



Meeting Agenda

Work Session

Tuesday, August 27, 2024

5:00 PM

Board Room

CALL TO ORDER

CITIZEN COMMENTS

Comments on agenda items may be made in person at City Hall or by emailing recorder@franklinton.gov before noon on the day of the meeting. Comments will be submitted for the record.

WORK SESSION DISCUSSION ITEMS

1. Presentation Of The Sustainability Commission Annual Report And Solar Expansion Recommendation

Sponsors: Emily Wright, Kelly Dannenfelser, Andrew Orr
2. Consideration Of Resolution 2024-57, A Resolution To Approve Temporary Median Barrier Installation On SR-96 (Murfreesboro Rd) Between Royal Oaks And Interstate 65
CIC 6/27/24, 4-0
Sponsors: Paul Holzen, Adam Moser
3. Discussion Concerning The Franklin Ridge Development Project And Connectivity Associated With Jordan Road

Sponsors: Paul Holzen
4. *Consideration Of Resolution 2024-74, A Resolution Awarding The City Hall Construction Manager At Risk To Skanska USA Building, Inc. And Authorizing The City Administrator To Enter Into Phase I, A Pre-Construction Contract For An Amount of \$260,000 With The Understanding The Board Of Mayor And Aldermen Will Be Presented Phase II For Consideration Of The Guaranteed Maximum Price For Development And Construction Of The New City Hall Site

Sponsors: Mark Hilty, Christopher Koeper, Robyn Freeman
5. *Consideration Of COF Contract No. 2024-0266, With The State Of Tennessee Department Of Transportation For Automated License Plate Reader (ALPR) License Agreement

Sponsors: Jason Potts, Deb Faulkner
6. Review Of The Department Of Housing & Urban Development Comprehensive Annual Performance & Evaluation Report (CAPER) And Annual Report From The Franklin Housing Commission

Sponsors: Kathleen Sauseda
7. Consideration Of Resolution 2024-52, A Resolution Declaring The Intent Of The Board Of Mayor And Aldermen Of The City Of Franklin, Tennessee To Consider The Adoption Of A Commercial Property

Assessed Clean Energy And Resiliency ("C-Pacer") Program. Establishing A Public Hearing On September 10, 2024

Sponsors: Kristine Brock, Shauna Billingsley

8. Presentation And Discussion Of Sanitation And Environmental Services (SES) Operations Alternatives

Sponsors: Mark Hilty, Jack Tucker

9. Presentation And Discussion Of Vested Rights And Vesting Extension Requests

Sponsors: Emily Wright, Amy Diaz-Barriga, Andrew Orr

10. Road Impact Fee Update Discussion

WS 4/23/24

BOMA 5/14/24, 7-0; 5/28/24 postpone to 9/10/2024 7-0

Sponsors: Vernon Gerth, Paul Holzen

11. Discussion Of Possible City Naming Policy

Sponsors: Lisa Clayton, Blake Harper

12. Consideration Of COF Contract No. 2024-0199, The Interlocal Agreement Between Williamson County, Tennessee And The City Of Franklin, Tennessee To Establish The Terms, Responsibilities, And Obligations Of The City Providing Funds Received From The National Opioid Settlements To The County To Be Allocated For Opioid Abatement And Remediation Projects That Impact The City

Sponsors: Eric Stuckey, Shauna Billingsley

13. Consideration Of New Wine In Grocery Store License For Mapco Express Inc, D/B/A Mapco #3326, (Marvin Hewatt, Scott Moon, And Bruce Thatcher, Managing Agent) 240 Franklin Road, Franklin, TN 37064

Sponsors: Angie Skarp

14. Discussion Of Board Of Mayor And Aldermen Pay

WS 2/13/24

Sponsors: Alderman Beverly Burger

OTHER BUSINESS

ADJOURN

Anyone needing accommodations due to disabilities please contact the ADA Coordinator at 615-791-3277 at least 24 hours prior to the meeting.



File #: 21-0508

DATE: July 26, 2024
TO: Board of Mayor and Aldermen
FROM: Eric Stuckey, City Administrator
Emily Wright, Director of Planning and Sustainability
Kelly Dannenfelser, Asst. Director of Planning
Andrew Orr, Long Range Planning Supervisor

SUBJECT:

Presentation Of The Sustainability Commission Annual Report And Solar Expansion Recommendation

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning the Sustainability Commission.

BACKGROUND/STAFF COMMENTS:

The Sustainability Commission has primarily been focused on two projects in 2024. The first of which is the City's participation in the Bee City USA program. Franklin became a member of the Bee City network in June 2024 and has been actively working to fulfill the expectations of the program. An interdepartmental staff committee has formed to help coordinate the creation of more native plantings. A webpage has also been created to share information with the community @ www.franklintn.gov/beecity.

The second initiative the Commission has focused on is the expansion of the 200 kW solar array located at the wastewater treatment facility at the end of Claude Yates Drive. The array was commissioned in 2012 and is owned by Energy Source Partners who designed, built, financed, and maintains the system under the one acre lease agreement. The power generated is sold to the TVA and the City shares in the revenue with Energy Source Partners. Under the TVA Generation Partners Program, TVA purchased the solar generated power at the retail rate of electricity plus a 10 cents/kWh premium for the first ten years of the contract. After the ten-year period ended in 2022, the TVA now only purchases the solar power at the retail rate. The contract expires in 2032.

Over the last few months, Energy Source Partners has made presentations at multiple Commission meetings to receive direction on how to proceed in a way that will benefit the City. The Commission reviewed several options for expanding the 200 kW system and has recommended an option that would increase the leased premise from one acre to approximately 3.25 acres in order to accommodate 3 Megawatts (MW) of solar production. The recommendation also includes using a

military grade flow battery for energy storage to help reduce the peak demand charges at the plant, which is a significant part of the monthly utility bill. The flow battery is an alternative to lithium-ion batteries. This option would utilize the additional power generated on-site for plant operations, rather than selling it back to the power grid.

Wastewater treatment processes are energy intensive and the City spends approximately \$1.5 million annually on electricity to run the operations. The expanded array and battery storage component are expected to offset about 50% of the energy usage of the plant. If the BOMA approves a contract amendment, Energy Source Partners estimates about \$7 million in savings to the City over the next twenty years.

Information about the activities of the Sustainability Commission can be found in the attached presentation.

FINANCIAL IMPACT:

See Background information above.

RECOMMENDATION:

Staff recommends that the Board of Mayor and Aldermen acknowledge the Sustainability Commission annual report and the Solar Array Expansion recommendation.

City of Franklin Annual Report to the Board of Mayor and Aldermen

Sustainability Commission

August 27, 2024

Mike Cassity, Chair

Christina Christensen, Vice Chair, (Utility Rep)

Alderman Beverly Burger (BOMA)

Eric McElroy (Franklin Tomorrow)

Al Pramuk

Anna Timme

Brian Stone

John Brevard

Keith Gordon

CURRENT MEMBERS

MEETINGS

2nd Friday @ 8:00 AM

Typically, 8-9 meetings/year

CURRENT

- Conduct Annual Litter Survey
- Energy Efficiency and Conservation Block Grant (EECBG) Allocation of \$145,990 for sports lighting upgrades at Liberty Park
- Opportunity to expand the 200 kW solar array
- Bee City USA internal staff committee

OUTLOOK

- Bee City USA implementation
 - Evaluate municipal sites for pollinator gardens
 - Establish Partnerships
 - Share Information
- Continue monitoring litter along streets
- Evaluate Glass Recycling Options
 - Several challenges including collection, sorting, end use, and cost
- Opportunity to expand 200 kW solar array with a contract amendment

200 kW Solar Project

- ◇ The 200 kW solar array was commissioned in 2012 through a partnership with Energy Source Partners.
- ◇ The City leased one acre of land at the water reclamation facility (wastewater treatment plant) and Energy Source Partners designed, financed, and built the system and continues to maintain it.
- ◇ The City and Energy Source Partners share the revenue from the sale of the electricity to the TVA.
- ◇ Eight years remain on the 20-year lease.



200 kW Solar Expansion Recommendation

- ◆ On August 9th, the Sustainability Commission evaluated several options for expanding the 200 kW solar array at the wastewater treatment plant located at the end of Claude Yates Drive.
- ◆ The Commission recommended expanding the leased premise to Energy Source Partners from one acre to 3.25 acres to accommodate a 3 Megawatt solar array with a flow battery for energy storage assuming the City can provide the additional 2.25 acres and the breakeven point for the project can happen within ten years.
- ◆ The majority of the power generated would be used directly on site and not sold to the TVA.
- ◆ The recommended enhancement is estimated to save the City approximately \$7 million over the life of the proposed 20-year contract.
- ◆ The Sustainability Commission has also requested that native wildflowers be integrated into the land lease.



Questions?



File #: 21-0381

DATE: July 8, 2024
TO: Board of Mayor and Aldermen
FROM: Paul Holzen, Director of Engineering
Adam Moser, Traffic Engineer

SUBJECT:

Consideration Of Resolution 2024-57, A Resolution To Approve Temporary Median Barrier Installation On SR-96 (Murfreesboro Rd) Between Royal Oaks And Interstate 65
CIC 6/27/24, 4-0

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning Resolution 2024-57, a resolution to approve installation of temporary median barrier with flexible delineators along SR-96 (Murfreesboro Rd) between Royal Oaks and I-65.

BACKGROUND/STAFF COMMENTS:

In the Spring of 2020, the Vintage Franklin development was approved by the Planning Commission and the Board of Mayor and Aldermen. In the development's traffic impact study, a transportation safety mitigation project proposed the installation of a concrete median on SR-96 (Murfreesboro Road) between Royal Oaks and I-65 where the crash rate was over 3 times the statewide average, at that time. This project was part of the development conditions of approval for when the office building on Riverside Drive was constructed. This office building has no timetable to be constructed. This section of roadway continues to be the highest vehicular crash location in the City and was identified for study by TDOT in July of 2022. At that same time, a TDOT repaving project was happening and TDOT proposed a less invasive striping solution to further discourage left turns along this section of roadway. The section was restudied in April 2024 and found that the striping and hatching has made zero reductions in left turn crashes and in fact, the crash rate has increased slightly since the striping was implemented. The crash rate is now over four times the statewide average for this type of roadway and is still the number one crash area in the City of Franklin.

FINANCIAL IMPACT:

TDOT has proposed to pay for the temporary curbing with flexible delineators as long as the City of Franklin installs the device. The cost of installation could be handled under existing annual budgets.

An alternative option would be to install a mountable concrete median. This option would cost

approximately \$400,000 and the work would be completed by our annual contractor. Engineering staff would need to work the Finance Department to determine a funding source.

RECOMMENDATION:

Staff recommends that the Board of Mayor and Aldermen approve Resolution 2024-57.

RESOLUTION 2024-57

**A RESOLUTION TO APPROVE TEMPORARY MEDIAN BARRIER INSTALLATION ON SR-96
(MURFREESBORO RD) BETWEEN ROYAL OAKS BLVD AND I-65**

WHEREAS, in March 2020, the traffic engineering consultant for the Vintage Franklin development identified a safety project to install a concrete median along SR-96 (Murfreesboro Road) between Royal Oaks Blvd and Interstate 65 as part of the development's transportation safety mitigation to address above average left turn vehicle crashes; and

WHEREAS, said safety project has been delayed until the construction of the Riverside Drive office building that was included in the Vintage Franklin development; and

WHEREAS, this section of SR-96 (Murfreesboro Road) between Royal Oaks Blvd and I-65 continues to be the number one location for vehicle crashes in the City of Franklin being over four times above the statewide average for this roadway type; and

WHEREAS, in July of 2022, TDOT identified this area as a high crash area to study installation of a permanent center median; and

WHEREAS, in July of 2022, as part of TDOT's SR-96 repaving project, TDOT implemented a new striping treatment to discourage left turn movements to see if it would have any effect on reducing vehicular crashes; and

WHEREAS, in April of 2024, a crash analysis was performed showing zero reduction in the crash rate for this section with the new striping treatment; and

WHEREAS, in May of 2024, TDOT and the City of Franklin Traffic Engineer have proposed a solution of temporary curbing with flexible delineators for this section of roadway to reduce left turn vehicle crashes.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, TENNESSEE, AS FOLLOWS:

The temporary curbing with flexible delineators shall be installed at the location specified in Exhibit A.

IT IS SO RESOLVED AND DONE on this ____ day of _____, 2024.

ATTEST:

CITY OF FRANKLIN, TENNESSEE:

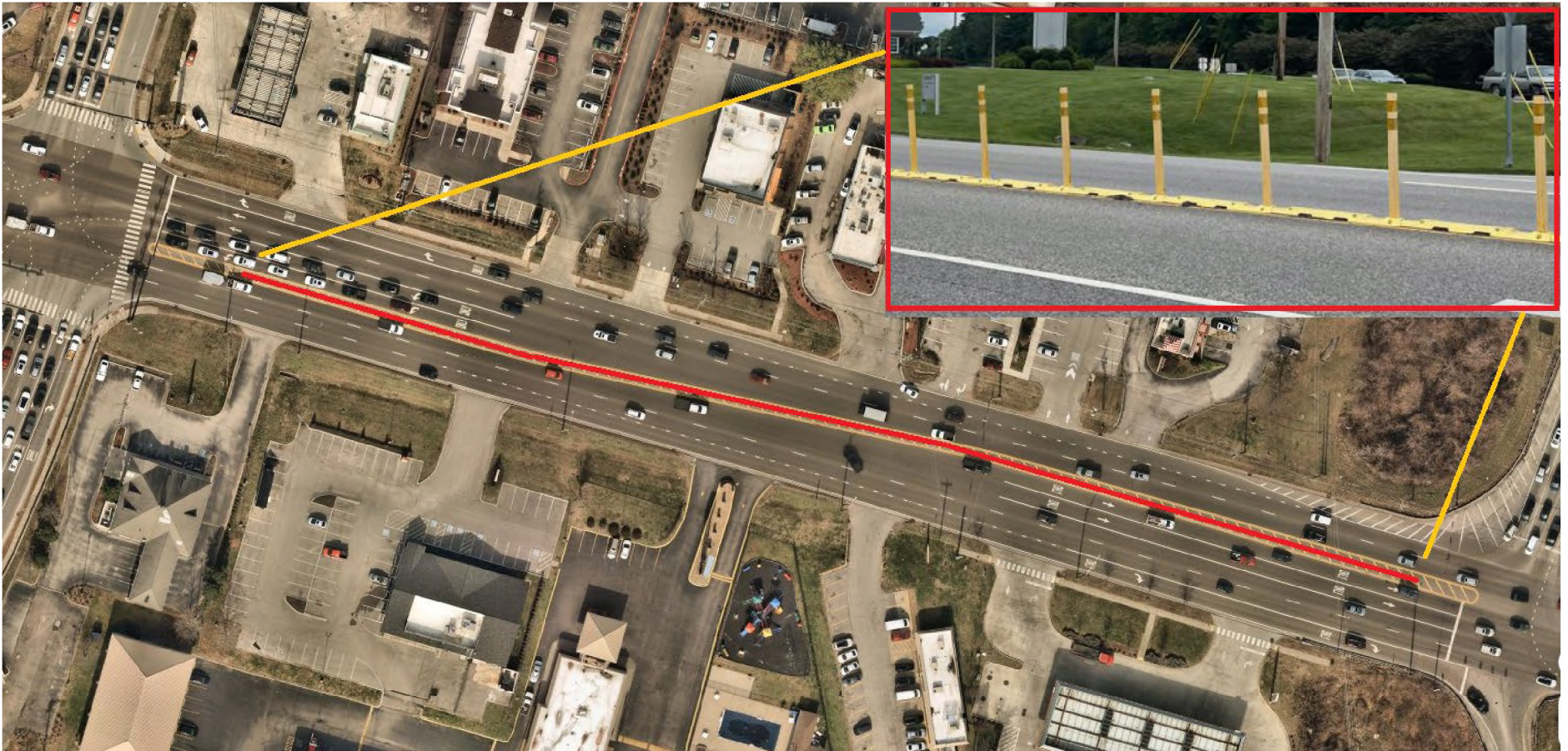
By: _____
Angie Skarp
City Recorder

By: _____
Dr. Ken Moore
Mayor

Approved as to form:

By: _____
William E. Squires
Assistant City Attorney

EXHIBIT A



From: [Zane Pannell](#)
To: [Adam Moser](#)
Cc: [Nathan Vatter](#); [Jordan Burress](#)
Subject: SR 96 curbed delineators
Date: Monday, May 20, 2024 10:40:22 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)

ATTENTION COF staff: This email originated from outside the City of Franklin. Please use discretion when clicking on attachments & links from unknown senders or suspicious emails.

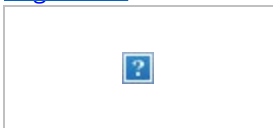
Adam,

Are you all still wanting to install curbed delineators along SR 96 between I-65 and Royal Oaks? Based on my discussion with Nathan, TDOT would purchase the delineators and provide traffic control if the City of Franklin can install. I'm looking to purchase about 1,100 feet. Here's an example below of what I had in mind but able to handle drainage.





Zane Pannell | Traffic Operations Manager
Region 3 Traffic Operations
6601 Centennial Blvd. Nashville, TN 37243-0360
615-741-6538
Zane.pannell@tn.gov
tn.gov/tdot



DATE: April 5, 2024 (Updated 8/9/2024)

TO: TDOT Region 3 Traffic Operations Division

FROM: Paul Holzen, Director of Engineering
Adam Moser, Traffic Engineer

SUBJECT: SR-96 (Murfreesboro Rd) from Royal Oaks to I-65 Turn Restriction Treatment

Purpose

The purpose of this memo is to summarize the crash data for the subject section of roadway and collaborate with the Tennessee Department of Transportation (TDOT) to implement further safety measures to restrict turning movements along this section of roadway.

Background

The section of SR-96 (Murfreesboro Road) from Royal Oaks to I-65 continues to be the highest crash rate area in the City of Franklin. While crashes are a majority property damage (minor), there have been both minor injuries and serious injuries reported. On average, between 40 and 50 crashes per year are reported in this section. This accounts to almost one crash per week per year.



Figure 1 Crash Analysis Location

In the Fall of 2022, and as seen in Figure 1, TDOT completed a repaving of this section and added a hatched area in the median to try and emphasize that left turning movements are discouraged for

this section, and to see if the pavement markings would help reduce left turn movements and crashes in this area. This first step was implemented as an alternative that could be added at no cost with the repaving project TDOT was performing at that time.

A year of crash data has now been collected since the implementation of this hatched median for a before/after analysis.

Analysis

Over the last five years, this section of roadway is Franklin's highest crash area (and crash rate) in the City, as shown circled in Figure 2.

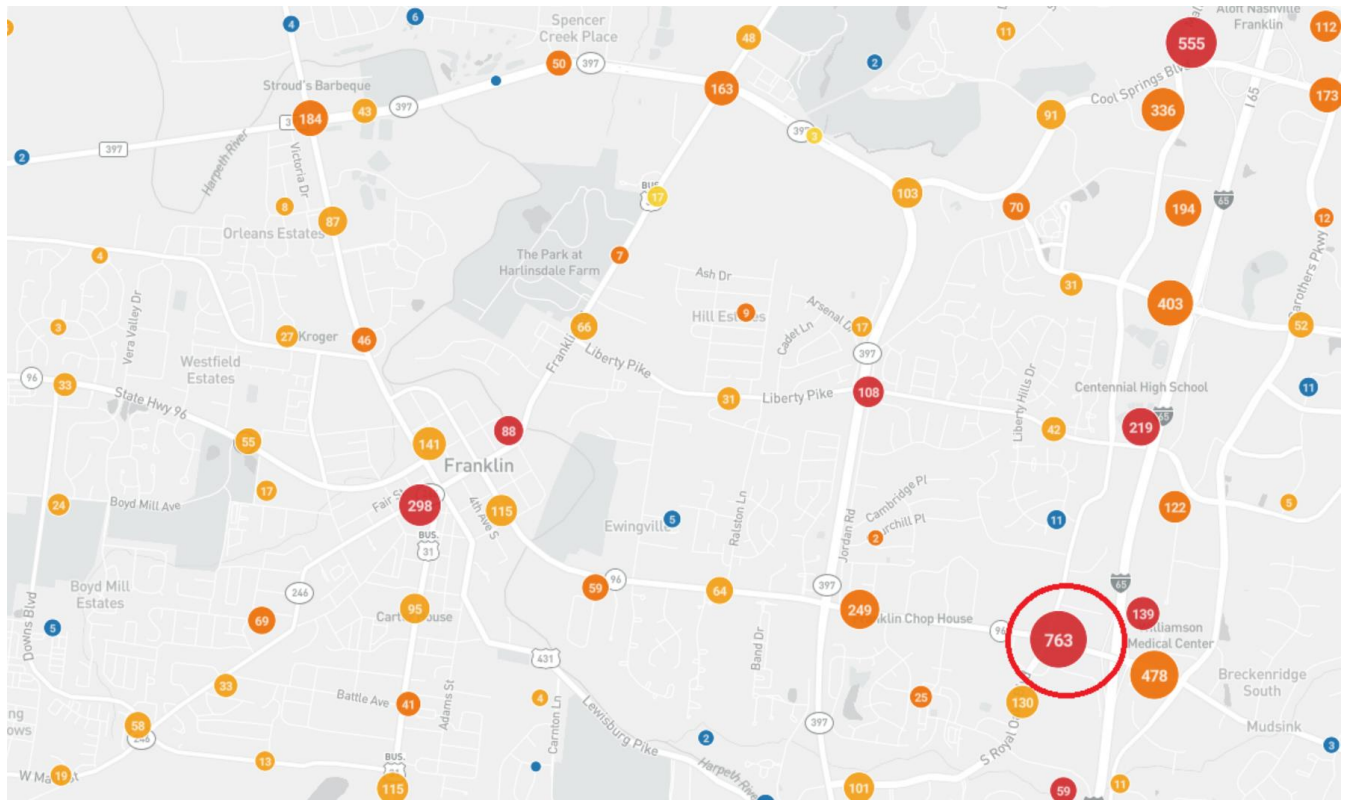


Figure 2 Five Year Crash History - Franklin, TN – Location Circled

The following tables represent crash rates on SR-96 in this section of roadway before and after the pavement marking (hatching). Table 1 represents the crash rate before the hatching was completed, and Table 2 shows 2023, the year after the hatching was completed.

State Route 96, Williamson County			LM 12.880 to 13.040	
Section - Royal Oaks Blvd to I-65 Interchange				
93 Crashes	- 2021 to 2023	Actual	- 13.848	Acc/MMM
State Average	- 3.223	Acc/MMM	Critical	- 4.909
A/S Ratio	= 4.30		A/C Ratio	= 2.82

Table 1 2021 to 2023 (Prior to Hatching)

State Route 96, Williamson County			LM 12.880 to 13.040	
Section - Royal Oaks Blvd to I-65 Interchange				
50 Crashes	- 2023 to 2024	Actual	- 14.890	Acc/MVM
State Average	- 3.223	Acc/MVM	Critical	- 5.652
A/S Ratio	= 4.62	A/C Ratio	= 2.63	

Table 2 2023 to 2024 (After Hatching)

As one can see from the analysis, the median hatching has been ineffective as to reducing the crash rate. In fact, it has gone up a bit from the prior years. The actual crash rate for this section is almost five times the state average for an urban multilane state route.

Conclusions & Recommendations

In 2020, the Vintage Franklin development, located along Oak Meadow Drive, included in their Traffic Impact Analysis (TIA) a recommendation restricting left turn movements along SR-96 from Royal Oaks to I-65, citing the unusually high crash rate during their safety analysis for the development. As a condition of approval, the developer was to install a concrete rolled curb median along this section, however, this condition was not to be implemented until the office building phase of the project was completed. That office building construction timeline is unknown, and likely years away from being constructed. This information was relayed to TDOT when discussing the hatching in 2022.

Since this roadway section continues to be the City's highest crash rate area, the City of Franklin recommends implementing near-term solutions to reduce the crash rate. As a possible solution, and as discussed with TDOT, 1000' of temporary curbing with flexible delineators could be installed along the center of the hatched median (TDOT Pay Item 712-12.10). It is estimated that the cost for this measure is approximately \$65 per linear foot, for a total estimate of \$65,000 for this work. The advantages of this temporary solution are the following:

1. Survey would not be required for installation to ensure proper stormwater drainage. This type of curbing has drain holes to allow water to pass through.
2. Flexible delineators allow for emergency vehicles to 'push through' to access businesses on each side of the roadway as necessary.
3. Should it be found that the temporary curbing either creates an issue, or proves to be effective in reducing crashes, a more permanent solution, such as what is required of the Vintage Franklin developer, can be implemented – or it can be removed.

The permanent median concept was presented to the Board of Mayor and Alderman as part of the Vintage at Watson glen PUD Subdivision. At the time, there was no major objection with our elected officials. If the state is willing to implement and fund this temporary solution, city staff would be more than willing to obtain approval from our Board of Mayor and Alderman to ensure TDOT has local support. In addition, we would work with future development to fund the installation of a rolled curb concrete median as a permanent solution as planned. Please let us know if this temporary solution is an option that TDOT can support and fund.



Figure 3 Example of Temporary Curbing with Delineators

Update 8/9/2024 – Alderman Request for More info on crashes/crash type – CIC Meeting 6/27/2024

The Franklin Police Department pulled detailed crash data for the past year. The following is a crash synopsis from 8/1/2023 – 8/1/2024

Total Crashes			53
Total Angle Crashes			30
Total Minor Injury			8
Total Injury			6

Location Map 8/1/2023 – 8/1/2024





HISTORIC
FRANKLIN
TENNESSEE

MEMORANDUM

Master #	Incident #	Date/Time	Officer	Synopsis	Injury
103738484	2308175381	8/4/2023 21:40	Munford	Westbound left turn into Shell, struck by eastbound vehicle	
103749771	323078823	8/16/2023 17:51	Achinger	Westbound left turn into Shell, struck by eastbound vehicle	Suspected minor injury, transported to WMC
400004346	2308189480	8/21/2023 17:18	Gibson	Westbound Murfreesboro left turn into Wafflehouse, struck by eastbound vehicle	
103758752	2308196819	8/30/2023 5:40	Langhi	Eastbound exiting Hardees, struck by westbound vehicle	
103770286	2309205000	9/9/2023 11:52	Durham	Eastbound left turn into Mapco, struck by westbound vehicle	Possible injury, transported to WMC
400009284	2309214860	9/22/2023 16:05	Lecates	Westbound left turn into Best Western, struck by eastbound vehicle	
103778416	2309215521	9/23/2023 12:00	Travis	Eastbound left turn into Candlewood, struck by westbound vehicle	
400012017	2310223945	10/4/2023 8:43	Brandon	Eastbound left turn into Hardees, struck by westbound vehicle	
400015614	2310233728	10/17/2023 17:02	Gibson	Westbound vehicle turning left into Twice Daily's was struck by eastbound vehicle	
400015923	2310234490	10/18/2023 17:01	Gibson	Westbound vehicle turning left into Twice Daily's was struck by eastbound vehicle	
400022725	2311249893	11/7/2023 18:17	Lecates	Westbound left turn into Best Western, struck by eastbound vehicle	
400024007	2311253165	11/11/2023 0:00	Lipinski	Eastbound left turn into Candlewood, struck by westbound vehicle	Possible injury, transported to WMC
400034633	2312276168	12/12/2023 13:02	Sanchez	Eastbound left turn into Wendy's, struck by westbound vehicle	
400045981	2401009746	1/13/2024 10:40	Donegan	Eastbound left turn into Hardees, struck by westbound vehicle	
400053448	2402029146	2/9/2024 7:55	Johnson	Westbound left turn into Shell, struck by eastbound vehicle	Possible injury, NOT transported
400057899	2402039550	2/22/2024 17:45	Gibson	Westbound vehicle turning left into Best Western struck vehicle	Possible injury, transported to WMC
400058328	2402040309	2/23/2024 15:59	Lecates	Westbound left turn into Twice Daily, struck by eastbound vehicle	2 people with suspected minor injury, transported to WMC
400059897	2402044177	2/28/2024 16:17	Anderson	Eastbound left turn into Wendy's, struck by westbound vehicle	
400060631	2403045747	3/1/2024 18:09	Lecates	Eastbound left turn into Candlewood, struck by westbound vehicle	
400064301	2403053940	3/12/2024 11:52	Jenkins	Eastbound left turn into Wendy's, struck by westbound vehicle	
400067568	2403061258	3/21/2024 17:45	Buffa	Eastbound left turn into Candlewood, struck by westbound vehicle	
400068572	2403063078	3/24/2024 13:01	Alexander	Westbound left turn into Shell, struck by eastbound vehicle	Possible injury, transported to WMC
400080715	2404086925	4/24/2024 12:00	Tuck	Eastbound left turn into KFC, struck by westbound vehicle	1 Suspected minor injury, transported to WMC, 1 Suspected minor injury not transported
400082041	2404089416	4/27/2024 10:58	Bennett	Eastbound left turn into Hardees, struck by westbound vehicle	Suspected minor injury, transported to WMC
400084279	2405093335	5/2/2024 12:50	Buffa	Eastbound left turn into Candlewood, struck by westbound vehicle	
400096860	2405114010	5/29/2024 12:27	Gibson	Eastbound left turn into Wendy's, struck by westbound vehicle	
400097772	2405115614	5/31/2024 11:39	Sanchez	Eastbound left turn into Wendy's, struck by westbound vehicle	
400107370	2406131351	6/21/2024 15:02	Lecates	Eastbound left turn into Wendy's, struck by westbound vehicle	Suspected minor injury, transported to Vanderbilt (Refused an interview)
400116366	2407146911	7/12/2024 10:26	Bennett	Eastbound left turn into Mapco, struck by westbound vehicle	Suspected minor injury, NOT transported (minor shoulder injury)
400124146	2407159493	7/29/2024 15:17:00 PM		Eastbound left turn into Candlewood, struck by westbound vehicle	Possible injury



File #: 21-0650

DATE: August 15, 2024
TO: Board of Mayor and Aldermen
FROM: Eric Stuckey, City Administrator
Paul Holzen, Director of Engineering

SUBJECT:

Discussion Concerning The Franklin Ridge Development Project And Connectivity Associated With Jordan Road

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning impacts to Jordan Road.

BACKGROUND/STAFF COMMENTS:

The Franklin Ridge Subdivision, Preliminary Plat was submitted in March of 2024. While this project does not require BOMA or FMPC approval, staff and the development team thought it was important to obtain feedback on impacts associated with Jordan Road. Two options are being presented for BOMA input.

Option A – This option includes connecting Glen Eagle Lane to the future development and will provide connectivity from Liberty Pike to McEwen Drive. In addition, the developer would install a cul-de-sac north of the Church of the Nazarene. This option is what is currently shown in the approved preliminary plat.

Option B - This option includes connectivity of Jordan Road, Gleneagle Lane and the future development. In addition, it would include the installation of a right-in right-out at Jordan Road and Liberty Pike.

The developer is supportive of both options. If option B is selected, they have requested reimbursement of approximately \$416,750. This would cover the increased cost associated with Option B.

The development team held a neighborhood meeting on August 5, 2024. Option B appears to be the concept with the most support based on those that attended the meeting.

FINANCIAL IMPACT:

If Option A is selected, there will be no cost to the City of Franklin. If Option B is selected, then it would be appropriate to reimburse the developer for the additional cost. It should be noted that Jordan Road is a local street and would not qualify for a road impact fee reimbursement.

RECOMMENDATION:

No recommendation at this time. Staff is seeking feedback and guidance from the Board.

NEIGHBOR COMMENTS

SUPPORT FOR THIS CONCEPT:
YES - 6
NO - 33

ADDITIONAL COMMENTS:
1. No to speed bumps (1)
2. Yes to speed bumps (1)

PORTION OF JORDAN ROAD TO BE ABANDONED

PORTION OF JORDAN ROAD TO BE EMERGENCY ACCESS ONLY

JORDAN ROAD - ROW VARIES - LOCAL ROAD

PERMANENT CUL-DE-SAC TO BE INSTALLED AT END OF EMERGENCY ACCESS PORTION OF JORDAN ROAD

TVA EASEMENT EXCEPTION 10

BERRYHUNTER LANE - LOCAL STREET (62' ROW)
551'15"16"W
334.22'

JUDY ENGEL
MAP 062J, G
PARCEL 1
BOOK 7541, P
LOT 37
R-3 RESIDENTIAL

MANHOLE SANITARY SEWER
T.O.C. 748.10'
INV. (E) 740.88' (8" PVC)
INV. (W) 740.69' (8" PVC)

ANDREW AND ASHLEY THOMAS
MAP 062J, GRP A PARCEL 48.00
BOOK 6923, PAGE 93
LOT 36
R-3 RESIDENTIAL

CHURCH FRANKLIN
COMMUNITY FAITH OF
THE NAZARENE
MAP 062
PARCEL 33.02
CI CIVIC AND
INSTITUTIONAL
DISTRICT

MANHOLE SANITARY SEWER
T.O.C. 715.10'
INV. (SE) 706.72' (8" PVC)
INV. (NW) 706.47' (8" PVC)

MANHOLE SANITARY SEWER
T.O.C. 715.50'
INV. (E) 706.41' (8" PVC)
INV. (W) 706.43' (8" PVC)

MACK HATCHER PARKWAY
FREEMAN EXPRESSWAY
ROW VARIES

CITY OF FRANKLIN 20' TRANSMISSION LINE

CIRCLEVIEW DRIVE

BATTON PLACE DRIVE

GOLDEN MEADOW LANE

LIBERTY PIKE

NEIGHBOR COMMENTS

SUPPORT FOR THIS PLAN:

YES - 44
NO - 4

ADDITIONAL COMMENTS:

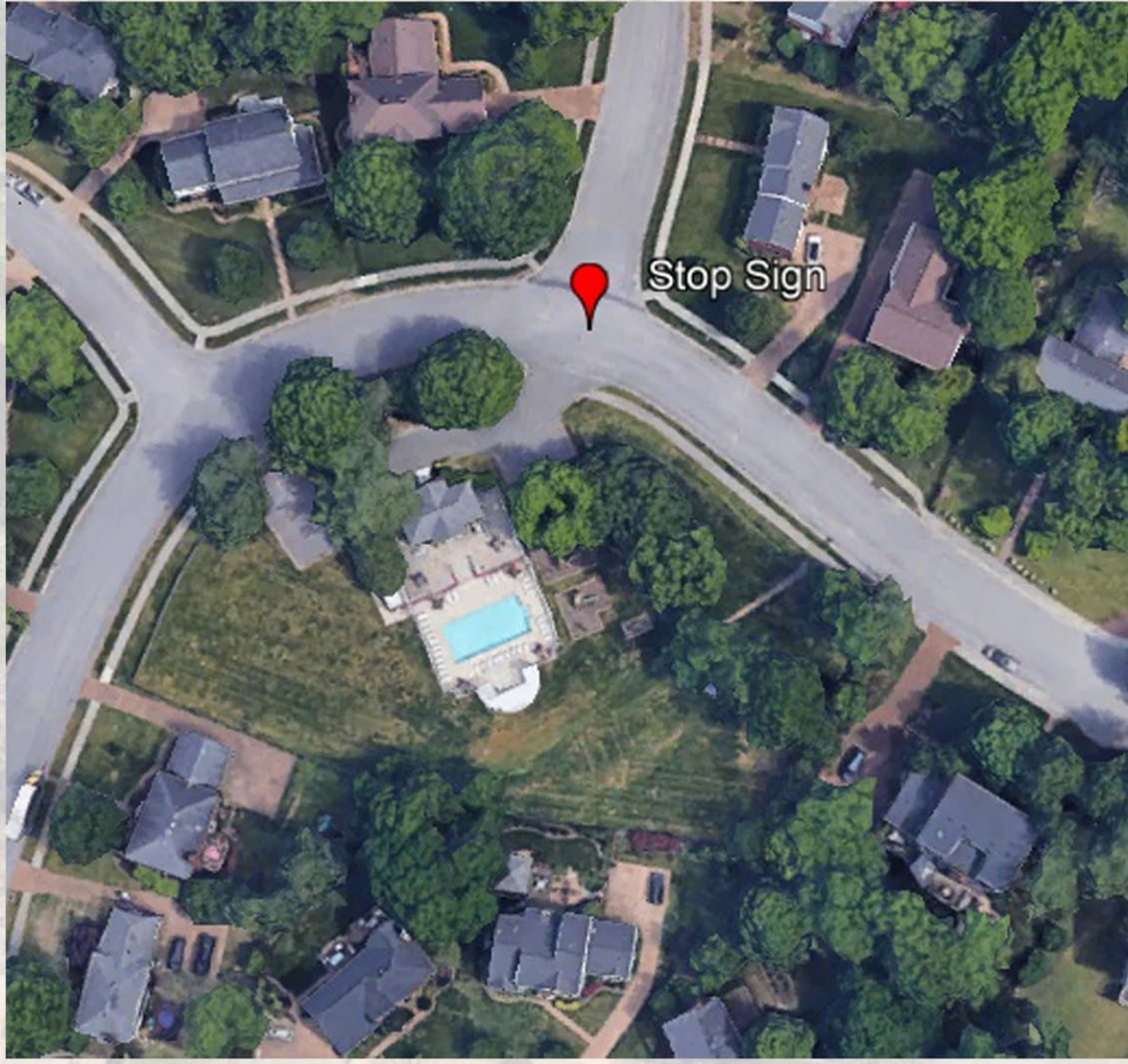
- 1. Add 3-way stop at Jordan Road and Glen Eagle Lane.
- 2. Construction access from McEwen only.
- 3. No to speed bumps (2).
- 4. Yes to speed bumps (1).
- 5. Add emergetny gate at Bratton Place Drive and Jordan Road.
- 7. Add stop sign at Eagle Glen swimming pool - regardless of new development.

PORTION OF JORDAN ROAD TO BE ABANDONED

JORDAN ROAD TO BE FULLY OPENED FROM LIBERTY PIKE TO GLENEAGLE RD

RIGHT-IN RIGHT OUT CONFIGURATION TO BE INSTALLED AT JORDAN ROAD AND LIBERTY PIKE

POOL/AMENITY STOP SIGN PER ADDITIONAL COMMENTS



JUDY ENGELSTAD
MAP 062J, GRP A
PARCEL 1.00
BOOK 7541, PAGE 6
LOT 37
R-3 RESIDENTIAL

ANDREW AND ASHLEY THOMAS
MAP 062J, GRP A PARCEL 48.00
BOOK 6923, PAGE 93
LOT 36
R-3 RESIDENTIAL

CHURCH FRANKLIN
COMMUNITY FAITH OF
THE NAZARENE
MAP 062
PARCEL 33.02
CI CIVIC AND
INSTITUTIONAL
DISTRICT

BIO 3
DET 3

Δ=2°09'43"
R=11017.10'
L=415.73'
CB=S52°20'21"W
CL=415.71'

S82°18'33"W
11.65'

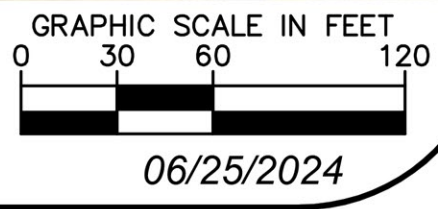
S75°35'38"W
83.91'

CIRCLEVIEW DRIVE

BATTON PLACE DRIVE

GOLDEN MEADOW LANE

LIBERTY PIKE



06/25/2024

Kimley»Horn

RIGHT-IN RIGHT-OUT OPTION B

K:\FRA_LUE\118680004 - Jordan Road\4-CAD\DE\shs\024\06-24 Right-In Right-Out\Right-In Right-Out at Liberty Pike and Jordan Road.dwg Option B Jun 25, 2024 4:45pm by Mackie Nicholas

NEIGHBOR COMMENTS

SUPPORT FOR THIS PLAN:

YES - 6
NO - 1

ADDITIONAL COMMENTS:

I. City staff does not support.

PORTION OF JORDAN ROAD TO BE ABANDONED

EMERGENCY

JORDAN ROAD - ROW VARIES - LOCAL ROAD

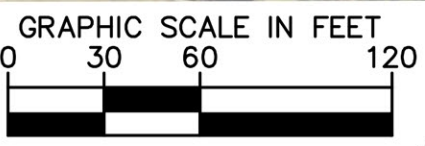
JUDY ENGELSTAD
MAP 062J, GRP A
PARCEL 1.00
BOOK 7541, PAGE 6
LOT 37
R-3 RESIDENTIAL

ANDREW AND ASHLEY THOMAS
MAP 062J, GRP A PARCEL 48.00
BOOK 6923, PAGE 93
LOT 36
R-3 RESIDENTIAL

CHURCH FRANKLIN
COMMUNITY FAITH OF
THE NAZARENE
MAP 062
PARCEL 33.02
CI CIVIC AND
INSTITUTIONAL
DISTRICT

JORDAN ROAD TO BE FULLY
OPENED FROM LIBERTY PIKE
TO GLENEAGLE RD

RIGHT-IN RIGHT OUT CONFIGURATION
TO BE INSTALLED AT JORDAN ROAD
AND LIBERTY PIKE



06/25/2024

Jordan Road – Neighborhood Meeting – August 5, 2024

Plan A – Post-it Note Comments

1. NO
2. This option blocks Eagles Glen from Jordan Road.
3. This option spends money to remove existing access – and limits emergency access. Eagles Glenn reduced to a single way out of the neighborhood. BAD IDEA.
4. Please make Glen Eagle Lane a 3 way stop.
5. Risky for 50+ children in Eagles Glen.
6. NO – current open Jordan Road allows 3 paths out of EG back & new Dev – 3 vs. 1 if closed. Less Emergency access also.
7. Preferred with speed bumps.
8. No speed bumps (they impact home values).
9. Yes.
10. NO!!
11. NO
12. School buses won't work with this routing!
13. No to closing off Jordan Road.
14. Please don't close Jordan Road – R in and R out at Liberty!
15. This option PROTECTS the children of Amber Glen. Currently ENDAGERED by DAILY cut thru traffic.
16. NO. I don't support.
17. BAD IDEA. Spens money to reduce access that is already in place.
18. Increases traffic thru eagles glen.
19. NO
20. NO
21. YES! These kids deserve to be protected.
22. NO
23. NO

24. Helpful for Eagles Glen, but causes excess traffic for Amber Glen. NO!
25. NO
26. NO. This option put LOTS of traffic through our neighborhood – essentially making it a public road.
27. No. do not approve. Too much traffic for Eagles Glen. Share the load.
28. No – too much traffic through Eagles Glen.
29. No – will create too much traffic via Eagles Glen.
30. NO! This puts the entire flow of traffic on Eagles Glen. It is already a busy road with lots of children.
31. NO! Eagles Glen with more homes & kids absorbs the entire traffic load of new neighborhood. Lets share the risk.
32. NO
33. NO – this would route way too much traffic thru EG. Allow everyone Jordan – Liberty
34. YES! We have too much cut through traffic in Amber Glen.
35. NO
36. EMT services impacted. Slower responses.
37. Block off Jordan for new subdivision. Build entrance to Mack Hatcher.
38. NO. Too much traffic through Eagles Glen. Bad for families.
39. 98 home owners in Eagles Glen DO NOT want this.
40. NO! Added risk to EG with no alleviation.
41. YES
42. YES
43. Very bad idea.
44. FSSD buses use Jordan to get to schools. Needs to stay open.

Plan B – Post-it Note Comments

1. YES!!! It is impossible to turn left onto Liberty from Eagles Glen during rush hour!!! Also emergency access!!!

2. Our FSSD busses use Jordan for routes. Leave open.
3. YES!
4. YES!
5. YES
6. In our opinion this is the better option. Yes to option B.
7. Yes. I support this plan.
8. YES!!
9. This option allows access to Jordan Road from Eagles Glen.
10. Yes. Safe option.
11. Yes
12. Yes. In Favor. This allows safe traffic through Jordan Road to continue w/options for all.
13. Best idea.
14. Amber Glen gets excess traffic from Church and Eagles Glen already. Adding new neighborhood will make it much worse for Amber Glen.
15. Keep Jordan Road open. 3 way stop at Gleneagle & Jordan. 3 way stop at Gleneagle and Pintail Court.
16. What avenues are being investigated to leave Jordan As is, but improved but have access to cool springs? Why are the apartments of Artesa spared when it has access to cool
17. Have this same protection??? Re-opening Jordan by Dwell
18. NO! Puts the burden on Amber Glen.
19. B – Best option. Eagles Glen impact both Amber Glen and Eagles Glen.
20. YES...to keep Jordan Rd. Open. It's already too busy/hard to exit EG onto Libert Pike.
21. YES
22. Correct cut through for Eagles Glen. Need Speed bumps to control speeds.
23. Yes.
24. Keep all roads open and rt in rt out for Jordan. Put up stop sign.,
25. No speed bumps!
26. No speed bumps. They drive down property values.
27. YES!
28. YES. Keep Jordan Road open.

29. Please make Glen Eagle Lane and Eagles Glen Drive a 3 way stop.
30. Don't favor one neighborhood over the other – keep the road open and share the risks to kids both neighborhoods.
31. NO! Drivers already cut through Amber Glen to go left on Liberty. This plan would exacerbate that!
32. If something has to change, this is the best option (sad face)
33. Yes!
34. Yes. If blocked at Jordan/Bratton for Amber Glen.
35. Yes!
36. Yes
37. No
38. Yes
39. This creates too much traffic in Amber Glen. We already have too much traffic cutting through from Glen Eagle.
40. This option please. Keeps access to Jordan and easy right to Liberty and Mack Hatcher.
41. Yes. I support this plan.
42. Yes. Two exits are better than one.
43. Leave Jordan Road open to spread additional traffic thru multiple streets instead of blocking it so it all funnels through Eagles Glen. Yes.
44. Yes. This option allows all of us access to Jordan Rd and everyone can access Liberty Pike in both directions from the front of their neighborhoods.
45. Yes.
46. Yes!! Homeowner on Eagles Glen. Better disperses traffic from new neighborhood.
47. Best plan if developed. Allows more access for both Amber Glen and Eagles Glen and new neighborhood.
48. Yes! Allows for more options!
49. Best option.
50. Eagles Glen residents. Enjoy having this alternative way to get to Liberty.
51. Jordan Road should not be closed between Glen Eagle and Liberty Pike at all! Each neighborhood needs additional access for emergency vehicles and we all need access to getting out multiple ways. Eagles Glen needs speed deterrents!
52. Yes! Please leave Jordan Rd open!

53. Yes. Best plan if we must develop the land.
54. Yes. Keep Jordan open. Eagles Glen need 3 paths out of EG and new Houses.
55. Yes. Provides room for heavier pedestrian traffic, safer for high population of children in Eagles Glen. Many people use Jordan Rd as part of walking, biking, running route.

Plan C – Post-it Note Comments

1. Best idea. Yes? Protects kids in AG and EG!!!
2. Yes. Best idea!
3. Yes.
4. No net change in interconnectivity compared to now. This should be a go.
5. Yes.
6. Emergency gate doesn't work now. Do not support.
7. Yes. Gives access to emergency the same as exists today. Minimal disruption to existing Amber and Eagles Glen.

Greg's notes:

- Gate
- Emergency access only – no residents
- No entrance/exit to EG
- No entrance/exit to AG
- Cheaper for developer

Additional Comments

1. Weed control on Jordan Road.
2. I'm concerned about blasting and damage to my home on Pintail Court. We need multiple access to all neighborhoods. Traffic calming for all neighborhoods.
3. Compensation to Eagles Glen HOA for play area/pool.

4. Keep Jordan open but widen. Too narrow now. Must keep as much traffic off Gleneagle Lane. Otherwise you've turned a private road into a public road. Need Jordan open for emergency access in back of Eagles Glen. Thank you.
5. Do not block access at Jordan Road. It is already impossible to turn left onto Liberty from Eagles Glen at rush hour! Lot of kids on this street! For emergency access we need to keep open. (Also, for school buses).
6. Yes to stop signs at intersection. Leave Jordan open please.
7. Leave Jordan Road open! Emergency Access. More even traffic flow. Safety from traffic changes anticipated by all.
8. 3 way stop sign on Eagles Glen near the pool.
9. Leave Jordan Road open for access to all. Allows best option for emergency vehicles.
10. Look at the cul de sac across from 618 Gleneagle...all the kids play hockey, pickle ball and ride their bikes and toys....please leave Jordan Road open vs. forcing delivery trucks on the cul de sac.
11. These 3 maps (A,B,C don't address construction traffic. If we are talking about 1-3 years of site prep to build out, this should all come from Jordan Road from McEwen – not through E Glen of A Glen.
12. Plan B
13. Plan B. Please keep Jordan Road open. This spreads the risk/inconvenience of 34+ more cars through both neighborhoods.
14. Plan B helps the most homes/people and keeps the most kids safe.
15. Please Jordan Road open to disperse traffic rather than routing all through Eagles Glen.
16. Spoke with Alderman Burger & Ann regarding our Frankli City Bus Routes. They should weigh in! They use the Jordan route.
17. I vote for Plan C
18. I vote for B or C to protect children. There is NO urgency to close Jordan Road. You could add the right in/right out and leave it open for now. In future years, IF there is an obvious problem – then close it off.
19. I vote for Plan B.
20. Sewer connection will be at manhole in my driveway. We will want driveway at the manhole replace with white aggregate (10% aggregate) to our satisfaction.
21. Option B (Jordan Rd Open) is obviously better because at least some portion of traffic (x number of cars/day) can access Mack Hatcher without having to go through EITHER neighborhood. The right in/right out is a good idea also.

22. Plan A puts ALL burden on Eagle Glen for traffic to & from Liberty.
23. Plan B will still impact Eagles Glen with traffic to Liberty but at least some will go down Jordan.
24. Please keep Jordan Road open. No speed bumps please.
25. Need stop sign (3 way) at Pintail Court & Glen Eagles Lane to stop/slow traffic coming to cul de sac across from 614 glean eagle
26. Plan A = Yes.
27. The section that is being gifted to owners in Eagles Glen, please put a sidewalk across the back connecting Jordan Road for walkers and bicycles. If sidewalk from new subdivision on Jordan to Liberty Pike would be helpful
28. Whatever you do, DO NOT put any speed bumps ANYWHERE!
29. Please keep access open to Jordan Road. Will help alleviate extra traffic in Eagles Glen.
30. Plan B please! This would obviously be the least impact on BOTH existing neighborhoods. It makes NO sense to route all the traffic through Eagles Glen. It is bad enough the traffic that will already be routed that way. Please think of safety. I love the idea of restricting Jordan Road to right turn only.
31. Jordan Road needs to connect to Liberty Pike to Gleneagle Lane. Go with Option B.
32. Plan B is best. To ask Eagles Glen to take the brunt is asking too much for one neighborhood. This is a neighborhood with lots of kids.
33. I support Option A. Amber Glen already receives too much traffic from Glen Eagle and the church. If it has to be option B, I am in favor of closing the Jordan Rd/Bratton intersection with a gate. Propose speed bumps and sidewalks on Jordan.
34. We prefer the plan that cuts off Jordan Road at the church. Amber Glen already experiences too much cut through traffic from Eagles Glen with no regard for speed limits or safety. Those problems would double if the new neighborhood was also routed through Amber Glen.
35. Keep Jordan Road open.
36. Plan B is the best option.
37. Any Gap-sidewalk to connect Toll Bros sidewalk to sidewalk at Firestone on Jordan. We want to know which side of Jordan Road that gap-connection will be – would it be in front of 604 Jordan Road?
38. Plan B. Leave Jordan Road open w/no left turn at Liberty.
39. Go with Plan B. Make Jordan Rd at Liberty right in and out only! Leave Jordan open!
40. Option B.

41. Option B is best! Option A spends money to reduce connectivity.

Email from Keith Logan:

Good afternoon -

I attended the neighborhood meeting last night at City Hall regarding the options being considered for Jordan Road due to the new Toll Brothers neighborhood being developed, and wanted to share an additional thought (I'm sure you've received *many* already!).

In the mid-to-late 1990's, Franklin officials very intentionally closed Jordan Road for safety reasons so it would not be used as a "short-cut" from the "new" developing Cool Springs area to Liberty Pike and Highway 96. They felt the road was too narrow and unsafe for ongoing, pass-through traffic. I believe this decision was made with good foresight and logic. I also believe the currently approved option on how to make changes to Jordan Road upholds this previous logic and prevents Jordan Road from once again becoming a "short cut".

However, if the recently proposed "Plan B" option is accepted, this is essentially allowing Jordan Road to become a "short-cut" again. The proposed alternative plan will have Jordan Road be a straight shot from McEwen to Liberty Pike, with a slight 1/4-mile detour *through* the new subdivision being built, which will not be nearly enough of an inconvenience to prevent people from taking the "short cut". This option would likely attract many drivers that do not live anywhere near Jordan Road to utilize that stretch of road for "convenience" purposes. I would encourage the city to remember why they closed Jordan Road in the first place. The factors considered in that decision have only been exaggerated, and the currently approved plan is the only option that upholds those valid concerns.

Thank you for your service to the city of Franklin. I am very impressed and pleased with the leadership Franklin has been able to maintain over many decades, as you have continued to make Franklin an incredibly desirable and wonderful place to live.

Many Blessings -Keith Logan



August 14, 2024

Mr. Paul Holzen
Director of Engineering
City of Franklin, Tennessee
109 3rd Avenue South
Franklin, Tennessee 37064

**RE: Offsite Roadway Reimbursement Request
Franklin Ridge Subdivision
Franklin, TN**

Dear Paul,

Please consider this formal request for a Reimbursement of Costs for the Offsite Improvements proposed and included within the “Franklin Ridge” project, also known as “COF #8466”.

The proposed plan and currently approved preliminary plat is proposing 34 single family units. This project is projected to generate an approximate value of \$166,974 in Arterial Road Impact Fees and \$113,560 in Collector Road Impact Fees, per the current fee structure.

Based upon previous discussions with city staff and alderman, offsite roadway improvements to Jordan Road to the south are being request of the developer based on discussions with the surrounding neighborhoods and community, in order to provide distribution and alternative access for existing and future traffic in this area. These requests are not born by the project. The reimbursement agreement request consists of the following items:

- 3-way stopping intersection at Gleneagle Lane and Jordan Road.
- Improvements to Jordan Road per City of Franklin requirements for the previously identified “emergency access only” portion south of Gleneagle Lane and Jordan Road intersection for approximately 350 linear feet.
- Improvements to Jordan road to the south and beyond the property frontage to the intersection of Jordan Road and Liberty Pike to provide minimum 20’ pavement for approximately 900 linear feet.
- A right-in right-out curbed access, striping, and signage configuration for Jordan Road and Liberty Pike intersection

Please see attached to this letter the following Exhibits for further reference and detail associated with the proposed improvements and background and basis for the costs associated with the proposed reimbursement agreement:

- **“Exhibit A – Jordan Road South – Offsite Improvement Exhibit – Option A”** – This exhibit labels and outlines the currently designed and approved plan for the COF #8466. No reimbursement is request for this option.
- **“Exhibit B – Jordan Road South – Offsite Improvement Exhibit – Option B”** – This exhibit labels and outlines fully reimbursable areas and infrastructure as provided by City staff. The items in Blue are included within this reimbursement. This exhibit is the basis for the construction estimate in Exhibit C, below.

- **“Exhibit C – Jordan Road South – Reimbursement Cost Outline”** – This exhibit totals the anticipated costs for this reimbursement agreement, based upon Exhibit B.

Due to the fact that the estimated design and construction costs of these improvements are preliminary and not based upon final bids, and that inflation will play a significant role in the rise of construction costs during the development of this Project, we are requesting a 25% contingency be added to the estimates provided. Based upon these estimated values and contingencies, Toll Brothers Inc. is requesting full reimbursement for the amount of \$416,750.

For our planning purposes, we request that the resulting agreement be finalized as soon as practically possible. If you have any questions, please contact me at (615) 564-2701 or gray.harrison@kimley-horn.com.

Sincerely,

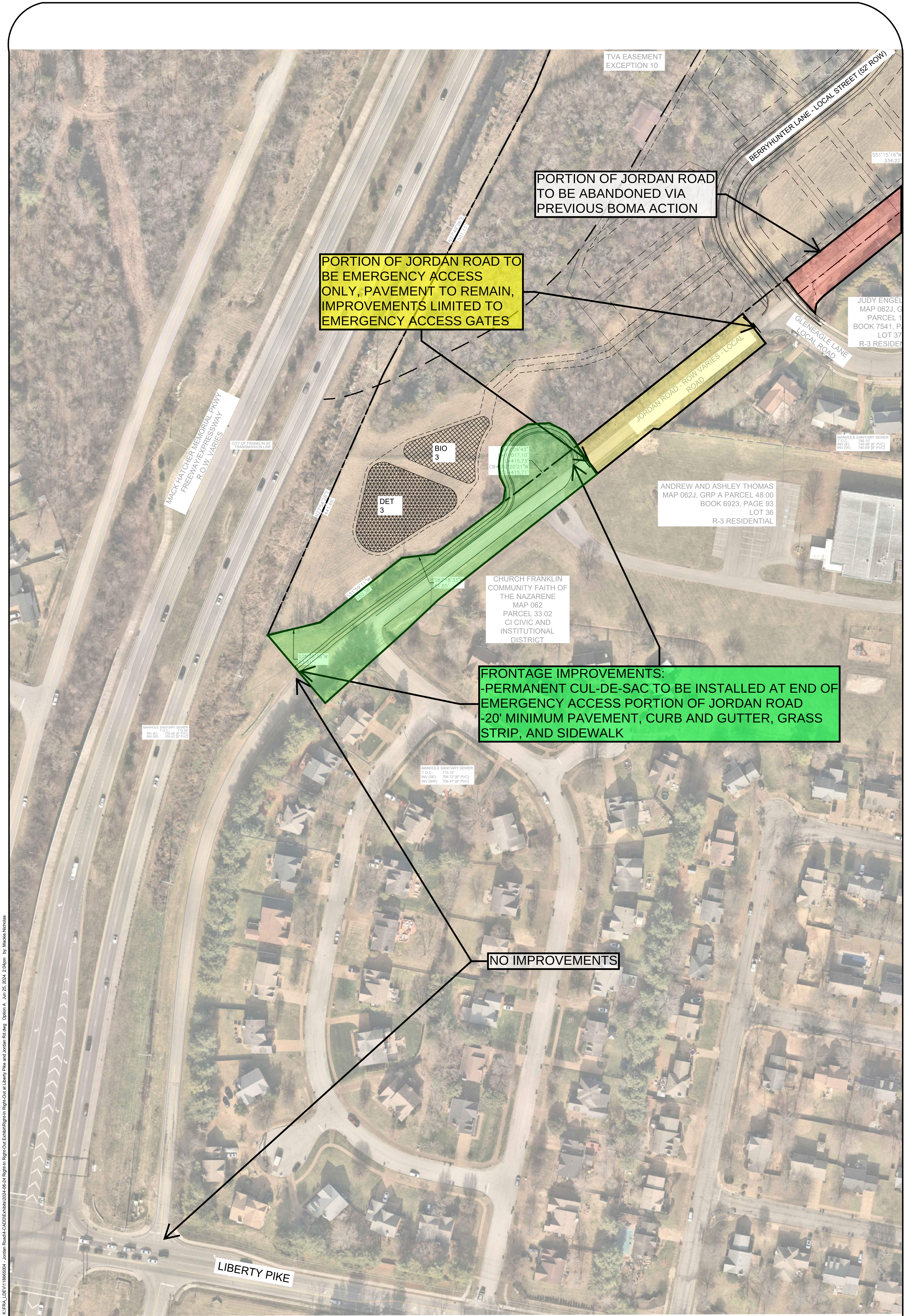


Gray Harrison, PE

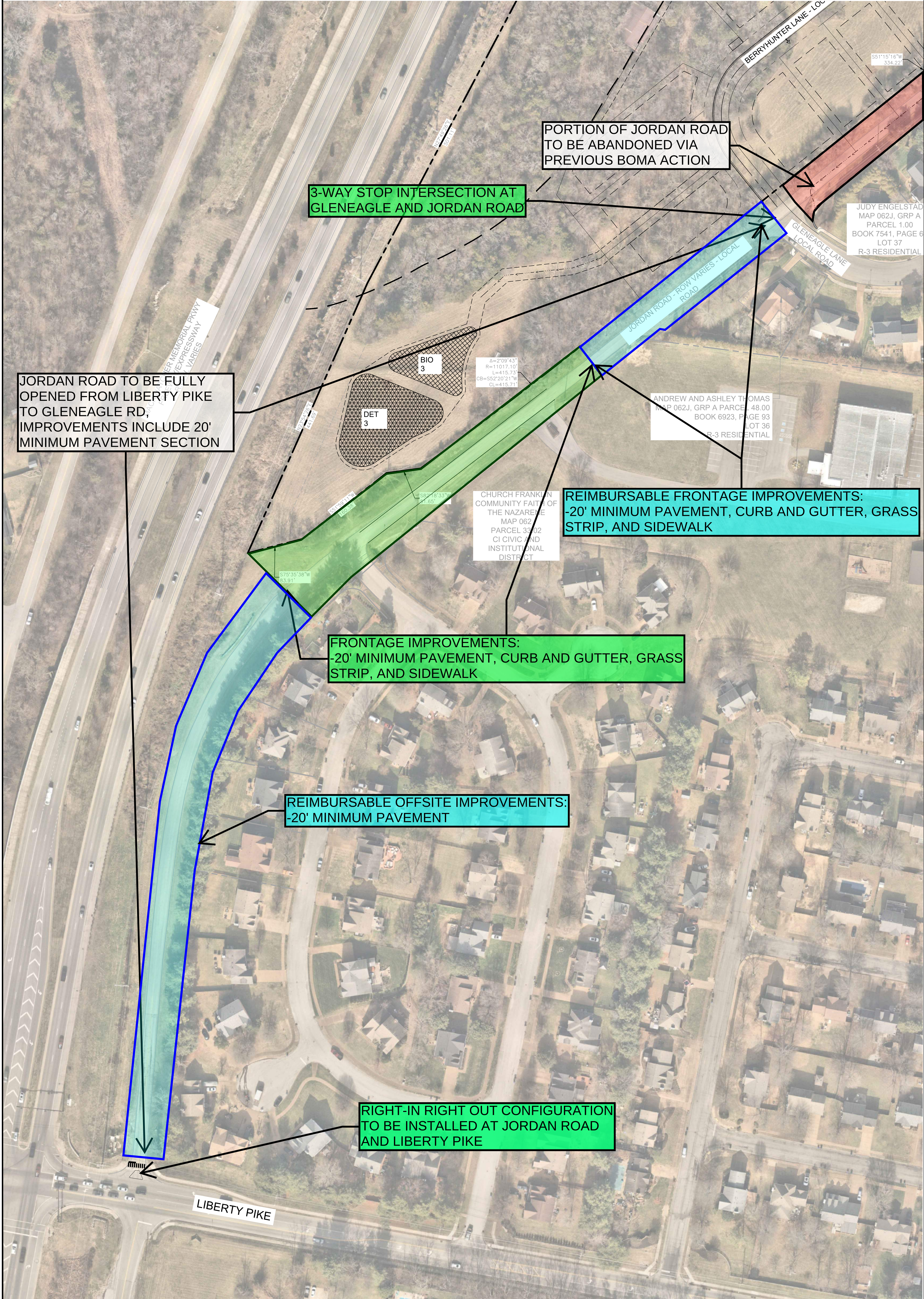
Attachments:

Exhibit A – Jordan Road South – Offsite Improvement Exhibit – Option A
Exhibit B – Jordan Road South – Offsite Improvement Exhibit – Option B
Exhibit C – Jordan Road South – Reimbursement Cost Outline

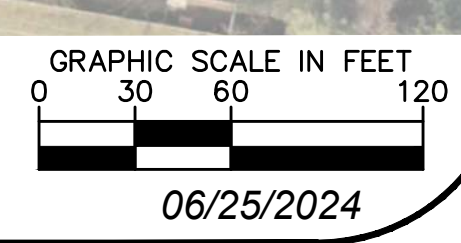
K:\FRA_LDEV\11665904 - Jordan Road\4-CADD\Exhibits\Right-In Right-Out at Liberty Pike and Jordan Rd.dwg - Option A - Jun 25, 2024 2:04pm by: Mackenzie Nicholas



K:\FRA_LDE\11885004 - Jordan Road\4-CAD\DE\entire\2024-06-24 Right-In Right-Out at Liberty Pike and Jordan Road\Option B Jan 25, 2024 4:52pm by Mackie Nicholas



RIGHT-IN RIGHT-OUT OPTION B





MEMORANDUM

To: City of Franklin
From: Gray Harrison, P.E.
Kimley-Horn and Associates, Inc.
Date: August 14, 2024
Subject: Preliminary Opinion of Probable Cost Jordan Rd South Improvements

Below is a preliminary budget estimate for the cost of a Right-In Right-Out configuration at the Liberty/Jordan Rd intersection. This also includes the difference between the Jordan Road closure/cul-de-sac improvement as currently approved, and the improvements to 340' of Jordan Road along the site frontage and 900' of Jordan Road from the end of the frontage to the Liberty Pike Intersection. These estimates are preliminary and have not been verified by a contractor for bidding. The estimates are based upon the preliminary layout.

Jordan Road South & Right-In Right Out Improvements

Design	\$25,000
Survey	\$5,000
Geotechnical Exploration	\$2,750
Mobilization	\$5,000
Earthwork/Rock Cut/Strip Topsoil	\$23,100
Storm Sewer/Structures	\$77,500
Dry Utility Relocations/Trenching (Comm. & Gas)	\$54,250
Curb & Gutter	\$9,100
Sidewalk	\$13,600
Asphalt/Mill & Overlay	\$57,800
Concrete Median (R-in R-Out)	\$15,000
Signage & Striping	\$3,000
Street Trees (50' OC, 1 side)	\$5,300
Traffic Control (Assumes 20 days)	\$37,000
Contingency – 25% of Hard cost	\$83,350
Grand Total Budget Estimate	<u>\$416,750</u>



File #: 21-0363

DATE: July 24, 2024
TO: Board of Mayor and Aldermen
FROM: Eric Stuckey, City Administrator
Mark Hilty, Asst. City Administrator Public Works
Christopher Koeper
Robyn Freeman, Engineering Associate

SUBJECT:

*Consideration Of Resolution 2024-74, A Resolution Awarding The City Hall Construction Manager At Risk To Skanska USA Building, Inc. And Authorizing The City Administrator To Enter Into Phase I, A Pre-Construction Contract For An Amount of \$260,000 With The Understanding The Board Of Mayor And Aldermen Will Be Presented Phase II For Consideration Of The Guaranteed Maximum Price For Development And Construction Of The New City Hall Site

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning Resolution 2024-74, awarding the City Hall pre-construction Construction Manager at Risk contract to Skanska USA Building, Inc and authorizing the City Administrator to execute the contract in a form substantially similar to Exhibit A.

BACKGROUND/STAFF COMMENTS:

On May 23, 2024, the City released a Request for Proposals – Contract No. 2024-0106, to solicit Statements of Qualifications from professional firms interested in providing Construction Manager at Risk (CMAR) services for the construction of a replacement City Hall. Ten firms expressed interest in providing these services by submitting Statements of Qualifications (SOQs). A committee comprised of three City Staff, the Owner's Representative, and the Architect for the project independently scored the proposals. The top four ranking firms were Bell, Reeves Young, RC Mathews, and Skanska, and were invited to do interviews before the selection committee.

A panel consisting of four City Staff, the Owner's Representative, and the Architect for the project then conducted interviews of the top four firms. Alderman Baggett was present to observe the interviews. However, he did not score the interviews. The committee deliberated independently and submitted final scoring. Upon review, staff recommends that Skanska, the firm with the highest overall score through the process, be awarded the Pre-Construction Contract for Construction Manager at Risk, and that BOMA authorize the City Administrator to execute this Phase 1 contract. At a future date, the BOMA will be presented early release bid packages and a guaranteed maximum price for Phase II for development of the site and construction of the new city hall for consideration.

FINANCIAL IMPACT:

The financial impact of the Pre-Construction Contract (Phase 1) is \$260,000 with the understanding that the Board of Mayor and Aldermen will be presented with a second phase at a later date for consideration of the guaranteed maximum price.

RECOMMENDATION:

Staff recommends that the Board of Mayor and Aldermen approve Resolution 2024-74.

RESOLUTION 2024-74

A RESOLUTION AWARDING THE CITY HALL CONSTRUCTION MANAGER AT RISK TO SKANSKA USA BUILDING, INC. AND AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO PHASE I, A PRE-CONSTRUCTION CONTRACT FOR AN AMOUNT OF \$260,000 WITH THE UNDERSTANDING THE BOARD OF MAYOR AND ALDERMEN WILL BE PRESENTED PHASE II FOR CONSIDERATION OF THE GUARANTEED MAXIMUM PRICE FOR DEVELOPMENT AND CONSTRUCTION OF THE NEW CITY HALL SITE

WHEREAS, pursuant to Tenn. Code Ann. § 12-3-107 the City may use competitive sealed proposals rather than competitive sealed bids when the City adopts a process for the use of competitive sealed proposals and determines that the use of competitive sealed bidding is either not practicable or not advantageous to the City ; and

WHEREAS, July 14, 2020, after issuing, reviewing, and scoring a Request for Proposals for architectural and engineering design services for the new City Hall project, the City Board of Mayor and Aldermen ("BOMA") approved Resolution 2020-108 authorizing City Staff to commence contract negotiations with a consultant to perform architectural and engineering design services for the new City Hall project; and

WHEREAS, in furtherance of Resolution 2020-108, on October 27, 2020, BOMA approved a Professional Services Agreement with a consultant for new City Hall under COF 2020-0041 and subsequent amendments; and

WHEREAS, August 8, 2023, after issuing, reviewing, and scoring a Request for Proposals for New City Hall Owner's Representative, the City Board of Mayor and Aldermen ("BOMA") approved Resolution 2023-55 authorizing City Staff to commence contract negotiations with a consultant to serve as the Owner's Representative for the purpose of supporting the planning and successful execution of the New City Hall project; and

WHEREAS, in furtherance of Resolution 2023-55, on March 26, 2024, BOMA approved a Professional Services Agreement with STV, Inc. to serve as the Owner's Representative for Franklin's new City Hall; and

WHEREAS, in addition to architectural and engineering design services, and hiring of an Owner's Representative, the Board of Mayor and Aldermen ("BOMA") decided to change the new city hall project delivery method from the traditional design, bid, build project delivery method to construction manager at risk and guaranteed maximum price (GMP) to take advantage of competitive pricing and cost certainty; and

WHEREAS, on May 23, 2024, after issuing a Request for Proposals for Construction Manager at Risk for Franklin's "New City Hall", sealed bids were received by the City of Franklin staff at City Hall, 109 3rd Avenue South, Franklin, Tennessee 37064, and were opened; and

WHEREAS, after careful review and scoring of the submitted bids and four (4) firms being invited back for interviews, City staff recommends award of the Pre-Construction Contract for Construction Manager at Risk contract (COF Contract No 2024-0106) to Skanska USA Building, Inc.; and

WHEREAS, the Board of Mayor and Aldermen believes it is in the best interest of the City of Franklin to award the bid to Skanska USA Building, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, TENNESSEE, AS FOLLOWS:

Section 1. Approval is granted to award the Pre-Construction Contract for Construction Manager at Risk (COF Contract No. 2024-0106, Exhibit A) to Skanska USA Building, Inc in the amount of \$260,000.

Section 2. The City Administrator is authorized to execute the Phase I Pre-Construction Contract (COF 2024-0106) upon approval as to form by the City Attorney in a form substantially similar to Exhibit A.

Section 3. At a future date, the Board of Mayor and Aldermen ("BOMA") will be presented early release packages and guaranteed maximum price ("GMP") for Phase II for development of the site and construction of Franklin's new city hall for consideration.

Section 4. The City Administrator and Assistant City Administrators are hereby authorized to review and approve the spending of funds programmed for the scope of work associated with the Board of Mayor and Aldermen approved early release packages that may include building demolition, grading, excavation, and foundation work prior to the overall guaranteed maximum price being approved.

IT IS SO RESOLVED AND DONE on this ____ day of _____, 2024.

ATTEST:

CITY OF FRANKLIN, TENNESSEE:

By: _____
Angie Skarp
City Recorder

By: _____
Dr. Ken Moore
Mayor

Approved as to Form:

By: _____
Shauna R. Billingsley
City Attorney

**AGREEMENT BETWEEN OWNER AND
CONSTRUCTION MANAGER AT RISK**

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AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AT RISK

This Agreement is by and between the City of Franklin, Tennessee (“Owner”) and _____ (“Construction Manager at Risk” or “CMAR”).

Terms used in this Agreement have the meanings stated herein and in the General Conditions and the Supplementary Conditions.

Owner and CMAR hereby agree as follows:

ARTICLE 1—THE PROJECT

- 1.01 The Project, of which the CMAR Services and the Work under the Contract Documents are a part, is generally described as follows:

**Replacement City Hall
COF Contract No. 2024-0106**

ARTICLE 2—OWNER’S ADVISOR AND ARCHITECT; OWNER’S PROJECT TEAM

- 2.01 The Owner has retained STV, Inc. (“STV”)(Owner’s Advisor or OA) to act as Owner’s representative, assume all duties and responsibilities of advisor to Owner and construction contract administrator on behalf of Owner, and have the rights and authority assigned to Owner’s Advisor in the Contract.
- 2.02 The Owner has retained Orchard, Hiltz, & McCliment, Inc. (“OHM Advisors”) (Architect) to design the Project, to assume all duties and responsibilities of Architect during the construction of the Project, and to have the rights and authority assigned to Architect in the CMAR Contract.

ARTICLE 3—CMAR SERVICES

- 3.01 Scope of CMAR Services
- A. CMAR will perform the CMAR Services set forth in Exhibit A, Scope of CMAR Services, as authorized, and other specified CMAR Services as expressly set forth in a Contract Amendment. Services rendered by CMAR to meet its general construction and management obligations are not CMAR Services, and are not compensated as CMAR Services, unless expressly designated as such.
 - B. CMAR Services are categorized in Exhibit A as Basic Preconstruction Services; Additional Preconstruction Services; Basic Procurement Services; Additional Procurement Services; and Special Services.
 - C. In Exhibit A and in scope of CMAR Services provisions in Contract Amendments, imperative sentences with respect to the performance of services are directives to CMAR, unless expressly indicated otherwise.
 - D. CMAR is prohibited from undertaking actual construction work on the Project except where bids have been solicited twice and no bids were submitted.

3.02 Basic Services, Additional Services, and Special Services

- A. Basic Services are CMAR Services (categorized as Preconstruction or Procurement) that are identified as Basic Services in Exhibit A.
- B. In addition to Basic Services, CMAR shall provide specific Additional Preconstruction Services and Additional Procurement Services within the scope set forth in Exhibit A, if Owner authorizes CMAR to do so. Owner or Owner's Advisor will authorize the specified Additional Services in a Contract Amendment. The Contract Amendment will describe the tasks to be performed, the compensation to be paid, the time for performance, the deliverables to be provided, and other applicable terms, if any. If a specific Additional Service has been priced during the CMAR selection process, such price will be binding on CMAR and Owner unless modified by mutual agreement.
- C. In addition to the services identified as Basic Services and Additional Services, after the Effective Date of the Contract the Owner and CMAR may identify Project-related services that were not contemplated at the time the Agreement was executed, are necessary to the Project, and should be added to the scope of CMAR Services. If Owner and CMAR mutually agree, a Contract Amendment will be issued that specifies the scope of such Special Services, the compensation to be paid, the time for performance, the deliverables to be provided, and other applicable terms. Any amount included in the Agreement for Special Services will serve as the Owner's contingency for Special Services, if authorized by the Owner.

3.03 Authorization to Provide CMAR Services

- A. CMAR is authorized by the execution of this Agreement to begin providing Basic Preconstruction Services set forth in Article 1 in Exhibit A, Scope of CMAR Services, as of the Effective Date of the Contract.
- B. CMAR shall provide Basic Procurement Services set forth in Article 3 in Exhibit A, Scope of CMAR Services, upon receipt of notice to commence such services from Owner or the Owner's Advisor, or in a Contract Amendment establishing the scope and compensation for Procurement Services.
- C. All other CMAR Services, including Additional Preconstruction Services, Additional Procurement Services, and Special Services, if any, must be authorized by Owner or Owner's Advisor.

3.04 Compensation for Basic CMAR Services

- A. Basic Preconstruction Services—Owner will compensate CMAR for Basic Preconstruction Services, provided per Article 1, Exhibit A—Scope of Work for CMAR Services, the lump sum (stipulated price) for the Price for CMAR Basic Preconstruction Services.

3.05 Payment for CMAR Services

- A. Preparation and Submittal of Invoices
 - 1. CMAR will prepare and submit invoices for CMAR Services to Owner's Advisor on a monthly basis in a format acceptable to Owner's Advisor.
 - 2. CMAR may not submit invoices and is not entitled to compensation for Additional Services or Special Services unless Owner has authorized such services through execution of a Contract Amendment.

3. CMAR will provide documentation acceptable to the Owner to allow Owner to verify CMAR's charges included in invoices.

B. Payments

1. Payment for CMAR Services compensated on a Lump Sum (stipulated price) basis:
 - a. The Lump Sum amount includes compensation for CMAR's services, and services of CMAR Subconsultants, if any. Appropriate amounts are to be incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses, and other cost.
 - b. The amount invoiced each billing period will be based on the CMAR's estimate of the percentage of the total CMAR Services completed during the billing period.
 - c. The compensation paid to CMAR for Basic Services will not exceed the Lump Sum amount unless duly authorized by a Contract Amendment.
2. The amounts paid to CMAR under this Article are deemed to include full compensation for CMAR's overhead and profit associated with such labor and expenses.

C. Time of Payment

1. Owner will make payments for CMAR Services within **30** days after receiving an approved invoice from the Owner's Advisor.
2. If Owner fails to make any payment due CMAR for CMAR Services within 30 days after receipt of CMAR's invoice, then:
 - a. CMAR may, after giving 7 days' written notice to Owner, suspend services under this Agreement until Owner has paid all amounts due for services, expenses, and other related charges in full. Owner waives any and all claims against CMAR for this suspension.
3. Owner may withhold only the contested portions of an invoice and must pay the undisputed portion of the invoice.

ARTICLE 4—COMPENSATION FOR PERFORMANCE AND COMPLETION OF THE WORK

- 4.01 Owner shall compensate CMAR for performance and completion of the Work in accordance with the Contract Documents. Payment for Work will consist of the following:
- A. Payment for Construction Support Costs in accordance with Article 5;
 - B. Payment for Cost of the Work as provided in Article 6; and
 - C. Payment of a CMAR Fee as set forth in Article 7.

- 4.02 This Agreement establishes a CMAR Contingency Allowance for use in paying for unforeseen costs as set forth in Article 8.
- 4.03 The amounts for CMAR's compensation summarized in Paragraph 4.01 are subject to additions and deletions as provided in the Contract, up to limitations established in the Guaranteed Maximum Price (GMP) as provided in Article 11.

ARTICLE 5—CONSTRUCTION SUPPORT COSTS

5.01 Construction Support Costs

- A. Construction Support Costs (field overhead or “general conditions” costs) are those costs associated with and in support of construction that are not directly related to specific construction activities. Construction Support Costs are not compensable as Cost of the Work and must not be included by CMAR in proposed Work Authorizations submitted to the Owner for approval and issuance. Construction Support Costs include without limitation:
1. CMAR project management costs, including project managers, superintendents, field Architecting staff, and clerical support located at the Site;
 2. Management of Subcontractors and Suppliers;
 3. Management of delegated professional design services, if any;
 4. Costs associated with safety programs, including safety managers and safety representatives;
 5. Quality management not specifically designated to be covered in a Work Authorization;
 6. Costs associated with obtaining permits, or paying patent fees or royalties, if not specifically designated to be covered in a Work Authorization;
 7. Costs for permit inspections, and other inspections required by Laws and Regulations not specifically designated to be covered in a Work Authorization;
 8. Compliance with Laws and Regulations;
 9. Taxes, other than those specifically designated to be covered in a Work Authorization;
 10. Contract administration costs, including costs for:
 - a. Meetings, reporting, notifications, and other communications and coordination,
 - b. Document management,
 - c. Submittals, record data, and other documentation,
 - d. Creating and maintaining Project schedules per Article 4 of the General Conditions,
 - e. Changes to the CMAR Contract per Article 11 of the General Conditions,
 - f. Applications for Payment per Article 15 of the General Conditions,
 - g. Maintenance of Record Documents, and
 - h. Other contract administration costs included in the Contract Documents;

11. Performance, payment, and warranty bonds, if any, or, Subcontractor Default Insurance (“SDI”) provided to cover the construction of the entire Project;
 12. General insurance costs for a Contractor Controlled Insurance Program (“CCIP”) excluding Builder’s Risk or other coverage that applies specifically to Work and specifically designated to be covered in a Work Authorization, and Worker’s Compensation Insurance which is to be included in payroll cost per Paragraph 6.02.A.1;
 13. Costs associated with CMAR temporary facilities and temporary infrastructure at the Site;
 14. The cost of purchasing, renting, or furnishing small tools and hand tools to complete the work.
 15. Costs for site maintenance, storage of materials, waste disposal, environmental controls, management of water, protection of site and adjacent property, cleaning during construction and final cleaning;
 16. Costs associated with startup and commissioning of the Work, including training of Owner’s personnel, temporary operation of facilities by the CMAR; and performance acceptance testing, if any;
 17. Costs associated with substantial completion, partial utilization, and final completion; and
 18. Costs associated with general warranty, guarantees and correction of defective work during the Correction Period.
- B. The organization of the Work into Work Packages will not result in changes to the CMAR’s compensation for Construction Support Costs.

5.02 Compensation for Construction Support Costs

- A. Payments for Fixed Construction Support Costs will be made in equal monthly increments determined by dividing the Fixed Construction Support Costs Contract Amount by the projected number of months in the Construction Period, or based on a predetermined percentage over the duration of the project.

ARTICLE 6—COST OF THE WORK

6.01 Purposes for Determination of Cost of the Work

- A. The term Cost of the Work is defined in the General Conditions, Article 1, as the sum of eligible costs incurred by CMAR for the performance of the Work, as allowed by the Cost of the Work provisions set forth in the Agreement; such provisions are set forth in this Article 6. Cost of the Work is determined for each Work Authorization, subject to any limits described in this Article. The provisions of this Article are used for two distinct purposes:
1. To determine Cost of the Work for purposes of CMAR’s base compensation for construction under this Contract; or
 2. When needed to determine the value of a Change Proposal, Change Order, Claim, set-off, or other adjustment to the Guaranteed Maximum Price. When the value of any such adjustment is determined based on Cost of the Work, CMAR is entitled only to

those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.

- B. For purposes of determining CMAR's base compensation, Cost of the Work applies only to Work that has been duly authorized in a Work Authorization.
- C. The Cost of the Work will include only those items identified in Paragraph 6.02.

6.02 Cost of the Work

- A. Payroll Cost—Payroll costs for employees in the direct employ of CMAR performing Work described in Work Authorizations, and excluding those efforts covered in Construction Support costs per Paragraph 5.01. Payroll costs will be based on actual amounts paid as indicated on Certified Payroll reports. Payroll costs are to include salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation insurance, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturdays, Sundays, or legal holidays, will be included in the above to the extent authorized by Owner.
- B. Incorporated Equipment and Material Cost—Cost of all materials and equipment furnished or incorporated in the Work, including costs for transportation and storage prior to delivery to the site. Cost for proper storage at the Site is to be included in Construction Support Cost per Paragraph 5.01. Cost for equipment is to include Suppliers' services for submittals, factory and field testing and inspections, installation checks, start-up assistance, and training, if any. All cash discounts accrue to CMAR unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and CMAR shall make provisions so that they may be obtained.
- C. Consumable Equipment and Material Cost—Cost, including transportation and maintenance, of all materials, supplies, equipment, tools, and machinery at the Site, which are consumed in the performance of the Work, less market value of such items used but not consumed which remain the property of CMAR. In establishing costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. CMAR will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such items.
- D. Subcontractor Cost—Payments made by CMAR to Subcontractors for Work performed by Subcontractors. CMAR shall obtain competitive bids from subcontractors acceptable to Owner and CMAR and shall deliver such bids to Owner, which will then determine, with the advice of Owner's Advisor, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as CMAR's Cost of the Work and fee as provided in this Article 6.
- E. Construction Equipment Cost—Cost of providing construction equipment and machinery to construct the Work described in the Work Authorization.

1. Include all the costs for transporting, loading, unloading, assembly, dismantling, and removal of the equipment and machinery with Consumable Equipment and Material Cost per Paragraph 6.02.C.
2. Construction equipment and machinery cost will be billed at rates approved by the Owner's Advisor as part of each Work Authorization.
 - a. All operating costs will include costs for fuel, maintenance, parts, and associated labor. Billing rates for equipment fueling and maintenance do not include payroll costs for equipment operators, which will be included in Payroll cost per Paragraph 6.02.A.
 - b. Costs for equipment and machinery owned by CMAR or a Subcontractor cannot exceed the rates shown for equipment in the EquipmentWatch Cost Recovery Rental Rate Blue Book, (<https://equipmentwatch.com/blue-book-cost-recovery>) An hourly rate will be computed by dividing the monthly rates by 176. These rates will include all operating costs per Paragraph 6.02.E.2.a.
 - c. Payment for rented equipment will be in accordance with rental agreements as to price, including any surcharge or special rates applicable to overtime use of the construction equipment or machinery, and all such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
 - d. No markup is allowed on equipment rented or leased from any company owned in total or in part by CMAR or a Subcontractor, or is owned by the same holding company or a company with a close legal affiliation to CMAR or Subcontractor, since markups are included in rental or lease rates.
 - e. Equipment used for site maintenance is to be included in Construction Support Costs. Equipment used for multiple Work Authorizations must be billed on the basis of time worked on each Work Authorization.
3. With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Guaranteed Maximum Price (changed Work), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

F. Supplemental Costs which consist of the following:

1. The proportion of necessary transportation, travel, and subsistence expenses of CMAR's employees incurred in the discharge of duties connected with the Work Authorization.
2. Costs of special consultants including Architects, architects, testing laboratories, and surveyors, employed or retained for services specifically related to the Work Authorization and expressly excluding costs incurred by consultants performing CMAR Services.
3. Sales, consumer, use, and other similar taxes related to the Work, and for which CMAR is liable, as imposed by Laws and Regulations.

4. Deposits lost for causes other than the negligence of CMAR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.
5. Royalty payments and fees for permits, patents, and licenses directly related to a Work Authorization.
6. The cost of premiums for performance, payment, and warranty bonds, or SDI obtained by CMAR as a requirement of a Work Authorization, in addition to the bonds purchased for the construction as a whole within the scope of Construction Support Costs per Paragraph 5.01.A.11. Final compensation for such premium costs will be based on reconciled costs at the conclusion of the Work.
7. Cost for SDI or Subcontractor bonds that must be required to protect Owner's and CMAR's interests in the event of a Subcontractor default associated with a Work Authorization. Final compensation for such premium costs will be based on reconciled costs at the conclusion of the Work.
8. The cost of premiums for Builder's Risk insurance and other Work Authorization-specific insurance that CMAR is required by the Contract Documents to purchase and maintain, but not including costs of commercial general liability, automobile liability, and contractor's pollution liability insurance which are covered as Construction Support Costs per Article 5. The compensation for worker's compensation is included as part of payroll costs per Paragraph 6.01.A.1. Final compensation for such premium costs will be based on reconciled costs at the conclusion of the Work.

6.03 Specific Exclusions from Cost of the Work

- A. The following items are not included in the Cost of the Work. This express itemization does not confer Cost of the Work or compensable status to otherwise ineligible items not listed here. Cost for any items not included in the Cost of the Work are to be included in the CMAR Fee unless specifically itemized at Construction Support Costs described in Article 5.
 1. Payroll costs and other compensation of CMAR's officers, executives, principals, general managers, project managers, superintendents, safety managers, safety representatives, Architects, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by CMAR, whether at the Site or in CMAR's principal or branch office for general administration of the Work. The payroll costs and other compensation excluded here are to be considered administrative costs covered by Construction Support Cost or the CMAR Fee.
 2. Expenses of CMAR's principal and branch offices.
 3. Any part of CMAR's capital expenses, including interest on CMAR's capital employed for the Work and charges against CMAR for delinquent payments.
 4. Costs due to the negligence of CMAR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.
 5. Cost for the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property not paid from CMAR's Contingency per Article 8.

6. Expenses incurred in preparing and advancing Claims.
7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 6.03 or approved by Owner..
8. Costs recovered or reimbursed under other Construction Support Cost or Cost of the Work provisions.

6.04 Compensation for the Cost of the Work

- A. Compensation for the Cost of the Work is based on the amount earned for Work completed for each Work Authorization.

ARTICLE 7—CONSTRUCTION MANAGER AT RISK FEE

7.01 The CMAR Fee will be determined as follows:

- A. The CMAR Fee is a specified percentage of the Cost of the Work and issued as a separate amendment to this agreement.

ARTICLE 8—CMAR CONTINGENCY ALLOWANCE

8.01 CMAR Contingency Allowance

- A. The CMAR Contingency Allowance funds—Estimated Guaranteed Maximum Price, are for the exclusive use of CMAR while executing the Work, to reimburse CMAR for costs due to unforeseen causes, unintentional errors, or events which cannot specifically be anticipated at the time Work Authorizations are issued.
- B. The CMAR Contingency Allowance funds may be used by CMAR for costs sustained by either CMAR itself or a Subcontractor, at CMAR's discretion. The CMAR contingency funds may not be used for costs which are reimbursable or recoverable under other provisions of the Contract.
- C. Without excluding other possible uses of the CMAR Contingency Allowance, the following uses are expressly acknowledged as eligible uses of the CMAR Contingency Allowance funds:
 1. Losses and damages, and related expenses, caused by damage to the Work, not compensated by insurance or otherwise, sustained by CMAR or a Subcontractor in connection with the performance of the Work;
 2. Corrective work, regardless of fault if non-conformance is unintended;
 3. Subcontractor defaults;
 4. Overruns in Construction Support Costs;
 5. Builder's Risk deductibles;
 6. Verified excusable errors in estimates; or
 7. Non-compensable overtime and other acceleration costs.
- D. CMAR shall replenish the CMAR Contingency Allowance by restoring money withdrawn with money recovered (1) from bonds and insurance coverage payments for such expenditures, and (2) from defaulting Subcontractors or Suppliers.

- E. The CMAR Contingency Allowance will not be used to fund Owner-directed changes in the Work. Such changes will be administered through the contractual procedures established for changes in the scope of the Work, including expenditures from the Owner's Contingency Allowance, if any, Work Authorizations as modified by Change Order, and Contract Amendments or other modifications that impact the Guaranteed Maximum Price.
- F. The CMAR Contingency Allowance will not be used to recover the cost of items that are compensable as a Cost of the Work.
- G. The CMAR Fee does not apply to expenditures from the CMAR Contingency Allowance. CMAR will not be entitled to any additional overhead, profit, or other markup on any CMAR Contingency Allowance expenditure.
- H. The designated CMAR Contingency Allowance, as duly replenished, is the maximum amount available to CMAR to recover eligible costs under this Article; Owner will not increase the CMAR Contingency Allowance or otherwise reimburse CMAR for eligible costs incurred in excess of the CMAR Contingency Allowance.
- I. CMAR will submit applications for reimbursement from the CMAR Contingency Allowance to Owner's Advisor, in a format acceptable to Owner's Advisor, together with appropriate documentation. Payments from the CMAR Contingency Allowance will be recorded in the Application for Payment.

ARTICLE 9—WORK AUTHORIZATIONS

9.01 General Provisions Regarding Work Authorizations

- A. Work Authorizations will be based on Work Packages prepared by Owner's Advisor and Architect describing equipment and materials to be purchased for installation or Work to be performed in accordance with the approved Work Authorization.
- B. All Work to be provided by CMAR must be authorized by the issuance of a Work Authorization specifying or referencing the scope of Work to be conducted.
- C. Owner's Advisor will issue each Work Authorization using the Work Authorization form provided by the Owner's Advisor.
- D. The Work Authorization will indicate the compensation to which CMAR is entitled for providing the authorized Work.
- E. CMAR is not entitled to compensation for providing Work that Owner's Advisor has not authorized.

9.02 First Work Authorization

- A. The first Work Authorization, authorizing the commencement of construction, will include, in addition to authorization for a specific Work Package, or multiple specific Work Packages, the authorization of expenditures by CMAR for Contract-specific (1) performance and payment bond premiums (2) Builder's Risk premiums, if CMAR is required to purchase and maintain Builder's Risk insurance, and (3) premiums for other specific insurance policies required by the Contract.

ARTICLE 10—PROCUREMENT OF SUBCONTRACTORS; CMAR SELF-PERFORMANCE OF AUTHORIZED WORK

10.01 Performance of the Authorized Work

- A. CMAR will solicit and receive competitive bids on the Work included in each Work Authorization, including the purchase of materials and equipment. CMAR will prepare bid packages supporting the Work Authorization and make opportunities available to Subcontractors and Suppliers in a way that will increase competition and allow bids by trade contractors or specialty entities. CMAR may prepare bid packages for Work the CMAR may wish to self-perform, so long as doing so will not limit bidding by competing bidders (prospective subcontractors).
- B. CMAR must submit self performing work bids in advance of receiving other bids, and in the same manner that other bids are to be submitted. Bids are to be opened in the presence of the Owner's Advisor.
- C. CMAR will award the subcontract for the Work under the Work Authorization to the responsible bidder submitting the lowest responsive bid for that portion of the Work for which bids are received. CMAR may self-perform Work when CMAR is the low bidder.

ARTICLE 11—GUARANTEED MAXIMUM PRICE

- 11.01 Subject to the provisions of Article 4, CMAR guarantees that the maximum amount payable by Owner (Guaranteed Maximum Price, or GMP) for the sum of the amounts for Paragraphs 11.01.A through D that follow will be the binding GMP established by the process stated in Paragraphs 11.02 and 11.03.
 - A. Construction Support Cost Amount (Article 5);
 - B. Cost of the Work (Article 6);
 - C. CMAR Fee (Article 7); and
 - D. CMAR's Contingency Allowance Amount (Article 8).
- 11.02 The Estimated GMP (Estimated Guaranteed Maximum Price) is a preliminary figure as of the Effective Date of the Contract. The GMP will be revised as the design is continued and completed.
- 11.03 A binding GMP will be established at any time agreeable to Owner and CMAR, but not later than the following:
 - A. If the Work is performed under Work Packages released and authorized concurrently for the complete Project, then the binding GMP will be established on the basis of Contract Documents that are 90% complete.
 - B. If the Work will be authorized over time, as the design for individual Work Packages is completed, in a series of incremental Work Authorizations (fast tracking or similar design/construction process) then the binding GMP will be developed in a series of incremental changes as the design for each Work Package reaches 90% completion, culminating, when all Work Packages have been authorized, in a binding GMP for the Contract.

11.04 Owner's Construction Budget

- A. Owner's Advisor will establish an updated Owner's Construction Budget (Budget) based on the CMAR's procurement strategy which identifies Work Packages used to construct the Work. Owner's Advisor, working with CMAR, will update this Budget with actual amounts for each line item as Work Authorization amounts identified in the updated Budget are determined.
- B. Owner's Advisor will revise the Budget to incorporate Change Orders or authorized allocation of contingency funds which change the funds available for Budget line items. When amounts for all Work Authorizations have been determined and the binding GMP is established for the Contract, the Budget must correlate to GMP line items, and the Budget must equal the GMP.
- C. CMAR will identify variances between the budgeted amount and actual amounts as Work Authorization amounts are determined.
 - 1. Positive variances are created when actual cost for a Work Authorization is less than the budgeted amount. Positive variances identify unused funds that can be used to offset negative variances.
 - 2. Negative variances are created when actual cost for a Work Authorization is more than the budgeted amount. Negative variances identify where additional funds are needed. Unused funds from positive variances can be used to offset these negative variances.
 - 3. Net variances for the Contract are used to determine the current status of the Owner's Construction Budget.
 - a. A net positive variance for the Contract represents a savings to the Owner. A final Contract Amendment will be issued at the completion of the Contract (Final Payment) to adjust the GMP to the actual amount of Contract costs.
 - b. A net negative variance for the Contract represents the amount for which the CMAR is at risk, and no additional compensation will be made to the CMAR.

11.05 Options for Costs Exceeding the Owner's Budget

- A. The Guaranteed Maximum Price resulting from the tabulation of cost for self-performed CMAR Work, bids for Work by Subcontractors and Suppliers, Construction Support Costs, CMAR Contingency Allowances and CMAR Fee cannot exceed the Owner's Construction Budget. The Owner may exercise any of the following options at the sole discretion of the Owner if the proposed Guaranteed Maximum Price exceeds the Owner's Construction Budget:
 - 1. Approve an increase in the Owner's Construction Budget in writing.
 - 2. Authorize rebidding or renegotiation for some or all parts of the Project within a reasonable time without an increase in the Guaranteed Maximum Price.
 - 3. Cooperate in the revision of the scope of the Project to reduce the actual cost of construction to the Owner's Construction Budget.
 - 4. Abandon the Project, in whole or in part, and terminate this Contract in accordance with applicable termination for convenience provisions.

- B. CMAR shall revise the project schedule to incorporate delays caused by actions taken to bring the Project within the Owner's Construction Budget.

11.06 Conversion of Cost of Work to a Lump Sum Amount

- A. If Owner and CMAR mutually agree, compensation for all Work on the Project, or for any Work Authorization, may be converted to a lump sum (stipulated amount). If compensation for all Work on the Project is converted to a lump sum amount, this lump sum amount will include costs for Construction Support Cost, Cost of the Work, the CMAR Fee, and all other costs associated with the Contract, all as if bid as a lump sum amount. CMAR will no longer have access to CMAR Contingency Allowance funds and bears all risk associated with delivering the Work for the lump sum amount.
- B. If a Work Authorization is converted to a lump sum amount, this lump sum amount will include costs for Cost of the Work, the CMAR Fee, and all other costs associated with the Work Authorization, all as if bid as a lump sum amount.
- C. The following will continue to apply for conversions to lump sum covered in Paragraphs B and C:
 - 1. The Cost of the Work provisions in Article 6 will continue to apply to pricing certain Change Orders and other similar matters, as set forth in Paragraph 6.01.A.2.
 - 2. Owner's Contingency will continue to be available per Article 12.

ARTICLE 12—OWNER'S CONTINGENCY ALLOWANCE

12.01 Owner's Contingency Allowance

- A. Owner's Contingency Allowance is used at the sole discretion of the Owner to cover unforeseen costs, Owner-directed changes in the scope of the Work, or any other unanticipated change in the Contract Price. These funds can only be accessed by the CMAR when and to the specific extent authorized by the Owner.
- B. The Owner's Contingency Allowance is to be included in the Contract Amount awarded but is not part of the CMAR's GMP.

ARTICLE 13—PAYMENT PROCEDURES

13.01 Submittal and Processing of Payments

- A. Billing and payment for CMAR Services are addressed in Article 3. The provisions in this Article 13 pertain to billing and payment for the Work.
- B. CMAR shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will indicate the amount of the CMAR Fee then payable. Applications for Payment will be processed by Owner's Advisor as provided in the General Conditions.

13.02 Progress Payments; Retainage

- A. Owner shall make progress payments on the basis of CMAR's Applications for Payment as recommended by Owner's Advisor on or about the **25th** day of each month during

construction as provided in Article 13, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract.

- B. Progress payments on account of the Cost of the Work will be made for each Work Authorization.
 - 1. Prior to Substantial Completion, for each Work Authorization progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. **95%** percent of the value of the Work completed, with the balance being retainage.
 - 1) If 50 percent or more of the Work under a Work Authorization has been completed, as determined by Owner's Advisor, and if the character and progress of the Work have been satisfactory to Owner, Owner's Advisor, and Architect, then as long as the character and progress of the Work remain satisfactory to Owner, Owner's Advisor, and Architect, there will be no additional retainage; and
 - b. **[number]** percent of cost of materials and equipment not incorporated in the Work, with the balance being retainage.
 - 2. Upon completion of the Work under a Work Authorization, including completion of all punch list items, Owner shall pay an amount sufficient to increase total payments to CMAR to **[number]** percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less **[number]** percent of Owner's Advisor's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

13.03 Final Payment

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Article 15 of the General Conditions.

13.04 Consent of Surety

- A. Owner will not make final payment or return or release retainage at Substantial Completion or any other time, unless CMAR submits written consent of the surety to such payment, return, or release.

ARTICLE 14—DOCUMENTATION AND AUDIT

14.01 Documentation

- A. Whenever the Cost of the Work for any purpose is to be determined pursuant to this Contract, CMAR and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices.
- B. CMAR will provide documentation of all Costs of the Work with the Application for Payment as directed by the Owner's Advisor.

14.02 Audit

- A. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all CMAR's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work, Contract, and the CMAR Fee. CMAR shall preserve all such documents for a period of three years after the final payment by Owner. Subcontractors performing Work on a Cost of the Work basis will afford such access to Owner, and preserve such documents, to the same extent required of CMAR.

14.03 Contract Times—Dates

- A. The Work will be substantially complete on or before [date], and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before [date].
- B. The dates by which the Work will be substantially complete, and by which the Work will be completed and ready for final payment, will be set out in a Contract Amendment and comply with provisions of Article 15.

14.04 Contract Times—Days

- A. The Work will be substantially complete within [number] days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within [number] days after the date when the Contract Times commence to run.
- B. The number of days in which the Work will be substantially complete, and in which the Work will be completed and ready for final payment, will be set out in a Contract Amendment and comply with provisions of Article 15. Completion dates for specified portions of the Work, if applicable, may be set out in Work Authorizations or Change Orders.

14.05 Bonus Shared Savings

- A. Owner and CMAR shall agree on a shared savings split as a result of early completion. This savings is related to the actual costs that the owner will save on their temporary leased office space(s). The CMAR shall be entitled to 25% for the cost savings resulting for occupying for each day the city is able to full occupancy our new city hall and have terminated our lease(s) for the temporary office space(s) for each day prior to June 30, 2027. (As an illustrative example, if the monthly lease payment(s) of the temporary office space is \$100,000 and the City is able to occupy our new city hall and terminate the temporary office lease by May 31, 2027, the CMA would receive \$25,000). The construction schedule and projected date of occupancy shall be determined and agreed upon with the owner and CMAR at the same time the GMP is established.
- B. Owner and CMAR shall agree on a 50/50 shared savings split on unused construction contingency and contractor buyout savings costs at the end of the project as determined by the issue date of a Final Certificate of Use and Occupancy. The CMAR will be entitled to a credit applied against the GMP.

14.06 Special Damages

- A. CMAR shall, as a direct result of CMAR's failure to attain a Substantial Completion according to the Contract Times. CMAR agrees that if Substantial Completion is not attained by the required Contract Time (the "LD Date") specified in the GMP Amendment, as it may be extended, CMAR shall pay the Owner the amount of TEN THOUSAN Dollars (\$10,000.00) for each day that Substantial Completion extends beyond the LD Date. Should LD's not be assessed, the absence of LD's is not a shared cost.
- B. After CMAR achieves Substantial Completion, if CMAR shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, CMAR shall reimburse Owner for the actual costs reasonably incurred by Owner for construction management, Architecting, construction observation, inspection, and administrative services needed after the time specified in Paragraph 14.04 for Work to be completed and ready for final payment, as duly adjusted pursuant to the Contract, until the Work is completed and ready for final payment.

ARTICLE 15—CONTRACT DOCUMENTS

15.01 Contents

- A. The Contract Documents consist of all of the following:
 - 1. This Agreement.
 - 2. General Conditions.
 - 3. Supplementary Conditions.
 - 4. General Requirements (Division 01 of the Specifications.)
 - 5. Exhibits to this Agreement (enumerated as follows):
 - a. Exhibit A, Scope of CMAR's Services;
 - 6. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Contract Amendments;
 - b. Executed Work Authorizations, including any exhibits identified as Drawings, Specifications, or other Contract Documents;
 - c. Work Authorization Modifications;
 - 1) Work Change Directives;
 - 2) Change Orders; and
 - 3) Field Orders.
 - d. Performance and Payment Bonds; and
 - e. Warranty Bonds, if any.
- B. There are no Contract Documents other than those listed above in this Article 16.
- C. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 16—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

16.01 CMAR's Representations

A. To induce Owner to enter into this Contract, CMAR makes the following representations:

1. CMAR has examined and carefully studied the Contract Documents, including Addenda.
2. CMAR has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. CMAR is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. CMAR has carefully studied the reports, if any, of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings, if any, of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
5. CMAR has carefully studied the reports and drawings, if any, relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
6. CMAR has considered the information known to CMAR itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract **[Proposal]** Documents; with respect to the effect of such information, observations, on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by CMAR; and (c) CMAR's safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraph, CMAR agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Guaranteed Maximum Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. CMAR is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
9. CMAR has given Owner's Advisor written notice of all conflicts, errors, ambiguities, or discrepancies that CMAR has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Owner's Advisor is acceptable to CMAR.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

11. CMAR's entry into this Contract constitutes an incontrovertible representation by CMAR that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

16.02 CMAR's Certifications

- A. CMAR certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 17.02:
 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 proposal process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the Proposal process or the execution of the Contract to the detriment of Owner, (b) to establish proposal Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Proposers, with or without the knowledge of Owner, a purpose of which is to establish proposal prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the proposal process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and CMAR have signed this Agreement.

This Agreement will be effective on _____, 20__ which is the Effective Date of the Contract.

Owner:

City of Franklin, Tennessee

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name: Ken Moore

(typed or printed)

Title: Mayor

(typed or printed)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

109 3rd Ave South

Franklin, TN 37064

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

(If **[Type of Entity]** is a corporation, attach evidence of authority to sign. If **[Type of Entity]** is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

CMAR:

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

(If **[Type of Entity]** is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

License No.:

(where applicable)

State:

EXHIBIT A—SCOPE OF CMAR SERVICES

ARTICLE 1—BASIC PRECONSTRUCTION SERVICES

1.01 Project Management

A. Participate in Project Meetings

1. Participate in Project kick-off meeting. Be prepared to discuss CMAR's team and organizations structure, assignments for responsibilities and Teams CMAR's plan for implementation of Preconstruction Services.
2. Participate in periodic meetings with Owner, Owner's Advisor, and Architect (collectively, Owner's Project Team or OPT) to review progress, coordinate efforts, and discuss planned activities for the next period. It is anticipated that these progress meetings will occur **twice monthly**.

B. Provide administration of Agreement for CMAR Preconstruction Services, including Applications for Payment, progress reporting, management of CMAR staff, schedule for services, and deliverables.

1.02 Review of Preliminary Design Report

A. As a priority first task, review Architect's Preliminary Design Report as soon as it is available.

1. Provide input and advice, according to the general requirements of Exhibit A Paragraph 1.03.D below, regarding the Preliminary Design Report's content concerning coordination of utilities work (both above-ground utilities and Underground Facilities), Underground Facilities Procedure, and mitigation of utilities conflicts, for Architect's use in the Final Design Phase of Architect's services.
2. Recommend strategies for the division of the Work under design into Work Packages, and for phased design and authorization of construction of such Work Packages (fast tracking). Work collaboratively with the OPT to finalize the number of Work Packages and their approximate scope, and the schedule for preparation, authorization, and completion of such Work Packages.

1.03 Design-Related Preconstruction Services

- A. Attend periodic design meetings to provide consultation on aspects of the design that will impact the budget, schedule, and quality of the completed Work.
- B. Advise, assist, and provide recommendations on all aspects of the planning and design of the Work. Consult with the OPT regarding Site use and improvements, and the selection of materials, building systems, and equipment.
- C. Provide recommendations: on construction feasibility; regarding actions designed to minimize adverse effects of labor or material shortages; on time requirements for procurement, installation, and construction completion; and on factors related to construction cost including estimates of alternative designs or materials, preliminary budgets, and possible opportunities for savings.
- D. Review in-progress design documents, including the documents variously described as preliminary design documents, preliminary design report, design development documents,

Exhibit A—Scope of CMAR Services

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and the interim final drafts of the Drawings and Specifications, and provide input and advice on constructability, materials and equipment selections, and availability. Provide timely suggestions for modifications to improve:

1. Ability to bid the Work:
 - a. Identify Work elements that may be difficult to price as presented in the design documents. Provide suggestions to reduce risk and to obtain better pricing from Subcontractors and Suppliers.
 - b. Provide suggestions on Work Packages to improve biddability, however, Architect will not subdivide work into Work Packages for specific trades.
 - c. Determine that specified products are readily available and notify Architect if equal or substitute materials might be available.
 2. Constructability, including sequencing or coordination issues:
 - a. Adequacy of details for construction;
 - b. Potential conflicts during construction;
 - c. Feasibility of construction;
 - d. Construction sequencing;
 - e. Ability to coordinate among Subcontractors and Suppliers; and
 - f. Coordination between Contract Documents.
 3. Operability:
 - a. Ability to minimize disruptions to existing operations;
 - b. Ability to complete construction connections to existing facilities or utilities;
 - c. Modifications to facilitate initial start-up and/or performance testing; and
 - d. Ability of Owner to operate/maintain the facility when completed.
 4. Possible use of patented, licensed, or copyrighted products.
 5. Requirements for Subcontractor and equipment and materials procurement.
 6. Completeness, consistency, and clarity.
- E. Subsurface conditions and Underground Facilities
1. Review information made available by Owner.
 - a. Review information pertaining to subsurface or physical conditions at the Site. Inform Owner's Advisor of additional examinations, investigations, explorations, testing, or studies (Supplemental Investigations) of subsurface or physical conditions at the Site that CMAR concludes would be beneficial if conducted prior to commencement of construction. See General Conditions Paragraph 5.03.E.
 - b. Review information pertaining to Underground Facilities. Collaborate with the Architect to improve the accuracy and completeness of information regarding

Underground Facilities that Architect incorporates into Work Authorizations in accordance with General Conditions Paragraph 5.05.

2. Owner's Advisor will issue a Work Authorization for any necessary potholing, exploratory excavations, or other field investigations related to Paragraph E if necessary.
- F. Research potential substitutes, furnish data and prepare a Preconstruction Substitute Request prior to a Work Authorization requesting the Owner's Advisor to authorize the use of other items of equipment or material in accordance with General Conditions Paragraph 7.09.
- G. Provide review comments in writing using the processes or procedures prescribed by the Owner's Advisor. Verify that the Project design can be executed within the Owner's Construction Budget, within the allotted Contract Times, and with available labor, equipment, and materials.
- H. Report to Owner's Advisor and Architect any elements of the design that appear to be in error or appear to require Architecting review and possible resulting modification.
- I. The CMAR is not responsible for design of the Project. The CMAR does not control the project design or contents of the Contract Documents and does not assume responsibility or liability for the project design by performing these reviews. The CMAR's review of the project design and Contract Documents and providing recommendations are only advisory to the OPT.

1.04 Construction Management Plan and Implementation

- A. Provide and implement a written Construction Management Plan that incorporates the following elements:
 1. CMAR's organization for the Construction Phase of the project, including assigned responsibilities and level of authority within Project management;
 2. Communication plan, including plans for distribution of documents, implementation of Action Item and Decision registers, frequency of reporting and project controls;
 3. Document management plan that incorporates Communications Plan and contractual Electronic Data Protocols;
 4. Construction contract administration;
 5. Cost management;
 6. Time management;
 7. Quality management;
 8. Risk management;
 9. Safety management;
 10. Site management and environmental controls;
 11. Regulatory requirements and permits;
 12. Procurement Strategy Plan.

- B. Work with the OPT to incorporate requirements of the General Conditions and General Requirements (Division 01 of the Specifications) into the plan. Reference provisions in the General Conditions and General Requirements as appropriate. Prepare a draft plan and submit for review and comment by the OPT. Respond to comments and incorporate changes suggested by review comments as appropriate.

1.05 Construction Contract Administration

- A. Work with the OPT to incorporate requirements of the General Conditions and General Requirements into administration of the Contract.
- B. Communications
 - 1. Assist the Owner's Advisor with planning Project meetings, participate in these meetings and provide documentation as requested by the Owner's Advisor.
 - 2. Plan, schedule, and document meetings held with Subcontractors and Suppliers. Include the members of the OPT as appropriate.

1.06 Cost Management

- A. Provide a preliminary evaluation of the Owner's program and budget requirements to determine that CMAR will be able to construct the facilities described in that program within the Owner's Construction Budget (Budget) using conceptual estimating techniques. Discuss this initial review of the Budget with the OPT.
- B. Work with OA to update the Budget with supporting data for review by the OPT at the following intervals:
 - 1. Completion of preliminary design documents by the Architect and approval by the Owner.
 - 2. Completion of design development documents by the Architect and approval by the Owner.
 - 3. At appropriate intervals agreed to by the OPT and CMAR during the preparation of the Construction Documents to determine that changes to the design can be constructed within the Budget.
- C. Assist OA in preparing an updated line-item Budget based on the CMAR's proposed Procurement Strategy Plan prepared per Paragraph 1.13. This Budget is to include a line item for each anticipated Work Package, as well as line items for Construction Support Costs, the CMAR Fee, and CMAR Contingency Allowances and other costs, if any, that will be incorporated into the GMP for the Project.
- D. Assess current construction market to determine risk associated with the Budget. As an example, volatility in the cost of selected materials or equipment may drive cost above the Budget. Identify areas where costs may be lower than original estimates and if cost savings may be used to balance the Budget. Report the cost of various design and construction alternatives to the Owner, including the CMAR's assumptions in preparing its analysis, a variance analysis between budget and preliminary Budgets, and recommendations for any adjustments to the Budget. Work with the OPT to consider costs relating to efficiency, usable life, maintenance, energy, and operation as part of the cost analysis.

- E. Notify the Owner and the Owner's Advisor immediately if any estimated construction cost will cause the projected GMP to exceed the Budget. Make appropriate recommendations to the OPT if cost projections exceed the Budget.
- F. Provide the Budget-related services set out in Paragraph 11.04 of the Agreement.

1.07 Time Management

- A. Provide a preliminary master schedule for the Contract. Incorporate the Owner's Advisor's preliminary schedule and the schedule for design into the preliminary master schedule. Include allowances for reasonable periods required for the review and approval of items by the OPT and for approvals of governmental authorities having jurisdiction over the Project. Prepare the preliminary master schedule in a way that the detailed construction schedule can be incorporated into the master schedule as the Project becomes better defined.
- B. Identify critical design Milestones that must be met to keep the Project on schedule. Coordinate and integrate the preliminary project schedule with the services and activities of the OPT and CMAR. Update the preliminary project schedule as design develops to indicate proposed activity sequences and durations, Milestone dates for receipt and approval of pertinent information, submittal of a GMP Proposal, preparation and processing of Shop Drawings and Samples, delivery of materials or equipment requiring long-lead time procurement, and the Owner's occupancy requirements. Include early packages as milestones in the schedule and provide monthly updated schedules throughout the Design development and construction development stages.
- C. Make appropriate recommendations to the Owner and Owner's Advisor if preliminary project schedule updates indicate that previously approved schedules may not meet Contract Time requirements.
- D. Revise the master schedule after the GMP is established.

1.08 Quality Management

- A. Prepare CMAR's Quality Control Plan (CQCP) in accordance with the General Requirements.
 - 1. Describe the quality control organization and lines of authority. Quality control plan is to identify the quality control manager and other key individuals involved in CMAR's quality control effort. Provide the services of a dedicated quality control manager unless Owner's Advisor determines that quality control manager may combine quality control duties with other responsibilities. If quality control manager is to serve in other capacities, identify those other responsibilities and the percentage of time spent in each role. Describe the qualifications of the quality control manager (in resume format) to demonstrate experience with quality management activities and performance on successful projects.
 - 2. Provide the name and qualifications, in resume format, of other persons assigned a quality control function. Define the roles and responsibilities and authorities for each person and the types of Work or portions of the work for which each person is responsible.
 - 3. Describe CMAR's approach to managing quality during construction. Describe how CMAR will integrate quality control procedures into the execution of the Work, provide

testing and inspection required to control the quality of the Work in progress and verification or acceptance testing as required by the Contract Documents and CQCP.

4. Include a testing plan with details of tests to be provided. Designate the organization (Owner, Owner's Advisor, CMAR, or Testing Agency) responsible for each type of testing. Coordinate CQCP Testing Plan with testing to be provided by the Owner.
5. Describe CMAR approach for managing defective Work, including notification and documentation procedures, development and implementation of corrective action plans and documentation that record corrective action has been successful in producing Work that complies with the Contract Documents.
6. Describe the approach for scheduling, reviewing, certifying, and managing documentation provided by Subcontractors and Suppliers. Include the approach for managing the quality of submittals, documentation procedures, and process for tracking and keeping documentation up to date.

1.09 Risk Management

- A. Analyze construction risks to assess risk impact and develop appropriate risk management strategies to minimize associated costs.
- B. Identify additional information that will help with risk assessment.
- C. Provide recommendations for appropriate allocation of construction risks.
- D. Review possible impacts associated with the use of patented, licensed, or copyrighted products.
- E. Review legal requirements for subcontractor and equipment procurement for risk impacts.
- F. Suggest procurement strategies to minimize risk.

1.10 Safety Management

- A. Provide a project-specific Health and Safety Plan for the Contract to address the safety concerns associated with construction activities, including potential hazards, that complies with applicable Laws and Regulations. Write the manual with the ability to readily update the plan to incorporate needed revisions on a regular basis.
- B. The Health and Safety Plan is to include at least the following information:
 1. Background information identifying the CMAR, Project description, and location;
 2. Management accountability structure with authority to implement safety plans, stop work, or make other safety-related decisions;
 3. Role of safety representative (see General Conditions, Paragraph 7.16);
 4. Provide descriptions of qualifications and certifications related to the performance of safety representatives;
 5. Objectives of the Health and Safety Plan;
 6. Administration and enforcement of the Health and Safety Plan;
 7. Applicability of the Health and Safety Plan to various personnel categories, including the workforce, visitors, and members of the OPT;

8. List of conditions at the Site that may pose a hazard to anyone, hazard types, and those potentially exposed;
 9. Procedures for first aid and medical attention;
 10. Emergency notifications procedures based on hazard type which specify the entity to be notified for each situation;
 11. Site access control requirements to prohibit unauthorized persons from entering the Site;
 12. Orientation and training requirements for workers, visitors, and members of the OPT;
 13. Hazard communications and awareness plan;
 14. Required safety certifications for each type of work;
 15. CMAR's safety training program and effort to create and maintain a culture of safety;
 16. CMAR's written safety guidelines for project-specific issues as defined by Laws and Regulations;
 17. Plan for conducting safety inspection and the audit frequency and schedule;
 18. Process for conducting a Job Hazard Analysis for work activities and implementing countermeasures to ensure safety, including checklist specific the Project and type of work; and
 19. Accident / incident reporting procedures including monthly reporting.
- C. Incorporate Owner's site safety requirements as appropriate.
- 1.11 Site Management and Environmental Controls
- A. Develop a plan for managing the Site during construction. The plan should address, at a minimum, management of the following:
1. Office space for CMAR, Subcontractors and if required by Contract, the OPT;
 2. Water, sanitation, electrical, internet, and other utilities for CMAR's and OPT's operations at the Site;
 3. Storage facilities, parking, and construction equipment storage and maintenance;
 4. Protection of existing structures, trees and other landscaping, buildings, utilities, and Underground Facilities;
 5. Site security, site safety, and emergency responses;
 6. Temporary roads, temporary signage, barricades, fencing, and other devices to manage traffic to and within the Site, including provisions for delivery of materials and equipment, and maintenance during construction;
 7. Environmental conditions including storm water management, pollution control, care of water, soil management, and other temporary controls and their removal when no longer required;
 8. Reference data and control points; and

- 9. Cleaning during construction and containment and disposal of waste materials.
 - B. Review plan with Owner's Advisor and Owner to identify potential conflicts with operating other facilities, on-going and anticipated construction by other entities. Revise if necessary.
- 1.12 Regulatory Requirements and Permits
- A. Review regulatory requirements and permits required for construction. Develop a written plan for meeting applicable Laws and Regulations and obtaining permits. List the permit requirements, entities responsible for obtaining permits, documentation required for permits and cost for obtaining and complying with these requirements.
 - B. Incorporate the associated cost into the Cost of Work and inform the Owner so these can be incorporated into the Owner's Construction Budget, or the Owner's Construction Budget may be adjusted as required.
 - C. Incorporate time for obtaining permits into the project schedule to ensure permits can be obtained and regulatory requirements met in time for the orderly progression of Work.
- 1.13 Procurement Strategy Plan
- A. Provide input to OPT regarding the current construction market, bidding climate, status of key Subcontractor and Supplier markets, and other local economic conditions.
 - B. As the design develops, organize the Work into Work Packages that will (1) allow for phased construction that will shorten the overall completion schedule for the Work, (2) encourage price competition by prospective Subcontractors and Suppliers, and (3) enhance the quality and safety of the Work.
 - C. Develop Subcontractor and Supplier interest in the Project consistent with state Laws and Regulations. Furnish the Owner's Advisor a list of possible Subcontractors and Suppliers, from whom competitive bids will be requested for each principal portion of the Work. Identify preferred providers based on CMAR's previous experience for quality of work, on-time delivery, and ability to complete work within bid amounts. Submission of this list is for information and discussion purposes only and not for prequalification. The review of this list will not require the OPT to investigate the qualifications of proposed Subcontractors and Suppliers, nor does it waive the right of Owner to later object to or reject any proposed Subcontractor or Supplier when bids are considered. CMAR may submit a Change Proposal for any increase in the Guaranteed Maximum Price if this change is made after the GMP has been established.
 - D. Recommend to the OPT a schedule for procurement of long-lead time items required to meet the project schedule. Assist the OPT with the procurement of these long-lead items by obtaining competitive bids for these items under a separate Work Authorization.
 - E. Identify critical elements of the Work that may require special procurement processes, such as prequalification of Subcontractors or Suppliers, requirement of certified or prequalified installers, or alternative contracting methods.
 - F. Advise the Owner of market conditions, bid issues, design issues, or other factors which may have had an impact causing bid prices to be higher than estimated. Discuss opportunities for bringing the Project within budget with the Owner and the Owner's Advisor, in consultation with the Architect to assist with deciding on how to proceed.

ARTICLE 2—ADDITIONAL PRECONSTRUCTION SERVICES

2.01 Value Architecting Studies

- A. Participate and provide Value Architecting reviews at the level appropriate for the projects at the completion, throughout Design development and Construction Development Documents to assist in identifying ways to improve value to the owner or reduce the cost for the project. Provide cost estimates to quantify potential cost savings to reduce the overall cost for the Project.
- B. Assist OA in conducting a workshop to identify potential changes which could reduce the cost of the Project or increase the value of the Project by more than the cost of the changes. Present selected alternatives for more detailed evaluation. The detailed evaluation will consider cost, ability to implement the changes, technical analysis, and the impact of changes on the Project. Ideas that pass the technical and economic analysis, and merit incorporation into the design of the project, will be presented, in a draft report, as a proposal to the OPT for consideration. Incorporate responses of the OPT in the final report.
- C. Review and comment on deliverables which include draft and final value Architecting recommendation reports.

2.02 Start Up and Commissioning Program

- A. Provide CMAR's organizational structure for startup and commissioning. Identify the individuals from CMAR, Subcontractors and Suppliers actively involved in the process. Identify testing personnel required for startup, including independent testing agencies. Work with Owner's Advisor to develop a table of roles and responsibilities for CMAR team and the OPT.
- B. Develop a written start up and commissioning program consistent with the requirements of the Contract Documents. Write the plan in a way that will allow specific details to be added or information updated as equipment and materials are purchased and delivered.
- C. Identify all systems to be included in the startup plan, each item of equipment involved with each system and the interface between each item of equipment and other operating equipment. Identify how each equipment component fits into operations of the completed facility.
- D. Identify control systems associated with operating the system or facility, and how each is used to start-up, operate, and shut down its associated system. Identify prerequisite conditions for startup and testing for each system and facility. Identify conditions which would merit termination of startup or testing procedures.
- E. Compile a list of all documents required for startup, including Contract Documents, Shop Drawings, operations and maintenance manuals, verification of warranty information, lists of spare parts and their location, and contact information for manufacturer's representatives to be included in startup readiness testing /verification and performance testing.
- F. Identify testing required for factory witness testing, startup readiness verification, equipment and performance testing, and functional and performance testing.

- G. Provide a preliminary schedule for startup and commissioning plans which can be updated as more detailed information is available. Incorporate this schedule in the master schedule and construction schedule for the Project.

2.03 Surveys and Drawings

- A. Provide field surveying required for the preparation of designs and drawings.
- B. Provide Geographic Information System (GIS) mapping services or assistance with these services.
- C. Prepare property, boundary, and right-of-way surveys; prepare easement and deed descriptions; conduct related title searches and examination of deed records.

ARTICLE 3—BASIC PROCUREMENT SERVICES

3.01 Project Management

- A. Participate in Project Meetings
 - 1. Participate in kick-off meeting for Procurement Services. Be prepared to discuss changes in CMAR's team and organization structure for Procurement Services, assignments of responsibilities, and CMAR's plan for implementation of Procurement Services.
 - 2. Participate in periodic meetings with the OPT to review progress, coordinate efforts, and discuss planned activities related to procurement. It is anticipated that these progress meetings will occur **[weekly]** at times when procurement activities for Work Packages are underway.
- B. Provide administration of Agreement for CMAR Procurement Services, including Applications for Payment, progress reporting, management of CMAR staff, schedule for services, and deliverables.

3.02 Assembling Work Packages

- A. Assemble appropriate bid documents for distribution to prospective bidders for Work Packages in accordance with the procurement strategies defined in the Construction Management Plan and Procurement Strategy Plan (see Basic Preconstruction Services).

3.03 Advertise for Bids

- A. Publicly advertise each Work Package, soliciting bids from Subcontractors and Suppliers for each Work Package in accordance with the applicable provisions of Laws and Regulations.
- B. Maintain a list of all entities that have requested bid documents for each Work Package (planholders) until bids are received. Provide updates of the planholders as required by the Owner's Advisor.
- C. Encourage multiple Subcontractors and Suppliers to submit bids on the Work Package so a minimum of three bids are received for each Work Package.

3.04 Addenda

- A. Receive draft Addenda prepared by the Owner's Advisor in consultation with the Architect. Review the draft Addenda for clarity, consistency, and coordination, and provide comments

to Owner's Advisor and Architect. By conducting such reviews and providing comments, CMAR does not assume responsibility or liability, in whole or in part, for all or any part of the Project design or the content of the Contract Documents.

- B. Distribute Addenda regarding any changes in the bid process or Contract Documents to all planholders. Require verification from planholders that Addenda have been received.

3.05 Opening Bids

- A. Open bids submitted by Subcontractors and Suppliers for all Work Packages at the time and location so indicated in the advertisement for bid or as altered by addendum sent to all planholders.
- B. Where allowed by state Laws and Regulations, the CMAR may be able to self-perform portions of the Work. Require sealed bids for all Work Packages which the CMAR proposes to perform with its own resources. The CMAR must submit a sealed bid for any such Work Package to be opened at the same time and in the same manner that other bids for this Work are to be opened. The CMAR will be allowed to self-perform that Work for which the CMAR's bid demonstrates that it will provide the best value in terms of cost, schedule, and quality of Work.
- C. Review all bids submitted in the presence of the Owner and the Owner's Advisor in a way that does not disclose the contents of the bid during the selection process to any entity other than the OPT and CMAR.
- D. Compare bids received to the line-item budget prepared for the Project prior to the opening of bids. Resolve discrepancies or overlaps in bid packages to eliminate duplications or the omission of elements of the Work that are not included in Construction Support Costs. Discuss each bid received with the OPT and recommend which bid received will provide best value for the Owner.
- E. Evaluate any substitutions or alternate bids offered by bidders. Owner's Advisor, in consultation with the Architect, will evaluate the substitutions or alternate bids to determine the technical merit and to determine that the modifications offered are consistent with the intent of the Contract Documents. The Owner, in consultation with the Owner's Advisor and Architect, will determine if the substitution or alternate is acceptable.
- F. The Owner will adjust the Guaranteed Maximum Price (GMP) if the Owner requires the CMAR to contract with a Subcontractor or Supplier different from the entity submitting the bid on which the GMP is based. This adjustment will be made in the GMP or by Change Order if the GMP has already been established by a Work Authorization.
- G. In the case of the need to replace a Subcontractor or Supplier under the provisions of the General Conditions Paragraph 7.10.O, Owner may direct the CMAR to obtain competitive bids for this Work if the cost proposed by the CMAR or substitute Subcontractor or Supplier for this Work differs from the line-item estimate by more than 10 percent of the line-item amount. The CMAR will not be required to advertise this Work as required in Paragraph 1.02.
- H. Make all bids public after the award of contracts or not later than 7 days after the date of the final selection of bids or proposals.

ARTICLE 4—ADDITIONAL PROCUREMENT SERVICES

4.01 Additional Work Packages

- A. Providing additional effort to procure Work Packages in addition to the number of Work Packages stipulated in Paragraph 3.02.

4.02 Additional Copies of Documents

- A. Furnishing additional sets of printed documents.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

Prepared By



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GUIDELINES FOR USE OF EJCDC® CMAR-700, STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

1.0 PURPOSE AND INTENDED USE OF THE DOCUMENT

EJCDC® CMAR-700, Standard General Conditions of the Construction Manager at Risk Contract (2023), is the foundation document for the EJCDC Construction Manager at Risk Series. The General Conditions define the basic rights, responsibilities, risk allocations, and contractual relationship of the Owner and Construction Manager at Risk (CMAR) and establish how the Contract is to be administered.

The Contract between Owner and CMAR is fundamentally a construction contract; however, in addition to its construction obligations the CMAR also is responsible for providing specified Preconstruction Services, for example, providing information regarding constructability to the Architect during the design phase and Procurement Services which include identifying qualified Subcontractors, and bringing them under contract. These CMAR Services are described and addressed in the Agreement between Owner and Construction Manager, CMAR-525. The General Conditions contain many construction-specific provisions (for example, the differing site conditions clauses) but also contain general clauses that are applicable to the CMAR Services as well as to construction (for example, the indemnification clause).

CMAR-700 is based on and organized in the same manner as EJCDC C-700, Standard General Conditions of the Construction Contract (2018). Users familiar with C-700 will find that the substance, wording, and risk allocations of that document are carried over into CMAR-700 whenever appropriate. The distinctions between the two documents most often involve procedural matters, such as the payment application process in Article 15 (for example, in C-700, applications for payment are submitted to the Architect; in CMAR-700, such applications are submitted to the Owner's Advisor).

2.0 OTHER DOCUMENTS

EJCDC documents are intended to be used as a system and changes in one EJCDC document may require a corresponding change in other documents. Other EJCDC documents may also serve as a reference to provide insight or guidance for the preparation of this document.

These General Conditions have been prepared for use with EJCDC® CMAR-525, Agreement Between Owner and Construction Manager at Risk (2023). The provisions of the General Conditions and the Agreement are interrelated, and a change in one may necessitate a change in the other.

To prepare supplementary conditions that are coordinated with the General Conditions, use EJCDC® CMAR-800, Supplementary Conditions of the Construction Contract – Construction Manager at Risk Series (2023).

The full EJCDC Construction series of documents is discussed in the EJCDC® CMAR-001, Commentary on the 2023 EJCDC Construction Management Documents scheduled for publication in 2023.

3.0 ORGANIZATION OF INFORMATION

All parties involved in a construction project benefit significantly from a standardized approach in the location of subject matter throughout the documents. Experience confirms the danger of addressing the same subject matter in more than one location; doing so frequently leads to conflicting requirements,

confusion, and unanticipated legal consequences. Careful attention should be given to the guidance provided in EJCDC® N 122/AIA® A521™, Uniform Location of Subject Matter, when preparing construction documents. EJCDC® N 122/AIA® A521™, is available at no charge from the EJCDC website, www.ejcdc.org, and from the websites of EJCDC's sponsoring organizations.

In addition, the current editions of MasterFormat and SectionFormat, published by the Construction Specifications Institute, provide useful guidance on the location of information and requirements in construction documents.

4.0 EDITING THIS DOCUMENT

Remove these Guidelines for Use. Some users may also prefer to remove the two cover pages.

Although it is permissible to revise the Standard EJCDC Text of CMAR-700 (the content beginning at Page 1 and continuing to the end), it is common practice to leave the Standard EJCDC Text of CMAR-700 intact and unaltered, with modifications and supplementation of CMAR-700's provisions set forth in EJCDC® CMAR-800, Supplementary Conditions of the Construction Contract – Construction Manager at Risk Series (2023). If the Standard Text itself is revised, the user must comply with the terms of the License Agreement, Paragraph 4.0, Document-Specific Provisions, concerning the tracking or highlighting of revisions. The following is a summary of the relevant License Agreement provisions:

1. The term "Standard EJCDC Text" for CMAR-700 refers to all text prepared by EJCDC in the main body of the document. Document covers, logos, footers, instructions, or copyright notices are not Standard EJCDC Text for this purpose.
2. During the drafting or negotiating process for CMAR-700, it is important that the two contracting parties are both aware of any changes that have been made to the Standard EJCDC Text. Thus, if a draft or version of CMAR-700 purports to be or appears to be an EJCDC document, the user must plainly show all changes to the Standard EJCDC Text, using "Track Changes" (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions.
3. If CMAR-700 has been revised or altered and is subsequently presented to third parties, such as potential bidders, grant agencies, lenders, or sureties, as an EJCDC document, then the changes to the Standard EJCDC Text must be shown, or the third parties must receive access to a version that shows the changes.
4. Once the document is ready to be finalized and, if applicable, executed by the contracting parties, it is no longer necessary to continue to show changes to the Standard EJCDC Text. The user may produce a final version of the document in a format in which all changes are accepted, and the document at that point does not need to include any "Track Changes," redline/strikeout, highlighting, or other indication of additions and deletions to the Standard EJCDC Text.

5.0 LICENSE AGREEMENT

This document is subject to the terms and conditions of the **License Agreement, 2023 EJCDC® Construction Manager at Risk Series Documents**. A copy of the License Agreement was furnished at the time of purchase of this document and is available for review at www.ejcdc.org and the websites of EJCDC's sponsoring organizations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

- A. Wherever used in the Proposal Documents or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and Paragraphs, and the titles of other documents or forms.
1. Addenda—Written or graphic instruments issued prior to the receipt of Proposals by the Owner which clarify, correct, or change the Proposal Documents or the proposed Contract Documents.
 2. Agreement—The written instrument, including its attached exhibits, executed by Owner and Construction Manager at Risk, that sets forth the Contract Price and Contract Times, identifies the Owner, Construction Manager at Risk, Owner's Advisor, and Architect, and designates the specific items that are Contract Documents.
 3. Application for Payment—The document prepared by Construction Manager at Risk, in a form acceptable to Owner's Advisor, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. Change Order—A document which is signed by Construction Manager at Risk and Owner after the Effective Date of a governing Work Authorization and authorizes an addition, deletion, or revision in the authorized Work, an adjustment in the applicable incremental Guaranteed Maximum Price or Contract Times, or other revision to such Work Authorization.
 5. Change Proposal—A written request by Construction Manager at Risk, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Guaranteed Maximum Price or Contract Times; contesting a decision by Owner's Advisor, in consultation with Architect, concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 6. Claim
 - a. A demand or assertion by Owner directly to Construction Manager at Risk, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting a decision rendered by Owner's Advisor, in consultation with Architect, concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents, or regarding a Change Proposal; or seeking other relief with respect to the terms of the Contract.

- b. A demand or assertion by Construction Manager at Risk directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Owner's Advisor's decision, made in consultation with Architect, regarding a Change Proposal.
 - c. A demand or assertion by Owner or Construction Manager at Risk, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.3, concerning disputes arising after Owner's Advisor has issued a recommendation of final payment.
 - d. A demand for money or services by a third party is not a Claim.
7. CMAR Contingency Allowance—An allowance used to reimburse CMAR for costs due to unforeseen causes, unintentional errors, or events which cannot specifically be anticipated at the time Work Authorizations are issued, as set forth in the Agreement, Article 8.
 8. CMAR Fee—The component of the Guaranteed Maximum Price that supplements the CMAR's compensation for the Cost of the Work, consisting of either a fixed fee (a stipulated price or lump sum amount) or a percentage of the Cost of the Work, as set forth in the Agreement.
 9. CMAR Services—Those specific planning, organizational, and advisory services to be performed or furnished by CMAR, consisting collectively of Preconstruction Services, Procurement Services, and any other services authorized by Owner's Advisor and expressly identified in such authorization as CMAR Services. CMAR Services are not part of the Work.
 10. Constituent 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.
 11. Construction Manager at Risk (CMAR)—The entity that has entered into the Contract with Owner. Under the Contract the CMAR will provide CMAR Services and construct the Work set out in the Drawings and Specifications, as duly authorized, using the Construction Manager at Risk project delivery method.
 12. Construction Period—The period from the commencement of Work on the first Work Authorization until Substantial Completion of the Work. This is the number of days for which Construction Support Costs will be compensated.
 13. Construction Support Costs—See Agreement, Article 5.
 14. Contract—The entire and integrated written agreement between Owner and Construction Manager at Risk concerning the CMAR Services and the Work.
 15. Contract Amendment—A document signed by Owner and Construction Manager at Risk which modifies the terms and conditions of the Contract, including but not limited to modifications of the time or compensation provisions of the Agreement and the scope of CMAR Services. A Contract Amendment is not used to make changes in the Work or

to a Work Authorization, such changes properly being made in a Change Order or supplemental Work Authorization.

16. Contract Documents—Those items so designated in the Agreement, and which together comprise the Contract.
17. Contract Price—The money that Owner has agreed to pay Construction Manager at Risk for performance and completion of the CMAR Services and the Work, in accordance with the Contract Documents. The Contract Price may be subdivided into component parts based on authorized CMAR Services and Work Authorizations. The Contract Price includes the CMAR's compensation for CMAR Services, Construction Support Costs, Cost of the Work, the CMAR Fee, CMAR Contingency Allowances, and the Owner's Contingency Allowance.
18. Contract Times—The number of days or the dates by which Construction Manager at Risk shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work and all required services. The Contract Times may be subdivided into component parts based on Work Authorizations and authorized CMAR Services.
19. Contractor—The term "Contractor," if used in the Contract, means Construction Manager at Risk.
20. Cost of the Work—The sum of eligible costs incurred by CMAR for the performance of the Work, as allowed by the Cost of the Work provisions set forth in the Agreement. Cost of the Work as a defined term does not include Construction Support Costs.
21. Drawings—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Construction Manager at Risk.
22. Effective Date of the Contract—The date indicated in the Agreement, on which the Contract becomes effective.
23. Electronic Document—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
24. Electronic Means—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
25. Architect—The individual or entity that has primary responsibility for preparing or furnishing the Drawings and Specifications and is named as Architect in the Agreement.
26. Estimated Cost of the Work—An estimate of the Cost of the Work prepared by the Owner for use (a) during the CMAR selection process in evaluating Proposals submitted in response to the Request for Proposals and (b) during the early stages of the Contract in calculating an Estimated Guaranteed Maximum Price until the design has progressed

to the point where Owner and CMAR can mutually agree upon a Guaranteed Maximum Price.

27. **Estimated Guaranteed Maximum Price**—A preliminary Guaranteed Maximum Price calculated on the basis of the Estimated Cost of the Work. This is a non-binding price used on an interim basis for comparison or estimation of Owner's Construction Budget until the design has progressed to the point that a Guaranteed Maximum Price for the Work is established, or a Guaranteed Maximum Price for a portion of the Work is established by issuance of a Work Authorization by the Owner's Advisor.
28. **Field Order**—A written order issued by Owner's Advisor which requires minor changes in the Work but does not change the Guaranteed Maximum Price or the Contract Times.
29. **Final Completion**—The point at which the Work is complete in accordance with the Contract Documents, items and documents required by the Contract Documents have been accepted by the Owner, all required services have been completed, and the Contract is ready for final payment.
30. **Guaranteed Maximum Price (GMP)**—The maximum amount to be paid by Owner to CMAR for the sum of the Construction Support Costs, plus Cost of the Work, plus the CMAR Fee, all as set forth in the Agreement.
31. **Hazardous Environmental Condition**—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
 - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
 - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
 - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
32. **Laws and Regulations; Laws or Regulations**—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction of the performance of the Work.
33. **Liens**—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
34. **Milestone**—A principal event in the performance of the Work that the Contract requires Construction Manager at Risk to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
35. **Notice of Award**—The written notice by Owner stating that Owner will enter into the Construction Manager at Risk contract with the selected Construction Manager at Risk.
36. **Owner**—The entity with which Construction Manager at Risk has contracted regarding the CMAR Services and the Work, and which has agreed to pay Construction Manager

at Risk for the performance of the CMAR Services and the Work, pursuant to the terms of the Contract.

37. Owner's Advisor (OA)—The individual or entity named as Owner's Advisor in the Agreement. The Owner's Advisor provides services to the Owner, as an advisor and representative.
38. Owner's Construction Budget (Budget)—The amount budgeted by the Owner to pay CMAR to perform and complete the Work in accordance with the Contract Documents. This amount includes compensation for Cost of the Work, the CMAR Fee, and Construction Support Costs, but does not include compensation for CMAR Services.
39. Owner's Project Team (OPT)—As used in this Contract, refers to Owner, Owner's Advisor and Architect, collectively.
40. Preconstruction Services—Those planning, management, and support services to be performed or furnished by CMAR as set forth in the Scope of CMAR Preconstruction Services Exhibit to the Agreement. Preconstruction Services are separate and distinct from Procurement Services, and from the performance of the Work itself, and are a component of CMAR Services.
41. Preconstruction Services Price—The total amount to be paid to CMAR for the Preconstruction Services described in the Scope of CMAR Preconstruction Services Exhibit to the Agreement.
42. Procurement Services—Those services relating to assembling Work Packages and procurement of construction Subcontractors, Suppliers, and materials and equipment, to be performed or furnished by CMAR as set forth in the procurement-related provisions of the Scope of CMAR Services Exhibit to the Agreement. Procurement Services are separate and distinct from Preconstruction Services, and from the performance of the Work itself, and are a component of CMAR Services.
43. Procurement Services Price—The total amount to be paid to CMAR for providing the Procurement Services described in the Scope of CMAR Procurement Services Exhibit to the Agreement.
44. Progress Schedule—A schedule, prepared and maintained by Construction Manager at Risk, describing the sequence and duration of the activities comprising Construction Manager at Risk's plan to accomplish the Work within the Contract Times.
45. Project—The total undertaking to be accomplished for Owner by construction managers, Architects, contractors, advisors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the CMAR Services and the Work to be performed under the Contract are a part.
46. Samples—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
47. Schedule of Submittals—A schedule, prepared and maintained by Construction Manager at Risk, of required Submittals and the time requirements for review of the Submittals.

48. Shop Drawings—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Construction Manager at Risk and submitted by Construction Manager at Risk to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
49. Site—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Construction Manager at Risk.
50. Specifications—The part of the Contract 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.
51. Subcontractor—An individual or entity having a direct contract with Construction Manager at Risk or with any other Subcontractor for the performance of a part of the Work.
52. Submittal—A written or graphic document, prepared by or for Construction Manager at Risk, which the Contract Documents require Construction Manager at Risk to submit to Owner's Advisor, or that is indicated as a Submittal in the Schedule of Submittals accepted by Owner's Advisor. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether approved or accepted by Owner's Advisor or Architect, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
53. Substantial Completion—The time at which the Work, or a specified part thereof, has progressed to the point where, the Work, or the specified part thereof, is sufficiently complete, in accordance with the Contract Documents, so that the Work, or the specified part thereof, can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work.
54. Supplementary Conditions—The part of the Contract that amends or supplements these General Conditions.
55. Supplier—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Construction Manager at Risk or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Construction Manager at Risk or a Subcontractor.

56. Technical Data

- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures, except Underground Facilities, or (2) Hazardous Environmental Conditions at the Site.
 - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Construction Manager at Risk.
 - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated in the Drawings.
57. Underground Facilities—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
58. Unit Price Work—Work to be paid for based on unit prices.
59. Work—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. 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.
60. Work Authorization—A document issued by Owner’s Advisor and signed by Owner and CMAR which identifies and defines new Work Packages and establishes the amount to be paid, times for completion, and any special or supplementary provisions applicable to the authorized Work.
61. Work Package—A specific portion of the Work developed by Architect and Owner’s Advisor in collaboration with the CMAR and subsequently authorized by a Work Authorization.
62. Work Change Directive—A written directive issued by Owner’s Advisor to Construction Manager at Risk on or after the Effective Date of a governing Work Authorization, signed by Owner and recommended by Architect, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Proposal Documents or Contract Documents, have the indicated meaning.
- B. Intent of Certain Terms or Adjectives—The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Owner’s Advisor or Architect. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Owner’s Advisor or Architect as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents, unless there is a specific statement indicating otherwise. The use of any such term or adjective is not intended to and will not be effective to assign to Owner’s Advisor or Architect any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. Day—The word “day” means a period of 24 hours measured from midnight to the next midnight.
- D. Defective—The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - 1. does not conform to the Contract Documents;
 - 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - 3. has been damaged prior to Owner’s Advisor’s recommendation of final payment unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.04 or Paragraph 15.05.
- E. Furnish, Install, Perform, Provide
 - 1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site, or some other specified location ready for use or installation and in usable or operable condition.
 - 2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for their intended use.
 - 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for their intended use.
 - 4. If the Contract Documents establish an obligation of CMAR with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then CMAR shall furnish and install said services, materials, or equipment complete and ready for their intended use.

- F. Contract Price or Contract Times—References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 Delivery of Performance and Payment Bonds; Evidence of Insurance

- A. Performance and Payment Bonds—When CMAR delivers the signed counterparts of a Work Authorization to Owner, CMAR shall also deliver to Owner the performance bond and payment bond, if the Contract requires CMAR to furnish such bonds, or confirm that existing performance and payment bonds have been supplemented to account for the additional authorized Work.
- B. Evidence of CMAR’s Insurance—When CMAR delivers the signed counterparts of the Agreement to Owner, CMAR shall also deliver to Owner, with copies to each additional insured, as identified in the Contract, the certificates, endorsements, and other evidence of insurance required to be provided by CMAR in accordance with Article 6, except to the extent the Supplementary Conditions or Agreement expressly establish other dates for delivery of specific insurance policies.
- C. Evidence of Owner’s Insurance—After receipt of the signed counterparts of the Agreement and all required insurance documentation, Owner shall promptly deliver to CMAR, with copies to each additional insured, as identified in the Contract, the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 Copies of Documents

- A. Owner shall furnish to CMAR four printed copies of the Contract, including one fully signed counterpart of the Agreement, and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Architect and other design professionals. Owner shall make such original printed record version of the Contract available to CMAR for review. Owner may delegate the responsibilities under this provision to Owner’s Advisor.

2.03 Electronic Transmittals

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Owner’s Advisor, Architect, and CMAR may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Owner’s Advisor, and CMAR shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, 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.

2.04 Construction Management

- A. In addition to providing CMAR Services, during the course of the Contract, and especially during the performance of the Work, CMAR will:
 - 1. Organize and manage the resources required for construction of the Work, commissioning, and correction of defective Work after Substantial Completion of the Work.
 - 2. Administer, coordinate, monitor, and report on construction progress and associated activities.
 - 3. Assist the Owner's Advisor in collecting, disseminating, and storing documents and information.
 - 4. Manage the Work to meet Contract goals and objectives.
 - 5. Recommend action to the Owner related to the management of the Work.
 - 6. Develop schedule and cost control systems to monitor and report on the progress of the overall Contract.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 Intent

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project, or part thereof, to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents, including any printed copies derived from such electronic versions, and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Owner's Advisor, in consultation with Architect, will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and CMAR, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

G. Nothing in the Contract Documents creates:

1. any contractual relationship between Owner, Owner's Advisor, or Architect and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
2. any obligation on the part of Owner, Owner's Advisor, or Architect to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 Reference Standards

A. Standards, Specifications, Codes, Laws and Regulations

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of receipt of Proposals, except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, CMAR, Owner's Advisor, or Architect from those set forth in the Contract Documents. No such provision or instruction will be effective to assign to Owner, Owner's Advisor, or Architect any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies

1. CMAR's Verification of Figures and Field Measurements—Before undertaking each part of the Work, CMAR shall carefully study the applicable Drawings and Specifications, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. CMAR shall promptly report in writing to Owner's Advisor any conflict, error, ambiguity, or discrepancy that CMAR discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Owner's Advisor, in consultation with Architect, and, if appropriate, an amendment or supplement to the Contract is issued by Owner's Advisor pursuant to Paragraph 11.01.
2. CMAR's Review of Drawings and Specifications—If, while performing or providing CMAR Services, or during the performance of the Work, CMAR discovers any conflict, error, ambiguity, or discrepancy within the Drawings and Specifications, whether in draft or final form, or between such documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then CMAR shall promptly report it to Owner's Advisor in writing. CMAR shall not proceed with the Work affected thereby, except in an emergency as required by Paragraph 7.18, until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Owner's

Advisor, in consultation with Architect, and, if appropriate, an amendment or supplement to the Contract is issued by Owner's Advisor pursuant to Paragraph 11.01.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Drawings and Specifications take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Drawings and Specifications and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier, whether or not specifically incorporated by reference as a Contract Document; or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work, unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation.

3.04 Interpretation of the Contract Documents

- A. During the performance of the Work and until final payment, CMAR and Owner shall submit to the Owner's Advisor in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation) or relating to the performance or acceptability of the Work under the Contract Documents, as soon as possible after such matters arise.
- B. Owner's Advisor will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, and if appropriate initiate a change to the Contract Documents. In determining its response, Owner's Advisor will consider CMAR's prior involvement and obligations with respect to reviewing and commenting on draft design documents during CMAR's provision of CMAR Services. Owner's Advisor's written clarification, interpretation, or decision (1) will be based, when applicable, on consultation with Architect, and (2) will be final and binding on CMAR, unless CMAR appeals by submitting a Change Proposal, and on Owner, unless Owner appeals by filing a Claim.

3.05 Reuse of Documents

- A. CMAR and its Subcontractors and Suppliers shall not:
 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents, or copies of any thereof, prepared by or bearing the seal of Architect or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Architect and specific written verification or adaptation by Architect; or
 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes CMAR from retaining copies of the Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 Commencement of Contract Times; Notice to Proceed

- A. The Contract Times will commence to run on the Effective Date of the Contract, or as specified in Work Authorizations.

4.02 Starting the Work

- A. CMAR shall start to perform the Work promptly upon receipt of the first Work Authorization. No Work may be done at the Site prior to such authorization.

4.03 Reference Points

- A. Owner shall provide Architecting surveys to establish reference points for construction. CMAR shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. CMAR shall report to Owner's Advisor whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and CMAR shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 Progress Schedule

- A. CMAR shall adhere to the Progress Schedule established as part of Preconstruction Services, as it may be adjusted from time to time as provided below.
 - 1. CMAR shall submit to Owner's Advisor for its information proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. CMAR schedule shall include but not limited to; a schedule that includes staging and logistics along with any constraints, Constructability reviews and phasing plans that includes multiple CMAR phases. Initial schedule provided in the first 30 days and developed and updated throughout the DD and CD stages for the Owner's Advisor to review.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. CMAR shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and CMAR may otherwise agree in writing.

4.05 Delays in CMAR's Progress

- A. If Owner, Owner's Advisor, Architect, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then CMAR shall be entitled to an equitable adjustment in Guaranteed Maximum Price and/or Contract Times.
- B. CMAR shall not be entitled to an adjustment in Guaranteed Maximum Price or Contract Times for delay, disruption, or interference caused by or within the control of CMAR. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier will be deemed to be within the control of CMAR.

- C. If CMAR's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, CMAR, and those for which they are responsible, then CMAR shall be entitled to an equitable adjustment in Contract Times and, may with Owner's reasonable approval, an equitable adjustment in the Guaranteed Maximum Price. Such an adjustment will be CMAR's sole and exclusive remedy for the delays, disruption, and interference described in this Paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times and/or the Guaranteed Maximum Price under this Paragraph include but are not limited to the following:
1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. Abnormal weather conditions;
 3. Acts or failures to act of third-party utility owners or other third-party entities, other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8; and
 4. Acts of war or terrorism.
- D. CMAR's entitlement to an adjustment of Contract Times or Guaranteed Maximum Price is limited as follows:
1. CMAR's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 2. CMAR shall not be entitled to an adjustment in Guaranteed Maximum Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of CMAR. Such a concurrent delay by CMAR shall not preclude an adjustment of Contract Times to which CMAR is otherwise entitled.
 3. Adjustments of Contract Times or Guaranteed Maximum Price are subject to the provisions of Article 11.
- E. Each CMAR request or Change Proposal seeking an increase in Contract Times or Guaranteed Maximum Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 4. The number of days' increase in Contract Times claimed because of each such cause of delay, disruption, or interference; and
 5. The impact on Guaranteed Maximum Price, in accordance with the provisions of Paragraph 11.07.

CMAR shall also furnish such additional supporting documentation as Owner or Owner's Advisor may require including, where appropriate, a revised progress schedule indicating all

the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.

- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 Availability of Lands

- A. Owner shall furnish the Site. Owner shall notify CMAR in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CMAR must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish CMAR with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. CMAR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 Use of Site and Other Areas

- A. Limitation on Use of Site and Other Areas
 - 1. CMAR shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that CMAR has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. CMAR shall assume responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for CMAR's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the CMAR or those for which CMAR is responsible.
 - 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the CMAR or those for which CMAR is responsible, CMAR shall (a) take immediate corrective or remedial action as required by Paragraph 7.18, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant,

or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Owner's Advisor, and their officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages, including but not limited to all fees and charges of Architects, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Owner's Advisor, Architect, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, CMAR's performance of the Work, or because of other actions or conduct of the CMAR or those for which CMAR is responsible.

- B. Removal of Debris During Performance of the Work—During the progress of the Work the CMAR shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
- C. Cleaning—Prior to Substantial Completion of the Work CMAR shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work CMAR shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. Loading of Structures—CMAR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CMAR subject any part of the Work or adjacent structures or land to stresses or pressures that could damage said structures or decrease their durability.

5.03 Subsurface and Physical Conditions

- A. Reports and Drawings—The Supplementary Conditions identify:
 - 1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
 - 2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site, except Underground Facilities, that contain Technical Data; and
 - 3. Technical Data described in such reports and drawings.
- B. Underground Facilities—Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.
- C. Reliance by CMAR on Technical Data—CMAR may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then CMAR may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.55.b.

- D. Limitations of Other Data and Documents – Except for such reliance on Technical Data, CMAR may not rely upon or make any claim against Owner, Owner’s Advisor, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
1. the completeness of such reports and drawings for CMAR’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CMAR, and safety precautions and programs incident thereto;
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
 3. the contents of other Site related documents may available to CMAR, such as record drawings from other projects at or adjacent to the Site, or Owner’s archival documents concerning the Site; or
 4. any CMAR interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.
- E. Confirmation of Site Conditions—As a part of Preconstruction Services CMAR will inform Owner if CMAR concludes that additional examination, investigation, exploration, testing, or study (Supplemental Investigations) of subsurface or physical conditions at the Site prior to commencement of construction would be advantageous, practical, and cost-effective, specifically identifying the nature and scope of any such recommended Supplemental Investigations. If Owner authorizes CMAR to conduct such Supplemental Investigations, through CMAR’s own personnel or through a qualified consultant, or if Owner conducts such Supplemental Investigations, through Owner’s Advisor, the Architect, or a consultant, then CMAR will be entitled to rely on the results of the Supplemental Investigations, together with the Technical Data cited above, in planning and pricing construction at the Site.
- F. If Owner does not authorize any Supplemental Investigations of Site conditions, then CMAR will proceed with planning and pricing construction based on the Technical Data made available to it.
- G. CMAR will be bound by any additional knowledge regarding Site conditions that CMAR gains while providing Preconstruction services.

5.04 Differing Subsurface or Physical Conditions

- A. Notice by CMAR—If CMAR believes that any subsurface or physical condition that is uncovered or revealed at the Site:
1. is of such a nature as to establish that any Technical Data or Supplemental Investigations results on which CMAR is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
 2. is of such a nature as to require a change in the Drawings or Specifications;
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then CMAR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith, except in an emergency as required by Paragraph 7.18, notify Owner's Advisor in writing about such condition. CMAR shall not further disturb such condition or perform any Work in connection therewith, except with respect to an emergency, until receipt of a written statement permitting CMAR to do so.

- B. Owner's Advisor's Review—After receipt of written notice as required by the preceding paragraph, Owner's Advisor, in consultation with Architect, will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from CMAR; prepare recommendations to Owner regarding the CMAR's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Owner's Advisor's findings, conclusions, and recommendations.
- C. Owner's Statement to CMAR Regarding Site Condition—After receipt of Owner's response and instructions regarding Owner's Advisor's written findings, conclusions, and recommendations, Owner's Advisor will issue a written statement to CMAR regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and informing CMAR of Owner's Advisor's written findings, conclusions, and recommendations, as revised based on Owner's response and instructions.
- D. Early Resumption of Work—If at any time Owner's Advisor, in consultation with Architect, determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Owner's Advisor's review or Owner's Advisor's issuance of its statement to CMAR, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then Owner's Advisor may instruct CMAR to resume such Work.
- E. Possible Price and Times Adjustments
 - 1. CMAR shall be entitled to an equitable adjustment in Guaranteed Maximum Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in CMAR's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Guaranteed Maximum Price will be subject to the provisions of Paragraph 13.02; and
 - c. CMAR's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

2. CMAR shall not be entitled to any adjustment in the Guaranteed Maximum Price or Contract Times with respect to a subsurface or physical condition if:
 - a. CMAR knew of the existence of such condition at the time CMAR made a commitment to Owner with respect to Guaranteed Maximum Price and Contract Times through a Work Authorization;
 - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Proposal Documents or Contract Documents to be conducted by or for CMAR prior to CMAR's making such commitment;
 - c. The existence of such condition reasonably could have been discovered or revealed as a result of practical and cost-effective Supplemental Investigations, as defined in Paragraph 5.03.E, but CMAR did not recommend any such Supplemental Investigations to Owner; or
 - d. CMAR failed to give the written notice required by Paragraph 5.04.A.
 3. If Owner and CMAR agree regarding CMAR's entitlement to and the amount or extent of any adjustment in the Guaranteed Maximum Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 4. CMAR may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Guaranteed Maximum Price or Contract Times, no later than 45 days after Owner's issuance of the Owner's written statement to CMAR regarding the subsurface or physical condition in question.
- F. Underground Facilities; Hazardous Environmental Conditions—Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 Underground Facilities

- A. CMAR's Responsibilities—Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all the following is included in the Guaranteed Maximum Price, and CMAR shall have full responsibility for:
1. collaborating with Architect during the design phase, as part of Preconstruction Services, to improve the accuracy and completeness of information regarding Underground Facilities that Architect gathers and depicts in the final Contract Documents;
 2. complying with applicable state and local utility damage prevention Laws and Regulations;
 3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities prior to construction;
 4. coordination of the Work with the owners, including Owner, of such Underground Facilities, during construction; and

5. the safety and protection of all existing Underground Facilities at the Site and repairing any damage thereto resulting from the Work.
- B. Notice by CMAR—If CMAR believes that an Underground Facility that is uncovered or revealed at the Site during construction was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then CMAR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith, except in an emergency as required by Paragraph 7.18, notify Owner and Owner's Advisor in writing regarding such Underground Facility.
- C. Owner's Advisor's Review
 1. Owner's Advisor will:
 - a. promptly review the Underground Facility in consultation with Architect, and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
 - b. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner, and if necessary, issue any preliminary instructions to CMAR regarding the CMAR's resumption of Work in connection with the Underground Facility in question;
 - c. obtain any pertinent cost or schedule information from CMAR; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
 - d. advise Owner and Architect in writing of Owner's Advisor's findings, conclusions, and recommendations.

During such time, CMAR shall be responsible for the safety and protection of such Underground Facility.
- D. Owner's Advisor's Statement to CMAR Regarding Underground Facility—After receipt of Owner's response to and recommendations regarding Owner's Advisor's written findings, conclusions, and recommendations, Owner's Advisor will issue a written statement to CMAR regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and informing CMAR of Owner's Advisor's written findings, conclusions, and recommendations, as revised based on Owner's response and instructions.
- E. Early Resumption of Work—If at any time Owner's Advisor, in consultation with Architect, determines that Work in connection with the Underground Facility may resume prior to completion of Owner's Advisor's review or Owner's Advisor's issuance of its statement to CMAR, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then Owner's Advisor may instruct CMAR to resume such Work.
- F. Possible Price and Times Adjustments
 1. CMAR shall be entitled to an equitable adjustment in the Guaranteed Maximum Price or Contract Times, to the extent that any existing Underground Facility at the Site that

was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in CMAR's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. With respect to Work that is paid for on a unit price basis, any adjustment in Guaranteed Maximum Price will be subject to the provisions of Paragraph 13.02;
 - b. CMAR's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
 - c. CMAR gave the notice required in Paragraph 5.05.B.
2. If Owner and CMAR agree regarding CMAR's entitlement to and the amount or extent of any adjustment in the Guaranteed Maximum Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 3. CMAR may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Guaranteed Maximum Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to CMAR regarding the Underground Facility in question.
 4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE Manual 38, Standard Guideline for Investigating and Documenting Existing Utilities, by the American Society of Civil Architects. If such information or data is incorrect or incomplete, CMAR's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 Hazardous Environmental Conditions at Site

A. Reports and Drawings—The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
3. Technical Data described in such reports and drawings.

B. Reliance by CMAR on Technical Data Authorized—CMAR may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then CMAR may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.55.b. Except for such reliance on Technical Data, CMAR may not rely upon or make any claim against Owner, Owner's Advisor, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for CMAR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CMAR, and safety precautions and programs incident

thereto;

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
 3. the contents of other Site related documents may available to CMAR, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
 4. any CMAR interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.
- C. CMAR shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. CMAR shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by CMAR, Subcontractors, Suppliers, or anyone else for whom CMAR is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If CMAR encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if CMAR or anyone for whom CMAR is responsible creates a Hazardous Environmental Condition, then CMAR shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby, except in an emergency as required by Paragraph 7.18; and (3) notify Owner, Owner's Advisor, and Architect, and promptly thereafter confirm such notice in writing. Owner shall promptly consult with Owner's Advisor and Architect concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Owner's Advisor and Architect, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide CMAR with the written notice required by Paragraph 5.06.E. If CMAR or anyone for whom CMAR is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition and impose a set-off against payments to account for the associated costs.
- F. CMAR shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to CMAR either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and CMAR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Guaranteed Maximum Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by CMAR, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, CMAR may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such

adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.

- H. If, after receipt of such written notice, CMAR does not agree to resume such Work based on a reasonable belief it is unsafe or does not agree to resume such Work under such special

conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless CMAR, Subcontractors, Owner's Advisor, and Architect, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages, including but not limited to all fees and charges of construction managers, Architects, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs, arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by CMAR or by anyone for whom CMAR is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, CMAR shall indemnify and hold harmless Owner, Owner's Advisor, and Architect and their officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages, including but not limited to all fees and charges of construction managers Architects, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by CMAR or by anyone for whom CMAR is responsible, or to a Hazardous Environmental Condition created by CMAR or by anyone for whom CMAR is responsible. Nothing in this Paragraph 5.06.J obligates CMAR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6—BONDS AND INSURANCE

6.01 Performance, Payment, and Other Bonds

- A. No later than the execution of the first Work Authorization the CMAR shall furnish a performance bond and a payment bond, each in an amount at least equal to the Guaranteed Maximum Price, as security for the faithful performance and payment of CMAR's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment on the Contract becomes due or until completion of the correction period for the Contract specified in Paragraph 15.09, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract. The premium costs of such bonds are:
 - 1. included in Construction Support Cost if purchased for the Work based on the Estimated Guaranteed Maximum Price established with the Agreement; or

2. a reimbursable Cost of the Work if the bonds are purchased with the first Work Authorization and increased as subsequent Work Authorizations are approved.
- B. CMAR shall also furnish such other bonds, if any, as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Contract Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570, as amended and supplemented by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. CMAR shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by CMAR is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then CMAR shall promptly notify Owner and Owner’s Advisor in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. If CMAR has failed to obtain a required bond, Owner may exclude the CMAR from the Site and exercise Owner’s termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to CMAR from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, CMAR shall provide a copy of the payment bond to such person or entity.
- I. Performance Bonds required of certain Subcontractors and Suppliers—see Paragraph 7.10.O.

6.02 Insurance—General Provisions

- A. Owner and CMAR shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or CMAR shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract must have an A.M. Best Financial Strength Rating of A- or better, and an A.M. Best Financial Size Category of VII or larger.

- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not adequate to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. CMAR shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that CMAR has obtained and is maintaining the policies and coverages required by the Contract and the Project. Upon request by Owner or any other insured, CMAR shall also furnish 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 Subcontractors or Suppliers. In any documentation furnished under this provision, CMAR, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- E. Owner shall deliver to CMAR, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract, if any. Upon request by CMAR or any other insured, Owner shall also provide other evidence of such required insurance, if any, including but not limited to copies of policies, documentation of applicable self-insured retentions, if allowed, and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or CMAR to demand such certificates or other evidence of the other party’s full compliance with these insurance requirements, or failure of Owner or CMAR to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party’s obligation to obtain, and maintain such insurance.
- G. In addition to the liability insurance required to be provided by CMAR, the Owner, at Owner’s option, may purchase and maintain Owner’s own liability insurance. Owner’s liability policies, if any, operate separately and independently from policies required to be provided by CMAR, and CMAR cannot rely upon Owner’s liability policies for any of CMAR’s obligations to the Owner, Owner’s Advisor, Architect, or third parties.
- H. CMAR shall require:
1. Subcontractors to purchase and maintain worker’s compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner Owner’s Advisor, and any other individuals or entities identified in the Supplementary Conditions as additional insureds on CMAR’s liability policies, on each Subcontractor’s commercial general liability policy; and
 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to

the start of the Work, or of such failure to maintain prior to any cancellation of the required coverage.

- J. If CMAR has failed to obtain and maintain required insurance, CMAR's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs, including but not limited to the cost of purchasing necessary insurance coverage, and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect, but is in no way obligated, to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.
- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect CMAR or CMAR's interests. CMAR is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that CMAR deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on CMAR's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder must provide a copy of the notice to Owner's Advisor and each other insured.

6.03 CMAR's Insurance

- A. Required Insurance—CMAR shall purchase and maintain worker's compensation, commercial general liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. General Provisions—The policies of insurance required by this Paragraph 6.03 as supplemented must:
 - 1. include at least the specific coverages required;
 - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
 - 3. remain in effect at least until the Work is complete, as set forth in Paragraph 15.07.D, and longer if expressly required elsewhere in this Contract, and at all times thereafter when CMAR may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
 - 4. apply with respect to the performance of the Work, whether such performance is by CMAR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
 - 5. include all necessary endorsements to support the stated requirements.

- C. Additional Insureds—The CMAR’s commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
1. include and list as additional insureds Owner and Owner’s Advisor, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 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 CMAR’s acts or omissions, or the acts and omissions of those working on CMAR’s behalf, in the performance of CMAR’s operations.

6.04 Builder’s Risk and Other Property Insurance

- A. Builder’s Risk—Unless otherwise provided in the Supplementary Conditions, beginning at the commencement of construction CMAR shall purchase and maintain builder’s risk insurance upon the Work on a completed value basis, in the amount of the Work’s full insurable replacement cost, subject to such deductible amounts as may be provided in the Supplementary Conditions, required by Laws and Regulations or as defined in a Work Authorization or the GMP. The specific requirements applicable to the builder’s risk insurance are set forth in the Supplementary Conditions.

For purposes of the builder’s risk and other required property insurance, “commencement of construction” first occurs when materials are in the course of delivery to the Site or an off-site storage location required to be insured if transit coverage is required, or if transit coverage is not required, when materials are delivered to the Site, or an off-site storage location required to be insured.

- B. Property Insurance for Facilities of Owner Where Work Will Occur—Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder’s risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.07.D.
- C. Property Insurance for Substantially Complete Facilities—Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.07.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder’s risk insurance. The builder’s risk insurance may terminate upon written confirmation of Owner’s procurement of such property insurance.
- D. Partial Occupancy or Use by Owner—If Owner will occupy or use a portion or portions of the

Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.05, then

Owner, directly, if it is the purchaser of the builder's risk policy, or through CMAR, will provide advance notice of such occupancy or use to the builder's risk insurer and obtain coverage or an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.

- E. Insurance of Other Property; Additional Insurance—If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If CMAR elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, CMAR may do so at its expense.

6.05 Property Losses; Subrogation

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04, or an installation floater policy if authorized by the Supplementary Conditions, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Owner's Advisor, Architect, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.
 - 1. Owner and CMAR waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Owner's Advisor, Architect, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
 - 2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or CMAR as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.05, after Substantial Completion pursuant to Paragraph 15.04, or after final payment pursuant to Paragraph 15.07, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against CMAR, Subcontractors, Owner's Advisor, or Architect, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
- C. Owner waives all rights against CMAR, Subcontractors, Owner's Advisor, and Architect, and the officers, directors, members, partners, employees, agents, consultants, and

subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.

- D. CMAR shall assure that each subcontract contains provisions whereby the Subcontractor waives all rights against Owner, CMAR, Owner's Advisor, Architect, all individuals or entities identified in the Supplementary Conditions as insureds, their consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 Receipt and Application of Property Insurance Proceeds

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured will act as fiduciary for the other insureds and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 must maintain such proceeds in a segregated account and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, CMAR shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—CMAR'S RESPONSIBILITIES

7.01 CMAR's Means and Methods of Construction

- A. CMAR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or CMAR determines, that professional Architecting or other design services are needed to carry out CMAR's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then CMAR shall cause such services to be provided by a properly licensed design professional, at CMAR's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner, Owner's Advisor, nor Architect has any responsibility with respect to (1) CMAR's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by CMAR, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 Supervision and Superintendence

- A. CMAR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, CMAR shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Owner's Advisor except under extraordinary circumstances.

7.03 CMAR Services—Key Personnel and Subconsultants

- A. CMAR will provide the services of the key individuals identified in the Agreement for CMAR Services (Preconstruction Services and Procurement Services) for the duration of the time required to provide these services. CMAR may substitute other individuals for the key individuals identified in the Agreement or for individuals previously approved only upon good cause and with the written consent of the Owner. Subject to the foregoing, not providing the individuals proposed may be the grounds for termination of this Contract.
- B. CMAR may provide CMAR Services through one or more subconsultants under contract to CMAR provided, however, that CMAR remains responsible to the Owner for all duties and obligations of the CMAR under this Contract, and in rendering services any such subconsultant must comply with all applicable terms and conditions of the Contract Documents. If the Agreement identifies a specific subconsultant, CMAR will provide the services of such subconsultant for the duration of the time required to complete the subcontracted tasks. CMAR may substitute other subconsultants for the subconsultants identified in the Agreement or previously approved only with the written consent of the Owner. Subject to the foregoing, not providing the subconsultants proposed may be the grounds for termination of this Contract.

7.04 Quality of CMAR Services

- A. The Owner's Advisor, with the concurrence of Owner and Architect, has the right to reject or disapprove any substandard portion of the CMAR Services. Owner's Advisor will provide written notice stating the reason for the rejection or disapproval. CMAR will revise the services in question to address the inadequacies identified by Owner's Advisor.
- B. CMAR acknowledges that any review or approval of CMAR Services by the Owner or Owner's Advisor does not relieve CMAR of its responsibility to properly and timely perform such services.

7.05 Continuation or Termination of CMAR Services

- A. Owner may terminate this Contract for Owner's convenience at the completion of Preconstruction Services if Owner determines that doing so is in Owner's best interest. Owner is not obligated to cite a reason for such a termination, but in making its determination Owner may wish to consider factors such as the quality of the CMAR Services, facts that indicate that the Project cannot be constructed for a cost within the Owner's budget, and changes in key personnel.
- B. The Owner may terminate the Contract for Owner's convenience at the end of Procurement Services if Owner determines that doing so is in Owner's best interest. Owner is not obligated to cite a reason for such a termination, but in making its determination Owner may wish to consider factors such as whether CMAR is unable to offer a Guaranteed Maximum Price

within the Owner's Construction Budget, or whether it will be advantageous to bid out the Work as a whole on a stipulated price basis.

7.06 Labor; Working Hours

- A. CMAR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. CMAR shall maintain good discipline and order at the Site.
- B. CMAR shall provide or furnish:
 - 1. Construction-related services as described in Division 00 and Division 01 of the Contract Documents;
 - 2. Post-construction services as described in Division 00 and Division 01 of the Contract Documents; and
 - 3. All other construction-related and post-construction services described in the Contract Documents.
- C. CMAR shall be fully responsible to Owner, Owner's Advisor, and Architect for all acts and omissions of CMAR's employees; of subconsultants, Suppliers, and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the CMAR Services or the Work, just as CMAR is responsible for CMAR's own acts and omissions.
- D. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. CMAR will not perform Work on a Saturday, Sunday, or legal holiday. CMAR may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.07 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, CMAR shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Owner's Advisor, the CMAR shall furnish satisfactory evidence, including reports of required tests, as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.
- D. CMAR will be fully responsible for the quality and effectiveness (1) of all services performed or provided by CMAR, including but not limited to CMAR Services and general services in support of construction, and (2) of the deliverables and documentation associated with all such services.

7.08 “Or Equals”

- A. CMAR’s Request; Governing Criteria—Whenever an Item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Guaranteed Maximum Price has been based upon CMAR furnishing such Item as specified. The specification or description of such an Item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” Item is permitted, CMAR may request that Owner’s Advisor authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
1. If Owner’s Advisor, in consultation with Architect, determines that an Item of equipment or material proposed by CMAR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Owner’s Advisor will deem it an “or equal” item. For the purposes of this paragraph, a proposed Item of equipment or material will be considered functionally equal to an Item so named if:
 - a. in the exercise of reasonable judgment Owner’s Advisor, in consultation with Architect, determines that the proposed item:
 - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to Owner.
 - b. CMAR certifies that if the proposed Item is approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) the Item will conform substantially to the detailed requirements of the Item named in the Contract Documents.
- B. CMAR’s Expense—CMAR shall provide all data in support of any proposed “or equal” Item at CMAR’s expense.
- C. Owner’s Advisor’s Evaluation and Determination—Owner’s Advisor, in consultation with Architect, will be allowed a reasonable time to evaluate each “or-equal” request. Owner’s Advisor may require CMAR to furnish additional data about the proposed “or-equal” item. Owner’s Advisor, in consultation with Architect, will be the sole judge of acceptability. No “or-equal” Item will be ordered, furnished, installed, or utilized until Owner’s Advisor’s review is complete and Owner’s Advisor, in consultation with Architect, has determined that the proposed Item is equal, which will be evidenced by an approved Shop Drawing or other written communication. Owner’s Advisor will advise CMAR in writing of any negative determination.

- D. Effect of Owner's Advisor's Determination—Neither approval nor denial of an “or-equal” request will result in any change in Guaranteed Maximum Price. The Owner's Advisor's denial of an “or-equal” request will be final and binding and may not be reversed through an appeal under any provision of the Contract.
- E. Treatment as a Substitution Request—If Owner's Advisor determines that an Item of equipment or material proposed by CMAR does not qualify as an “or-equal” item, CMAR may request that Owner's Advisor consider the Item a proposed substitute pursuant to Paragraph 7.09.

7.09 Substitutes

- A. CMAR's Request; Governing Criteria—Unless the specification or description of an Item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, CMAR may request that Owner's Advisor authorize the use of other items of equipment or material under the circumstances described below.
- B. To the extent possible such requests must be made as part of Preconstruction Services, before the completion of the applicable portion of the design, the Procurement of Subcontractors, construction pricing, and execution of the governing Work Authorization (Preconstruction Substitute Requests). Preconstruction Substitute Requests are further addressed in Paragraph 7.09.E below; substitute requests made after the applicable Work Authorization are addressed in Paragraph 7.09.F.
- C. The following provisions apply to all substitute requests:
 - 1. CMAR shall submit adequate information as provided below to allow Owner's Advisor, in consultation with Architect, to determine if the Item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Owner's Advisor will not accept requests for review of proposed substitute items of equipment or material from anyone other than CMAR.
 - 2. The requirements for review by Owner's Advisor, in consultation with Architect, will be as set forth in Paragraph 7.09.D, as supplemented by the Specifications, and as Owner's Advisor may decide is appropriate under the circumstances.
 - 3. CMAR shall make written application to Owner's Advisor for review of a proposed substitute Item of equipment or material that CMAR seeks to furnish or use. The application:
 - a. will certify that the proposed substitute Item will:
 - 1) adequately perform the functions and achieve the results called for by the general design;
 - 2) be similar in substance to the Item specified; and
 - 3) be suited to the same use as the Item specified.

- b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute Item will necessitate a change in Contract Times;
 - 2) whether use of the proposed substitute Item in the Work will require a change in any of the Contract Documents, or in the provisions of any other direct contract with Owner for other work on the Project, to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute Item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute Item from the Item specified; and
 - 2) available Architecting, sales, maintenance, repair, and replacement services.
 - d. will contain, to the extent applicable, an itemized estimate of all costs, anticipated price impacts, or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Guaranteed Maximum Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- D. Owner's Advisor's Evaluation and Determination—Owner's Advisor, in consultation with Architect, will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Owner's Advisor may require CMAR to furnish additional data about the proposed substitute item. Owner's Advisor, in consultation with Architect, will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Owner's Advisor's review is complete and Owner's Advisor determines that the proposed Item is an acceptable substitute.
- E. Preconstruction Substitute Requests—CMAR will research potential substitutes, furnish data, and prepare a Preconstruction Substitute Request as compensable Basic Preconstruction Services. CMAR will not be responsible for costs incurred by Owner, Owner's Advisor, or Architect in response to a Preconstruction Substitute Request. If such a request is approved, CMAR will not be required to issue a special guarantee with respect to the substitute's inclusion in the final design.
- F. For substitute requests made after a Work Authorization, or in an untimely manner such that the substitution cannot be made part of the final design on which binding construction pricing is based, the following apply:
- 1. Owner's Advisor's determination will be evidenced by a Field Order, or a proposed Change Order issued by the Owner's Advisor accounting for the substitute itself and all related impacts, including changes in Guaranteed Maximum Price or Contract Times. Owner's Advisor will advise CMAR in writing of any negative determination.
 - 2. Special Guarantee —Owner's Advisor may require CMAR to furnish at CMAR's expense a special performance guarantee or other surety with respect to the substitute.
 - 3. Reimbursement of Review Cost—Owner's Advisor and Architect will record their costs in evaluating the substitute proposed or submitted by CMAR. Whether or not Owner's Advisor approves a substitute so proposed or submitted by CMAR, CMAR shall

reimburse Owner for the reasonable charges of Owner's Advisor and Architect for evaluating each such proposed substitute. CMAR shall also reimburse Owner for the reasonable charges of Owner's Advisor and Architect for making changes in the Contract Documents, or in the provisions of any other direct contract with Owner resulting from the acceptance of each proposed substitute.

4. CMAR's Expense—CMAR shall provide all data in support of any proposed substitute at CMAR's expense.
5. Effect of Owner's Advisor's Determination—If Owner's Advisor approves the substitute request, CMAR shall execute a Change Order and proceed with the substitute. The Owner's Advisor's denial of a substitution request will be final and binding and may not be reversed through an appeal under any provision of the Contract. CMAR may challenge the scope of reimbursement costs imposed under Paragraph 7.09.F.3, by timely submittal of a Change Proposal.

7.10 Concerning Subcontractors and Suppliers

- A. CMAR may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The CMAR's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve CMAR's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. CMAR shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. As a general matter, CMAR shall retain Subcontractors and Suppliers for Work Packages through the procurement process described in the Agreement, including but not limited to the Procurement Strategy Plan and Exhibit A Article 3 of the Agreement. If there is a conflict between such provisions of the Agreement and this paragraph, the provisions of the Agreement will govern.
- D. Subsequent to the submittal of CMAR's Proposal or final negotiation of the terms of the Contract, Owner may not require CMAR to retain any Subcontractor or Supplier against which CMAR has reasonable objection to furnish or perform any of the Work.
- E. Prior to entry into any binding subcontract or purchase order, CMAR shall submit to Owner the identity of the proposed Subcontractor or Supplier, unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the CMAR selection process, the Subcontractor and Supplier procurement process, or otherwise. Such proposed Subcontractor or Supplier will be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- F. Owner may require the replacement of a Subcontractor or Supplier. Owner also may require CMAR to retain specific replacements; provided, however, that Owner may not require a replacement to which CMAR has a reasonable objection. If CMAR has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, through the Subcontractor and Supplier procurement process or otherwise, and Owner has accepted it, either in writing or by failing to make written objection thereto, then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of

substantive, reasonable objection after due investigation. CMAR shall submit an acceptable replacement for the rejected Subcontractor or Supplier.

- G. If Owner requires the replacement of any Subcontractor or Supplier retained by CMAR to perform any part of the Work, then CMAR shall be entitled to an adjustment in Guaranteed Maximum Price or Contract Times, with respect to the replacement; and CMAR shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- H. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- I. On a monthly basis, CMAR shall submit to Owner's Advisor a complete list of all Subcontractors and Suppliers having a direct contract with CMAR, and of all other Subcontractors and Suppliers known to CMAR at the time of submittal.
- J. CMAR shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- K. The divisions and sections of the Specifications and the identifications of any Drawings do not control CMAR in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- L. All Work performed for CMAR by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner, Owner's Advisor, and Architect.
- M. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to CMAR for Work performed for CMAR by the Subcontractor or Supplier.
- N. CMAR shall restrict all Subcontractors and Suppliers from communicating with Owner's Advisor or Owner, except through CMAR or in case of an emergency, or as otherwise expressly allowed in this Contract.
- O. CMAR will perform or undertake the responsibilities of any Subcontractor or Supplier that defaults, fails to perform, declares bankruptcy, or meets any of the other requirements for termination for cause listed as applying to the CMAR as described in Paragraph 16.02 of the General Conditions.
 - 1. If, for a specific Subcontractor or Supplier, CMAR determines that CMAR would not reasonably be able to self-perform the Subcontractor's work or meet the Supplier's obligations in the event of the Subcontractor or Supplier default, then CMAR may require a subcontract/supplier performance bond, the costs of which will be reimbursed as a Cost of the Work under the Subcontract costs category (Paragraph 6.02, Agreement). Before requiring such a bond, CMAR will consult with Owner's Advisor and consider whether other protective measures are feasible and more cost-effective.
 - 2. If Owner requires that CMAR enter into a subcontract with a Subcontractor to which the CMAR has reasonable objections, CMAR may require subcontract performance and payment bonds, the costs of which will be reimbursed as a Cost of the Work under the Subcontract costs category (Paragraph 6.02, Agreement).

7.11 Patent Fees and Royalties

- A. CMAR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner, Owner's Advisor, or Architect, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, then the existence of such rights will be disclosed in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless CMAR, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages, including but not limited to all fees and charges of construction managers, Architects, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs, arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, CMAR shall indemnify and hold harmless Owner, Owner's Advisor, and Architect, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages, including but not limited to all fees and charges of construction managers, Architects, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.12 Permits

- A. Unless otherwise provided in the Contract Documents, CMAR shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist CMAR, when necessary, in obtaining such permits and licenses. CMAR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of CMAR's Proposal. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.13 Taxes

- A. CMAR shall pay all sales, consumer, use, and other similar taxes required to be paid by CMAR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.14 Laws and Regulations

- A. CMAR shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of CMAR Services or the Work. Neither Owner, Owner's

Advisor, nor Architect will be responsible for monitoring CMAR's compliance with Laws or Regulations.

- B. If CMAR performs any CMAR Services or Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, CMAR shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner, Owner's Advisor, and their officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages, including but not limited to all fees and charges of construction managers, Architects, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or relating to such CMAR Services, Work, or other action and in accordance with Section 7.21.A.
- C. It is not CMAR's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve CMAR of its obligations under Paragraph 3.03.
- D. Owner or CMAR may give written notice to the other party of any changes after the Effective Date of the Contract in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and CMAR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Guaranteed Maximum Price or Contract Times resulting from such changes, then within 30 days of such written notice CMAR may submit a Change Proposal, or Owner may initiate a Claim.

7.15 Record Documents

- A. CMAR shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, Contract Amendments, Work Packages, Work Authorizations, written interpretations and clarifications, and approved Shop Drawings. CMAR shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Owner's Advisor and Architect for reference. Upon completion of the Work, CMAR shall deliver these record documents to Owner's Advisor.

7.16 Safety and Protection

- A. CMAR shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. CMAR shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. CMAR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.16.C.2 or 7.16.C.3 caused, directly or indirectly, in whole or in part, by CMAR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, will be remedied by CMAR at its expense, except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner, Owner's Advisor, or Architect or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CMAR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them.
 - E. CMAR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
 - F. CMAR shall notify Owner's Advisor; Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities, if the identity of such owners is known to CMAR; and other contractors and utility owners performing work at or adjacent to the Site, in writing, when CMAR knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
 - G. CMAR shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
 - H. CMAR shall inform Owner, Owner's Advisor, and Architect of the specific requirements of CMAR's safety program with which Owner's, Owner's Advisor's, and Architect's employees and representatives must comply while at the Site.
 - I. CMAR's duties and responsibilities for safety and protection will continue until all the Work is completed, Owner's Advisor has issued a written notice to Owner and CMAR in accordance with Paragraph 15.07.C that the Work is acceptable, and CMAR has left the Site, except as otherwise expressly provided in connection with Substantial Completion.
 - J. CMAR's duties and responsibilities for safety and protection will resume whenever CMAR or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.17 Hazard Communication Programs

- A. CMAR shall be responsible for coordinating any exchange of safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.18 Emergencies

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, CMAR is obligated to act to prevent damage, injury, or loss. CMAR shall give Owner's Advisor prompt written notice if CMAR believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency or are required as a result of CMAR's response to an emergency. If Owner's Advisor, in consultation with Architect, determines that a change in the Contract Documents is required because of an emergency or CMAR's response, a Work Change Directive or Change Order will be issued.

7.19 Submittals

A. Shop Drawing and Sample Requirements

1. Before submitting a Shop Drawing or Sample, CMAR shall:
 - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determine and verify:
 - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
 - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - 3) all information relative to CMAR's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
 - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
2. Each Shop Drawing or Sample must bear a stamp or specific written certification that CMAR has satisfied CMAR's obligations under the Contract Documents with respect to CMAR's review of that Submittal, and that CMAR approves the Submittal.
3. With each Shop Drawing or Sample, CMAR shall give Owner's Advisor specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

- B. Submittal Procedures for Shop Drawings and Samples—CMAR shall label and submit Shop Drawings and Samples to Owner’s Advisor for review by Architect in accordance with the accepted Schedule of Submittals.
1. Shop Drawings
 - a. CMAR shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show the services, materials, and equipment CMAR proposes to provide, and to enable the information to be reviewed for the limited purposes required by Paragraph 7.19.D.
 2. Samples
 - a. CMAR shall submit the number of Samples required in the Specifications.
 - b. CMAR shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Owner’s Advisor may require to enable Architect to review the Sample for the limited purposes required by Paragraph 7.19.D.
- C. Proceeding without Architect’s Approval—Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, Owner will not pay for related Work, including equipment or materials, until Architect approves the Shop Drawing or Sample. If CMAR proceeds without such approval, CMAR will bear the full risk of all resulting delays, costs, and losses, including but not limited to removal, corrective, purchase, and installation costs, if such approval is not granted.
- D. Architect’s Review of Shop Drawings and Samples
1. Architect will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Architect’s review will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Architect’s review and approval, if any, will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
 3. Architect’s review and approval, if any, of a separate Item as such will not indicate approval of the assembly in which the Item functions.
 4. Architect’s review and approval, if any, of a Shop Drawing or Sample will not relieve CMAR from responsibility for any variation from the requirements of the Contract Documents unless CMAR has complied with the requirements of Paragraph 7.19.A.3 and Architect has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Owner’s Advisor, in consultation with Architect, will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Architect's review and approval, if any, of a Shop Drawing or Sample will not relieve CMAR from responsibility for complying with the requirements of Paragraphs 7.19.A and B.
 6. Architect's review and approval, if any, of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Guaranteed Maximum Price, unless such changes are included in a Change Order.
 7. Neither receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such Item becoming a Contract Document.
 8. CMAR shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.19.D.4.
- E. Resubmittal Procedures for Shop Drawings and Samples
1. CMAR shall make required corrections and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. CMAR shall direct specific attention in writing to revisions other than the corrections called for on previous Submittals.
 2. CMAR shall furnish required Shop Drawing and Sample submittals with adequate information and accuracy to obtain required approval of an Item with no more than two resubmittals. Architect will record Architect's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and CMAR shall be responsible for Architect's charges to Owner for such time. Owner may impose a set-off against payments due CMAR to secure reimbursement for such charges.
 3. If CMAR requests a change of a previously approved Shop Drawing or Sample, CMAR shall be responsible for Architect's charges to Owner for its review time, and Owner may impose a set-off against payments due CMAR to secure reimbursement for such charges, unless the need for such change is beyond the control of CMAR.
- F. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs
1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
 - a. CMAR shall submit all such Submittals to Owner's Advisor in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
 - b. A timely review will be made of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
 - c. Review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

- d. If any such Submittal is not accepted, CMAR shall confer with Owner's Advisor regarding the reason for the non-acceptance and resubmit an acceptable document.
- 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 4.04, 7.19, and 15.02.
- G. Owner-delegated Designs–Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.22.

7.20 CMAR's General Warranty and Guarantee

- A. CMAR warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Owner's Advisor and Owner are entitled to rely on CMAR's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.09. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.20 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.09:
 - 1. Owner shall give CMAR written notice of any defective Work within 60 days of the discovery that such Work is defective; and
 - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. CMAR's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, or improper modification, maintenance, or operation, by persons other than CMAR, Subcontractors, Suppliers, or any other individual or entity for whom CMAR is responsible; or
 - 2. normal wear and tear under normal usage.
- D. CMAR shall perform or provide CMAR Services in accordance with the Contract Documents and good construction management practice.
- E. CMAR's obligation to perform and complete the CMAR Services and the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of CMAR Services or Work that is not in accordance with the Contract Documents, a release of CMAR's obligation to perform the CMAR Services or Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.20:
 - 1. Observations by Owner's Advisor;
 - 2. Recommendation by Owner's Advisor or payment by Owner of any progress or final payment;
 - 3. The acceptance of CMAR Services without objection;
 - 4. The issuance of a certificate of Substantial Completion by Owner's Advisor or any payment related thereto by Owner;

5. Use or occupancy of the Work or any part thereof by Owner;
 6. Any review and approval of a Shop Drawing or Sample submittal;
 7. The issuance of a notice of acceptability by Owner's Advisor;
 8. The end of the correction period established in Paragraph 15.09;
 9. Any inspection, test, or approval by others; or
 10. Any correction of defective Work by Owner.
- F. If the Contract requires CMAR to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to CMAR's performance obligations to Owner for the Work described in the assigned contract.

7.21 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of CMAR under the Contract or otherwise, CMAR shall indemnify and hold harmless Owner, Owner's Advisor, and Architect, and their officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments, including but not limited to all fees and charges of Architects, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs, arising from third-party claims or actions relating to or resulting from the performance or furnishing of CMAR Services or the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage 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 CMAR, any Subcontractor, any Supplier, subconsultant, or any individual or entity directly or indirectly employed by any of them to perform any of the CMAR Services or Work, or anyone for whose acts any of them may be liable, except due to the sole negligence of Owner, its agents or employees.
- B. In claims against Owner, Owner's Advisor, or Architect, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any CMAR employee, or the survivor or personal representative of such employee, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.21.A will not be limited by a limitation on the amount or type of damages, compensation, or benefits payable by or for CMAR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.22 Delegation of Professional Design Services

- A. Owner may require CMAR to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that CMAR must furnish to Owner's Advisor with respect to the Owner-delegated design.
- B. CMAR shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional,

whose signature and seal must appear on all drawings, calculations, specifications,

certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.

- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by CMAR, a Subcontractor, or others for submittal to Owner's Advisor, then such Shop Drawing or other Submittal must bear the written approval of CMAR's design professional when submitted by CMAR to Owner's Advisor.
- D. Owner, Owner's Advisor, and Architect shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by CMAR under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.22, Architect's review, approval, and determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by CMAR pursuant to an Owner-delegated design will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.22;
 - 2. Confirming that CMAR, through its design professionals, has used the performance and design criteria specified in the Contract Documents; and
 - 3. Establishing that the design furnished by CMAR is consistent with the design concept expressed in the Contract Documents.
- F. CMAR shall not be responsible for the adequacy of performance or design criteria specified by Owner or Architect.
- G. CMAR is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 Other Work

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give CMAR written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to CMAR.
- C. CMAR shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.

- D. CMAR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CMAR shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that CMAR may cut or alter others' work with the written consent of Owner's Advisor and the others whose work will be affected.
- E. If the proper execution or results of any part of CMAR's Work depends upon work performed by others, CMAR shall inspect such other work and promptly report to Owner's Advisor in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CMAR's Work. CMAR's failure to so report will constitute an acceptance of such other work as fit and proper for integration with CMAR's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this Article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by CMAR is governed by the provisions of Paragraph 4.05.C.3.

8.02 Coordination

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to CMAR prior to the start of any such other work:
 - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 Legal Relationships

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of CMAR or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then CMAR shall be entitled to an equitable adjustment in the Guaranteed Maximum Price or the Contract Times. CMAR must submit any Change Proposal seeking an equitable adjustment in the Guaranteed Maximum Price or the Contract Times under this paragraph within 60 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will consider information, if any regarding such other work that was provided to CMAR in the Contract Documents prior to the submittal of the Proposal or the final negotiation of the terms of the Contract, and any remedies available to CMAR under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable

adjustment in Guaranteed Maximum Price will be conditioned on CMAR assigning to Owner all CMAR's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. CMAR's entitlement to an adjustment of the Contract Times or Guaranteed Maximum Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

- B. CMAR shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
 - 1. If CMAR fails to take such measures, and as a result, damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due CMAR, and assign to such other contractor or utility owner the Owner's contractual rights against CMAR with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
 - 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, CMAR shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of CMAR's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due CMAR.
- C. If CMAR damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through CMAR's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of CMAR's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against CMAR, Owner, Owner's or Advisor, then CMAR shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner, and Owner's Advisor, and their officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against any such claims, and against all costs, losses, and damages, including but not limited to, all fees and charges of constructions managers, Architects, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs arising out of or relating to such damage, delay, disruption, or interference..

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 Communications to CMAR

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to CMAR through Owner's Advisor.

9.02 Replacement of Owner's Advisor or Architect

- A. Owner may at its discretion appoint a replacement for Owner's Advisor, provided CMAR makes no reasonable objection to the replacement. The replacement's status under the Contract Documents will be that of the former Owner's Advisor.

- B. Owner may at its discretion appoint an Architect to replace Architect, provided CMAR makes no reasonable objection to the replacement Architect. The replacement Architect's status under the Contract Documents will be that of the former Architect.
- 9.03 Furnish Data
 - A. Owner shall promptly furnish the data required of Owner under the Contract Documents.
- 9.04 Pay CMAR
 - A. Owner shall make payments to CMAR when they are due as provided in the Agreement.
- 9.05 Lands and Easements; Reports, Tests, and Drawings
 - A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
 - B. Owner's duties with respect to providing Architecting surveys to establish reference points are set forth in Paragraph 4.03.
 - C. Article 5 refers to Owner's identifying and making available to CMAR copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.
- 9.06 Insurance
 - A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.
- 9.07 Change Orders
 - A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.
- 9.08 Inspections, Tests, and Approvals
 - A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.
- 9.09 Owner's Tasks in Support of CMAR Services
 - A. Owner shall provide CMAR with all criteria and full information as to Owner's requirements for the Project including drafts of proposed Contract Documents, general schedules and completion requirements, reports, surveys, permits, record documents from related previous projects, and other information as required for CMAR to provide services. Owner shall be responsible for, and CMAR 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 CMAR pursuant to this Agreement. CMAR may use such criteria and information in performing or furnishing CMAR Services.
 - B. Owner shall provide reasonable assistance to CMAR 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.
 - C. Owner shall arrange for safe access to and make all provisions for CMAR to enter upon public and private property as required for CMAR to perform services.

- D. Owner shall review documents presented by CMAR, make decisions, and carry out Owner's other responsibilities in a timely manner so as not to delay the CMAR's performance of its services.
- E. Owner shall provide the services of attorneys, insurance consultants, financial advisors, and other professional advisors or consultants required for the Project, but not provided by the CMAR.
 - 1. Advise CMAR 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 the Project, including cost estimating, project peer reviews, value Architecting, and constructability reviews.
 - 2. 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 CMAR.
- F. Owner is not responsible for discovering deficiencies in the CMAR's Services. CMAR will correct any deficiencies without additional compensation, except to the extent this corrective action is directly attributable to deficiencies in Owner-furnished information.

9.10 Limitations on Owner's Responsibilities

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, CMAR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CMAR to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for CMAR's failure to perform the Work in accordance with the Contract Documents.

9.11 Undisclosed Hazardous Environmental Condition

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.12 Evidence of Financial Arrangements

- A. Upon request of CMAR, Owner shall furnish CMAR reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract, including obligations under proposed changes in the Work.

9.13 Safety Programs

- A. While at the Site, Owner's employees and representatives will comply with the specific applicable requirements of CMAR's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to CMAR.

ARTICLE 10—STATUS OF OWNER'S ADVISOR AND ARCHITECT DURING CONSTRUCTION

10.01 Owner's Advisor

- A. Owner's Advisor will be Owner's representative during the construction period.
- B. The general duties, responsibilities, and the limitations of authority of Owner's Advisor and Architect during construction are set forth below.

10.02 Visits to Site

- A. Owner's Advisor will either be based at the Site or make visits to the Site on a regular basis. Owner's Advisor will observe the Work; check the quality, quantity, and progress of the Work; implement Owner's quality assurance program; and administer the Contract as Owner's representative.
- B. Architect will make visits to the Site at intervals appropriate to the various stages of construction as Architect deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of CMAR's executed Work. Architect will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Architect will report to Owner's Advisor regarding information obtained during such Site visits and observations.
- C. Owner's Advisor's and Architect's visits and observations are subject to all the limitations on Owner's Advisor's and Architect's authority and responsibility set forth in Paragraph 10.05. Particularly, but without limitation, during or as a result of Owner's Advisor's and Architect's visits or observations of CMAR's Work, neither Owner's Advisor nor Architect will supervise, direct, control, or have authority over or be responsible for CMAR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CMAR to comply with Laws and Regulations applicable to the performance of the Work.

10.03 Determinations for Unit Price Work

- A. Owner's Advisor will determine the actual quantities and classifications of Unit Price Work performed or furnished by CMAR as set forth in Paragraph 13.02.

10.04 Decisions on Requirements of Contract Documents and Acceptability of Work; Exercise of Authority

- A. Owner's Advisor will render decisions regarding the requirements of the Contract Documents, and judge the quality and acceptability of the Work, pursuant to the specific procedures set forth herein for interpretations, Change Proposals, Applications for Payment, and acceptance of the Work.
 - 1. Before rendering such decisions or judgments, and before exercising its authority with respect to differing subsurface or physical conditions, Underground Facilities, "or equal" and substitute requests, emergencies, Field Orders, and similar matters, Owner's Advisor will consult with Architect as to all matters in question involving (a) the design, as set forth in the Drawings, Specifications, or otherwise, (b) the quality or acceptability of the Work under the Contract Documents, or (c) other Architecting matters.
 - 2. With respect to such matters, Owner's Advisor's decisions and judgments as rendered will be in accord with Architect's professional analysis, opinions, recommendations, and conclusions.
- B. In rendering such decisions and judgments, exercising such authority, or providing professional analysis, opinions, recommendations, or conclusions underlying such decisions and judgments, neither Owner's Advisor nor Architect will show partiality to Owner or CMAR, and neither Owner's Advisor nor Architect will be liable to Owner, CMAR, or others in

connection with any proceedings, interpretations, analysis, opinions, recommendations, conclusions, decisions, or judgments conducted or rendered in good faith.

- C. Owner's Advisor may at any time request that CMAR furnish proposed changes to Guaranteed Maximum Price and Contract Times that would result from specified proposed changes to the Contract Documents.

10.05 Limitations on Owner's Advisor's and Architect's Authority and Responsibilities

- A. Neither Owner's Advisor's nor Architect's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Owner's Advisor or Architect in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Owner's Advisor or Architect, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Owner's Advisor or Architect to CMAR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Neither Owner's Advisor nor Architect will supervise, direct, control, or have authority over or be responsible for CMAR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CMAR to comply with Laws and Regulations applicable to the performance of the Work. Neither Owner's Advisor nor Architect will be responsible for CMAR's failure to perform the Work in accordance with the Contract Documents.
- C. Neither Owner's Advisor nor Architect will be responsible for the acts or omissions of CMAR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Owner's Advisor's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by CMAR under Paragraph 15.07.A, will only be to determine generally that their content complies with the requirements of the Contract Documents, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

10.06 Compliance with Safety Program

- A. While at the Site, Owner's Advisor's and Architect's employees and representatives will comply with the specific applicable requirements of Owner's and CMAR's safety programs of which Owner's Advisor and Architect have been informed.

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 Amending and Supplementing the Contract

- A. The Contract may be amended or supplemented by a Contract Amendment, Work Authorization, Change Order, Work Change Directive, or Field Order.
- B. A Work Authorization, as more fully defined in Paragraph 1.01, is used to authorize specified Work, and establish related compensation. Change Orders, Work Change Directives, and Field Orders are used to modify a Work Authorization, including but not limited to

modifications of the authorized Work and changes to the Guaranteed Maximum Price and Contract Times associated with the Work Authorization.

If a modification under a Work Authorization includes a change in the Guaranteed Maximum Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.

- C. A Contract Amendment, as more fully defined in Paragraph 1.01, is used for general contract modification purposes.
- D. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design, as set forth in the Drawings, Specifications, or otherwise, or (3) other Architecting matters, must be supported by Architect's recommendation. Owner and CMAR may amend other terms and conditions of the Contract without the recommendation of the Architect.

11.02 Change Orders

- A. With respect to a governing Work Authorization, Owner and CMAR shall execute appropriate Change Orders covering:
 - 1. Changes in Guaranteed Maximum Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work performed in accordance with a Work Change Directive;
 - 2. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Architect's recommendation if the change in the Work involves the design, as set forth in the Drawings, Specifications, or otherwise, or other Architecting matters; and
 - 3. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Paragraph 13.02.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or CMAR refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.
- C. Owner and CMAR will enter into either a Change Order, if related to a specific Work Authorization, or a Contract Amendment with respect to the following:
 - 1. Changes in Guaranteed Maximum Price resulting from an Owner set-off, unless CMAR has duly contested such set-off;
 - 2. Changes that embody the substance of any final and binding results under Article 12, Claims; Paragraph 13.01, final adjustments resulting from allowances; and similar provisions.

11.03 Work Change Directives

- A. A Work Change Directive will not change the Guaranteed Maximum Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented

by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Guaranteed Maximum Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Guaranteed Maximum Price.

B. If Owner has issued a Work Change Directive and:

1. CMAR believes that an adjustment in Contract Times or Guaranteed Maximum Price is necessary, then CMAR shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
2. Owner believes that an adjustment in Contract Times or Guaranteed Maximum Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 Field Orders

- A. Owner's Advisor, in consultation with Architect, may authorize minor changes in the Work if the changes do not involve an adjustment in the Guaranteed Maximum Price or the Contract Times. Such changes will be accomplished by a Field Order and will be binding on Owner and on CMAR, which shall perform the Work involved promptly.
- B. If CMAR believes that a Field Order justifies an adjustment in the Guaranteed Maximum Price or Contract Times, then before proceeding with the Work at issue, CMAR shall submit a Change Proposal as provided herein.

11.05 Owner-Authorized Changes in the Work

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design, as set forth in the Drawings, Specifications, or otherwise, or other Architecting matters will be supported by Architect's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and CMAR have agreed as to the effect, if any, of the changes on Contract Times or Guaranteed Maximum Price; or by a Work Change Directive. Upon receipt of any such document, CMAR shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates CMAR to undertake work that CMAR reasonably concludes cannot be performed in a manner consistent with CMAR's safety obligations under the Contract Documents or Laws and Regulations.

11.06 Unauthorized Changes in the Work

- A. CMAR shall not be entitled to an increase in the Guaranteed Maximum Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.18 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 Change of Contract Price

- A. The Contract Price may be changed by a Work Authorization, Change Order, or Contract Amendment. Any Change Proposal for an adjustment in the Guaranteed Maximum Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Guaranteed Maximum Price with respect to the Work will be determined as follows:
 - 1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved;
 - 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum; or
 - 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work determined in accordance with the Cost of the Work provisions in the Agreement, plus the CMAR Fee, applied proportionally, for overhead and profit determined in accordance with the terms in the Agreement.

11.08 Change of Contract Times

- A. The Contract Times may be changed by a Work Authorization, Change Order, or Contract Amendment. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 Change Proposals

- A. Purpose and Content—CMAR shall submit a Change Proposal to Owner's Advisor to request an adjustment in the Contract Times or Guaranteed Maximum Price; contest a decision by Owner's Advisor concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Guaranteed Maximum Price, or other proposed relief; identify any governing Work Authorization; indicate CMAR's recommendation for the correct means of amending the Contract (Work Authorization, Change Order, or Contract Amendment) if the proposed change is accepted; and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.
- B. Determination of Changes in Guaranteed Maximum Price for Work—If a Change Order under a Work Authorization entails a change in Guaranteed Maximum Price, then:
 - 1. The change will include the applicable increase or decrease in Cost of the Work, pursuant to the provisions Article 6 of the Agreement.
 - 2. The CMAR Fee for changes will be those agreed to Article 7 of the Agreement.

3. If there is a Guaranteed Maximum Price, it will increase or decrease in an amount equal to the increase or decrease in the Cost of the Work and CMAR Fee, as duly determined.
 4. The amount of any increases or decreases in the CMAR Fee, or in Guaranteed Maximum Price, will be set forth in the applicable Change Order.
- C. Change Proposal Procedures
1. Submittal—CMAR shall submit each Change Proposal to Owner's Advisor within 30 days after the start of the event giving rise thereto, or after such decision.
 2. Supporting Data—The CMAR shall submit supporting data, including the proposed change in Guaranteed Maximum Price or Contract Time, if any, to the Owner's Advisor within 15 days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
 - b. Change Proposals related to a change of Guaranteed Maximum Price based on Cost of the Work must include full and detailed account of eligible costs, such as materials incorporated into the Work, labor and equipment used for the subject Work, and Subcontract costs.

The supporting data must be accompanied by a written statement that the supporting data is accurate and complete, and that any requested time or price adjustment is the entire adjustment to which CMAR believes it is entitled as a result of said event.
 3. Owner's Advisor's Initial Review—Owner's Advisor, in consultation with Architect, will advise Owner regarding the Change Proposal and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Owner's Advisor concludes that additional supporting data is needed before conducting a full review and deciding regarding the Change Proposal, then Owner's Advisor may request that CMAR submit such additional supporting data by a date specified by Owner's Advisor, prior to Owner's Advisor beginning its full review of the Change Proposal.
 4. Owner's Advisor's Full Review and Action on the Change Proposal—Upon receipt of CMAR's supporting data, including any additional data requested by Owner's Advisor, Owner's Advisor, in consultation with Architect, will conduct a full review of each Change Proposal and, within 30 days after such receipt of the CMAR's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and CMAR. If Owner's Advisor does not act on the Change Proposal within 30 days, then either Owner or CMAR may at any time thereafter submit a letter to the other party indicating that as a result of Owner's Advisor's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
 5. Binding Decision—Owner's Advisor's decision is final and binding upon Owner and CMAR, unless Owner or CMAR appeals the decision by filing a Claim under Article 12.
- D. Post-Completion—CMAR shall not submit any Change Proposals after Owner's Advisor issues a written recommendation of final payment pursuant to Paragraph 15.07.B.

11.10 Notification to Surety

- A. CMAR shall notify the performance and payment bond surety of the issuance of each Work Authorization and confirm that the bonds have been adjusted to reflect the changes in Guaranteed Maximum Price and Contract Times.
- B. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents, including, but not limited to, Guaranteed Maximum Price or Contract Times, the giving of any such notice will be CMAR's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12—CLAIMS

12.01 Claims

- A. Claims Process—The following disputes between Owner and CMAR are subject to the Claims process set forth in this article:
 - 1. Appeals by Owner or CMAR of Owner's Advisor's decisions regarding Change Proposals;
 - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
 - 3. Subject to the waiver provisions of Paragraph 15.08, any dispute arising after Owner's Advisor has issued a written recommendation of final payment pursuant to Paragraph 15.07.B.
- B. Submittal of Claim—The party submitting a Claim shall deliver it directly to the other party to the Contract promptly, but in no event later than 30 days after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Owner's Advisor and Architect, for their information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by CMAR seeking an increase in the Contract Times or Contract Price, CMAR shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of CMAR's knowledge and belief the amount of time or money requested accurately reflects the full amount to which CMAR is entitled.
- C. Review and Resolution—The party receiving a Claim shall review it thoroughly and consider its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Owner's Advisor and Architect.
- D. Mediation
 - 1. At any time after initiation of a Claim, Owner and CMAR may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
 - 2. If Owner and CMAR agree to mediation, then after 60 days from such agreement, either Owner or CMAR may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the

mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and CMAR shall each pay one-half of the mediator's fees and costs.
- E. Partial Approval—If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. Denial of Claim—If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not act on the Claim within 90 days, then either Owner or CMAR may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. Final and Binding Results—If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13—ALLOWANCES; UNIT PRICE WORK

13.01 Allowances

- A. The CMAR Contingency Allowance (Agreement, Article 8) and Owner's Contingency Allowance (Agreement, Article 12) are governed by the applicable provisions of the Agreement.
- B. CMAR confirms that it has included the CMAR Contingency Allowance in the Guaranteed Maximum Price and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Owner's Advisor.
- C. CMAR confirms that it has included the Owner's Contingency Allowance in the Contract Price and that use of Owner's Contingency Allowance is subject to the provisions of Article 12 in the Agreement.
- D. Cash Allowances—CMAR agrees that:
 1. the cash allowances include the cost to CMAR, less any applicable trade discounts, of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 2. CMAR's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Guaranteed Maximum Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.

- E. Prior to final payment, an appropriate Change Order will be issued as recommended by Owner's Advisor to reflect actual amounts due CMAR for Work covered by allowances, and the Guaranteed Maximum Price will be correspondingly adjusted.

13.02 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Guaranteed Maximum Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified Item of Unit Price Work times the estimated quantity of each Item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Proposals and determining an Estimated Guaranteed Maximum Price. Payments to CMAR for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by CMAR to be adequate to cover CMAR's overhead and profit for each separately identified item.
- D. Owner's Advisor will determine the actual quantities and classifications of Unit Price Work performed or furnished by CMAR. Owner's Advisor will review with CMAR the Owner's Advisor's preliminary determinations on such matters before rendering a written decision thereon, by recommendation of an Application for Payment or otherwise. Owner's Advisor's written decision thereon will be final and binding except as modified by Owner's Advisor to reflect changed factual conditions or more accurate data upon Owner and CMAR, and the final adjustment of Guaranteed Maximum Price will be set forth in a Change Order, subject to the provisions of the following Paragraph.
- E. Adjustments in Unit Price
 - 1. CMAR or Owner shall be entitled to an adjustment in the unit price with respect to an Item of Unit Price Work if:
 - a. the quantity of the Item of Unit Price Work performed by CMAR differs materially and significantly from the estimated quantity of such Item indicated in the Agreement; and
 - b. CMAR's unit costs to perform the Item of Unit Price Work have changed materially and significantly as a result of the quantity change.
 - 2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in CMAR's costs to perform such other Work, such that the resulting overall change in Guaranteed Maximum Price is equitable to Owner and CMAR.
 - 3. Adjusted unit prices will apply to all units of that item.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

14.01 Access to Work

- A. Owner, Owner's Advisor, Architect, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. CMAR shall provide them with proper and safe conditions for such access and

advise them of CMAR's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 Tests, Inspections, and Approvals

- A. CMAR shall give Owner's Advisor timely notice of readiness of the Work, or specific parts thereof, for all required inspections and tests and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except those costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work, or part thereof, specifically to be inspected, tested, or approved by an employee or other representative of such public body, CMAR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Owner's Advisor the required certificates of inspection or approval.
- D. CMAR shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 - 2. to attain acceptance of materials or equipment to be incorporated in the Work;
 - 3. by manufacturers of equipment furnished under the Contract Documents;
 - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to CMAR's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Owner's Advisor.

- E. If the Contract Documents require the Work, or part thereof, to be accepted by Owner, Owner's Advisor, Architect, or another designated individual or entity, then CMAR shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work, or the work of others that is to be inspected, tested, or approved is covered by CMAR without written concurrence of Owner's Advisor, CMAR shall, if requested by Owner's Advisor, uncover such Work for observation. Such uncovering will be at CMAR's expense unless CMAR has given Owner's Advisor timely notice of CMAR's intention to cover the same and Owner's Advisor had not acted with reasonable promptness in response to such notice.

14.03 Defective Work

- A. CMAR's Obligation—It is CMAR's obligation to assure that the Work is not defective.
- B. Owner's Advisor's Authority—Owner's Advisor has the authority to determine, in consultation with Architect, whether Work is defective, and to reject defective Work.
- C. Notice of Defects—Prompt written notice of all defective Work of which Owner, Owner's Advisor, or Architect has actual knowledge will be given to CMAR.
- D. Correction, or Removal and Replacement—Promptly after receipt of written notice of defective Work, CMAR shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Owner's Advisor has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. Preservation of Warranties—When correcting defective Work, CMAR shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. Costs and Damages—In addition to its correction, removal, and replacement obligations with respect to defective Work, CMAR shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and CMAR are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 Acceptance of Defective Work

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so. If such acceptance occurs prior to final payment, to Architect's confirmation that such acceptance is in general accord with the design intent and applicable Architecting principles and will not endanger public safety. CMAR shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work; such costs to be approved by Owner's Advisor as to reasonableness, and for the diminished value of the Work to the extent not otherwise paid by CMAR. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Guaranteed Maximum Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, CMAR shall pay an appropriate amount to Owner.

14.05 Uncovering Work

- A. Owner's Advisor has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Owner's Advisor, then CMAR shall, if requested by Owner's Advisor, uncover such Work for Owner's Advisor's or Architect's observation, and then replace the covering, all at CMAR's expense.

- C. If Architect or Owner's Advisor considers it necessary or advisable that covered Work be observed by Owner's Advisor or Architect, or inspected or tested by others, then Owner's Advisor will so advise CMAR, and CMAR shall uncover, expose, or otherwise make available for observation, inspection, or testing as Owner's Advisor may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, CMAR shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction, including but not limited to all costs of repair or replacement of work of others, and pending CMAR's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. If the uncovered Work is not found to be defective, CMAR shall be allowed an increase in the Guaranteed Maximum Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then CMAR may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 Owner May Stop the Work

- A. If the Work is defective, or CMAR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order CMAR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of CMAR, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 Owner May Correct Defective Work

- A. If CMAR fails within a reasonable time after written notice from Owner's Advisor to correct defective Work, or to remove and replace defective Work as required by Owner's Advisor, then Owner may, after 7 days' written notice to CMAR, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude CMAR from all or part of the Site, take possession of all or part of the Work and suspend CMAR's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid CMAR but which are stored elsewhere. CMAR shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, Owner's Advisor, Architect, and their consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against CMAR as set-offs against payments due under Article 15. Such claims, costs, losses, and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CMAR's defective Work.

- D. CMAR shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15—PAYMENTS TO CMAR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 Payment for CMAR Services

- A. The basis and procedures for payment for CMAR Services are set forth in the Agreement, Article 3. The provisions of this Article 15 pertain to payment for performance and furnishing of the Work, unless noted otherwise.

15.02 Progress Payments

A. Basis for Progress Payments

1. CMAR will, at least 10 days prior to applying for Payment, prepare and submit for approval by Owner's Advisor a schedule allocating portions of the Guaranteed Maximum Price to various portions of the Work, as determined by the applicable Work Authorizations.
2. The Schedule of Values will serve as the basis for progress payments and will be incorporated by Owner's Advisor into an Application for Payment form. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.02. Progress payments for cost-based Work will be based on Cost of the Work completed by CMAR during the pay period.

B. Applications for Payments

1. At least 20 days before the date established in the Agreement for each progress payment, but not more often than once a month, CMAR shall submit to Owner's Advisor for review an Application for Payment filled out and signed by CMAR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by CMAR for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
3. Beginning with the second Application for Payment, each Application must include an affidavit of CMAR stating that all previous progress payments received by CMAR have been applied to discharge CMAR's legitimate obligations associated with prior Applications for Payment.

4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- C. Review of Applications
1. Owner's Advisor will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to CMAR indicating in writing Owner's Advisor's reasons for refusing to recommend payment. In the latter case, CMAR may make the necessary corrections and resubmit the Application.
 2. Owner's Advisor's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner's Advisor to Owner, based on Owner's Advisor's (a) observations of the executed Work, (b) consultations with Architect, and (c) review of the Application for Payment and the accompanying data and schedules, that to the best of Owner's Advisor's knowledge, information, and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.02, and any other qualifications stated in the recommendation; and
 - c. the conditions precedent to CMAR's being entitled to such payment appear to have been fulfilled in so far as it is Owner's Advisor's responsibility to observe the Work.
 3. By recommending any such payment Owner's Advisor will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Owner's Advisor in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle CMAR to be paid additionally by Owner or entitle Owner to withhold payment to CMAR.
 4. Neither Owner's Advisor's review of CMAR's Work for the purposes of recommending payments nor Owner's Advisor's recommendation of any payment, including final payment, will impose responsibility on Owner's Advisor:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - c. for CMAR's failure to comply with Laws and Regulations applicable to CMAR's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes CMAR has used the money paid by Owner; or

- e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
- 5. Owner's Advisor may refuse to recommend the whole or any part of any payment if, in Owner's Advisor's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.02.C.2.
- 6. Owner's Advisor will recommend reductions in payment (set-offs) necessary in Owner's Advisor's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Guaranteed Maximum Price has been reduced by Change Orders or other Contract modifications;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which CMAR is responsible; or
 - e. Owner's Advisor has actual knowledge of the occurrence of any of the events that would constitute a default by CMAR and therefore justify termination for cause under the Contract Documents.
- D. Payment Becomes Due
 - 1. Ten days after Owner's Advisor's presentation of the Application for Payment to Owner with Owner's Advisor's recommendation, the amount recommended, subject to any Owner set-offs, will become due, and when due will be paid by Owner to CMAR.
- E. Reductions in Payment by Owner
 - 1. In addition to any reductions in payment (set-offs) recommended by Owner's Advisor, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. Claims have been made against Owner based on CMAR's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from CMAR's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. CMAR has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. CMAR has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which CMAR is responsible;
 - e. Owner has incurred extra charges for advisory services or Architecting costs related to submittal reviews, evaluations of proposed substitutes, tests, and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;

- g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. The Guaranteed Maximum Price has been reduced by Change Orders or other Contract modifications;
 - i. An event has occurred that would constitute a default by CMAR and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of CMAR's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where CMAR has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - l. Claims have been made or costs have been incurred arising from CMAR Services; or
 - m. Other items entitle Owner to a set-off against the amount recommended.
- 2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Owner's Advisor, Owner will give CMAR immediate written notice, with a copy to Owner's Advisor, stating the reasons for such action and the specific amount of the reduction, and promptly pay CMAR any amount remaining after deduction of the amount so withheld. Owner shall promptly pay CMAR the amount so withheld, or any adjustment thereto agreed to by Owner and CMAR, if CMAR remedies the reasons for such action. The reduction imposed will be binding on CMAR unless it duly submits a Change Proposal contesting the reduction.
 - 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.02.D.1 and subject to interest as provided in the Agreement.
- F. Where the Contract Price is based on the Cost of Work, if Owner determines that progress payments made to date substantially exceed the actual progress of the Work, as measured by reference to the Schedule of Values, or present a potential conflict with the Guaranteed Maximum Price, then Owner may require that CMAR prepare and submit a plan for the remaining anticipated Applications for Payment that will bring payments and progress into closer alignment and take into account the Guaranteed Maximum Price, if any, through reductions in billings, increases in retainage, or other equitable measures. Owner will review the plan, discuss any necessary modifications, and implement the plan as modified for all remaining Applications for Payment.

15.03 CMAR's Warranty of Title

- A. CMAR warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than at the time of payment by Owner.

15.04 Substantial Completion

- A. When CMAR considers the entire Work ready for its intended use CMAR shall notify Owner's Advisor in writing that the entire Work is substantially complete and request that Owner's

Advisor issue a certificate of Substantial Completion. CMAR shall at the same time submit to Owner's Advisor CMAR's proposed punch list of items to be completed or corrected before final payment.

- B. Promptly after CMAR's notification, Owner, CMAR, Owner's Advisor, and Architect will inspect the Work to determine the status of completion. If the Work is not determined to be substantially complete, Owner's Advisor will notify CMAR in writing, giving the reasons for the determination.
- C. If the Work is deemed substantially complete, Owner's Advisor will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Owner's Advisor will attach to the certificate the Owner's Advisor's proposed punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Owner's Advisor as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Owner's Advisor, in consultation with Architect, concludes that the Work is not substantially complete, Owner's Advisor will, within 14 days after submission of the preliminary certificate to Owner, notify CMAR in writing that the Work is not substantially complete, stating the reasons for the conclusion. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Owner's Advisor, in consultation with Architect, concludes that the Work is substantially complete, then Owner's Advisor will, within said 14 days, execute and deliver to Owner and CMAR a final certificate of Substantial Completion, with a revised punch list of items to be completed or corrected, reflecting such changes from the preliminary certificate as Owner's Advisor believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and CMAR will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and CMAR agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the CMAR shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases CMAR may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude CMAR from the Site after the date of Substantial Completion subject to allowing CMAR reasonable access to remove its property and complete or correct items on the punch list.

15.05 Partial Use or Occupancy; Completion of Authorized Work

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Owner's Advisor, Architect, and CMAR agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its

intended purpose without significant interference with CMAR's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that CMAR permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when CMAR agrees that such part of the Work is substantially complete, CMAR, Owner, Owner's Advisor and Architect will follow the procedures of Paragraph 15.04.A through 15.04.E for that part of the Work.
2. At any time, CMAR may notify Owner and Owner's Advisor in writing that CMAR considers any such part of the Work substantially complete and request Owner's Advisor to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, CMAR, Owner's Advisor and Architect will inspect that part of the Work to determine its status of completion. If Owner's Advisor, in consultation with Architect, does not consider that part of the Work to be substantially complete, Owner's Advisor will notify Owner and CMAR in writing, giving the reasons for its determination. If Owner's Advisor, in consultation with the Architect, considers that part of the Work to be substantially complete, then for that part of the Work the provisions of Paragraph 15.04 will apply with respect to certification of Substantial Completion, the Division of responsibility, and access.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.
5. Neither the organization of the Work into Work Packages, nor the authorization of specified parts of the Work in a Work Authorization, establishes (a) that such packages or parts of the Work have been identified in the Contract Documents or otherwise as a part of the Work that Owner may use or occupy upon completion, or (b) that any such Work constitutes a separately functioning and usable part of the Work that upon completion can be used by Owner for its intended purpose without significant interference with CMAR's performance of the remainder of the Work. The determination of whether any part of the Work qualifies for partial use or occupancy under this Paragraph 15.05 will be made on the merits without reference to Work Packages or Work Authorizations.

B. Substantial Completion of Authorized Work

1. When CMAR considers the entire Work authorized under a specific Work Authorization is ready for its intended use, CMAR shall notify Owner's Advisor in writing that such authorized Work is substantially complete and request that Owner's Advisor issue a certificate of Substantial Completion applicable solely to such authorized Work. CMAR shall at the same time submit to Owner's Advisor the CMAR's proposed punch list of items to be completed or corrected before such authorized Work is deemed complete.
2. CMAR, Owner, Owner's Advisor, and Architect will follow the procedures of Paragraphs 15.04.A, B, C, E, and F for such authorized Work. The terms of Paragraph 15.04.D are not applicable to the determination of Substantial Completion of the Work authorized under a Work Authorization.

3. Until Substantial Completion of the entire Work under this Contract under Paragraph 15.04, such authorized Work will not be eligible for Owner's use or occupancy, unless otherwise eligible for partial use or occupancy under Paragraph 15.05.A; the determination of a date of Substantial Completion for such authorized Work will not mark the commencement of the contractual correction period and applicable warranties required by the Contract for such authorized Work; and the authorized Work will remain the responsibility of CMAR.

15.06 Final Inspection

- A. Upon written notice from CMAR that the entire Work or an agreed portion thereof is complete, Owner's Advisor will promptly make a final inspection with Owner, Architect, and CMAR and will notify CMAR in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. CMAR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.07 Final Payment

- A. Application for Final Payment
 1. After Owner's Advisor, in consultation with Architect, determines that CMAR has (a) satisfactorily completed all corrections identified during the final inspection, (b) has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents, as provided in Paragraph 7.15, and other documents, and (c) completed performance of all services required by the Contract, CMAR may make application for final payment.
 2. The final Application for Payment must be accompanied, except as previously delivered by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects or will so pass upon final payment;
 - d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective releases or waivers, satisfactory to Owner, of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
 3. In lieu of the releases or waivers of Liens specified in Paragraph 15.07.A.2 and as approved by Owner, CMAR may furnish receipts or releases in full and an affidavit of CMAR that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CMAR may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at

its option may issue joint checks payable to CMAR and specified Subcontractors and Suppliers.

- B. Owner's Advisor's Review of Final Application and Recommendation of Payment—If, on the basis of Owner's Advisor's observation of the Work during construction and final inspection, consultation with Architect regarding completion, and review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Owner's Advisor is satisfied that CMAR has completed the Work and fulfilled CMAR's other obligations under the Contract, Owner's Advisor will, within 10 days after receipt of the final Application for Payment, indicate in writing Owner's Advisor's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Owner's Advisor's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Owner's Advisor will return the Application for Payment to CMAR, indicating in writing the reasons for refusing to recommend final payment, in which case CMAR shall make the necessary corrections and complete the Work and all remaining services, and resubmit the Application for Payment.
- C. Notice of Acceptability of the Work—In support of its recommendation of payment of the final Application for Payment, Owner's Advisor, with Architect's express approval, will also give written notice to Owner and CMAR that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.08.
- D. Completion of Work—The Work is complete, subject to surviving obligations, when it is ready for final payment as established by the Owner's Advisor's written recommendation of final payment and issuance of Notice of Acceptability of the Work.
- E. Final Payment Becomes Due—Upon receipt from Owner's Advisor of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Owner's Advisor for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to CMAR within 30 days of Owner's receipt of the final Application for Payment from Owner's Advisor.

15.08 Waiver of Claims

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by CMAR, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.
- B. The acceptance of final payment by CMAR will constitute a waiver by CMAR of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim or appealed under the provisions of Article 17.

15.09 Correction Period

- A. Scheduled Correction Period Inspection—Within one month before the end of the Contract's correction period, CMAR will participate in an inspection of the Work with the Owner, Owner's Advisor, and Architect to ascertain whether any portion of the Work or the repair of

any damage to the Site or adjacent areas is defective and therefore subject to correction by CMAR.

- B. If within one year after the date of Substantial Completion, or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents, Owner gives CMAR written notice that any Work has been found to be defective, whether as a result of the scheduled correction period inspection or otherwise, or that CMAR's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect CMAR shall promptly, without cost to Owner and in accordance with Owner's written instructions:
1. return to the Site with Owner, Owner's Advisor and Architect to inspect any apparent or discovered defects in the Work, or unrepaired damage to the Site or adjacent areas;
 2. consult with Owner's Advisor and Architect regarding recommendations as to replacement or correction of such defective Work, or the repair of any damage;
 3. correct the defective repairs to the Site or such adjacent areas;
 4. correct such defective Work;
 5. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
 6. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- C. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.20.B.
- D. If, after receipt of a notice of defect within 60 days and within the correction period, CMAR does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. CMAR shall pay all costs, losses, and damages, including but not limited to all fees and charges of construction managers, Architects, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or relating to such correction or repair or such removal and replacement, including but not limited to all costs of repair or replacement of work of others. CMAR's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- E. In special circumstances where a particular Item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that Item may start to run from an earlier date if so provided in the Specifications.
- F. Where defective Work, and damage to other Work resulting therefrom, has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- G. CMAR's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16—SUSPENSION AND TERMINATION

16.01 Owner May Suspend CMAR Services or Work

- A. At any time and without cause, Owner may suspend the CMAR Services or the Work, or any portion thereof, for a period of not more than 60 consecutive days by written notice to CMAR and Owner's Advisor. Such notice will fix the date on which CMAR Services or Work will be resumed. CMAR shall resume the CMAR Services or Work on the date so fixed. CMAR shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. With respect to a suspension of the Work, any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 Owner May Terminate for Cause

- A. The occurrence of any one or more of the following events will constitute a default by CMAR and justify termination for cause:
 - 1. CMAR's persistent failure to perform the Work in accordance with the Contract Documents, including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule;
 - 2. Failure of CMAR to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. CMAR's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. CMAR's repeated disregard of the authority of Owner, Owner's Advisor or Architect.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving CMAR and any surety 10 days' written notice that Owner is considering a declaration that CMAR is in default and termination of the Contract, Owner may proceed to:
 - 1. declare CMAR to be in default, and give CMAR, and any surety, written notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude CMAR from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid CMAR but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if CMAR within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, CMAR shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and

damages, including but not limited to all fees and charges of Owner's Advisors, Architects, architects, attorneys, and other professionals, sustained by Owner, such excess will be paid to CMAR. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, CMAR shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Owner's Advisor as to their reasonableness and, when so approved by Owner's Advisor, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where CMAR's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against CMAR then existing or which may thereafter accrue, or any rights or remedies of Owner against CMAR or any surety under any payment bond or performance bond. Any retention or payment of money due CMAR by Owner will not release CMAR from liability.
- G. If and to the extent that CMAR has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 Owner May Terminate for Convenience

- A. Upon 7 days' written notice to CMAR and Owner's Advisor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, CMAR shall be paid for without duplication of any items:
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. CMAR shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 CMAR May Stop Work or Terminate

- A. If, through no act or fault of CMAR, (1) the Work is suspended for more than 60 consecutive days by Owner or under an order of court or other public authority, or (2) Owner's Advisor fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay CMAR any sum finally determined to be due, then CMAR may, upon 7 days' written notice to Owner and Owner's Advisor, and provided Owner or Owner's Advisor do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Owner's Advisor has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay CMAR any sum finally determined to be due, CMAR may, 7 days after written notice to Owner and Owner's Advisor, stop the Work

until payment is made of all such amounts due CMAR, including interest thereon. The provisions of this paragraph are not intended to preclude CMAR from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CMAR's stopping the Work as permitted by this paragraph.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 Methods and Procedures

- A. Disputes Subject to Final Resolution—The following disputed matters are subject to final resolution under the provisions of this article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
 - 2. Disputes between Owner and CMAR concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. Final Resolution of Disputes—For any dispute subject to resolution under this article, Owner or CMAR may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18—MISCELLANEOUS

18.01 Giving Notice

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Owner's Advisor, CMAR, or Architect when required, it will be deemed to have been validly given only if delivered:
 - 1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
 - 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 - 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 Computation of Times

- A. When any period is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 Cumulative Remedies

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 Limitation of Damages

- A. With respect to Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner, Owner's Advisor, nor Architect, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to CMAR for any claims, costs, losses, or damages sustained by CMAR on or in connection with any other project or anticipated project.

18.05 No Waiver

- A. 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 Contract.

18.06 Survival of Obligations

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of CMAR.

18.07 Controlling Law

- A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 Assignment of Contract

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent, except to the extent that the effect of this restriction may be limited by law, and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 Successors and Assigns

- A. Owner and CMAR each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 Headings

- A. Article and Paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.



8/18/2024

Mr. Eric Stuckey
City Administrator
City of Franklin

Dear Mr. Stuckey,

As you are aware, in combination with STV, Inc., City of Franklin staff, and OHM Advisors, we conducted a Request for Proposals for a Construction Manager At-Risk for the Franklin City Hall construction project. Below are details regarding the process and next steps.

CMaR Selection Process:

- Early May - The selection committee consisting of Mark Hilty, Brad Wilson, and Joe Marlow (COF), Chris Koeper (STV) and Gary Sebach (OHM) was agreed upon by our team.
- May 23 – Sol. No. 2024-0106 Request for Proposals was advertised on COF website
- June 25 - COF received ten (10) CMaR proposals for the new City Hall Project – all proposals were opened, verified, and accounted for at the opening.
- June 26 - STV advised the selection committee to begin reviews and submit scoring by EOB of 7/9/2024.
 - The scoring was completed independently without cross discussions between committee members. All scores were received and tallied on 7/10/24 followed by a review and discussion of the top firms.
- Based on the final score groupings, we recommended to interview four (4) CMaR firms: Bell, Reeves Young, RC Mathews, and Skanska. Skanska scored the highest followed by Bell, RC Mathews, and Reeves Young.
- Letters to all firms went out that same day to inform if they made the shortlist and/or interviews.
- July 18 & 19 - Interview slots were scheduled and selected alphabetically by firm, two interviews per day. Each firm was given 50mins (approx. 20min presentation and 30min Q&A with the same questions being asked to all firms).
- July 19 - After the last interview, the committee had a debrief to review our notes and thoughts before submitting the final interview score.
- July 22 - The committee deliberated independently over the weekend before submitting final scoring by end of day July 22.



4037 Rural Plains Cr. Suite 270
Franklin, TN 37064
stvinc.com

Recommendation:

All scores were tallied on July 23 with a recommendation to proceed with contractual conversations with the firms that noted in their proposal that they had exceptions to specific elements of the contract language provided in the RFP. These exceptions were reviewed and discussed with our team and COF attorney.

The firm recommended for CMAR services is Skanska USA Building, Inc.

In conclusion, the process has been fair and reasonable and the selection committee achieved the best outcome with an overwhelming response from highly qualified firms. As always, STV will continue to move this process forward with the understanding that time is of the essence.

If you have any questions or concerns about the current status of this process, I am happy to discuss further.

Sincerely,
Chris Koeper

STV Inc.



File #: 21-0642

DATE: August 14, 2024
TO: Board of Mayor and Aldermen
FROM: Eric Stuckey, City Administrator
Jason Potts, Director of Information Technology
Deb Faulkner, Police Chief

SUBJECT:

*Consideration Of COF Contract No. 2024-0266, With The State Of Tennessee Department Of Transportation For Automated License Plate Reader (ALPR) License Agreement

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning Contract No. 2024-0266 with TDOT for the Automated License Plate Reader (ALPR) License Agreement for Franklin Police Department.

BACKGROUND/STAFF COMMENTS:

This grant program is the VCIF (Violent Crimes Intervention Program) program and it's purpose to provide grants to law enforcement agencies in the State of Tennessee for violent crime intervention initiatives. This license agreement with TDOT license plate readers to aid in the criminal investigations and/or searches for missing or endangered persons.

FINANCIAL IMPACT:

This financial cost is \$233,172.00 and will be funded entirely by the (VCIF) Violent Crime Intervention Fund grant through the State of Tennessee.

RECOMMENDATION:

Staff recommends that the Board of Mayor and Aldermen approve COF Contract No. 2024-0266.

This Instrument prepared by:
State of Tennessee
Department of Transportation
Region 3
6601 Centennial Boulevard
Nashville, TN 37243
(Local Government)

COF CONTRACT 2024-0266
Project Nos. Multiple
Tract Nos. Multiple
Williamson County
Request No. 7378

**LICENSE AGREEMENT TO INSTALL AND OPERATE FIXED
AUTOMATED LICENSE PLATE RECOGNITION CAMERAS**

THIS AGREEMENT is made and entered into as of this the _____ day of _____, 20__ by and between THE STATE OF TENNESSEE, acting by and through its Commissioner of Transportation, (hereinafter referred to as “State”) and the CITY OF FRANKLIN (POLICE DEPARTMENT) (hereinafter referred to as “Licensee”).

WHEREAS, Licensee desires to use a portion of the Licensed Premises to install, operate, and maintain fixed automated license plate recognition (ALPR) cameras in Williamson County, Tennessee, being more specifically described in Exhibit A being attached to and made a part of this License; and

WHEREAS, the State is willing to permit said use of the Licensed Premises subject to certain conditions.

NOW, THEREFORE, in consideration of the execution of this License Agreement, it is mutually agreed between the parties hereto as follows:

1. **LICENSE** – Licensee is hereby granted permission to use the Licensed Premises to install, operate, and maintain fixed automated license plate recognition (ALPR) cameras in Williamson County, Tennessee, for the purpose of aiding in criminal investigations or searches for missing or endangered persons, (hereinafter referred to as the “Improvements”). The precise locations approved for ALPR cameras under this license are described in Exhibit A. Any ALPR camera approved for location on a new pole within the clear zone of the highway right-of-way must use a pole pre-approved by the State for crashworthiness.
2. **USE OF LICENSED PREMISES** – Licensee shall be permitted to use the Licensed Premises for the operation of the Improvements. Licensee shall not be permitted to use the Licensed Premises for any other purpose except by prior written permission of the State. Licensee’s use of the Licensed Premises is subject to any easements of record and to the right of any utility owner to operate and maintain any existing utility facilities within the Licensed Premises.
3. **PRODUCTION AND ASSEMBLY OF ALPR CAMERA** – The manufacturer, ALPR camera, or any of the ALPR camera’s components shall not be (a) produced, assembled, or based in an entity appearing on a sanctions list published under the authority of the United States Department of the Treasury, office of foreign assets control (<https://ofac.treasury.gov/>), (b) prohibited or restricted under Section 889 of the National Defense Authorization Act (48 C.F.R. 52.204- 25), (c) prohibited or restricted under Title 2 of the SECURE Technology Act (Public Law 115-390 of 2018), or (d) prohibited or restricted under the United

States Department of Commerce Regulations on Information and Communications and Services Supply Chain (15 C.F.R. Part 7).

4. **DATA COLLECTED BY ALPR CAMERA** – The manufacturer of and custodian of any data collected by the ALPR camera shall (a) comply with T.C.A. § 55-10-302, (b) ensure that all aspects of the manufacturer's and custodian's data services, data retention, information technology, or other internal data management processes are contained and managed within the United States, (c) and ensure that all data and metadata collected by the ALPR camera are not used for commercial purposes or sold, other than sharing with other law enforcement agencies in the United States as authorized by law.
5. **FEE** – Licensee shall pay \$0 per year to the State for the use of the Licensed Premises.
6. **TERM** – The License is a ten (10) year, renewable license which shall begin on _____, 20____ and shall end on _____, 20____.
7. **ACCESS** – The State shall provide Licensee access to the Licensed Premises at all times for the uses authorized herein.
8. **MAINTENANCE** – The costs of any maintenance and operation of the Improvements shall be at the sole expense of Licensee.
9. **TRAFFIC CONTROL** – At no time will work authorized by this License Agreement interfere with the normal flow of traffic on roadways adjoining the Licensed Premises. Licensee is responsible for providing traffic control for this work zone in accordance with the requirements of the current *Manual on Uniform Traffic Control Devices*. If proper traffic control is not in place, TDOT may order Licensee to stop work until proper traffic control is put in place.
10. **FIRE HAZARD** – The Property shall not be used for the manufacture or storage of flammable material or for any other purpose deemed by the State or the Federal Highway Administration to be a potential fire hazard or other hazard to the highway. The determination as to whether or not a use constitutes such a hazard shall be in the sole discretion of the State or the Federal Highway Administration. The operation and maintenance of said property will be subject to regulation by the State to protect against fire or other hazard which could impair the use, safety or appearance of the highway. Licensee shall provide access, at all times, for firefighters and accompanying equipment.
11. **DAMAGE TO STATE PROPERTY** – Licensee shall be liable for any damage to state property resulting from Licensee's use of the Licensed Premises and/or installation and operation of the Improvements, including but not limited to, the roadway, shoulders, guardrail, drainage, landscaping, signs and controlled-access fences. All repair or replacement of such damage shall be made in accordance with the current TDOT Standard Specifications for Road and Bridge Construction, TDOT Standard Drawings and any other applicable design and/or construction standards or guidelines.
12. **LIABILITY** – Licensee shall assume all liability for claims arising out of conduct on the part of the Licensee for which it would be liable under the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101 *et seq.*, up to the limits for which it can be held liable for such conduct under that act, arising from its use of the Licensed Premises. In addition, Licensee shall require that any contractor of Licensee that performs any work on the Licensed Premises, including any installation, maintenance, or operation of the Improvements, shall indemnify and hold harmless the State and all of its officers, agents and employees from all suits, actions or claims of any character arising from the contractor's acts or omissions in the prosecution of the work.

13. **INSURANCE** – The Licensee, its successors and assigns, agrees to maintain adequate public liability insurance, which may include self-insurance, and will provide satisfactory evidence of such insurance to the State. Further, the liability limits of this insurance must not be less than the exposure and limits of the Licensee’s liability under the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101 *et seq.* The insurance policy shall include a provision for the insurance company to notify the State in writing of any cancellation or changes of the policy at least 30 days in advance of the cancellation or change. In addition, Licensee shall require that any contractor of Licensee that performs any work on the Licensed Premises, including any installation, maintenance, or operation of the Improvements, shall provide proof of adequate and appropriate general liability insurance providing liability coverage in an amount not less than \$1 million dollars per occurrence and \$300,000 per claimant, naming the State of Tennessee as an additional insured.
14. **PERMITS** – Licensee is responsible for obtaining and paying the costs of all permits, licenses or other approvals by any regulatory body having jurisdiction over the uses authorized herein. Prior to commencing the work authorized herein, Licensee shall notify Tennessee One Call regarding any excavation(s) and shall ensure that the provisions of T.C.A. § 65-31-101 *et seq.* are met.
15. **COMPLIANCE** – All work on the Licensed Premises shall be performed in compliance with applicable federal, state and local laws and regulations. Should Licensee fail or neglect to comply with any term or condition of this License Agreement or to comply with written notice and demand, this License shall be subject to immediate termination. In the event of such termination, Licensee shall immediately remove any and all of its Improvements from the licensed Premises and surrender all rights and privileges under this License Agreement; otherwise, on written notification by the State, the Improvements will be removed and said Licensed Premises restored to its former condition in a timely manner at the expense of the Licensee.
16. **TITLE VI ASSURANCES** – The Licensee for itself, its successors in interest and assigns, as part of the consideration hereof does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the property described in this License Agreement for a purpose for which the State or a State program or activity is extended or for another purpose involving the provision of similar services or benefits, the Licensee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations shall be amended.
17. **AMERICANS WITH DISABILITIES ACT ASSURANCES** – The Licensee for itself, its successors in interest and assigns, as part of the consideration hereof does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the property described in this License Agreement for a purpose for which the State or a State program or activity is extended or for another purpose involving the provision of similar services or benefits, the Licensee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 28, Code of Federal Regulations, Parts 35 and 36, Nondiscrimination on the Basis of Disability in State and Local Government Services and Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, and as said regulations shall be amended. The Licensee further agrees that if any pedestrian facilities are constructed, maintained, or operated on the property described in this License, the Licensee shall construct, maintain, and operate such facilities in compliance with the Architectural and Transportation Barriers Compliance Board’s “Accessibility Guidelines for Pedestrian Facilities in Public

Rights-of-Way” (proposed 36 C.F.R. Part 1190; published in the Federal Register, July 26, 2011).

- 18. **REVERSION** – In the event that the Licensed Premises is needed for a transportation project, Licensee shall remove any and all of its Improvements from the Licensed Premises and surrender all rights and privileges under this License Agreement within 60 days of receiving written notice from the State. In the event that the Licensed Premises is needed for a highway maintenance project, the use of the Licensed Premises will cease temporarily until the maintenance project is completed. In the event that a utility owner needs to maintain an existing utility facility, the Licensee’s use of the Licensed Premises may cease or be impaired until the utility maintenance activity is completed.
- 19. **ADJACENT PROPERTY** – Licensee states and affirms that the Improvements constructed and maintained on the Licensed Premises are not relevant to any adjacent property’s activities, features, or attributes that qualify the adjacent property for protection under Section 4(f) of the Department of Transportation Act of 1966 (Pub. L. 89—670, 80 Stat. 931) now codified at 23 U.S.C. § 138, 49 U.S.C. § 303, and 23 C.F.R. Part 774 (hereinafter referred to as “Section 4(f)”). Therefore, neither the act of reversion nor termination of this Agreement, nor any transportation related activities occurring on the Licensed Premises (including, but not limited to, maintenance activities, construction activities, etc.), would result in a substantial impairment to the activities, features, or attributes that may qualify Licensee’s adjacent or nearby property for protection under Section 4(f).
- 20. **NO PERMANENT OWNERSHIP** – Licensee does not currently possess, nor through this Agreement acquire, permanent ownership or control over the Licensed Premises.
- 21. **TERMINATION** – The State may terminate this License at will with 60 days written notice to Licensee.
- 22. **ASSIGNMENT** – The License shall not be transferred, conveyed or assigned to another party without prior written approval from the State.

TO THE LICENSEE:	TO THE STATE:
City of Franklin Police Department Attention: Chief Deb Faulkner 900 Columbia Avenue Franklin, TN 37064	State of Tennessee Department of Transportation Attention: Brian Dickerson Suite 600, James K. Polk Building 505 Deaderick Street Nashville, Tennessee 37243-0337

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

LICENSEE:

CITY OF FRANKLIN

_____	DATE: _____
Dr. Ken Moore, Mayor	

License Agreement
Request No. 7378

APPROVED AS TO FORM
AND LEGALITY:

J. Blake Harper, Staff
Attorney

DATE: _____

STATE OF TENNESSEE

Howard H. Eley
Deputy Governor and Commissioner
Tennessee Department of Transportation

DATE: _____

APPROVED AS TO FORM
AND LEGALITY:

Leslie South, General Counsel
Tennessee Department of Transportation

DATE: _____

EXHIBIT A

Site#	State Route	Latitude	Longitude
1 Camera 1	431	35.968275606863344	-86.8840916974935
1 Camera 2	431	35.96826692356175	86.88444709018798
2 Camera 1	96W	35.93120601338636	86.92406195100078
2 Camera 2	96W	35.93127751064219	-86.92406195100078
3 Camera 1	246	35.90991558652818	86.89201445757264
3 Camera 2	246	35.90993405217064	-86.8924407275255
3 Camera 3	246	35.90993532135147	86.89243273169672
3 Camera 4	246	35.91012649480497	-86.89218957571093
4 Camera 1	31	35.907870805719845	-86.87475330932371
4 Camera 2	31	35.90763265608116	-86.87498397929899
4 Camera 3	31	35.907863494345754	-86.87476102605162
5 Camera 1	31	35.89152066528488	-86.87704758480098
5 Camera 2	31	35.89151740588422	-86.87717230752017
5 Camera 3	31	35.891125670015064	-86.8769035198217
6 Camera 1	431/397	35.89938927584372	-86.84897208725009
6 Camera 2	431/397	35.89927672743173	-86.8493702114641
6 Camera 3	431/397	35.8993918815527	-86.84896653900736
6 Camera 4	431/397	35.89939395960314	-86.84897602455703
7 Camera 1	431/248	35.86100281034277	-86.84658224518549
7 Camera 2	431/248	35.86073152581464	-86.8469818943287
7 Camera 3	431/248	35.8608673868484	-86.84658224518549
7 Camera 4	431/248	35.860936947607534	-86.84659967954408
9 Camera 1	96E	35.90422910621375	-86.80064877529406
9 Camera 2	96E	35.904301887774274	86.8006367053535
10 Camera 1	96E/248	35.91748182149844	-86.84488984212813
10 Camera 2	96E/248	35.91756555053646	-86.84432852903365

10 Camera 3	96E/248	35.917045553291736	-86.84480267033514
10 Camera 4	96E/248	35.91710203132935	-86.84425952300963
11 Camera 1	431	35.92905379473624	-86.87519309170285
11 Camera 2	431	35.929008184756235	-86.87526417024175
12 Camera 1	431/397	35.94507784977208	-86.88072408018095
12 Camera 2	431/397	35.94451474861862	-86.88092788438652
12 Camera 3	431/397	35.94471175094199	-86.88047998591723
12 Camera 4	431/397	35.94490935473688	-86.8811572436935
13 Camera 1	431/31	35.947026944176336	-86.85139473051011
13 Camera 2	431/31	35.94656595168133	-86.85214486318728
13 Camera 3	431/31	35.94662458005446	-86.85154270726343
13 Camera 4	431/31	35.947049091606836	-86.85201209384104
14 Camera 1	31	35.957114831459094	-86.84330050907315
14 Camera 2	31	35.95724075702085	-86.8435633655566
14 Camera 3	31	35.95711374589303	-86.8432911213416
24 Camera 1	96E	35.91297991047706	-86.81921438194905
24 Camera 2	96E	35.913161488940574	-86.81960699828474
24 Camera 3	96E	35.91016776036893	-86.81294874169026
27 Camera 1	31	35.93246832357739	-86.86251376375999
27 Camera 2	31	35.93248558351597	-86.8625447166803
27 Camera 3	31	35.93234224399796	-86.86235696204926
28 Camera 1	397	35.92986503214582	-86.84177386394254
28 Camera 2	397	35.92959166826506	-86.84233062312305
28 Camera 3	397	35.9294604879119	-86.84175463768067
28 Camera 4	397	35.92967007521317	86.84233935924591
29 Camera 1	31	35.92263132596418	-86.8718529872153
29 Camera 2	31	35.92263132596418	-86.87192138354519
29 Camera 3	31	35.92248068958353	-86.87180978891459
29 Camera 4	31	35.92264218636139	-86.87193211238124

30 Camera 1	96W/431	35.92553343920733	-86.8726621780974
30 Camera 2	96W/431	35.92528067939647	-86.8727527863324
30 Camera 3	96W/431	35.92548050377169	-86.87259721820953
30 Camera 4	96W/431	35.925469643764245	-86.87304514711502
31 Camera 1	246	35.91319819624682	-86.88666395307413
31 Camera 2	246	35.91339805114941	86.88669882179133
31 Camera 3	246	35.913201454754734	86.88666663528315
32 Camera 1	96E	35.922088393563584	86.8667019036809
32 Camera 2	96E	35.92206015518222	86.86673767123503
32 Camera 3	96E	35.922074274948095	86.86678907547389
32 Camera 4	96E	35.92211764001511	86.86683870532586



STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
REGION 3 RIGHT OF WAY DIVISION
6601 CENTENNIAL BOULEVARD
NASHVILLE, TENNESSEE 37243-0360
(615) 350-4200

BUTCH ELEY
COMMISSIONER

BILL LEE
GOVERNOR

MEMORANDUM

TO: City of Franklin Police Department
Chief Deb Faulkner

FROM: Jon "Bird" Armstrong
Excess Land Coordinator, RegionIII, Right-of-Way Division

DATE: July 23, 2024

SUBJECT: Region's Request for ALPR License Signatures
Request# 7378
Inv. #: 10397
Project No: Multi
County: Williamson
Tract(s): Multi

Requestor; City of Franklin Police Department

Chief Deb Faulkner

Please see the attached License Agreement and Exhibit A for Review.
You have two options on how you would like to sign and return. The first option is print out 2 **legal size** copies, printed on one side only, signed and mail to me for execution. One copy would be returned to you after the license agreement is executed. Also please date your signature but leave all other dates blank.

Option 2, sign and return the document to me electronically. Doing it this way we would only send you a PDF copy of the executed agreement.

Please let me know which option you choose.

If you choose to mail the 2 copies to me. Please use the below mailing address.

This can only be signed by the Mayor of Sheriff / Chief

Let me know if you have questions.

Mailing Address.
Tennessee Department of Transportation
Attn; Jon "Bird" Armstrong
6601 Centennial Blvd.
Nashville, Tn. 37243-0360

Jon "Bird" Armstrong
Excess Land Coordinator
(615) 350-4213
Jon.Armstrong@tn.gov



File #: 21-0468

DATE: July 16, 2024
TO: Board of Mayor and Aldermen
FROM: Eric Stuckey, City Administrator
Kathleen Sauseda, Housing Development Coordinator

SUBJECT:

Review Of The Department Of Housing & Urban Development Comprehensive Annual Performance & Evaluation Report (CAPER) And Annual Report From The Franklin Housing Commission

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning the Comprehensive Annual Performance Evaluation Report (CAPER).

BACKGROUND/STAFF COMMENTS:

The CAPER is required by grantees to report to HUD their accomplishments and progress toward the goals that are identified in the City's current Consolidated Plan. Our current Consolidated Plan includes the years 2020 through 2024. The CAPER report follows the City's Annual Action Plan that was presented to HUD in May of the current year.

FINANCIAL IMPACT:

There is no financial impact to the City of Franklin. This report reflects how the City spent the CDBG funds received for year 2023-2024. The City's allocation for 2023-24 was \$368,352.

RECOMMENDATION:

Staff recommends that the Board of Mayor and Aldermen acknowledge the 2023-2024 Comprehensive Annual Performance & Evaluation Report (CAPER).

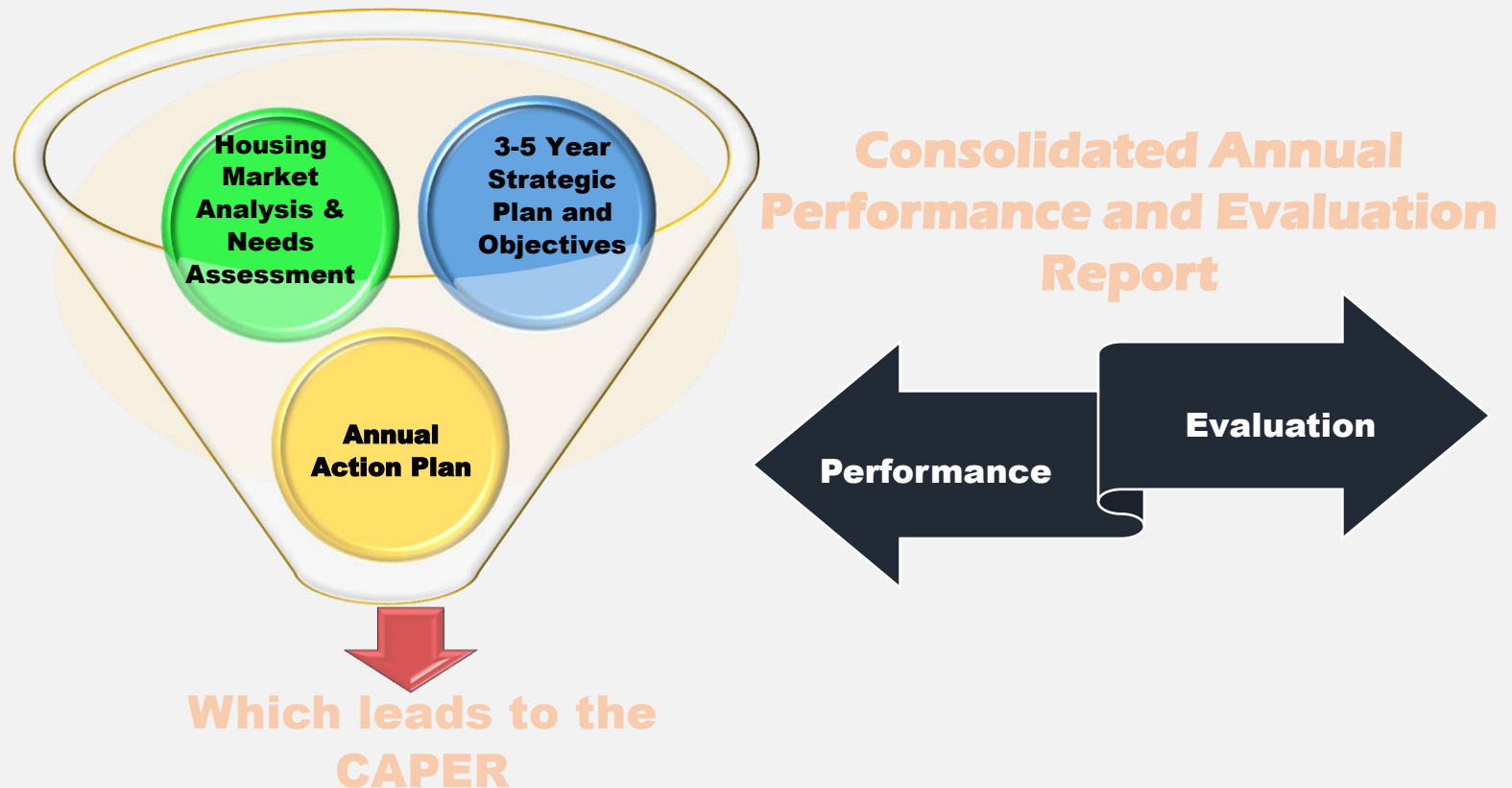


COMPREHENSIVE ANNUAL PERFORMANCE EVALUATION REPORT (CAPER)

Provides Annual Update on the Outcomes
of a Grantee's Annual Action Plan.

Required by U.S. Department of Housing and Urban
Development to receive Community Development Block
Grant (CDBG) funds

The Annual Plan communicates City intent for utilization of the CDBG Allocation. The CAPER reports how funds were spent.



CDBG Budget

- Established annually by the Department of Housing & Urban Development.
- Average allocation to City of Franklin has been approximately 325k since the City became an Entitlement City in 2007.
- The allocation for 2023-2024 was \$368,352.00.



Accomplishments 2023-24



Funds were used to:

- Assist with repair services;
- Help FHA financially toward the Cherokee Development;
- Purchase a duplex that will house two LMI families.





HISTORIC
FRANKLIN
TENNESSEE

A public hearing with a 30-day public comment period is required as part of the Consolidated Annual Performance and Evaluation Report (CAPER) process

- **Public Hearing was held on August 12**
- **Comment Period ends September 12**



The Housing Commission

- All volunteer board
- Mission to make housing available to all residents.
- Continue to work in the background to initiate home ownership at an attainable cost in the City of Franklin



File #: 21-0649

DATE: August 15, 2024
TO: Board of Mayor and Aldermen
FROM: Eric Stuckey, City Administrator
Kristine Brock, Asst. City Administrator/CFO
Shauna Billingsley, City Attorney

SUBJECT:

Consideration Of Resolution 2024-52, A Resolution Declaring The Intent Of The Board Of Mayor And Aldermen Of The City Of Franklin, Tennessee To Consider The Adoption Of A Commercial Property Assessed Clean Energy And Resiliency ("C-Pacer") Program. Establishing A Public Hearing On September 10, 2024

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning Resolution 2024-52 declaring the intent to adopt a Commercial Property Assessed Clean Energy and Resiliency ("C-Pacer") program and establishing notice of a Public Hearing on September 10, 2024.

BACKGROUND/STAFF COMMENTS:

C-PACER is a financing program passed in the 2021 Tennessee Legislative session that allows commercial property owners to obtain long term financing from private lenders for clean energy and renewable energy building improvements. Owners repay the lender through voluntary special assessments placed on their properties. Lenders on the property must give permission for a lien that stands ahead of their own loan.

FINANCIAL IMPACT:

Special assessments are typically billed on the annual property tax bill and collected by the local government's tax collecting agent. In the case of the City of Franklin, by agreement with Williamson County, the County Trustee bills and collects property taxes on behalf of the City. Williamson County is not currently participating in the C-PACER program. Therefore, should the City desire to offer C-PACER, an alternate program administration method must be identified. An option is engagement with a third party administrator who will accept and evaluate proposals, recommend approval to the Board of Mayor and Aldermen, maintain records as required by law and the lender, bill and collect the annual special assessments and finally, remit the special assessments back to the lender.

RECOMMENDATION:

Staff recommends that the Board of Mayor and Aldermen approve Resolution 2024-52.

RESOLUTION 2024-52

A RESOLUTION DECLARING THE INTENT OF THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, TENNESSEE TO CONSIDER THE ADOPTION OF A COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AND RESILIENCY (“C-PACER”) PROGRAM.

WHEREAS, per Tenn. Code Ann. §§ 68-205-101 et seq., as amended (the “C-PACER Act”), the State Legislature granted local governments the authority to establish a commercial property assessed clean energy and resiliency (C-PACER) program that jurisdictions can voluntarily implement to ensure that free and willing owners of agricultural, commercial, and industrial properties and certain multi-family residential properties can obtain low-cost long-term financing; and

WHEREAS, the C-PACER Act allows this financing to be used for qualifying improvements, including energy efficiency, water conservation, renewable energy, and resiliency measures such as flood mitigation, stormwater management, wildfire and wind resistance, energy storage, microgrids, and fire suppression; and

WHEREAS, the C-PACER program authorized in the C-PACER Act promotes voluntary energy efficiency, energy conservation, and resiliency, and such improvements not only save money for building owners, but also support the reduction of energy consumption, support the production of clean, renewable energy, and reduce greenhouse gas emissions; and

WHEREAS, the Board of Mayor and Aldermen will consider the matter at a duly-advertised public hearing on September 10, 2024.

WHEREAS, the Board of Mayor and Aldermen believes it is in the best interest of the City of Franklin to adopt this resolution declaring intent to consider the adoption of the C-PACER program.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, TENNESSEE, AS FOLLOWS:

SECTION I. The financing of Qualified Projects as defined in the C-PACER Act through special assessments is a valid public purpose.

SECTION II. The City intends to authorize direct financing between property owners and capital providers as the means to finance Qualified Projects in accordance with the C-PACER Act and the terms of a Resolution to be adopted by the City establishing a C-PACER Program.

SECTION III. The City intends to authorize special assessments, entered into voluntarily by a property owner with the City by means of the written assessment contract, as the means to repay the financing for qualified projects available to property owners in accordance with the C-PACER Act and the terms of a Resolution to be adopted by the City establishing a C-PACER Program.

SECTION IV. Qualified Projects that may be subject to special assessments will be more particularly described in a separate Resolution to be adopted by the City establishing a C-PACER Program in accordance with the C-PACER Act.

SECTION V. The C-PACER Program shall be available to privately owned commercial, industrial, or agricultural real property or privately owned residential real property with five or more dwelling units, including property owned by nonprofit, charitable or religious organizations located in the industrial and commercial zoning districts of the City in accordance with the C-PACER Act and the terms of a Resolution to be adopted by the City establishing a C-PACER Program.

SECTION VI. The Program shall be available to all Eligible Property within the boundaries of the City of Franklin. A map of these boundaries is attached hereto as Exhibit A.

SECTION VII. The C-PACER Program shall be administered in accordance with the C-PACER Act and the terms of a Resolution to be adopted by the City establishing a C-PACER Program.

SECTION VIII. The debt-servicing procedures of either the City or a third-party delegate responsible for servicing the installment payments on the C-PACER financing will be described in a Resolution to be adopted by the City establishing a C-PACER Program in accordance with the C-PACER Act.

SECTION IX. A public hearing will be at City of Franklin's City Hall on September 10, 2024, at 5:00 p.m.

SECTION X. The appropriate local official for consultation about the collection of the proposed special assessments is the City Administrator. The Williamson County Trustee collects property taxes in Williamson County, however, because the capital provider will collect the special assessment as delegated by the City, the City Administrator should be consulted about the collection of the proposed special assessment on the assessed property.

SECTION XI. Severability. Should any provision or provisions of this Resolution be declared invalid or unenforceable in any respect by final decree of any court of competent jurisdiction, the invalidity or unenforceability of such section, paragraph, ordinance, or provisions shall not affect the remaining provisions of such Resolution.

SECTION XII. Repeal of Conflicting Resolutions. All resolutions or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed.

SECTION XIII. Effective Date. This Resolution shall take effect upon its adoption, the welfare of the Municipality requiring it.

IT IS SO RESOLVED AND DONE on this ____ day of _____, 20__.

ATTEST:

CITY OF FRANKLIN, TENNESSEE:

By: _____
Angie Skarp
City Recorder

By: _____
Dr. Ken Moore
Mayor

Approved as to Form:

By: _____
J. Blake Harper
Staff Attorney

PUBLIC HEARING AND BOMA APPROVAL: _____

EXHIBIT A





File #: 21-0530

DATE: August 14, 2024
TO: Board of Mayor and Aldermen
FROM: Eric Stuckey, City Administrator
Mark Hilty, Asst. City Administrator Public Works
Jack Tucker, Sanitation and Environmental Services Director

SUBJECT:

Presentation And Discussion Of Sanitation And Environmental Services (SES) Operations Alternatives

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning SES operations and potential alternatives to explore to help reduce costs.

BACKGROUND/STAFF COMMENTS:

In the preceding months, staff presented a cost of service (COS) analysis and a five-year rate plan to the BOMA for consideration. During the discussions, it was clear that there is concern related to the cost of performing the services SES currently offers. The attached presentation provides some background with respect to the SES Department and identifies potential alternatives that the BOMA may want staff to explore. Some broad categories of alternatives include:

- "Pay as you throw" or volume-based programs,
- Frequency of services offered,
- Potential for opting out of services,
- Glass and other materials diversion, and
- Policies for consideration

Staff will use this presentation as a means to receive feedback from the Board of Mayor and Aldermen to focus efforts on exploring various options that may help to reduce current and future costs of SES operations.

FINANCIAL IMPACT:

At this time, there is no financial impact.

RECOMMENDATION:

Staff requests that the Board of Mayor and Aldermen provide feedback to staff with respect to potential alternatives.



Sanitation and Environmental Services (SES)

Service Delivery Options
Discussion

Current Services Offered

- Residential Curbside Services Provided
 - MSW collection and disposal
 - Weekly
 - Recycling collection and disposal
 - Weekly
 - Backdoor service is available to customers with medical condition
 - Bulky item and white goods collection and disposal
 - Brown bag collection
 - Brush collection and disposal
 - Weekly

SES Efficiencies Implemented

- July 2008 - Enforcement of small yard waste in brown bags, used as feed stock for the city compost operations.
- July 2009 - Buck-a-bag service started first Pay-As-You Throw option with excess household waste.
- November 2009 - BOPAE drop-off site established.
- July 2010 - Blue Bag Recycling - first curbside recycling service in the City of Franklin.
- November 2012 - Added cooking oil collection to BOPAE.
- July 2012 - Began partnership with Bi-County hauling and landfilling.
- July 2013 - Started opening BOPAE drop-off services the first Saturday of the month.
- August 2013 - Added compact fluorescent bulbs (CFL) recycling to BOPAE.
- April 2014 - Began accepting sharps (needles) from residents at our main office.
- FY 2014 - Routing software purchased.
- FY 2015 – Implemented four-day work week for collections division.
- FY 2016 - Crane Pedestals installed.
- July 2019 - Eliminated commercial dumpster service.
- January 2020 - Moved residential recycling from blue bags to blue bins.
- March 2020 - Enforcement of ground trash ordinance.
- August 2020 - Implemented call-in services for bulky items & White Goods.
- September 2020 - First burn of Air Curtain Burner.
- February 2024 - Installed waste compactor at the transfer station.

Staffing Levels and Key Milestones

- FY 2011 Fleet staff formed new division under Streets Department
- FY 2013 contracted out hauling services
- FY 2015 4-day work week in collections division

SES Department Personnel				
Fiscal Year	Estimated COF Population	Full-Time	Part-Time	Temp Staff Expenses
FY2007		53	2	
FY2008	56,219	53	2	
FY2009	60,908	59	0	
FY2010	62,487	59	0	
FY2011	63,771	51	5	
FY2012	66,172	52	1	
FY2013	66,370	48	5	
FY2014	70,737	48	5	
FY2015	72,272	48	5	\$ 74,129
FY2016	74,440	49	2	\$ 124,879
FY2017	71,374	45	0	\$ 151,110
FY2018	79,608	45	0	\$ 201,484
FY2019	82,029	45	0	\$ 243,905
FY2020	83,545	45	0	\$ 165,344
FY2021	86,628	44	0	\$ 5,628
FY2022	89,065	46	0	\$ -
FY2023	90,092	48	0	\$ -
FY2024		48	0	\$ 8,024



SES Diversion Strategies

- Diversion
 - Leaf collection by Streets department
 - BOPAE
 - Air curtain destructor
 - Blue Bag program
 - Blue Bag to Blue Bin
 - Collection of white goods for recycling
- 

SES Diversion Stats

Wood Waste Processed by City (Burned in air curtain burner)			
Fiscal Year	2023	2024	Total
Tons	604.08	178.58	782.66
Cost to dispose elsewhere per ton	\$40.00	\$40.00	
Savings each year	\$24,163.20	\$7,143.20	\$31,306.40

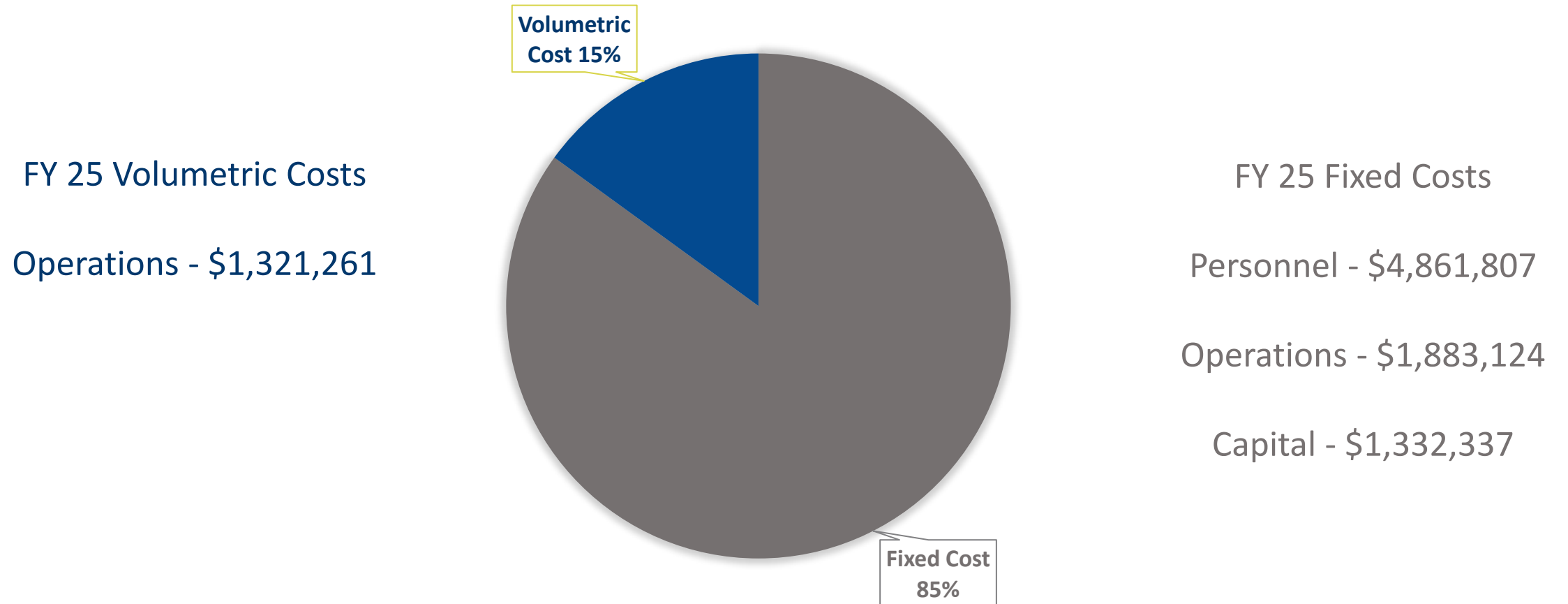
BOPAE 5 Year Totals						
Fiscal Year	2019	2020	2021	2022	2023	5 Yr. Total
Batteries (lbs)	10,680	9,180	19,240	17,095	25,981	82,176
Oil (gallons)	1,143	1,250	2,395	1,230	2906	8,924
Paint (lbs)	163,490	289,769	23,917	23,532	29,919	530,627
Anti-Freeze (gallons)	689	774	709	789	799	3,760
Electronics (lbs)	54,320	52,650	61,160	51,360	80,440	299,930

Citizen Survey Results

2016 Citizen Survey	Percentage of Respondents Rating the Service Excellent or Good
Garbage Collection	91%
Recycling	76%
Yard Waste pick-up	86%
2019 Citizen Survey	
Garbage Collection	90%
Recycling	82%
Yard Waste pick-up	87%
2022 Citizen Survey	
Garbage Collection	88%
Recycling	60%
Yard Waste pick-up	80%

Residential Service Breakdown

Fixed Costs vs Volumetric Costs



SES Hauling and Disposal Costs

COF Contract Pricing for Hauling and Disposal					
Calendar Year (contract swaps to fiscal year in 27)	MSW Cost Per Ton (Disposal)	MSW COST Per Ton Compaction	Calendar Year	MSW COST Per Ton Hauling	MSW Total Cost Per Ton Hauling and Disposal
CY 23	\$ 18.25		CY 23	\$ 25.85	\$ 44.10
CY 24	\$ 19.16	\$ 1.00	CY 24	\$ 27.14	\$ 47.31
CY 25	\$ 20.12	\$ 1.00	CY 25	\$ 28.50	\$ 49.62
CY 26	\$ 21.13	\$ 1.00	CY 26	\$ 29.92	\$ 52.05
FY 27	\$ 28.50	\$ 1.00	CY 27	\$ 31.42	\$ 60.92
FY 28	\$ 29.93	\$ 1.00	CY 28	\$ 32.99	\$ 63.92
FY 29	\$ 31.42	\$ 1.00	CY 29	\$ 34.64	\$ 67.06
FY 30	\$ 32.99	\$ 1.00	CY 30	\$ 36.37	\$ 70.37
FY 31	\$ 34.64	\$ 1.00	CY 31	\$ 38.19	\$ 73.83
FY 32	\$ 36.37	\$ 1.00	CY 32	\$ 40.10	\$ 77.48

The Bi-County Disposal contract estimates a CPI increase of 5% each calendar year from 23 to July 1, 2026. On July 1, 2026, the second term of the contract swaps to fiscal years and the new rate is \$28.50 per ton or the current gate rate, whichever is lesser. A 5% CPI increase is estimated for each fiscal year from 2027 until 2032. For the MBI hauling contract, an estimated 5% CPI increase is estimated each calendar year from 2023 until 2032.

Service Options to Consider

Pay as you throw pricing

- Container size – 96-Gal, 64-Gal, 32-Gal
- By weight – Weigh each Bin each week and assign to customer based on RFID chip on Bin
- Special bags – Eliminate Rates, sell special COF bags at a fixed cost at local retailers, must be used in bin
- Charging for bulky/white goods pickup
- Yard waste debris
 - Including post storm recovery
- At home composting for diversion of food waste

Schedules

- Recycling- Weekly, Bi- Weekly
- Yard waste – Weekly, Bi – Weekly, Monthly, As Requested
- MSW – Weekly, Bi- Weekly

Service Options to Consider

- Opt-out of services/a la carte menu of services
 - Break down Cost of MSW, Recycling, Yard Waste and allow customers to select the services they want at that cost
 - Services can only be subscribed to or canceled at the beginning of the year or upon a new resident at address
- Glass diversion
- Waste Stream Audit
- Policy discussions (i.e. charges for lower income residents, elderly, veterans, recycling mandatory)

Discussion

- Guidance on next steps



File #: 21-0583

DATE: August 7, 2024
TO: Board of Mayor and Aldermen
FROM: Eric Stuckey, City Administrator
Emily Wright, Director of Planning and Sustainability
Amy Diaz-Barriga, Asst Director of Planning Development
Andrew Orr, Long Range Planning Supervisor

SUBJECT:

Presentation And Discussion Of Vested Rights And Vesting Extension Requests

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning Vested Rights and Vesting Extension Requests.

BACKGROUND/STAFF COMMENTS:

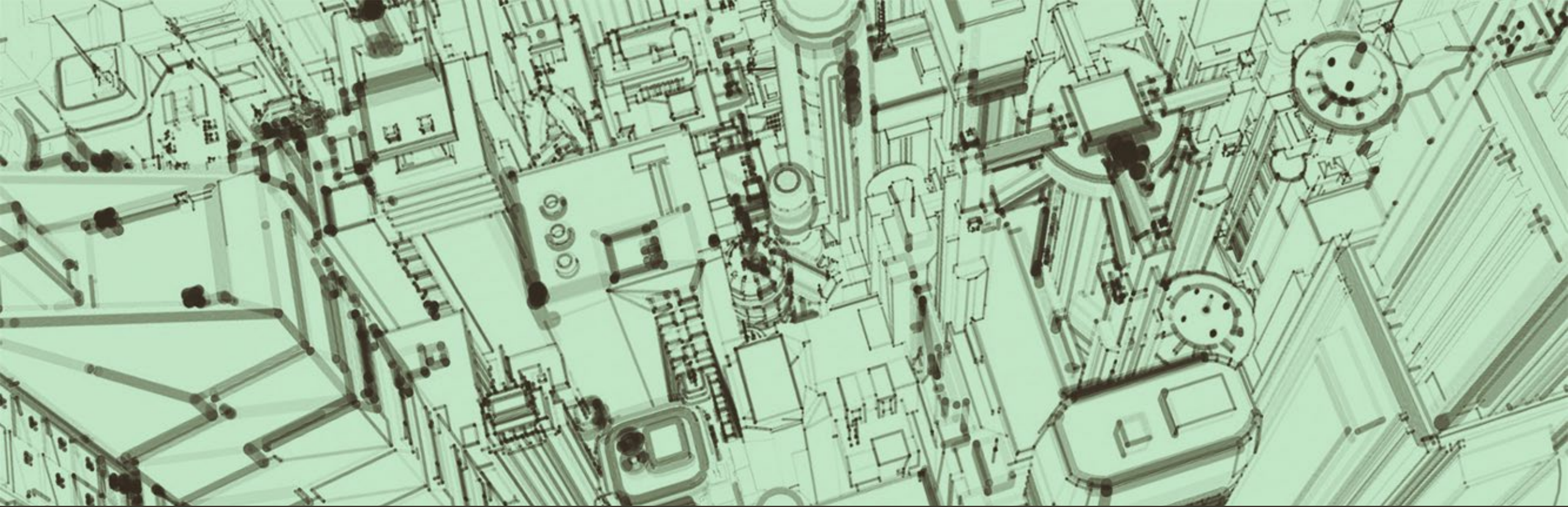
The attached presentation provides information on state law regarding Vested Rights, how staff tracks Vesting milestones, and how the Vesting extension process works. Also attached are a list of vested residential and mixed use projects with Vesting milestones noted, Project Buildout information for the City's residential and mixed use projects, and document templates used for notices of pending Vested Rights expirations.

FINANCIAL IMPACT:

Unknown.

RECOMMENDATION:

Staff recommends that the Board of Mayor and Aldermen acknowledge the discussion on Vested Rights and Vesting Extension Requests.



Vested Rights and Extensions

City of Franklin, TN



Overview of Vested Rights

- Tenn. Code Ann. § 13-4-310
- Took affect January 1, 2015
- “the locally adopted development standards which are in effect on the date of approval of a preliminary development plan...shall remain the development standards applicable to that property or building during the vesting period”.
- § 13-4-310 defines:
 - Start date of vesting
 - Milestones that must be met to maintain vesting
 - What violations terminate vesting
 - When an approving body can reconsider vesting
 - When an approving body can extend vesting

Vesting Timeline



Vesting Extensions

- Not much guidance provided in TCA
- Permits the local government to grant them
- Granted by Ordinance or Resolution
- Basis for granting extensions is whether “the local government determines, in writing, that **it is in the best interest of the community** to allow development to proceed”
- For project-specific information, see lists of Vesting Status and Project Buildout Status of residential and mixed-use projects (attached separately in Civic Clerk)

Current Procedure: Tracking

- Staff updates the Vesting database monthly to check that milestones have been met
 - Check for Stormwater inspections that verify the 1st step is complete (begin site prep)
 - Check for Foundation inspections that verify the 2nd step is complete (commence construction)
 - Verify that sureties have been released and the final CO/COC issued (“total vesting period” met)
 - Spot check based on general knowledge of construction happening throughout City
- At the beginning of each month, staff reviews the Vesting database for upcoming expirations
- For projects with Vesting expirations occurring in 6-7 months:
 - Staff notifies the Property Owner, Developer, and Applicant listed on the vested plan of impending expiration if action is not taken to extend the Vested Rights (template letter attached in Civic Clerk)
 - Staff provides a “drop dead date” reminder email if a request for extension has not yet been initiated within 60 days of vesting expiration

Current Procedure: Logistics

- Development must gain extension prior to the vesting expiration date
- Staff requires a request letter from property owner
 - includes reason for delay
 - requested extension date
- Resolution for Vesting Extension follows same approval path as original entitlement document
 - Development Plan Extensions go to FMPC for Recommendation, then BOMA
 - Preliminary Plats/Site Plans go to FMPC only

Current Procedure: Staff Review

- Reports on status of project
 - Has a site plan been approved? Have site permits been issued? Has site prep begun? Has vertical construction started?
- Analyzes the plan against current local development standards and any changes made since the time of vesting
- Reports on whether the plan would change substantially if resubmitted under current regulations.
 - *“Would we essentially get the same plan if vesting was lost and the developer had to start from scratch?”*
- Staff does not provide a recommendation on whether it is in the “best interest of the community” to extend the vested rights
 - Public Hearing/Public Comment
 - Discussion by Approving Body

Vested Development Standards

- Zoning Ordinance
- Subdivision Regulations
- Transportation and Street Technical Standards
- Stormwater BMP Manual
- Municipal Code
- Historic District Guidelines
- Envision Franklin

Vesting Dashboard: Internal Testing now

City of Franklin

Planning Department Project Vesting

PLANNING DEPT LOGIN

Search

aureum

CLEAR

DEVELOPMENT PLAN

PRELIMINARY PLAT

SITE PLAN

NAME	MILESTONES	VESTING
AUREUM PUD SUBDIVISION // COF# 6910  Type: Development Plan  Ordinance: 2018-07-01	 2024-06-24 EXTENDED  2026-06-24	 2034-06-21

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Discussion

- What additional information can staff provide to help BOMA better determine whether extending a vested right is **in the best interest of the community**?
 - Is the project consistent with BOMA's vision?
 - Are there new considerations that need to be made with respect to utilities or traffic?
 - What role does the development have in extending infrastructure and does it impact any other development projects?

Table 1

Residential Projects & Vesting Expiration Dates						
Project Name	Year Approved	Residential Units	Non-Res SF	Vesting Milestone Expiration Date	Status	Total Vesting Period
Berry Farms Reams-Fleming	2006	400	1,100,000	N/A	None	
Ovation	2014	950	480,000	N/A	None	
BOMA Approval						
West Franklin Park PUD	2021	555	320,116	Sep-24	Need to begin site prep	Sept 2036
Gateway Village PUD	2021	60		Oct-24	Need to begin site prep	Oct 2036
Haven at Cool Springs PUD	2021	297	8,595	Dec-24	Need to begin site prep	Dec 2031
Hillhaven PUD	2022	43	0	Jan-25	Need to begin site prep	Jan 2032
Shawnee PUD	2022	26	0	Feb-25	Need to begin site prep	Feb 2032
Legends View PUD	2022	18	3,903	Mar-25	Need to begin site prep	Mar 2032
Avalon Square PUD	2019	614	450,000	Mar-25	Need to begin site prep	March 2034
East Works PUD	2020	1624	995,084	Jul-25	Need to begin site prep	July 2035
555 Franklin Rd PUD	2023	201	110,273	Oct-25	Need to begin site prep	Oct 2032
Novara PUD	2023	77	0	Feb-26	Need to begin site prep	Feb 2038
Madison PUD	2020	72	0	Mar-26	Need to begin site prep	March 2030
Aureum PUD	2019	480	850,000	Jun-26	Need to begin vertical construction	June 2034
Southvale PUD	2021	512	0	Jun-26	Need to begin vertical construction	June 2036
Middle Eight PUD	2023	275	3,000	Aug-26	Need to begin site prep	Aug 2033
Hamilton PUD	2021	58	0	Oct-26	Need to begin vertical construction	Oct 2031
Poplar Farms PUD	2021	546	0	Nov-26	Need to begin vertical construction	Nov 2036
Carothers Glen PUD	2020	45	0	Dec-26	Need to begin vertical construction	Dec 2029
Colletta Park PUD	2017	199	0	Dec-26	Need to begin vertical construction	Dec 2032
Historic Magnolia Hall PUD	2021	10	0	Dec-26	Need to begin vertical construction	Dec 2031
Hard Bargain II PUD	2023	2	0	Dec-26	Need to begin site prep	Dec 2033
Tuckaway PUD	2021	0	120,000	Mar-27	Need to begin site prep	March 2031
Cottages at 509 Hill Drive PUD	2022	4	0	Aug-27	Need to begin vertical construction	Aug 2032
Wood Duck Ct PUD	2019	237	0	Sep-27	Need to begin vertical construction	Sept 2029
Optima Franklin PUD	2023	348	203,968	Jan-28	Need to begin vertical construction	Jan 2038
611 Mt Hope St PUD	2023	2	0		Began vertical construction	Sep 2033
Fields at Reese Farm PUD	2019	132	0		Began vertical construction	Feb 2034
Huffines Ridge	2019		693,297		Began vertical construction	April 2034
McEwen Place Town Center PUD	2020		338,000		Began vertical construction	Aug 2035
Vintage at Watson Glen PUD	2020		17,320		Began vertical construction	Sept 2035
FMPC Only Approval						
Woodwick Stone	2022	6	0	Mar-25	Need to begin site prep	March 2032
Eastview	2023	2	0	Apr-26	Need to begin site prep	Apr 2033
Tavistock / Laguna	2021	7	0	Aug-26	Need to begin vertical construction	Aug 2031
Silagi Subdivision	2023	32	0	Dec-26	Need to begin site prep	Dec 2033
Franklin Ridge	2024	34	0	Jun-27	Need to begin site prep	June 2034
Poteat Place	2023	7	0	Apr 2028 (North) & Aug 2026	Need to begin vertical construction	Apr & Aug 2033
TOTAL VESTED		7,875	5,693,556			

As of July 2024

Table 2

Residential Projects Under Construction						
Project Name	Year Approved	Units Constructed	Units Approved	Units Remaining	Percent Complete	Vesting Deadline
Waters Edge	2013	385	395	10	97%	N/A
Simmons Ridge Rev 4	2017	390	408	18	96%	2032
Avalon	2002	416	445	29	93%	N/A
Lockwood Glen Rev 5	2008	586	638	52	92%	2031
The Standard at Cool Springs	2016	328	359	31	91%	2026
Riverbluff Rev 3	2018	70	81	11	86%	2033
Preserve at Echo Estates	2013	37	43	6	86%	N/A
Stream Valley Rev 1	2017	696	824	128	84%	N/A
Fountains of Franklin (Silver Grace)	2009	87	123	36	71%	N/A
Westhaven Rev 5	2020	2,467	3,444	977	72%	2035
Bushnell Farms	2017	13	20	7	65%	2027
Berry Farms Town Center Rev 1	2021	671	1,052	381	64%	2036
McEwen Town Center Rev 3	2020	711	1,191	480	60%	2035
Meadows and Villages of Southbrooke	2020	94	205	111	46%	2035
Cherokee Place PUD	2021	3	100	97	3%	2030
TOTALS		6,954	9,328	2,374	75%	

All projects listed have at least one completed residential unit.

Notice of Vesting Expiration Email Templates

Haven't Reached the 2st Milestone:

Good morning/afternoon,

As Property Owner, Developer, or representatives listed on the [application name] applications filed with the City of Franklin, I am writing to inform you that the vesting of your [project type] is set to expire unless steps are taken.

In accordance with Tenn. Code Ann. § 13-4-310, a vested property right is established for development projects approved after January 1, 2015. This vested property right remains in effect during a vesting period, and the development project is required to satisfy development requirements to maintain and extend this vesting period.

Regarding the development project, [Project Name], it appears that **the vesting period of the approved plans will expire on [Vesting Expiration Date]. To keep these plans vested, the following requirements must be met prior to the expiration date:**

- **Obtaining and maintaining necessary permits.**
- **Commencement of construction. Construction, as defined by the Zoning Ordinance, means that any foundations for a building are installed and the building has begun to be erected vertically.**

If these requirements are met, the vesting period of the approved plans will be extended for an additional 5-year period from the expiration date of the current period. If these requirements are *not* met prior to the expiration date, all vested rights and entitlements will terminate at the end of the current vesting period. **At this point any work on the site will be issued stop work orders, and you will be required to resubmit any plans to the City for reapproval.**

If you have any questions or would like to discuss this further, please let me know.

Kind regards,

Haven't Reached the 1st Milestone:

Good morning/afternoon,

As Property Owner, Developer, or representatives listed on the [application name] applications filed with the City of Franklin, I am writing to inform you that the vesting of your [project type] is set to expire unless steps are taken.

In accordance with Tenn. Code Ann. § 13-4-310, a vested property right is established for development projects approved after January 1, 2015. This vested property right remains in effect during a vesting period, and the development project is required to satisfy development requirements to maintain and extend this vesting period.

Regarding the development project, [Project Name], it appears that **the vesting period of the approved plans will expire on [Vesting Expiration Date]. To keep these plans vested, the following requirements must be met prior to the expiration date:**

- **Secure the approval of a site plan.**
- **Secure any necessary permits.**
- **Commence site preparation, which includes: grading, excavating, and physical improvements such as water and sanitary lines, footings, or foundations installed.**

If these requirements are met, the vesting period of the approved plans will be extended for an additional two years from the expiration date to commence construction. Construction, as defined by the Zoning Ordinance, means that any foundations for a building are installed and the building has begun to be erected vertically. If these requirements are *not* met prior to the expiration date, all vested rights and entitlements will terminate at the end of the original vesting period. **At this point any work on the site will be issued stop work orders, and you will be required to resubmit any plans to the City for reapproval.**

If you have any questions or would like to discuss this further, please let me know.

Kind regards,

LAST CALL FOR EXTENSION EMAIL

Good morning/afternoon,

As Property Owner, developer, and/or representatives listed on the [PROJECT NAME] Subdivision applications filed with the City of Franklin, I am writing to inform you that the vesting of your Development Plan/Site Plan/Preliminary Plat is set to expire unless steps are taken. As previously conveyed to you on [date of first email correspondence], it appears that the vesting period of the approved plans for the [PROJECT NAME] Subdivision will expire on [expiration date].

(BOMA LEVEL APPROVAL NEEDED)

Steps may be taken through the site plan and site preparation process to extend vesting, or you may request a vesting extension. Any requests to extend vesting must be heard and approved by the Board of Mayor and Alderman (BOMA) prior to the expiration date; meaning that any extension request must be first heard by the Franklin Municipal Planning Commission (FMPC) no later than their [date] meeting. If you would like to request a vesting extension, I must receive a letter requesting vesting extension by [date, correlate with initial submittal deadline].

----or----

(FMPC LEVEL APPROVAL NEEDED)

Steps may be taken through the site plan and site preparation process to extend vesting, or you may request a vesting extension. Any requests to extend vesting must be heard and approved by the Franklin Municipal Planning Commission (FMPC) no later than their [date] meeting. If you would like to request a vesting extension, I must receive a letter requesting vesting extension by [date, correlate with initial submittal deadline].

If you no longer wish to develop the site utilizing the approved development/site plan, you may simply allow your vesting to expire and/or submit a new plan for the site. Feel free to contact me with any questions,



File #: 21-0665

DATE: August 19, 2024
TO: Board of Mayor and Aldermen
FROM: Eric Stuckey, City Administrator
Vernon Gerth, Asst. City Administrator Community Development
Paul Holzen, Director of Engineering

SUBJECT:

Road Impact Fee Update Discussion
WS 4/23/24
BOMA 5/14/24, 7-0; 5/28/24 postpone to 9/10/24, 7-0

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning the two meetings held with the Design Professionals/Developer Group on August 7th and 21st regarding the implementation of Franklin's updated road impact fees.

BACKGROUND/STAFF COMMENTS:

City staff periodically evaluates City policies with regard to road impact fees. As part of such evaluation, in 2023, City Staff secured the services of two outside expert(s) to update and determine road impact fees that are reasonable and prudent. The primary goal of such an endeavor is to ensure the City's infrastructure adequately supports the growing needs of our community and to make recommendations that align with the best interests of our City and its residents. City staff has presented the proposed road impact fees at three BOMA work sessions and held meetings with the Design Professionals/Developer Group, NAIOP, the Development Services Advisory Commission, and the Housing Commission.

Based on our two discussions with the Design Professionals/Developer Group on August 7th and August 21st, in addition to the two phased implementation options (2-years and 3-years) included in Ordinance 2023-41, this group proposed/discussed the following alternatives for implementing the updated road impact fees.

The Board of Mayor and Aldermen are scheduled to hold a public hearing and second reading on Ordinance 2023-41 (attached) on September 10th and staff is seeking guidance on whether Ordinance 2023-41 should be modified prior to final approval. The ideas shared during the two Design Professionals/Developer Group meetings follow:

1. Assess Road Impact Fees at the time a pre-application meeting is held. (Not all projects require a pre-application meeting and there was no deadline proposed for the length of time the assessed

fee would remain valid)

2. Assess Road Impact Fees at the time a project becomes vested. (Depending on the type of vested project, the assessed fee would remain valid for up to 5 years for a single building/single phase project and up to 15 years for a multi-building/multi-phased project)

3. Continue to assess Road Impact Fees at time Building Permits are issued with a city commitment to publish the Road Impact Fee Schedule a minimum of three years forward for predictability. Additionally, for larger multi-family and commercial projects, a portion of the Road Impact Fee would be due(collected) at the time the building permit is issued, and the balance would be due(collected) prior to requesting final inspection(s).

FINANCIAL IMPACT:

The implications of not keeping road impact fees aligned with current construction costs that are used, in part, to expand Franklin's arterial and collector network will require the Board of Mayor and Aldermen to identify additional funding sources to off-set the shortfall not covered by private development.

RECOMMENDATION:

Staff recommends additional guidance from the Board of Mayor and Aldermen (BOMA) for any changes that are not included in Ordinance 2023-41 which is scheduled for a public hearing and second reading during the September 10th BOMA meeting.



City of Franklin, Tennessee

Road Impact Fee Answers to Questions & Spending Plans

August 21, 2024



City of Franklin, Tennessee

Road Impact Fee Answers to Questions & Spending Plans

Purpose

The Road Impact Fund is the special revenue fund created for the accounting of expenditures in accord with City Ordinance 88-13 on the proceeds of road impact fees from new development. After completing an update of the major thoroughfare plan, the City re-examined the structure of road impact fees which was approved in April 2011. These funds can be used to pay for new arterial roads, directly or through payment of debt service on bonds associated with the projects.

City of Franklin, Tennessee

Road Impact Fee Answers to Questions & Spending Plans

How much money has been raised?

Since its inception (Ord. 88-13), \$115,361,786* has been raised from Road Impact Fees through June 30, 2024.

**Includes unaudited FY 2024 collections*

How much money has been spent?

Since its inception (Ord. 88-13), \$91,185,749* has been raised from Road Impact Fees through June 30, 2024.

**Includes unaudited FY 2024 expenditures*

What are the major categories of expenditure?

Of the \$91,185,749* spent through June 30, 2024, expenditures can be broken into three main categories:

1) Offset Agreement repayments**	\$ 8,284,653
2) Project Funding – Direct Cash/Transfer to Capital Projects Fund	\$26,293,864
3) Project Funding – Servicing of Debt	\$56,607,232
	<u>\$91,185,749</u>

**Includes unaudited FY 2024 expenditures*

***Accounted for separately starting FY 2016.*

What major projects have been funded through Road Impact Fees?

Since 2010, with the creation of the City's Debt Service Fund, an annual amount has been transferred to service debt issued prior to 2010 for various road projects. The major projects which were partially/majority funded by those bonds included (but are not necessarily limited to: Baker's Bridge, Carothers Parkway, Hillsboro Phase 1 (widening), Mack Hatcher Parkway (design), McEwen Phase(s) 2 & 3, Royal Oaks and South Carothers. As of June 30, 2024, \$22,051,931 of debt service remains until FY 2033.

How much of the CIP is funded through Road Impact Fees?

Total Expenses:
\$482,413,781

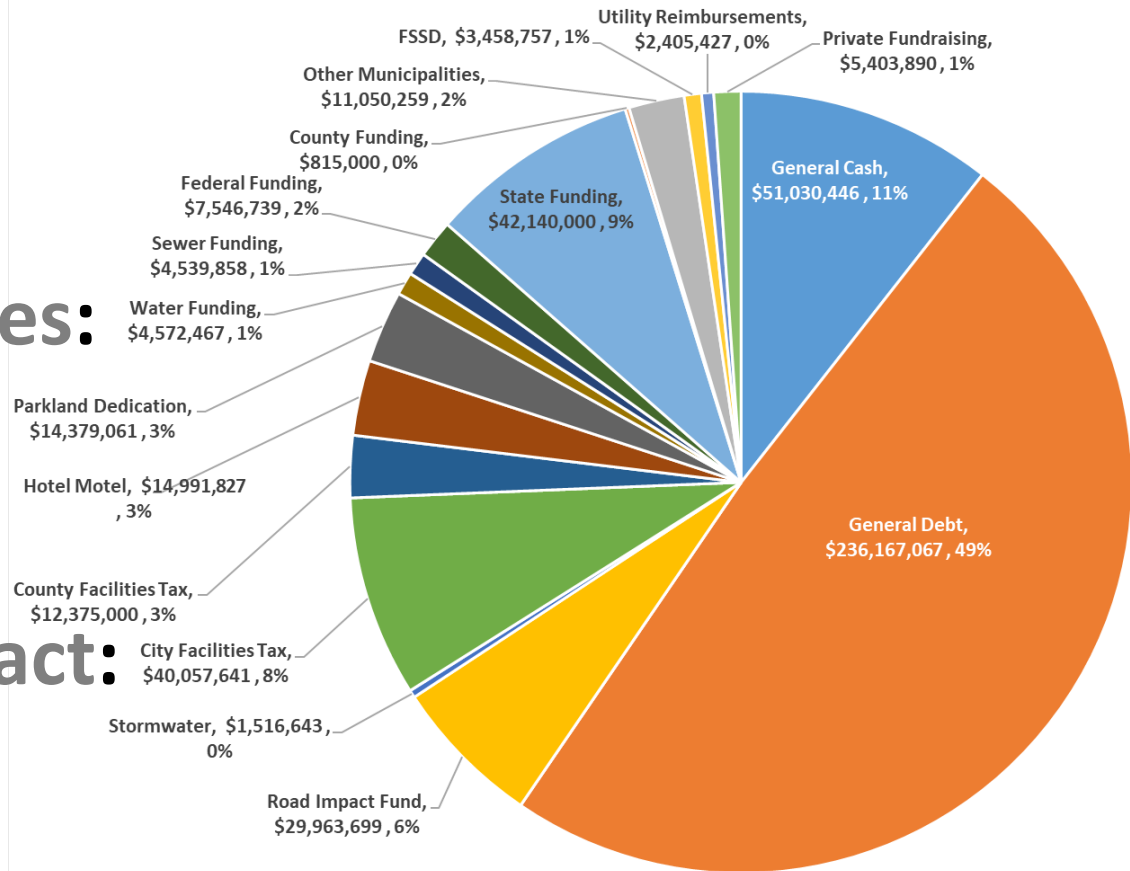
Total Impact Fees:

(Road Impact, Parkland,
City Facilities,
County Facilities)

\$96,775,401

Total Road Impact:

\$26,963,699



How much of the CIP is funded through all Impact Fees?

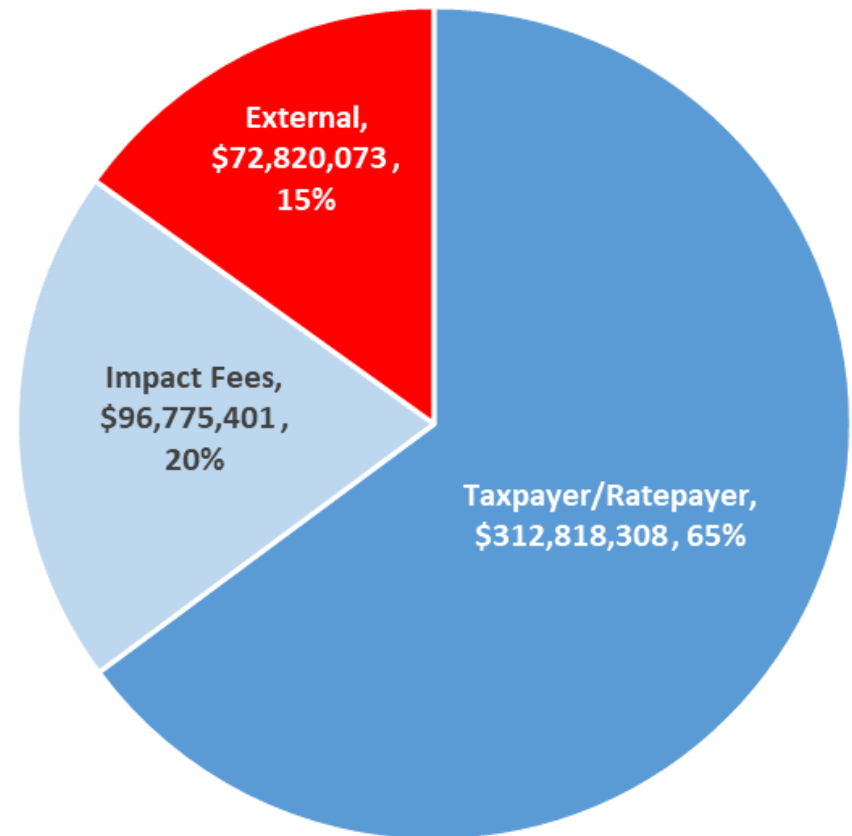
Total Expenses:
\$482,413,781

Total Impact Fees:

(Road Impact, Parkland,
City Facilities,
County Facilities)

\$96,775,401

Total Road Impact:
\$26,963,699



How much of the CIP is funded through all Impact Fees?

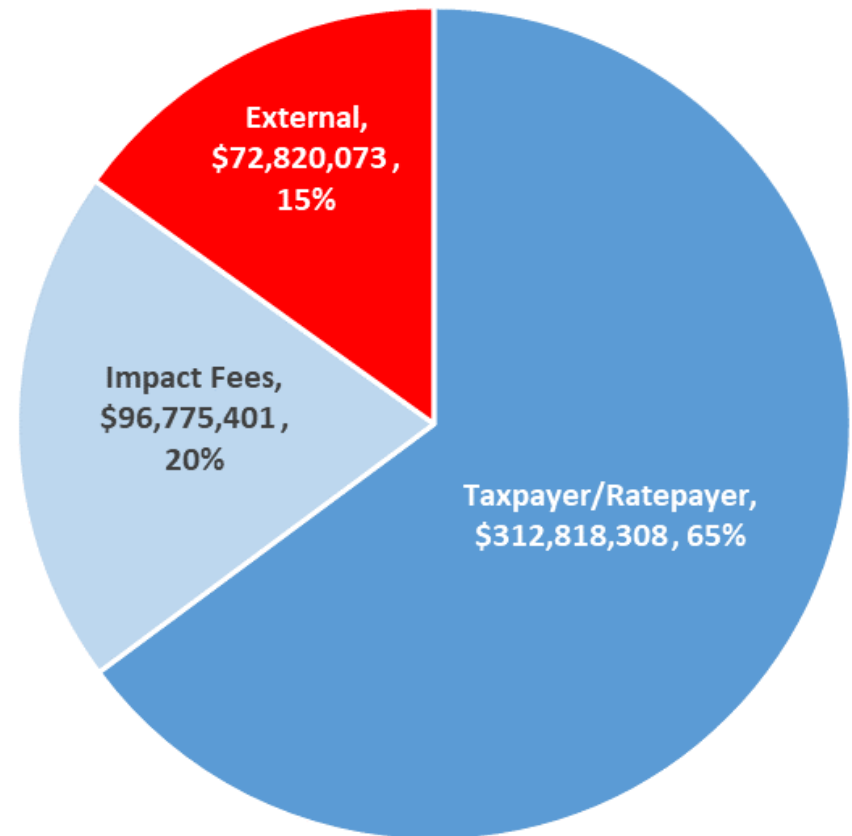
Total Expenses:
\$482,413,781

Total Impact Fees:

(Road Impact, Parkland,
City Facilities,
County Facilities)

\$96,775,401

Total Road Impact:
\$26,963,699



City of Franklin, Tennessee

Road Impact Fee Answers to Questions & Spending Plans

What projects are funded in the CIP?

Project	Status	Type	Total Budget	Pre-2024 Prior Funding	2024-2033 Planned Funding	Total Funding	% of total funded by Road Impact
McEwen Drive Interchange Modifications	Completed	Arterial	\$ 807,792	\$ 1,000,000		\$ 1,000,000	123.8%
East McEwen Drive - Phase 4	Under Construction	Arterial	\$ 47,000,706		\$ 483,807	\$ 3,483,807	7.4%
Jordan Road (Aspen Grove Dr-Mallory Ln)	ROW/Bidding	Collector Area 2	\$ 3,541,764		\$ 1,241,764	\$ 1,541,764	43.5%
Long Ln and Old Peytonsville Rd Connector	Design-Committed	Collector Area 2	\$ 28,200,000	\$ 3,755,213		\$ 3,755,213	13.3%
E McEwen Dr. Ext. (Wilson Pike to City Limits)	Design-Committed	Arterial	\$ 19,800,687		\$ 3,500,000	\$ 3,500,000	17.7%
Mallory/N Royal Oaks & Liberty Int. Imp.	Design - Uncommitted	Arterial	\$ 21,723,895			\$ 475,000	2.2%
Church Street*	Design - Uncommitted	Collector Areas 1 & 2	\$ 16,532,450		\$ 12,607,915	\$ 12,607,915	76.3%
Peytonsville Rd & Pratt Ln Int. Improvements	Design - Uncommitted	Arterial	\$ 14,100,000		\$ 3,600,000	\$ 3,600,000	25.5%
Total Road Impact Fee Funding - 2024-2033 CIP			\$ 151,707,294	\$ 4,755,213	\$ 21,433,486	\$ 29,963,699	19.8%

*Use of Road Impact Financing under review



City of Franklin, Tennessee

Road Impact Fee Answers to Questions & Spending Plans

Questions

ORDINANCE 2023-41

AN ORDINANCE TO AMEND CHAPTER 4 OF TITLE 16 OF THE FRANKLIN MUNICIPAL CODE, CONCERNING ROAD IMPACT FEES.

WHEREAS, the Board of Mayor and Aldermen desires to set road impact fees to assure the provision of adequate arterial road improvements to serve such new development, by requiring the developer to pay the pro rata share of the cost of new road improvements or expansions reasonably attributable to such new development, based upon recent growth in residential and nonresidential developments; arterial road improvements actually constructed; changing levels of service and transportation needs; inflation; revised cost estimates for arterial road improvements; and changes in the availability of other funding sources for arterial road improvements; and

WHEREAS, the Board of Mayor and Aldermen commissioned and received a Road Impact Fee Update study conducted by Alfred Benesch & Co. dated January 5, 2024, that indicates a need to increase the Road Impact Fees in order to recover funds for the City's roadway infrastructure improvements more efficiently; and

WHEREAS, the Board of Mayor and Aldermen commissioned Duncan Associates to validate the methodology and data studied by Alfred Benesch & Co.; and

WHEREAS, the City of Franklin Municipal Charter, art. H, § 1 (38), as amended by Priv. Acts 1987, Ch. 54 and by Priv. Acts 1987, Ch. 117 (HB 1311) confers such power to increase Road Impact Fees.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF FRANKLIN BOARD OF MAYOR AND ALDERMEN, AS FOLLOWS:

SECTION I. Appendix A, Title 16, of the City of Franklin Municipal Code is hereby amended to delete the "Road Impact Fees" and "Implementation of Fee Schedule" tables, and by replacing them with the tables included herewith in Exhibit A – Option ____.

SECTION II. This Ordinance shall take effect after its passage on third and final reading, the health, safety, and welfare of the citizens requiring it.

ATTEST:

CITY OF FRANKLIN, TENNESSEE

BY: _____
ERIC S. STUCKEY
City Administrator

BY: _____
DR. KEN MOORE
Mayor

Approved as to Form

By: _____
William E. Squires
Assistant City Attorney

PASSED FIRST READING

PUBLIC HEARING PASSED

SECOND READING

THIRD READING

Implementation of Road Impact Fees										
Land Use Type	Unit	Arterial	Current Fees		Fee Effective January 1, 2025			Fee Effective January 1, 2026		
			Collector	Total	Arterial	Collector	Total	Arterial	Collector	Total
Single-Family Detached	Dwelling	\$ 4,911	\$ 3,340	\$ 8,251	N/A	N/A	N/A	N/A	N/A	N/A
Single-Family Det <1,500 sf	Dwelling	N/A	N/A	N/A	\$ 9,665	\$ 2,084	\$ 11,749	\$ 12,543	\$ 2,704	\$ 15,247
Single-Family Det 1,500-2,999 sf	Dwelling	N/A	N/A	N/A	\$ 10,581	\$ 2,281	\$ 12,862	\$ 14,374	\$ 3,098	\$ 17,472
Single-Family Det 3,000 sf or more	Dwelling	N/A	N/A	N/A	\$ 11,421	\$ 2,461	\$ 13,883	\$ 16,054	\$ 3,460	\$ 19,514
Single-Family Att <1,500 sf	Dwelling	N/A	N/A	N/A	\$ 8,525	\$ 1,838	\$ 10,363	\$ 10,263	\$ 2,212	\$ 12,475
Single-Family Att 1,500-2,999 sf	Dwelling	N/A	N/A	N/A	\$ 9,276	\$ 1,999	\$ 11,275	\$ 11,763	\$ 2,535	\$ 14,298
Single-Family Att 3,000 sf or more	Dwelling	N/A	N/A	N/A	\$ 9,950	\$ 2,145	\$ 12,096	\$ 13,113	\$ 2,827	\$ 15,940
Multi-Family	Dwelling	\$ 3,112	\$ 2,121	\$ 5,233	\$ 7,208	\$ 1,555	\$ 8,763	\$ 10,111	\$ 2,181	\$ 12,292
Mobil Home Park	Site	\$ 2,338	\$ 1,592	\$ 3,930	\$ 6,958	\$ 1,499	\$ 8,457	\$ 10,683	\$ 2,301	\$ 12,984
Congregate Care Facility	Dwelling	\$ 1,093	\$ 743	\$ 1,836	\$ 2,550	\$ 551	\$ 3,101	\$ 3,590	\$ 776	\$ 4,366
Hotel/Motel	Room	\$ 2,567	\$ 1,750	\$ 4,317	\$ 5,049	\$ 1,090	\$ 6,139	\$ 6,547	\$ 1,414	\$ 7,961
Retail/Commercial										
Shopping Center/Gen. Retail	1,000 ft ²	\$ 6,484	\$ 4,394	\$ 10,878	\$ 14,133	\$ 3,061	\$ 17,195	\$ 19,325	\$ 4,186	\$ 23,511
Restaurant, Quality	1,000 ft ²	\$ 12,069	\$ 8,186	\$ 20,255	\$ 33,060	\$ 7,169	\$ 40,229	\$ 49,474	\$ 10,728	\$ 60,202
Restaurant, Fast Food	1,000 ft ²	\$ 17,442	\$ 11,862	\$ 29,304	\$ 40,426	\$ 8,765	\$ 49,191	\$ 56,769	\$ 12,308	\$ 69,077
Office/Institutional										
Office, General	1,000 ft ²	\$ 4,632	\$ 3,170	\$ 7,802	\$ 9,769	\$ 2,124	\$ 11,894	\$ 13,130	\$ 2,855	\$ 15,985
Hospital	1,000 ft ²	\$ 5,359	\$ 3,653	\$ 9,012	\$ 10,295	\$ 2,217	\$ 12,512	\$ 13,174	\$ 2,837	\$ 16,011
Nursing Home	1,000 ft ²	\$ 3,082	\$ 2,099	\$ 5,181	\$ 6,259	\$ 1,345	\$ 7,605	\$ 8,254	\$ 1,774	\$ 10,028
Church	1,000 ft ²	\$ 3,258	\$ 2,218	\$ 5,476	\$ 5,378	\$ 1,154	\$ 6,532	\$ 6,248	\$ 1,340	\$ 7,588
Elementary/Sec. School	1,000 ft ²	\$ 1,606	\$ 1,091	\$ 2,697	\$ 3,723	\$ 803	\$ 4,526	\$ 5,227	\$ 1,127	\$ 6,354
Industrial										
Manufacturing	1,000 ft ²	\$ 2,030	\$ 1,389	\$ 3,419	\$ 5,039	\$ 1,095	\$ 6,134	\$ 7,269	\$ 1,580	\$ 8,849
Industrial Park	1,000 ft ²	\$ 3,636	\$ 2,484	\$ 6,120	\$ 5,093	\$ 1,104	\$ 6,198	\$ 5,157	\$ 1,118	\$ 6,275
Business Park	1,000 ft ²	\$ 6,613	\$ 4,519	\$ 11,132	\$ 14,116	\$ 3,068	\$ 17,184	\$ 19,087	\$ 4,149	\$ 23,236
Warehouse	1,000 ft ²	\$ 1,893	\$ 1,294	\$ 3,187	\$ 2,612	\$ 566	\$ 3,178	\$ 2,605	\$ 564	\$ 3,169
Mini-Warehouse	1,000 ft ²	\$ 885	\$ 602	\$ 1,487	\$ 1,715	\$ 373	\$ 2,088	\$ 2,209	\$ 480	\$ 2,689

Starting January 1, 2027, the City Engineer, in consultation with the City Administrator and such other City staff as the City Administrator may designate, shall adjust the road impact fee annually. The adjustment shall be based on the percent change published by the National Highway Construction Cost Index (NHCCI) as published by the U.S. Department of Transportation Federal Highway Administration. The NHCCI was 2.843 for the first quarter of 2023.

Implementation of Road Impact Fees													
Land Use Type	Unit	Current Fees			Fee Effective January 1, 2025			Fee Effective January 1, 2026			Fee Effective January 1, 2027		
		Arterial	Collector	Total	Arterial	Collector	Total	Arterial	Collector	Total	Arterial	Collector	Total
Single-Family Detached	Dwelling	\$ 4,911	\$ 3,340	\$ 8,251	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Single-Family Det <1,500 sf	Dwelling	N/A	N/A	N/A	\$ 8,706	\$ 1,877	\$ 10,583	\$ 10,625	\$ 2,290	\$ 12,915	\$ 12,543	\$ 2,704	\$ 15,247
Single-Family Det 1,500-2,999 sf	Dwelling	N/A	N/A	N/A	\$ 9,317	\$ 2,008	\$ 11,325	\$ 11,845	\$ 2,553	\$ 14,398	\$ 14,374	\$ 3,098	\$ 17,472
Single-Family Det 3,000 sf or more	Dwelling	N/A	N/A	N/A	\$ 9,877	\$ 2,129	\$ 12,005	\$ 12,965	\$ 2,794	\$ 15,760	\$ 16,054	\$ 3,460	\$ 19,514
Single-Family Att <1,500 sf	Dwelling	N/A	N/A	N/A	\$ 7,946	\$ 1,713	\$ 9,659	\$ 9,105	\$ 1,962	\$ 11,067	\$ 10,263	\$ 2,212	\$ 12,475
Single-Family Att 1,500-2,999 sf	Dwelling	N/A	N/A	N/A	\$ 8,446	\$ 1,820	\$ 10,267	\$ 10,105	\$ 2,178	\$ 12,282	\$ 11,763	\$ 2,535	\$ 14,298
Single-Family Att 3,000 sf or more	Dwelling	N/A	N/A	N/A	\$ 8,896	\$ 1,918	\$ 10,814	\$ 11,005	\$ 2,372	\$ 13,377	\$ 13,113	\$ 2,827	\$ 15,940
Multi-Family	Dwelling	\$ 3,112	\$ 2,121	\$ 5,233	\$ 6,240	\$ 1,346	\$ 7,586	\$ 8,175	\$ 1,764	\$ 9,939	\$ 10,111	\$ 2,181	\$ 12,292
Mobil Home Park	Site	\$ 2,338	\$ 1,592	\$ 3,930	\$ 5,717	\$ 1,231	\$ 6,948	\$ 8,200	\$ 1,766	\$ 9,966	\$ 10,683	\$ 2,301	\$ 12,984
Congregate Care Facility	Dwelling	\$ 1,093	\$ 743	\$ 1,836	\$ 2,203	\$ 476	\$ 2,679	\$ 2,897	\$ 626	\$ 3,523	\$ 3,590	\$ 776	\$ 4,366
Hotel/Motel	Room	\$ 2,567	\$ 1,750	\$ 4,317	\$ 4,549	\$ 983	\$ 5,532	\$ 5,548	\$ 1,198	\$ 6,746	\$ 6,547	\$ 1,414	\$ 7,961
Retail/Commercial													
Shopping Center/Gen. Retail	1,000 ft ²	\$ 6,484	\$ 4,394	\$ 10,878	\$ 12,402	\$ 2,687	\$ 15,089	\$ 15,864	\$ 3,436	\$ 19,300	\$ 19,325	\$ 4,186	\$ 23,511
Restaurant, Quality	1,000 ft ²	\$ 12,069	\$ 8,186	\$ 20,255	\$ 27,588	\$ 5,982	\$ 33,571	\$ 38,531	\$ 8,355	\$ 46,886	\$ 49,474	\$ 10,728	\$ 60,202
Restaurant, Fast Food	1,000 ft ²	\$ 17,442	\$ 11,862	\$ 29,304	\$ 34,978	\$ 7,584	\$ 42,562	\$ 45,874	\$ 9,946	\$ 55,819	\$ 56,769	\$ 12,308	\$ 69,077
Office/Institutional													
Office, General	1,000 ft ²	\$ 4,632	\$ 3,170	\$ 7,802	\$ 8,649	\$ 1,881	\$ 10,530	\$ 10,890	\$ 2,368	\$ 13,257	\$ 13,130	\$ 2,855	\$ 15,985
Hospital	1,000 ft ²	\$ 5,359	\$ 3,653	\$ 9,012	\$ 9,335	\$ 2,010	\$ 11,345	\$ 11,254	\$ 2,424	\$ 13,678	\$ 13,174	\$ 2,837	\$ 16,011
Nursing Home	1,000 ft ²	\$ 3,082	\$ 2,099	\$ 5,181	\$ 5,594	\$ 1,202	\$ 6,797	\$ 6,924	\$ 1,488	\$ 8,412	\$ 8,254	\$ 1,774	\$ 10,028
Church	1,000 ft ²	\$ 3,258	\$ 2,218	\$ 5,476	\$ 5,089	\$ 1,091	\$ 6,180	\$ 5,668	\$ 1,216	\$ 6,884	\$ 6,248	\$ 1,340	\$ 7,588
Elementary/Sec. School	1,000 ft ²	\$ 1,606	\$ 1,091	\$ 2,697	\$ 3,221	\$ 695	\$ 3,916	\$ 4,224	\$ 911	\$ 5,135	\$ 5,227	\$ 1,127	\$ 6,354
Industrial													
Manufacturing	1,000 ft ²	\$ 2,030	\$ 1,389	\$ 3,419	\$ 4,295	\$ 934	\$ 5,229	\$ 5,782	\$ 1,257	\$ 7,039	\$ 7,269	\$ 1,580	\$ 8,849
Industrial Park	1,000 ft ²	\$ 3,636	\$ 2,484	\$ 6,120	\$ 5,072	\$ 1,100	\$ 6,172	\$ 5,115	\$ 1,109	\$ 6,223	\$ 5,157	\$ 1,118	\$ 6,275
Business Park	1,000 ft ²	\$ 6,613	\$ 4,519	\$ 11,132	\$ 12,459	\$ 2,708	\$ 15,167	\$ 15,773	\$ 3,429	\$ 19,201	\$ 19,087	\$ 4,149	\$ 23,236
Warehouse	1,000 ft ²	\$ 1,893	\$ 1,294	\$ 3,187	\$ 2,615	\$ 566	\$ 3,181	\$ 2,610	\$ 565	\$ 3,175	\$ 2,605	\$ 564	\$ 3,169
Mini-Warehouse	1,000 ft ²	\$ 885	\$ 602	\$ 1,487	\$ 1,551	\$ 337	\$ 1,888	\$ 1,880	\$ 408	\$ 2,288	\$ 2,209	\$ 480	\$ 2,689

Starting January 1, 2025, the City Engineer, in consultation with the City Administrator and such other City staff as the City Administrator may designate, shall adjust the road impact fee annually. The impact fee published above shall be adjusted (increased or decreased) based on the percent change published by the National Highway Construction Cost Index (NHCCI) as published by the U.S. Department of Transportation Federal Highway Administration. The NHCCI was 2.843 for the first quarter of 2023.

Proposal to City of Franklin & Board of Mayor and Alderman

08/19/2024

The Development Community of Franklin Tennessee appreciates your willingness to allow for more discussion and input regarding the proposed roadway impact fees. As you know, the proposed roadway impact fees pose a substantial financial consequence to the development community, and we respect the thoughtfulness and consideration that city staff has given to this subject.

While we understand that increases in impact fees are required to support the continued growth of Franklin, we would like to propose a fair and equitable structure to both the Development Community and the City of Franklin.

In fairness to all stakeholders (City of Franklin, landowners, and developers), we are proposing the terms below:

1. Grandfathering – We propose a “Grandfathering” of current impact fees for any project that has approved Development Plans AND has an approved site plan within that PUD. This would apply to both single-phase projects and multi-phase projects. For multi-phase projects, the “Grandfathering” would apply to the entire entitled project, and not just the portion or phase that may have started site work since the PUD Development Plan Approval would be vested. This format would follow all state vesting statutes. Additionally, modifications to approved development plans will not be treated as new projects unless the traffic study for the modified development plan indicates an increase in VMT over the traffic study for the initial development plan approval, and only the increase in VMT will be subject to the impact fees in place at the time of the modification.
2. New Projects – For all new projects that do not have approved Development Plans or have not begun construction, we propose that the four conditions outlined below shall apply:
 - a. Timing of Fee Calculation and Assessment – Fees would be determined and distributed to the applicant at the time of staff responses to initial FMPC submittal. “Draft” fees would be determined at Pre-App, but “Final” fees would be tied to the FMPC cycle and initial staff response.
 - b. Vesting – New projects would be vested per state law and the impact fee schedule would be listed on the cover page of the site plan and approved at FMPC and One Stop. The fee amount would be vested for the life of the project per the vesting legislation and tied to the site plan submittal. The fee at the time of site plan approval would not increase during the construction cycle of the project.
 - c. Pricing Index – Road impact fees would increase annually based on a construction index similar to the published TDOT Bituminous Index.

- d. Timing of Fee Payment – All impact fees (roadway, water/sewer, parkland, etc.) should be paid at the time of CO, when the impact actually hits the infrastructure system, or other time as identified below:
 - i. Single Family Residential – Due at the issuance of Certificate of Occupancy.
 - ii. Multifamily Residential – Due at the issuance of Certificate of Occupancy.
 - iii. Commercial Office or Retail – Due at the issuance of Certificate of Occupancy for the “tenant”. Unless the office or retail building is a build to suit project, the developer will be pulling a permit for the shell, and the subsequent tenants (office or retail users) will then be pulling their individual build out permits for their space. The impact fees should be due at the time of CO for the individual user. This will in effect also spread out the payment of fees and more coincide with the lease up schedule of a project.

We look forward to working with staff on the details of this proposal.

Sincerely,

The Development Community of Franklin, Tennessee

NAIOP Nashville, The Commercial Real Estate Development Association

Home Builders Association of Middle Tennessee



City of Franklin

109 3rd Ave S.
Franklin, TN 37064
(615) 791-3217

File #: 21-0548

DATE: August 5, 2024
TO: Board of Mayor and Aldermen
FROM: Eric Stuckey, City Administrator
Lisa Clayton, Director of Parks
Blake Harper, Staff Attorney

SUBJECT:

Discussion Of Possible City Naming Policy

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning the City of Franklin Naming Policy.

BACKGROUND/STAFF COMMENTS:

The City has been approached regarding the naming of certain City-owned assets. The Board needs to decide if it would like to consider naming City assets when requested and if so, establish a uniform policy regarding requests for the naming or renaming of City-owned assets that are compatible with community interest and will enhance the values and heritage of the City of Franklin.

In 2022, the City of Franklin adopted an honorary street naming policy. This ordinance is attached and may provide guidance applicable in development a broader naming policy.

FINANCIAL IMPACT:

N/A

RECOMMENDATION:

Staff recommends that the Board of Mayor and Aldermen give guidance on this item.

Discussion of City of Franklin Naming Policy Draft

August 27, 2024



City of Franklin Naming Policy Draft

- The need has arisen to establish a uniform policy regarding requests for the naming or renaming of City-owned assets.
- BOMA input is needed with a few overarching questions that have emerged while preparing the first draft of the Ordinance.

Discussion Points

1. Should the naming policy be limited ONLY to assets of the Parks Department?
2. Should the naming policy be open to the naming of buildings not within City parks? (For example: City Hall, Public Works, etc.).

Discussion Points

3. If the policy is open to the naming of City-owned buildings, is it also open to individual rooms or assets within buildings? (For example, the Board Room in new City Hall).

Discussion Points

4. Would the Board like a subcommittee to consider the naming applications or would they prefer all applications to go before them?

ORDINANCE 2022-06

**AN ORDINANCE TO AMEND TITLE 16 – STREETS AND SIDEWALKS, ETC BY
ADDING SECTION 16-120. – HONORARY STREET NAMES**

WHEREAS, the City of Franklin desires to recognize individuals and non-profit organizations that have demonstrated significant contributions to the City through cultural, economic, educational, intellectual, political, or scientific works within the community or have made an extraordinary contribution in the service of humanity; and

WHEREAS, the Franklin Board of Mayor and Aldermen wish to establish standards related to honorary streets names to recognize such individuals and non-profit organizations; and

WHEREAS, the Franklin Board of Mayor and Aldermen wish to establish an approval process related to honorary street names.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, TENNESSEE, AS FOLLOWS:

SECTION 1: Title 16 – Streets and Sidewalks, ETC of the Franklin Municipal Code is hereby amended by adding the following new Section:

Sec. 16-120. – Honorary Street Names.

The City of Franklin has established a policy to administer requests for honorary street designations. This policy has been established to provide criteria and a procedure for approving honorary designations of public streets in the City.

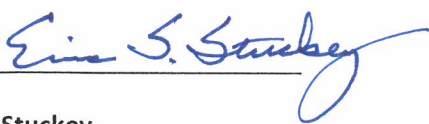
The honorary street naming dedication program enables the City of Franklin to commemorate individuals and non-profit organizations who have made significant contributions to the community and humanity. Honorary street name signs are signs posted above standard street name signs which are intended to recognize and honor individuals or non-profit organizations without changing the official name of the street or the official addresses of residences and businesses on the street.

- 1) Proposal – A proposal to assign an honorary street name shall be submitted in writing to the office of the City Administrator who will refer the proposal to the City Staff for review and presentation to the Board of Mayor and Aldermen for consideration. Each proposal shall include:
 - a) The applicants name, address, phone number, and email address.
 - b) The specific street segment being proposed for honorary street naming.
 - c) The full form of the name being proposed.
 - d) If the proposed name refers to an individual, a brief biography of that individual.
 - e) If the proposed name refers to a non-profit organization, a justification for proposing the organization.
 - f) The rational for assigning the honorary street name, including an explanation of how the name or individual has been associated with the area in which the street is located.
 - g) A letter of consent from the family or organization.

- 2) Criteria – In reviewing a proposed honorary street name, staff shall consider the following criteria for recommendation to the Board of Mayor and Aldermen:
- a) The honorary street name shall be that of an individual or non-profit organization.
 - b) If the honoree is an individual, the individual must be deceased for a period of no less than one year.
 - c) The honoree must have resided or worked in the City of Franklin, Tennessee.
 - d) The honoree shall have made a demonstrable and significant positive impact on the community or contributed to the cultural, economic, educational, intellectual, political, or scientific vitality of the community or have made an extraordinary contribution in the service of humanity, as determined by the Board of Mayor and Aldermen.
 - e) There shall be one honorary street sign per intersection.
 - f) The proposed honorary street name shall not duplicate any existing name or be similar either phonetically or in spelling to any other honorary or actual street name.
 - g) Requests must be made for a publicly owned and maintained street, including signage and post.
 - h) There shall be up to one honorary street designation per calendar year.
- 3) Street Sign
- a) Honorary street signs shall be posted above the City's standard street sign and shall be of similar size and shape as the standard street sign.
 - b) Honorary street signs shall contain the City of Franklin's seal and have white lettering on a blue background.
- 4) Approval
- a) An honorary street name shall be approved by the Board of Mayor and Aldermen by resolution.
 - b) The City has the right to remove any honorary street sign upon approval of a resolution by the Board of Mayor and Aldermen.
 - c) If approved, the honorary street name shall remain in place for a period of 20 years from the date of approval. Renewal of the honorary street name requires approval by the Board of Mayor and Aldermen by resolution.

SECTION II: BE IT FINALLY ORDAINED by the Board of Mayor and Aldermen of the City of Franklin, Tennessee that this Ordinance shall take effect immediately, after its passage on second and final reading, the health, safety, and welfare of the citizens requiring it.

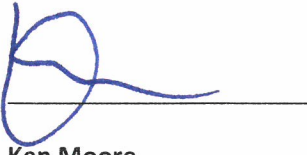
ATTEST:

By: 

Eric Stuckey

City Administrator/Recorder

CITY OF FRANKLIN, TENNESSEE:

By: 

Dr. Ken Moore

Mayor

Approved as to form by:

Shauna R Billingsley

Shauna R. Billingsley
City Attorney

PASSED FIRST READING

Aug 9, 2022

PASSED SECOND READING

Aug 23, 2022



File #: 21-0453

DATE: July 9, 2024
TO: Board of Mayor and Aldermen
FROM: Eric Stuckey, City Administrator
Eric Stuckey, City Administrator
Shauna Billingsley, City Attorney

SUBJECT:

Consideration Of COF Contract No. 2024-0199, The Interlocal Agreement Between Williamson County, Tennessee And The City Of Franklin, Tennessee To Establish The Terms, Responsibilities, And Obligations Of The City Providing Funds Received From The National Opioid Settlements To The County To Be Allocated For Opioid Abatement And Remediation Projects That Impact The City

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning an interlocal agreement between the City of Franklin and Williamson County for providing funds received from the National Opioid Settlements to the County to be allocated for opioid abatement and remediation projects that impact the City.

BACKGROUND/STAFF COMMENTS:

Tennessee joined a broad coalition of states and local political subdivisions to settle opioid related lawsuits with Kroger, Allergan, Teva, CVS, Walgreens, Walmart, and Janssen/J&J. The Board voted to enter into settlement agreements along with the State. Through the settlement agreement, the City has received a portion of the TN allocation totaling almost \$50,000. The settlements are to be paid out up to 30 years but annually the amounts are not large and settlement agreement dictates what the funds can be used for and what it cannot. The City must spend the funds as dictated by the settlement terms. The City has used some funds for training and may need to use some funds in the future for training and possibly purchasing naran. As of now, the naran is provided to the City free of charge. The City can set up a grant program to award the money to groups who work in the opioid field or with people who are impacted by opioids. However, setting up a program and running the program is time-consuming and could cost the City money in the long term. Williamson County has created such a program and the City of Franklin and Williamson County believe that entering into an interlocal agreement for the City to provide funds received from the National Opioid Settlements to the County to be allocated for opioid abatement and remediation projects that impact the City to be in the best interest of the City. The City will provide \$40,000 to the County as an initial contribution to the County to be allocated for opioid abatement and remediation projects that impact the City. The City will contribute 90% of its annual funds received through the National Opioid Settlements until such time the City deems retainage of the funds in its best interest.

FINANCIAL IMPACT:

The City has received funds through the National Opioid Settlements and will combine its funds with the County's to fund the opioid abatement and remediation projects through the Task Force's application process. The City will provide \$40,000 to the County as an initial contribution to the County to be allocated for opioid abatement and remediation projects that impact the City. The City will contribute 90% of its annual funds received through the National Opioid Settlements until such time the City deems retainage of the funds in its best interest.

RECOMMENDATION:

Staff recommends that the Board of Mayor and Aldermen approve the interlocal contract between the City of Franklin and Williamson County for funds received from the National Opioid Settlements.

**INTERLOCAL AGREEMENT BETWEEN WILLIAMSON COUNTY, TENNESSEE AND
THE CITY OF FRANKLIN, TENNESSEE
COF Contract No. 2024-0199**

THIS INTERLOCAL AGREEMENT ("Agreement"), is made and entered into pursuant to Tennessee Code Annotated, Section 12-9-101, et seq., by and between **WILLIAMSON COUNTY, TENNESSEE**, (hereinafter "County"), and **THE CITY OF FRANKLIN, TENNESSEE** (hereinafter "City"), to establish the terms, responsibilities, and obligations of the City providing funds received from the National Opioid Settlements to the County to be allocated for opioid abatement and remediation projects that impact the City ("Activity").

RECITALS

WHEREAS, Williamson County, Tennessee and the City of Franklin, Tennessee have the authority pursuant to Tenn. Code Ann. § 12-9-104, to enter into interlocal agreements to provide services to their citizens; and

WHEREAS, the County currently funds the implementation of opioid abatement and remediation strategies throughout the County with distributions received via the National Opioid Settlements ("County Opioid Abatement Funds"); and

WHEREAS, the County's Opioid Task Force ("Task Force") was established to accept and review applications from individuals and entities that desire to receive funding from the County Opioid Abatement Funds; and

WHEREAS, the City also received funds through the National Opioid Settlements; and

WHEREAS, the City finds it would be duplicative to have its own application process for these funds and finds it in its best interest to combine its funds with the County's to fund opioid abatement and remediation projects through the Task Force's application process; and

WHEREAS, the City will provide FORTY-THOUSAND and 00/100 Dollars (\$40,000.00) ("City Allocation") as an initial contribution to the County to be allocated for opioid abatement and remediation projects that impact the City; and

WHEREAS, the City will contribute 90% of its annual funds received through the National Opioid Settlements until such time the City deems retainage of the funds in its best interest; and

WHEREAS, the County and the City have determined it to be in the best interest of the County and the City to enter into this Interlocal Agreement for the provision of the Activity.

NOW THEREFORE, in consideration of the mutual promises contained herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

- I. Purpose of Agreement. The City provides funds received through the National Opioid Settlements to the County to be allocated by the County for opioid abatement and remediation projects that impact the City. The City Allocation will be appropriated through the same process that the County's Opioid Abatement Funds are appropriated, including by way of application to the Task Force.
- II. Authority. This Agreement is made and entered into pursuant to the authority granted to the parties under the *Interlocal Cooperation Act, Tennessee Code Annotated*, Section 12-9-101, et seq., and the parties agree that all approvals and filings required by the terms of said Act shall be achieved as soon as possible prior to the execution of this Agreement.
- III. Activity. The City Allocation will be awarded to opioid abatement and remediation projects through the same process that the County's Opioid Abatement Funds are awarded. Individuals and entities may apply to the Task Force for funding for their project. The Task Force will provide an application process through which projects may apply for funding. The Task Force will make a recommendation to the Williamson County Board of Commissioners ("Board") as to which projects to fund, based on careful review and according to the guidelines in the National Settlement Agreement and set forth by the State of Tennessee. The County will notify the City of the projects being recommended to the

Board. The Task Force has the ultimate authority to recommend projects to be funded. The Board has the ultimate authority to approve the allocation.

- IV. Reporting. The City will be responsible for its own reporting to the applicable authorities regarding the use of the City Allocation. Likewise, the County will be responsible for its own reporting to the applicable authorities regarding the use of the County Opioid Abatement Funds.
- V. City Allocation. The City shall pay the County FORTY-THOUSAND and 00/100 Dollars (\$40,000.00) of their funds received from the National Opioid Settlements as an initial contribution to be allocated by the County to opioid abatement and remediation projects. The City will contribute 90% of its annual funds received through the National Opioid Settlements until such time the City deems retainage of the funds in its best interest
- VI. Term. The initial term of this Agreement shall be for a period of three (3) years, beginning on the date of execution. The parties may extend this Agreement for additional one (1) year terms through written amendment to this Agreement. Alternatively, the parties may enter into a new agreement at any time to supersede this Agreement.
- VII. Amendment. Any and all amendments to this Agreement must be written amendments, signed by all parties, and approved by all applicable County officials.
- VIII. Termination—Breach. Should any party fail to fulfill in a timely and proper manner a material obligation under this Agreement, the non-breaching party shall provide the breaching party with notice of the breach. The breaching party will then have fourteen (14) calendar days from the receipt of the notice to cure the breach. Should the breaching party fail to cure the breach, the non-breaching party may terminate this Agreement. Such termination shall not relieve the breaching party of any damages sustained by the non-breaching party. Termination of this Agreement by the non-breaching party for any breach by the breaching party shall be in addition to any other remedies available for such breach. Nothing herein shall be construed as prohibiting the non-breaching party from pursuing any other available remedy, including without limitation, injunctive relief and/or money charges.
- IX. Notices. All notices under this Agreement shall be given in writing, addressed to the following persons:

To: Williamson County

Attn: Williamson County Mayor
1320 West Main Street, Suite 125
Franklin, TN 37064

To: City of Franklin

Attn: City Administrator
109 3rd Avenue South
Franklin, TN 37064

With a copy to:

City Attorney
109 3rd Avenue South
Franklin, TN 37064

Written notices shall be deemed received three (3) days after the same are deposited in the United States Mail, postage prepaid, addressed as provided above.

- X. Miscellaneous.
 - a. Relationship. In consideration of the mutual covenants provided herein, the parties agree that nothing contained herein is intended to be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting an agency relationship in any manner whatsoever. The individual parties are and shall remain independent entities with respect to this Agreement.

- b. Binding. This Agreement shall be binding upon the parties and shall take effect from and after its ratification and signing by all parties after obtaining appropriate approval pursuant to the requirements of applicable law.
- c. Severability. The parties agree that if any part, term, or provision of this Agreement is determined to be illegal or in conflict with any law of the State of Tennessee by any court with jurisdiction, the validity of the remaining portions or provisions shall not be affected. The rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
- d. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement. No person or entity other than a party to this Agreement shall have any rights hereunder or any authority to enforce its provisions, and any such rights or enforcement must be consistent with and subject to the terms of this Agreement.
- e. Assignment. The rights and obligations of this Agreement are not assignable.
- f. Cooperation. The parties agree to cooperate fully in order to successfully execute the terms and conditions of this Agreement, including obtaining all regulatory and governmental approvals required to carry out the terms of this Agreement, recognizing that the intent of each party to the other is to serve the individual interests of each party while respecting the conditions and obligations of this Agreement.
- g. Law/Venue. This Agreement shall be exclusively governed by the laws of the State of Tennessee. In the event that any section and/or term of this Agreement, or any exhibits hereto, become subject to litigation, the venue for such action will be exclusively maintained in a court of competent jurisdiction sitting in Williamson County, Tennessee.
- h. Entire Agreement. This Agreement represents the entire agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral, with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates recorded below.

WILLIAMSON COUNTY, TENNESSEE:

Rogers Anderson, Williamson County Mayor

Date

CITY OF FRANKLIN, TENNESSEE:

Signature

Name/Title

Date

APPROVED AS TO FORM AND LEGALITY:

Williamson County Attorney

APPROVED AS TO FORM AND LEGALITY:

Shauna R. Billingsley
City Attorney



City of Franklin

109 3rd Ave S.
Franklin, TN 37064
(615) 791-3217

File #: 21-06148

DATE: August 9, 2024
TO: Board of Mayor and Aldermen
FROM: Eric Stuckey, City Administrator
Angie Skarp, City Recorder

SUBJECT:

Consideration Of New Wine In Grocery Store License For Mapco Express Inc, D/B/A Mapco #3326, (Marvin Hewatt, Scott Moon, And Bruce Thatcher, Managing Agent) 240 Franklin Road, Franklin, TN 37064

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning a request for a new Wine in Grocery Store License for Mapco #3326.

BACKGROUND/STAFF COMMENTS:

A wine in grocery store license certificate of compliance request has been received for the location at 240 Franklin Road, Franklin, TN 37064. A City of Franklin Wine in Grocery Certificate is required for the owners to obtain a new Tennessee ABC (Alcoholic Beverage Commission) license.

In accordance with policy, a background record check has been performed by the Franklin Police Department. The Building and Neighborhood Services department has performed a zoning check for the location. All applicants have successfully met the requirements for this certificate to be issued.

FINANCIAL IMPACT:

N/A

RECOMMENDATION:

Staff recommends that the Board of Mayor and Aldermen approve the wine in grocery store certificate of compliance for Mapco #3326.

HISTORIC
FRANKLIN
TENNESSEECERTIFICATE OF COMPLIANCE
RETAIL FOOD STORE WINE

Mapco #3326, 240 Franklin Road, Franklin, TN, 37064

The City of Franklin hereby certifies the following facts concerning application in the name of Bruce Thatcher, Managing Agent and Executive Officers Marvin Hewatt [President & CFO], Scott Moon [Vice-President & Secretary] with Mapco Express, Inc at 801 Crescent Centre Drive Suite 300 Franklin, TN 37067 who has made application for a Certificate of Compliance to sell retail food store wine at 240 Franklin Road, Franklin, TN which is within the corporate limits of the City of Franklin, Williamson, County, Tennessee:

1. An investigation has been undertaken of the applicant's felony criminal record and of the location of said business, and from said investigation the undersigned certify that the applicant or applicants who are to be in actual charge of the business have not been convicted of a felony within a ten-year period immediately preceding the date of application and, if a corporation, that the executive officers or those in control have not been convicted of a felony within a ten-year period immediately preceding the date of the application;

2. The applicant or applicants have secured a location which lies within the city limits of the City of Franklin which complies with all applicable zoning laws adopted therein by the City.

This the 27th day of August 2024

Dr. Ken Moore, Mayor
City of FranklinATTEST:

Angie Skarp, City Recorder



File #: 21-092

DATE: August 14, 2024
TO: Board of Mayor and Aldermen
FROM: Eric Stuckey, City Administrator
Alderman Beverly Burger

SUBJECT:

Discussion Of Board Of Mayor And Aldermen Pay
WS 2/13/24

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) regarding Board of Mayor and Aldermen pay and receive direction from the Board.

BACKGROUND/STAFF COMMENTS:

Per the City Charter Article IV, Section 7, the Board of Mayor and Aldermen has the authority to set the level of compensation for itself. The conditions related to this authority address timing in two respects: 1) no ordinance increasing compensation shall take effect until the second Tuesday in November following the regular City election; 2) adoption of such an ordinance shall take place at least three months prior to the regular City election. The compensation for the Mayor and Aldermen was last modified in June 2013 and went into effect beginning November 2013.

Earlier this year, the Board of Mayor and Aldermen discussed the compensation provided to the Mayor and Aldermen. To assist the Board in this consideration, a survey of elected official compensation in a cross-section of other Tennessee cities was compiled. Comments shared by Alderman Burger, who initially raised this topic, are also attached.

In addition to Board compensation, the topic of providing an automobile allowance for the Mayor has been raised. Mayor Moore frequently travels on behalf of the City for his various responsibilities, requiring him to submit reimbursement requests for this travel. Providing the auto allowance would require Board approval, but could be implemented immediately (not requiring delayed implementation following the next election cycle for the position of Mayor). Currently, certain department directors receive an automobile allowance of \$200 per month as compensation for regular use of their personal vehicle in the implementation of their City duties. Per the City Administrator's employment contract, he receives a auto allowance of \$400 per month.

FINANCIAL IMPACT:

Changes to BOMA compensation could not be implemented until after each position goes through their next election cycle (Ward Aldermen pay would go into effect following the 2025 municipal election; At-Large Aldermen and Mayor pay would go into effect following the 2027 municipal election). The current budget for elected official compensation is \$120,000. Franklin Aldermen and the Mayor are also eligible to receive health insurance benefits from the City. They do not receive a pension benefit.

RECOMMENDATION:

Guidance from the Board of Mayor and Aldermen is requested related to the structure of elected official pay.

Subject: Proposal to Increase City Council Pay: Empowering Younger Candidates with Families and Full-Time Jobs

Dear Esteemed City Council Members,

As we continue to serve our vibrant and rapidly growing city of 86,000 residents, it's imperative that we reflect on ways to ensure effective governance and representation. I am advocating for an increase in Alderman and Mayor monthly pay for the board of Mayor and Aldermen, with a particular reason to focus on empowering those how are coming after us as well as younger candidates who juggle family responsibilities and full-time employment.

Here are compelling reasons why such an increase is not only warranted but crucial for the continued success of our city:

1. **Attracting Diverse Talent:** Our city boasts highly talented citizens and it's essential that our city council reflects the diversity those individuals and the skill-sets they can offer to our city. By offering compensation that contributes somewhat more towards all the responsibilities we must cover we can attract a wider range of candidates, especially those who may currently be deterred by the investment of time, study, and the financial strain of serving in public office alongside their existing family, job, and community commitments.
2. **Ensuring Representation for Working Families:** Many of our residents are young professionals with families and demanding careers. By increasing the compensation, we send a clear message that our community values and supports individuals from all walks of life, including those who may not have the financial flexibility to cover sitters (at \$15 and \$20 per hour), attending community meeting, events, seminars and just juggling their family and career lives.
3. **Encouraging Civic Engagement:** A increased compensation can incentivize more individuals, particularly younger demographics, to engage in local public service and consider running for the Board of Mayor and Aldermen. This infusion of fresh perspectives and energy is essential for keeping our governance dynamic and responsive to the evolving needs of our community.
4. **Balancing Commitments:** Serving on the Board of Mayor and Aldermen is a significant responsibility that often requires time away from family and work obligations. Increasing compensation can assist in alleviating the financial burden associated with this important commitment, enabling BOMA members to strike a better balance between their civic duties and personal and professional lives.
5. **Investment in Effective Governance:** Ultimately, investing in fair compensation for Board of Mayor and Aldermen members is an investment in the effectiveness and integrity of our governance and can help attract and retain dedicated individuals who are representative of our community.

In conclusion, raising the monthly compensation for city council members is not just about fair compensation—it's about fostering inclusivity, promoting civic engagement, and ensuring effective governance for the benefit of all residents. I urge my fellow Aldermen to consider this proposal seriously and to join me in taking this important step towards a future vibrant and representative Board of Mayor and Aldermen.

Let's remember:

1. No one takes on this position / job as a working income or expects anything close to a sustainable income. That is not why any of us do this job or the public servants to come after us. I have never met any Alderman who ran for office because they thought a monthly compensation was a paying job they were applying for.
2. People should not be penalized for wanting to serve or be disincentivized because of the demands on time and finances.
3. Let's not overlook the non-visible things, working through the issues, studying massive amounts of material at times, attending seminars, community meetings, and dealing with explosive growth and all the challenges that brings to our city and board.
4. BOMA members are not just board members, they are members of an executive board the take on critical responsibilities for our city.
5. Look at the growth over the last 10 year and the work load the complexities of the issues (sewer treatment plant, drinking water plant, impact fees, growth, sewer basins challenges, long term planning, financial planning for a fast-growing community, the list goes on).
6. Aldermen and the Mayor in reality, don't have a day off a they serve 365 days a year. Yes, one of us even got a call on Christmas day. So, the Aldermen and Mayor are on the clock.
7. Just one metric for the increase growth and increased activity is look at the number of increased numbers of employees that work for the city, the increases in pay for staff and especially the increase in pay for administration over the last 15 years. In a weak Mayor system, the actual decision-making via votes on important issue primarily rest on the shoulders of the Aldermen. It is their responsivity to become extremely well informed on each decision, thus adding more to the workload of the current board and to those to come. The workload of our mayor has increase just as well and his ambassadorship for a nationally and internationally recognized city is very demanding here locally and at the state level and beyond.

Currently Compensation for:

Aldermen \$1000 per month /per year \$12,000

Mayor: \$2,000 per month / per year \$24,000

Proposed:

|Aldermen \$2,250 per month/ per year \$27,000

Mayor: \$4,000 per month / Per year \$48,000

Thank you for your attention to this needed matter.

Elected Official Pay Data

Alcoa	Mayor – \$350 per month (\$4,200/yr) Commissioners – \$275 per month (\$3,300/yr) No additional pay. Elected officials do not receive benefits.
Bartlett	Mayor – \$105,000/yr Board Members – \$12,000/yr Mayor is full-time and receives \$500/month stipend for personal use vehicle. No additional pay. Defined Pension Plan if elected before 7/1/14. City's Defined Pension Benefit 401 Plan if elected after 7/1/14. Can participate in health, vision, and disability plans like city employees.
Brentwood	Mayor – \$1000 per month (\$12,000/yr) Commissioners – \$950 per month (\$11,400/yr) No additional pay. Both receive Health and Life Insurance benefits only.
Bristol	Mayor – \$8,077.60/yr Council Member – \$8,077.60/yr No additional pay. Elected officials are eligible for all the same benefits as full-time employees except for Life Insurance or Short Term Disability.
Chattanooga	Mayor – \$192,237.53/yr (calculated) Council Member – 15% of Mayoral Salary (\$28,835.63/yr) Council Chair – \$33,835.63/yr (additional \$5,000 from Council Member) Council Vice Chair – \$31,335.63/yr (additional \$2,500 from Council Member) No additional pay. Each Council Member is allotted \$6,000 for District-specific expenses (reimbursement) Elected Officials are eligible to receive all city employee benefits, except for longevity bonuses.
Collierville	Mayor – \$35,000/yr Vice-Mayor – \$15,000/yr Aldermen – \$12,000/yr No additional pay. Found salary based on charter (resolution amendments) Increase by \$2,000 for Mayor and \$1,000 for Aldermen in 4 year increments.*

	Board members receive health and life insurance benefits.
Columbia	Mayor – \$346.15 every two weeks (\$9,000/yr) Vice-Mayor – \$279.96 every two weeks (\$7,278.96/yr) Council – \$230.77 every two weeks (\$6,000/yr) No additional pay. All are offered medical and dental insurance like City employees.
Fairview	Mayor – \$1,000 per month (\$12,000/yr) Commissioners – \$950 per month (\$11,400/yr) No additional pay. Elected officials do not receive benefits.
Germantown	Mayor – \$24,000/yr Aldermen – \$12,000/yr The Mayor receives a vehicle allowance. All are eligible to be on the city’s health care insurance.
Johnson City	Mayor – \$150 per month (\$1,800/yr) Commissioners – \$100 per month (\$1,200/yr) No additional pay. Elected Officials are eligible to participate in City insurance.
Kingsport	Mayor – \$3,000/yr Aldermen – \$2,400/yr No additional pay. No benefits.
Knoxville	Mayor – \$162,500/yr Council – \$24,000/yr No additional pay. Elected Officials are eligible for City benefits.
Maryville	Mayor – \$50 per month (\$600/yr) Council – \$25 per month (\$300/yr) Elected Officials do not receive any City-provided benefits.
Murfreesboro	Mayor – \$12,000/yr Council – \$11,400/yr Council Members receive a car allowance of \$4,800/yr and a phone allowance of \$1,800/yr.

	The Mayor receives a car allowance of \$9,600/yr and a phone allowance of \$1,800/yr. All are eligible for benefits like employees.
Nashville (found on General Pay Plan)	Mayor – \$180,000/yr (change to \$209,898/yr in September 2023) Vice-Mayor – \$25,230/yr (change to \$27,977/yr in September 2023) Council Member – \$23,100/yr (change to \$25,615/yr in September 2023)
Nolensville	Mayor – \$425 per month (\$5,100/yr) Vice-Mayor – \$425 per month (\$5,100/yr) Commissioners – \$425 per month (\$5,100/yr) No additional pay. Elected officials do not receive city-provided benefits.
Spring Hill	Mayor – \$925 per month (\$11,100/yr) Aldermen – \$450 per month (\$5,400/yr) Aldermen on the Planning Commission – \$500 per month (\$6,000/yr) No additional pay. All are eligible for benefits like employees, but is not eligible for medical opt-out pay.
Thompson's Station	Mayor – \$10,000/yr Alderman – \$5,000/yr No additional pay. Mayor can use a town paid-for cell phone for official business (\$360/yr) No benefits aside from required training by the State.