, based on the terms of the Construction Contract and on information submitted by the Contractor or available in project documentation. Process Construction Contract modification requests and negotiate with the Contractor on behalf of the Owner to determine the cost and time impacts of these changes. Prepare documentation for approved changes for execution by the Owner.
4. Conduct investigations, analyses, and studies of proposed modifications of the Contract Documents, and proposed substitutions of equipment and/or materials, corrections of defective or deficient work of the Contractor, or other deviations from the construction Contract Documents, and coordinate Engineer's services in support of such investigations, analyses, and studies. When appropriate, obtain express Owner authorization of such services.
5. Prepare documentation for Construction Contract modifications required to implement modifications in the design of the Project prepared by the Engineer.

D. Monthly Reporting to Owner. Develop monthly reports for Owner to track schedule and costs.

- E. Site Coordination. Support resident engineers in the management and coordination of planning activities that may impact Owner operations and staff, including traffic, construction areas, and plant processes.
- F. Payment Applications by Contractors: Review and provide input on the monthly payment applications provided by Contractors.
- G. Project Close-out. Work with Owner, Contractor, resident engineer, and Engineer to participated in substantial and final completion inspection and obtain all final documentation

#### 2.05 Resident Engineering and Inspection (RE&I) Services

- A. Provide RE&I services described herein for the Tertiary Systems Upgrade (Tertiary) project and Centrate Pretreatment (CPT) project.
- B. Progress Meetings. The Construction Manager will facilitate bi-weekly progress meetings for each Project with the respective Contractors to review safety and quality performance, design status, progress completed against baseline in the previous week, review four-week schedule look ahead, review the status of action items, and maintain coordination of current and upcoming activities. The Construction Manager will facilitate monthly progress meetings with the Owner, the Owner's Advisor, when applicable, and the Contractors to review the Contractors' progress against the baseline schedule, a forecast of the schedule of all major milestones, the status of action items, and the status of all key design documentation. The Construction Manager will prepare the meeting agenda, lead the meetings, and prepare/disseminate the meeting minutes.
- C. Schedule Management. Oversight of the contractors' schedules to ensure the success of the Projects, including but not limited to:
  - 1. Review and comment on the preliminary, baseline, and any revisions to CPM schedule for compliance with contract requirements, as well as for appropriateness of activities, durations and logic/sequencing of the Project;
  - 2. Review the monthly progress narratives, schedule updates, and revisions submitted by the Contractor to determine whether these documents accurately represent actual progress and future planning;
  - 3. Facilitate a monthly schedule coordination meeting with the Contractor to support accurate reporting and tracking of the Project's schedule and budget;
  - 4. Make an independent assessment of the schedule forecast and report findings to the Owner;
  - 5. Incorporate change order schedule fragments into the CPM schedule to determine the impact the proposed Contractor contract change order has on contract milestones and overall Project completion;
  - 6. Maintain, on continuous basis, a record of Owner versus contactor-caused delays based on an approved CPM and schedule updates;
  - 7. Perform time impact analysis for Contractor requested time extensions that accompany change orders;
  - 8. Prepare a monthly schedule analysis report; and
  - 9. Analyze and prepare recommendations for Contractor contract extension of time requests and Project delay claim responses.

- D. Change Management. Support the overall change management process through verification of Contractor change requests and scope, review and development of cost estimates, as needed, support and/or leading negotiations, and assisting in the preparation of responses to any claims.
- E. Payment Applications. Review and provide input on the monthly payment applications provided by Contractors.
- F. Environmental Health and Safety Management. The Contractors bear the responsibility for their means and methods of construction and the safety of their workers. The Construction Manager shall oversee the Contractors' safety programs to ensure compliance with health and safety standards, OSHA/VOSH, and industry best practices.
  - 1. Review and provide oversight of the Contractors' Environmental Health and Safety Plan (EHASP) and site-specific Job Hazard Analyses (JHA).
  - 2. Provide oversight and safety orientation of Owner, Owner's Advisor, and RE&I staff initially and at intervals as required at each construction staging area or for each construction activity.
  - 3. Review and comment on all safety related documents submitted by the Contractors to ensure comprehensive coverage of all site activities.
  - 4. Develop and administer with Owner a process for Water Resource Recover Facility (WRRF) access.
  - 5. Facilitate weekly meetings with the Contractors' Site Safety Representative (SSR) to ascertain and discuss upcoming construction activities and the application of EHASP and JHAs, and review best management practices and safety performance.
  - 6. Perform two (2) inspections per shift with the Contractors' SSR to assess whether the Contractor is adequately identifying and addressing the environmental health and safety risks/hazards of the Work, and to document non-compliance with EHASPs and JHAs.
  - 7. Track and monitor the Contractors' SSR performance including, but not limited to, daily report review, ensuring safety issues are being addressed, and the overall effectiveness of the SSR.
  - 8. Prepare monthly trending analysis of Contractors' performance to proactively address non-conformance.
  - 9. Prepare Contractors safety evaluations at 6-month intervals.
  - 10. Notify Owner of all incidents including near misses.
  - 11. Review Contractors' incident reports for acceptability; participate in meetings related to incidents involving Contractors' employees and subcontractors, and ensure all necessary Contractors corrective actions are implemented.
  - 12. Provide incident investigation and root cause analysis to Owner for all incidents including near misses.
  - 13. Oversee emergency response planning and drills for the construction staging areas in coordination with Owner.
  - 14. Submit a monthly Environmental Health and Safety Status Report.
- G. Permits and Regulatory Compliance. The Construction Manager shall work collaboratively with the Contractors and Owner's Advisor, when applicable, to track permit and regulatory

conditions. The Construction Manager will track permit acquisition and compliance via monthly submissions to a tracking log via CMIS. The Construction Manager shall at a minimum:

1. Maintain hard and electronic copies of all permit applications, secured permits, and associated correspondence.
  2. Verify that permits are posted in accordance with each permit's requirements.
  3. Track that all permit conditions are being met.
- H. Quality Management and Inspections. The Construction Manager shall inspect the installation of all facets of the Project, including the inspection of temporary works for conformance with approved submittals. The Construction Manager shall use its best professional efforts to safeguard Owner against defects and deficiencies in the Work and in determining whether the Work conforms to the contracts.
1. The Construction Manager shall maintain inspection and testing records and all necessary documents needed to obtain the Certificate of Occupancy/Certificate of Completion.
  2. The Construction Manager shall log all incidents of non-conformance with the construction contract that are not immediately recognized and addressed in a timely manner by the Contractors. The Construction Manager shall track and ensure timely resolution of all non-conformance issues by the Contractors. Where clarification is required, the Construction Manager shall prepare a Request for Clarification.
  3. The Construction Manager shall manage and/or generate the issuance of Non-Conformance Notices (NCN).
  4. The Construction Manager shall provide oversight and witnessing of Contractor required inspections and testing.
  5. The Construction Manager shall develop and implement a plan to perform inspection and Quality Assurance audits of equipment/materials manufactured.
  6. The Construction Manager shall witness and create a comprehensive photographic log of job progress. The log must be well-organized and maintained to facilitate quick record retrieval as needed.
  7. Each inspector for the Construction Manager shall prepare and maintain daily inspection reports for the Construction Contracts and input the information into the CMIS.
  8. Perform root cause analyses and make corrective measure recommendations.
- I. Third Party and Special Inspection Services. The Construction Manager shall provide complete Third Party and Special Inspection services as required by the City of Alexandria and as determined by the Project.
- J. Independent Acceptance Inspection Services. The Construction Manager shall confirm that representative samples are provided for submittal to selected testing laboratories where required pursuant to the Construction Contract, and shall obtain test results, and recommend acceptance or non-acceptance of materials to the Owner based on the laboratory test results. The Construction Manager shall monitor equipment, material, shop tests, and preliminary and final testing. The Construction Manager shall:
1. Review proposed field tests procedures submitted by the Contractors;
  2. Attend and monitor equipment, material, shop, preliminary and final field tests; and

3. Analyze the results and determine acceptability of field tests in conformance with the Construction Contracts.
- K. Digital Photographic Documentation System. The Construction Manager shall utilize and administer a digital photographic documentation system to record all progress of the Work for the duration of the Project.
  - L. Certifications, Warranties, and Guarantees. Prior to equipment being commissioned, the Construction Manager shall obtain and forward to the Owner the Contractors' lists of manufacturers' installation directions, operating and maintenance manuals, materials specifications, certifications, warranties and guarantees. The Construction Manager shall deliver warranties and guarantees that are properly assigned to the Owner (if not already in the name of the Owner) and to verify all certifications, warranties, and guarantees meet the contract requirements. The Construction Manager shall organize and track the delivery of these items to the Owner including who took delivery on the Owner's behalf and the format and location of the delivery.
  - M. Facility Acceptance Inspection. If it is deemed necessary by the Owner to take over, use, occupy, or operate any part of the completed or partially completed Work, the Construction Manager shall inspect that part of the Work and compile punch lists detailing all omissions and deficiencies. In addition, if it is deemed necessary for special inspections to occur, the Construction Manager and/or special inspection subconsultant(s) shall perform and sign-off on all applicable forms. Upon correction of all omissions and deficiencies, the Construction Manager shall report to the Owner on the completion of the Work, recommend its acceptance, and approve final payment to the Contractors.
  - N. Final Record Drawings. The Construction Manager shall mark-up and maintain a file of the approved construction drawings throughout the performance of the Construction Contracts, showing approved deviations with respect to the Work from the approved Contract Documents. The Construction Manager shall submit final record drawings, which include as-built drawings, shop drawings, and various other work products to the Owner at final completion.
  - O. Document Control. Construction Manager will utilize the selected CMIS, including the prescribed Owner document folder structure and file naming convention, to manage, track, and report on the status of all documents (e.g., correspondence, submittals, RFIs, shop drawings, operation and maintenance manuals, daily reports, etc.) produced by the Engineers and Contractors.
  - P. Start-up, Testing, and Commissioning. The Construction Manager shall coordinate all testing, start-up and commissioning of the facilities as required under the Construction Contract. The Construction Manager shall:
    1. Develop a comprehensive start-up, testing, and commissioning schedule in collaboration with the Owner, the Owner's Advisor, when applicable, and Contractors;
    2. Coordinate the review and approval of all Contractor testing and start-up plans with Owner and the Owner's Advisor, when applicable;
    3. Coordinate all required unit/component tests, function and system tests, acceptance testing, and commissioning;
    4. Witness and signature-verify the results of all tests with authorized representatives of the Contractors and the Owner; and

5. Organize and maintain the original field-testing documents and provide copies to the Owner's Advisor, when applicable within 24 hours following each test.

The Construction Manager shall coordinate and monitor all classroom and field instruction required to be provided by the Contractors. The Construction Manager shall attend and monitor all equipment instruction events to confirm that approved lesson plans are followed and that the instructors are effectively conveying subject information. The Construction Manager shall schedule training for the Owner in the most efficient and optimum manner, for example, coordinating short duration trainings into one allowing for availability of relevant Owner personnel. The Construction Manager shall record all training and provide a list of trainings and attendees to the Owner.

- Q. Construction Contract Close-out. The Construction Manager shall proactively manage all action items necessary to close-out the Construction Contracts and issue the final payment in a timely manner.

## 2.06 Job Order Contract (JOC) Services

- A. Manage overall tracking of tasks and costs for the three (3) Job Order Contracts
  1. Develop scopes of work and draft JOC Task Order Agreements (as defined in the Job Order Contracts) for Contractor signature.
  2. Research and provide available information and records related to JOC Task Orders to the Engineers/Contractors.
  3. Serve as Owner's representative in meetings with the Engineer.
  4. Research and provide available information and records related to JOC Task Orders to the Contractors.
  5. Monitor progress of JOC Task Orders.
  6. Notify Owner of all safety incidents or unsafe behavior including near misses.
  7. Serve as the Owner's representative in meetings with the Contractors.
  8. Prepare independent cost estimates of all JOC Task Orders.
  9. Review and negotiate price proposals.
  10. Support field investigations related to scoping and executing JOC Task Orders.
  11. Coordinate between Contractors and Owner regarding access to and use of the site, connections to existing systems and outage requests.
  12. Assist in managing risk registers as needed.
  13. Coordinate vendor training with Owner Operations and Maintenance staff.
  14. Review Contractor RFIs and coordinate with Owner personnel to provide responses.
- B. Provide programmatic construction management support and oversight during the pre-construction, construction, start-up/commissioning, and closeout phases for designated JOC projects. This includes:
  1. Track and document construction activities that arise from JOC Task Orders. Inspect work in progress for conformance to Contract Documents. Notify Contractor of nonconforming work, and review proposed corrective actions and monitor resolution of deficiencies.



2. Elevate construction concerns for construction activities that arise from JOC Task Orders.
3. Create and manage deficiency lists.
4. Assist Owner in performing draft pay applications.
5. Facilitate and track review of Contractor submittals including schedules, daily reports, shop drawings and commissioning plans.
6. Utilize CMIS for documentation of construction activities.
7. Manage and address Contractor claims and change orders.
8. Produce a construction management plan.

#### 2.07 General Provisions

- A. Upon completion of Contractor selection services, Construction Manager will proceed with the performance of construction phase services. The Construction Manager will function as an extension of Owner's staff and provide support, advice, and technical expertise on construction-related issues. Construction Manager will endeavor to protect Owner in providing these services; however, it is understood that Construction Manager does not guarantee the Contractor's performance, nor is Construction Manager responsible for supervision of the Contractor's operations and employees. Construction Manager will not have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Construction Manager shall not be responsible for the acts or omissions of any Constructor at the Site or otherwise performing any of the Work.
- B. Not used.
- C. Owner will provide complete and functional office facilities, telephone, internet, and other utility services, equipment, and copying services.
- D. Construction Manager will also provide the construction phase services set forth in the preceding paragraphs.

#### **ARTICLE 3—NOT USED**

**EXHIBIT A CONSTRUCTION MANAGER'S SERVICES  
APPENDIX 2—FIRST YEAR SCOPE**

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Exhibit G—INSURANCE REQUIREMENTS

ARTICLE 1—CONSTRUCTION MANAGER’S INSURANCE

Article 7.06 of the Agreement is supplemented to include the following:

1.01 Insurance Coverage and Required Limits

- A. In accordance with Article 7.06 of the Agreement, the insurance that Construction Manager must procure and maintain, and the minimum policy limits of such insurance, are as follows:

Coverage	Policy limits of not less than:
<b>Workers’ Compensation</b>	
State	Statutory
<b>Employer’s Liability (Bodily Injury, Disease, Each Accident)</b>	<b>\$1,000,000</b>
<b>Commercial General Liability</b>	
Bodily Injury and Property Damage—Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Products-Completed Operation Aggregate	\$2,000,000
<b>Automobile Liability</b>	
Each Accident/Combined Single Limit	\$1,000,000
<b>Excess or Umbrella Liability</b>	
Each Occurrence/General Aggregate	\$10,000,000
<b>Professional Liability</b>	
Per Claim/Aggregate	\$10,000,000

- B. In accordance with Article 7.06 of the Agreement, the insurance that CM Subconsultants must procure and maintain, and the minimum policy limits of such insurance, are as follows:

Coverage	Policy limits of not less than:
<b>Workers’ Compensation</b>	
State	Statutory
<b>Employer’s Liability (Bodily Injury, Disease, Each Accident)</b>	<b>\$500,000</b>
<b>Commercial General Liability</b>	
Bodily Injury and Property Damage—Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Products-Completed Operation Aggregate	\$2,000,000
<b>Automobile Liability</b>	
Each Accident	\$1,000,000
<b>Professional Liability (if providing professional services)</b>	
Per Claim/Aggregate	\$1,000,000

- C. The insurances noted above in Section 1.01.B. shall include the Owner and Owner Indemnitees as Additional Insureds on the Commercial General Liability and Automobile Liability policies on a primary and non-contributory basis and there shall be a waiver of subrogation on all required policies in favor of Owner and Owner Indemnitees.

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## Exhibit J—CONSTRUCTION MANAGER’S COMPENSATION

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### ARTICLE 2—COMPENSATION FOR BASIC SERVICES

2.01 Not Used.

2.02 Not Used.

2.03 Payment using Direct Costs Times a Factor

A. Owner shall pay Construction Manager for Basic Services set forth in Exhibit A as follows:

1. An amount equal to Construction Manager's Direct Labor Costs times a multiplier plus Reimbursable Expenses plus CM Subconsultants' Direct Labor Costs times a multiplier. The multiplier is calculated from Construction Manager's or CM Subconsultant's Audited Overhead Rate plus Direct Labor Costs (1) multiplied by 1 plus Construction Manager's profit. The Construction Manager's profit is not to exceed ten (10) percent.
2. Direct Labor Cost means salaries and wages paid to Construction Manager's and CM Subconsultants' employees but does not include payroll-related costs or benefits.
3. The Construction Manager's Reimbursable Expenses Schedule is included in Article 8.
4. The total estimated compensation for Construction Manager's services included in the breakdown by phases incorporates all labor, overhead, profit, Reimbursable Expenses, and CM Subconsultants' charges.
5. Construction Manager may alter the distribution of compensation between budget categories to be consistent with services actually rendered, but compensation will not exceed the total estimated compensation amount unless approved in writing by Owner.
6. Audited Overhead Rate means an indirect cost rate that has been reviewed and found to be without deficiencies through an independent audit in the last calendar year; or, approved by a Federal Agency in compliance with 2 CFR Part 200, Subpart E & Appendix IV or the Federal Acquisition Regulation (FAR), whichever applies; or, in special cases, (e.g. small firms with less than a total of four (4) persons including owners) owner may, at its discretion, establish indirect cost factors for services based on information other than a federally-negotiated rate or independent audit.

B. The amount invoiced each billing period is to be based on the Direct Labor Costs for the hours charged to each category of services during the billing period, times the factor for Direct Labor Costs. Invoices will also include direct costs for Reimbursable Expenses paid during the billing period times the applicable factor for Reimbursable Expenses, and direct costs for CM Subconsultants' charges paid during the billing period times the applicable factor for CM Subconsultants' charges.

2.04 Other Provisions Concerning Payment

A. Whenever Construction Manager is entitled to compensation for Reimbursable Expenses for CM Subconsultants, such compensation will be the amounts billed by CM Subconsultants to Construction Manager times a mark-up of ten (10) percent.

B. Direct Labor Costs, the multiplier applied to Direct Labor Costs, and the Reimbursable Expenses Schedule may be adjusted no more than once annually, any adjustments are to

be mutually agreed upon prior to July 1 and such adjusted rates apply to the next Fiscal Year.

- C. To the extent necessary to verify Construction Manager's charges and upon Owner's timely request, Construction Manager shall make copies of such records available to Owner at cost.
- D. For those compensation methods other than Lump Sum, Construction Manager will notify the Owner if it appears to Construction Manager that the estimated total compensation amount will be exceeded. Owner and Construction Manager will estimate the services remaining to be performed to complete the project and the estimated additional compensation for these services. Owner may take one of the following actions:
  - 1. Agree to pay the additional compensation required for completion, and enter into an Amendment to the Agreement confirming such additional compensation; or
  - 2. With Construction Manager's concurrence, agree to a reduction in the remaining services to be rendered by Construction Manager so that total compensation for these services will not exceed the amount estimated.
- E. For compensation methods other than Lump Sum, Owner will pay for all services rendered if Construction Manager exceeds the estimated total compensation amount before Owner and Construction Manager have agreed to an increase in the compensation due Construction Manager or a reduction in the remaining services.

**ARTICLE 3—NOT USED**

**ARTICLE 4—NOT USED**

**ARTICLE 5—NOT USED**

**ARTICLE 6—NOT USED**

**ARTICLE 7—NOT USED**

**EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES**  
**APPENDIX 1—REIMBURSABLE EXPENSES SCHEDULE**

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Reimbursable Expenses are subject to review and adjustment per Exhibit J. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

8"x11" Copies/Impressions	\$ [Enter Cost]/page
Copies of Drawings	\$ [Enter Cost]/sq. ft.
Mileage (auto)	\$ [Enter Cost]/mile
Air Transportation	at cost
Laboratory Testing	at cost
Health and Safety	\$ [Enter Cost]/day
Meals and Lodging	at cost

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**EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES  
APPENDIX 2—BUDGET**

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