

CONSTRUCTION MANAGER-AT-RISK CONTRACT
MESQUITE ANIMAL SHELTER ADOPTION CENTER EXPANSION PROJECT
PHASE I

THIS CONTRACT entered into this ____ day of _____, 2022, is by and between the **CITY OF MESQUITE**, a municipal corporation of Dallas County, Texas (hereinafter called "Owner"), and _____, a corporation authorized to conduct business in the State of Texas, with local offices located at _____ (hereinafter called "CMaR" or "Construction Manager-at-Risk").

W I T N E S S E T H:

WHEREAS, the Owner intends to obtain construction management services in connection with the design (Phase I services) and construction (Phase II services, referred to in the General Conditions as the "Work") of **Mesquite Animal Shelter Adoption Center and Expansion** (hereinafter called the "Project") in the City of Mesquite and County of Dallas, Texas; and

WHEREAS, in connection with the Project, Drawings and Specifications will be prepared under a separate contract between the Owner and **GSR Andrade Architects, Inc.** (hereinafter called the "Architect"); and

WHEREAS, in response to the Owner's request, CMaR has submitted a proposal to provide the Owner all Phase I construction manager-at-risk services (the "Work"); and

WHEREAS, the scope of the Work is generally the Phase I services as specified below and in the CMaR's Proposal in response to RFP 2022-XXX, dated _____, 2022, and in the CMaR's Best and Final Offer, dated _____, 2022, collectively attached hereto and made a part hereof as Exhibit 1; and

WHEREAS, the City of Mesquite has selected _____, as CMaR to perform the Work, and authorized the City Manager to enter into a contract with CMaR; and

WHEREAS, Owner has allocated a _____ fee for all Phase I CMaR compensation; and

WHEREAS, Owner has established that the total budgeted cost for completion of the Project, subject to additions or deletions by the Owner, shall not exceed **\$2,000,000** (the "construction budget") inclusive of all cost associated with: (1) all Contractor and Subcontractor costs; (2) all General Conditions incurred by CMaR and all Contractors and Subcontractors; (3) all Construction Contingencies; and (4) CMaR's Fee; and

WHEREAS, CMaR understands that time is of the essence, and has agreed to undertake all efforts to expedite the performance of the Work set out below.

NOW, THEREFORE, Owner and CMaR, in consideration of the mutual promises, covenants, and agreements made in this Contract and of the terms and conditions contained in this Contract, agree as follows:

ARTICLE 1

THE PROJECT DESCRIPTION, REQUIREMENTS AND EXTENT OF AGREEMENT

1.1 CMaR has previously submitted its Proposal to the Owner, attached to and made a part of this Contract as Exhibit 1. In the event of a conflict between the terms of the Proposal and the terms of this Contract, the terms of this Contract shall control; provided, however, that this provision shall not be construed to relieve the CMaR from performing all Phase I services set forth in the Proposal. The CMaR accepts the relationship of trust and confidence established between it and the Owner by this Contract. It expressly covenants with the Owner to furnish its best skill and judgment and to cooperate with the Architect, and Architect's consultants on the Project in furthering the interests of the Owner. It agrees to furnish, in connection with the Project, all Phase I services; and in the event this Contract is supplemented as provided for below at the election of the Owner, CMaR also agrees to provide all Phase II services. CMaR shall promote furtherance of the Project in the best and soundest way and in the most expeditious and economical manner consistent with the interests of the Owner and the requirements of the Contract Documents.

1.2 CMaR agrees to work under the direction of the Owner with the Architect and other consultants from design through, to the extent Owner supplements this Contract, final completion of the Project, including the final two-year warranty inspection and resolution of all outstanding Project-related claims or disputes. The CMaR shall provide its expertise and services on all matters relating to design review; and following Contract supplementation, on all matters relating to Project construction.

1.3 Time is of the essence of this Contract. CMaR agrees to undertake all necessary efforts to expedite the performance of services required under this Contract, so that on-site construction of the Project can commence on schedule and be substantially complete on or before March 01, 2024, or any extension of the Contract Time granted by the Owner. In this regard, CMaR shall immediately commence design review, value engineering, scheduling, and budget-related services in connection with the Work and will continue these services until design documents are 100% complete and bids are received by CMaR. CMaR shall proceed with sufficient qualified personnel necessary to expedite and fully complete all services required under this Contract in the highest professional manner consistent with the requirements of the Contract Documents. CMaR's personnel assigned to the Project shall be subject to Owner's approval, and no change in key personnel set out in the Proposal shall be made unless approved by Owner. Owner's decisions in this regard shall not be the basis for any claim for additional compensation by CMaR.

1.4 This Contract shall be administered on behalf of the Owner by the City Manager or the City Manager designees. All Work under this Contract shall be reviewed and approved for the

Owner by the City Manager or designees. CMaR shall fully comply with any and all directives or instructions from the City Manager or designees.

1.5 A schedule of performance of services hereunder shall be mutually agreed upon between CMaR, Architect and Owner as described below. Failure of CMaR to maintain progress in accordance with the agreed schedule shall be grounds for declaring CMaR in default except when CMaR is delayed by events exclusively beyond CMaR's control.

1.6 CMaR understands that Owner intends to have the Project fully completed within the time and budget limits stated in this Contract. CMaR agrees to perform the Phase I Work under this Contract consistent with that intention. Further, it is understood and agreed by CMaR that the Project is intended to be designed and built under construction bid packages utilizing multiple and concurrent construction trade contractors/subcontractors. If Owner accepts the Guaranteed Maximum Price developed by CMaR, all trade construction contracts awarded on the Project shall be publicly advertised for bid and awarded by CMaR pursuant to Sections 2269.255 and 2269.256, Texas Government Code, as amended.

1.7 For each division of the Phase II Work, the Architect, under separate contract with the Owner, will produce, assemble, and deliver to CMaR (through Owner and at CMaR's cost and expense) Drawings and Specifications. CMaR shall review the Drawings and Specifications as received and shall advise Owner and Architect within a reasonable period of time as to their acceptability, suitability, constructability, need for value engineering or other revisions, and any areas in which the Drawings and Specifications increase the scope and cost of the Project or extend the completion dates.

ARTICLE 2

CONSTRUCTION MANAGER-AT-RISK'S SERVICES

2.1.1 CMaR's Work under this Contract shall consist of the Design Phase described below and, following execution of the supplemental agreement at Owner's election, the Construction Phase. The description of Work is necessarily general rather than specific and detailed and shall not be construed so as to exclude any services customarily provided by experienced and competent construction management organizations incident to construction projects of the nature and scope of this Project. The divisions and description of the Work under this Contract are intended only to add clarity and are not in contemplation of fixed events whereupon the character of CMaR's services will change from one type to another with respect to the Project, as it is anticipated that shortly after commencement of the Work under this Contract, CMaR will be simultaneously providing services identified in all divisions with regard to each portion of the Project.

2.1.2 CMaR understands and agrees that in the development and review of the design documents and the award of subsequent construction trade contracts, the General Conditions in all construction contracts to be awarded will be the City of Mesquite General Conditions for Building

Construction (the "General Conditions"), along with such special provisions modifying the General Conditions as are agreed to by Owner in writing prior to their inclusion in the final construction bidding documents. CMaR's services under this Contract and under any supplemental agreement subsequently entered into are subject to the applicable provisions of the General Conditions as modified by special provisions approved in writing by Owner. Owner reserves the right, without paying any additional compensation to CMaR, to reject any bid proposed for acceptance by CMaR that is not based upon or takes exception to any of the provisions of the General Conditions specified above. Terms used in this Contract that are defined in the General Conditions shall have the meanings as described in the General Conditions unless otherwise indicated in this Contract.

2.2 DESIGN PHASE (Phase I Services)

2.2.1 CMaR shall: (1) attend regularly scheduled meetings with Owner and the Architect during the development of the design and the Contract Documents and advise on site use, foundations and improvements, selection of materials, building systems and equipment; and (2) provide recommendations on construction efficiency and feasibility, availability of materials and labor, time requirements for installation and construction, and factors related to cost including costs of alternative designs, equipment or materials, preliminary budgets, and possible economies, without, however, assuming the responsibilities of the Architect.

2.2.2 CMaR shall develop and maintain the construction schedule (hereinafter called the "Schedule") as described in Paragraph 3.10 of the General Conditions. The Schedule shall be revised and updated to reflect actual Project status with each Application for Payment.

2.2.3 CMaR shall: (1) monitor the construction budget, which shall include all estimated CMaR compensation, including fees and reimbursable expenses; (2) prepare an estimate based on a quantity survey of the Project Drawings and Specifications for approval by the Owner as the final construction budget; (3) update and refine this estimate for Owner's approval as the development of the Project Drawings and Specifications proceeds; and (4) advise the Owner and Architect if it appears that the construction budget will be exceeded and make recommendations for alternate action.

2.2.4 CMaR shall review the Project Drawings and Specifications as they are being prepared, on the basis of value engineering, and recommend alternative solutions whenever design decisions, plans and details adversely affect construction efficiency and feasibility, budgeted costs or schedules.

2.2.5 CMaR shall recommend the purchase or lease and procurement of long-lead items to endeavor to assure delivery by the required dates.

2.2.6 CMaR shall recommend to the Architect divisions in the Work and in the Drawings and Specifications to facilitate the bidding and awarding of contracts, allowing for phased construction, taking into consideration such factors as time of performance, minimization of worksite interference, on-time material and equipment procurement, availability of labor, overlapping trade

jurisdictions, provision of temporary facilities, coordination and sequencing of the Project, minimization of overall Project costs, and availability of the Project site.

2.2.7 CMAr shall review the Project Drawings and Specifications with Owner and Architect to assure: (1) efficiency in the use of materials and methods of construction; and (2) coordination among the plan sheets and among the various bid packages. CMAr shall eliminate areas of conflict and overlapping in the phased construction packages to be performed by the various trade contractors/subcontractors. CMAr shall use and include Owner's minimum wage rates and requirements for equal employment opportunity and minority business enterprise programs in the prepared trade bid packages.

2.2.8 CMAr shall confirm, by written memorandum to Owner with qualifications where necessary, review and approval as to construction feasibility for bidding purposes of the Architect's final Drawings and Specifications for every division or bid package of the Project, prior to final approval by Owner and public advertising for bids. Such review and approval as to construction feasibility, however, shall not be deemed an assumption by CMAr of any of the Architect's responsibilities, including errors and omissions in design. The Owner's standard bid documents and forms, including the General Conditions, Instructions to Bidders, Bid Bond, Performance and Payment Bonds, Wage Rates, and other standard City bid forms applicable to this Project, shall control the legal relationship between the Owner, the CMAr and the trade contractors/subcontractors, insofar as the actual performance of the Work is concerned and the rights and duties of parties in connection with the Work. Provided, however, that where conflict exists between such documents and this Contract, the provisions of this Contract shall be controlling. CMAr shall assist in the production of each set of final bid documents for each phase of the Project by combining the Owner's standard bid documents and forms with the Architect's final approved Drawings and Specifications, with such Special Provisions as may be necessary and for which CMAr shall be responsible for developing. In the event this Contract is supplemented to provide for performance of Construction Phase Services (Phase II) by the CMAr, and the Owner so elects to assign the phased construction work to CMAr following award by the Owner, each resulting subcontract between the CMAr and the successful low bidder shall incorporate the corresponding set of final bid documents.

2.2.9 CMAr shall: (1) develop contractor interest in the Project as contract Drawings and Specifications are completed; and (2) subject to the approval of the Architect and Owner, establish the bid schedules and schedules for pre-bid conferences, including on-site visits to endeavor to assure that prospective bidders understand the various site conditions, availability, coordination, and scheduling requirements.

2.2.10 **Guaranteed Maximum Price.** Prior to completion of CMAr's Design Phase Services and submission of trade bid packages to bidding, CMAr shall develop and submit to Owner a Guaranteed Maximum Price ("GMP") which is within the approximate \$12.3 million project construction budget, after or during the preconstruction services, and prior to a 100% set of construction documents based on the Architect's finished Design Development Drawings, with a full list of construction and performance items, additive and deductive alternates, and including CMAr compensation for fees and reimbursable expenses, all within the Construction Budget.

2.2.11 **Advertising for Bids.** If the GMP is accepted by Owner through a duly authorized supplemental agreement as described below in Paragraph 2.3 of this Contract, CMAr shall publicly advertise the trade bid packages in accordance with the requirements of Sections 2269.255 and 2269.256 of the Texas Government Code, as amended. Bid packages shall be reviewed by CMAr and Owner in accordance with the requirements of the supplemental agreement entered into for Phase II services. If CMAr is retained in Phase II only for the purpose of limited consulting services as described in Paragraph 2.3 of this Contract, Owner shall advertise the trade bid packages in accordance with applicable law and CMAr shall have the responsibilities for limited consulting services as are prescribed in a duly authorized Phase II supplemental agreement.

2.3 BIDDING AND CONSTRUCTION PHASE

2.3.1 CMAr shall undertake Bidding and Construction Phase services (Phase II) only upon execution by Owner and CMAr of a supplemental agreement or agreements to this Contract, duly authorized by resolution of the Mesquite City Council, identifying all Phase II services and specifying a not-to-exceed amount as additional compensation to be paid CMAr.

2.3.2 The supplemental agreement may specify, at Owner's election, that CMAr shall provide only limited consulting services during the Construction Phase, with the Owner publicly advertising for bids and contracting directly with each bidder. The CMAr will then act in an expanded capacity of providing continuing construction management services, including scheduling, coordination, supervision, inspection, and administration of the Work. Owner shall look to CMAr in a fiduciary capacity to assist Owner in the completion of the Project.

Alternatively, the supplemental agreement may provide for full construction manager-at-risk services under which CMAr shall enter into each construction contract, subject to the consent of the Owner, with responsibilities and pursuant to such procedures as have been utilized on other City projects involving a GMP arrangement. CMAr will thereafter act in a dual capacity of providing continuing construction management and construction services, the successful bidders in each instance constituting Subcontractors in privity only with the CMAr. Owner shall look solely to CMAr as a general contractor for the completion of the Project, the full responsibility for the construction of which CMAr shall accept. In this regard, CMAr acknowledges receipt of a copy of the City's standard form supplemental agreement for full construction manager-at-risk services, and agrees to enter into a substantially similar agreement with the Owner for Phase II services on this Project should the Owner elect to proceed in such manner at Owner's sole discretion. In such event, the supplemental agreement shall stipulate a GMP for all costs of the Work necessary to complete the Project, including all CMAr compensation for general conditions, fees and reimbursable expenses, as developed under Paragraph 2.2.10 above. The Project may be upgraded at Owner's election during construction by approving "add alternates" on a selective basis depending upon availability of funding and the magnitude of bids received.

2.3.3 CMAr shall furnish all copies of Drawings and Specifications necessary for the execution of the Project on a reimbursable basis, from reproducible originals furnished by the Architect.

ARTICLE 3

OWNER'S RESPONSIBILITIES

3.1 The Owner shall provide information regarding its requirements for the Project, consistent with the Contract Documents and within the Scope of the Work.

3.2 The Owner shall designate a representative who shall be fully acquainted with the Scope of the Work and has authority to approve the Construction Budget, render decisions promptly and furnish information expeditiously; the City Manager or designee is designated by the Owner for this purpose subject to the provisions of Paragraph 1.4 of this Contract.

ARTICLE 4

FIXED LIMIT CITY BUDGET - TOTAL PROJECT COST

4.1 The fixed limit of the construction budget for this Project is **\$2,000,000** for all costs associated with construction of the Project. THESE AMOUNTS ARE ESTABLISHED AS A CONDITION OF THIS CONTRACT AND SHALL PROVIDE THE BASIS FOR CMAR'S DECISIONS AND RECOMMENDATIONS. CMaR, in consultation with Owner and in cooperation with the Architect, shall determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents and recommend adjustments in the scope of the Project to assure that the construction budget is not exceeded.

4.2 With Owner's approval, CMaR may include alternate bids within the Contract Documents to adjust construction costs in order to assure that the construction budget is not exceeded.

ARTICLE 5

OWNERSHIP OF DOCUMENTS AND CMAR STATUS

5.1 All of the CMaR's documentary work product under this Contract shall be the property of the Owner; and upon completion of this Contract, such documentary work product shall be promptly delivered to Owner in a reasonably organized form without restriction on its future use. Any necessary work product lost or destroyed by the CMaR shall be replaced or reproduced at the CMaR's sole cost. In addition, Owner shall have access, during the term of this Contract and for three (3) years after Contract termination, to all of CMaR's records and documents in connection with this Contract for purposes of auditing same at the sole cost of the Owner. Nothing in this Paragraph 5.1 shall be construed to deny CMaR the right to retain duplicates. Refusal by CMaR to comply with the provisions of this Paragraph 5.1 shall entitle Owner to withhold further payments to CMaR until compliance is obtained.

5.2 CMaR shall not be considered an employee of the Owner, but shall occupy the status of an independent contractor of the Owner. CMaR shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Work flow and determining how the Work is to be performed. No term or provision of this Contract or act of CMaR in the performance of this Contract shall be construed as making CMaR the agent, servant or employee of the Owner, or making CMaR or any of CMaR's

employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the Owner provides its officers or employees. CMaR shall perform its tasks and duties consistent with such status, and will make no claim or demand for any right or privilege applicable to an officer or employee of the Owner, including, but not limited to, worker's compensation, disability benefits, accident or health insurance, unemployment insurance, social security or retirement membership.

ARTICLE 6

CONSTRUCTION MANAGER-AT-RISK'S COMPENSATION FOR PHASE I CONSTRUCTION MANAGEMENT SERVICES

6.1 In consideration of the performance of Construction Management services under this Contract, Owner agrees to pay the CMaR compensation calculated in accordance with CMaR's proposal, attached to and made a part of this Contract as **Exhibit 1**, subject to Paragraph 6.5 below.

6.2 CMaR shall furnish to Owner a periodic statement of the Work performed, in a form satisfactory to Owner, with backup substantiation. Payment shall be made following review and approval of CMaR's periodic statement by Owner. No interest shall be due CMaR for any delay in payment caused by any claim or dispute by or between Owner and CMaR.

6.3 Final Payment shall be paid by Owner to the CMaR within thirty (30) days after Final Completion of all Work under this Contract and Final Acceptance of same by Owner.

6.4 CMaR will perform Additional Services, over and above the Scope of the Work, upon written instruction of Owner, should Owner determine same to be necessary. CMaR shall be compensated for such Additional Services following acceptance by Owner. CMaR shall undertake no Additional Services except pursuant to written supplemental agreement, setting out the scope and compensation for same, and Owner shall not be liable in any event for any such Additional Services except as undertaken in accordance with this Paragraph 6.4.

6.5 **Total compensation for all Phase I services under this Contract shall not exceed \$_____**, following receipt of invoices and approval of same by Owner. Owner shall not be liable for any payments in excess of the aforementioned amount, unless this Contract is amended by written supplemental agreement, executed by the parties and fully authorized under the Charter and ordinances of the City of Mesquite. Any provision of the proposal in conflict with this Paragraph 6.5 is hereby withdrawn.

6.6 Owner may, at its option, offset any amounts due and payable under this Contract against any debt (including taxes) lawfully due to Owner from CMaR, regardless of whether the amount due arises pursuant to the terms of this Contract or otherwise and regardless of whether or not the debt due to Owner has been reduced to judgment by a court.

ARTICLE 7

INSURANCE

7.1 CMAr shall purchase, pay for, and maintain throughout the term of this Contract at least the minimum insurance as identified and required in Exhibit 2, attached to and made a part of this Contract. Certificates evidencing such coverages and limits to be in force shall be provided to the Owner. Insurance costs and deductibles shall be the responsibility of CMAr. In the event Owner utilizes CMAr for Phase II services, the required minimum insurance coverages and limits may be adjusted pursuant to the requirements of the supplemental agreement.

ARTICLE 8

OWNER'S RIGHT TO TERMINATE; REMEDIES, DELAYS, AND CMAr'S RIGHT TO SUSPEND WORK

8.1 The City Manager or designee may terminate this Contract, in whole or in part, for cause or for the convenience of the Owner. In such event, notice of termination, for all or any portion of the Work, shall be delivered to CMAr, who shall then be reimbursed by the City Manager or designee in accordance with the terms and provisions of this Contract, for all Work satisfactorily completed, but not to exceed actual costs incurred in connection with the Work to the date of termination. No amount shall be due for lost or anticipated profits. All Work-related documents and records shall become the property of Owner, and shall be promptly delivered to Owner in a reasonably organized form without restriction on future use. Should Owner subsequently contract with a new construction manager for continuation of services on the Project, which right Owner specifically retains, CMAr shall cooperate in providing information.

8.2 Nothing contained in Article 6 or Paragraph 8.1 above shall require Owner to pay for services which are unsatisfactory as determined by the Owner, or services not in compliance with the provisions of this Contract. The City Manager or designee may withhold payments to CMAr when CMAr is in default under this Contract, without waiving any other remedy or right available at law or in equity, including the right to bring legal action for damages or to force specific performance of this Contract.

8.3 CMAr understands that time is of the essence. CMAr shall be fully responsible for delays in performance or for failure to use best efforts to accomplish the purposes of this Contract. However, neither Owner nor CMAr shall be deemed in violation of this Contract for delays in performance solely caused by circumstances beyond their respective control. In such event, notice of a delay due to reasons solely beyond the control of a party must be timely given and reasonable efforts undertaken to mitigate effects.

8.4 Except on an emergency basis, or for the protection of the Project or personnel at the Project site, or where CMAr observes construction being undertaken contrary to the Drawings or Specifications, CMAr shall not suspend the Work without Owner's permission.

ARTICLE 9

ASSIGNMENT, GOVERNING LAW, VENUE AND NOTICES

9.1 This Contract shall be binding on the parties, their successors, assigns and representatives. CMaR shall not sell, assign, transfer or convey this Contract, in whole or in part, to any person or entity without the prior written consent of CityManager. As an express condition of consent to any assignment, CMaR shall remain liable under this Contract for all obligations of CMaR and for the completion of the Work in accordance with the terms and conditions of this Contract in the event of default by the successor contractor or assignee.

9.2 This Contract shall be governed by and construed solely in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

9.3 The obligations of the parties to this Contract shall be performable in Dallas County, Texas, and if legal action is necessary in connection with or to enforce rights under this Contract, exclusive venue shall lie in Dallas County, Texas.

9.4 Except as otherwise specifically provided in this Contract, any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this Paragraph. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If intended for City, to:

City of Mesquite
Cliff Keheley, City Manager
1515 North Galloway Avenue
Mesquite, Texas 75149

If intended for CMaR, to:

ARTICLE 10

COMPLIANCE WITH LAWS, NON-DISCRIMINATION AND FEDERAL FUNDS

10.1 This Contract is entered into subject to and controlled by the Charter and ordinances of the City of Mesquite and all applicable laws, rules, and regulations of the State of Texas and the Government of the United States of America. CMaR shall, during the course of performance of this Contract, comply with all applicable City codes and ordinances, as amended, and all applicable State and Federal laws, rules and regulations, as amended.

10.2 As a condition of this Contract, CMaR hereby covenants that it will take all necessary action to ensure that, in connection with any work under this Contract, it and its subcontractors

will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or physical handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. In this regard, CMaR shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City upon request for purposes of evaluating compliance with this and other provisions of the Contract.

10.3 In the event Owner receives from any Federal agency funds to be utilized in construction of the Project, Owner shall notify CMaR of any terms, requirements, conditions or restrictions attached to the use of the funds. Thereafter, CMaR shall assist Owner in notifying all affected bidders/contractors/subcontractors, and will include, to the extent necessary, all Federal requirements as a part of each and every trade contractor bid package on the federally-funded portion of the Project. CMaR shall also comply with any applicable requirements and assist Owner with assembling the documents necessary to evidence compliance by each affected bidder/contractor/subcontractor.

ARTICLE 11

RESPONSIBILITY FOR WORK; INDEMNIFICATION

11.1 Approval by Owner shall not constitute nor be deemed a release of the responsibility and liability of CMaR, its employees, subcontractors, agents, or consultants, for the accuracy and competency of their services; nor shall such approval be deemed to be an assumption of responsibility by Owner for any defect, error, or omission in the Work prepared or performed by CMaR, its employees, subcontractors, agents, or consultants.

11.2 CMAR AGREES TO DEFEND, INDEMNIFY AND HOLD OWNER, ITS OFFICERS, AGENTS, INSURANCE, RISK POOLS, AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CMAR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF CMAR, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS CONTRACT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE OWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF BOTH CMAR AND THE OWNER, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW

AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

ARTICLE 12

CONSTRUCTION WORK BY THE CMAr AND CMAr'S ACCOUNTING RECORDS

12.1 In the event CMAr performs a portion of the Work with its own forces pursuant to Section 2269.255, Texas Government Code, as amended, CMAr shall also continue to provide all construction management services to the extent provided under this Contract with respect to that portion of the Work. Further, Work performed by CMAr shall be completed to the full satisfaction of Owner; any disputes that may arise between CMAr and Owner in connection with the Work performed by CMAr shall be determined by Owner, whose decision shall be final and binding.

12.2 Records of direct salary costs, direct personnel expenses, and reimbursable expenses of CMAr and Subcontractors pertaining to the Project, and records of accounts between Owner and CMAr shall be kept by CMAr on a generally recognized accounting basis and shall be available to Owner or its authorized representatives at mutually convenient times. In the event CMAr performs a portion of the Work, all cost and other records relating to that portion of the Work shall be kept by CMAr separately from CMAr's records relating to its construction management services, in order to facilitate review or auditing by the Owner at its election.

ARTICLE 13

TERM

13.1 Unless sooner terminated in accordance with the applicable provisions of this Contract, or extended by supplemental agreement approved by Owner, the term of this Contract shall be from the date of its execution until final completion of Phase I of the Project and all services in connection with Phase I.

ARTICLE 14

FINANCIAL INTEREST PROHIBITED; CONFIDENTIALITY

14.1 CMAr covenants and represents that CMAr, its officers, employees, agents, consultants, and subcontractors will have no financial interest, direct or indirect, in product, materials or equipment that will be specified for the construction of the Project.

14.2. CMAr understands and agrees that the Charter of the City of Mesquite provides that no officer or employee of the City shall have any financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services, except on behalf of the City as an officer or employee. Any violation of this prohibition shall constitute malfeasance in office, and any officer or employee guilty of a violation of the above-mentioned Charter provision shall thereby forfeit his office or

position with the City. Any violation of this prohibition with knowledge, express or implied, of the person or corporation contracting with the City shall render the contract involved voidable by the City CMAr or the City Council.

14.3. CMAr's reports, evaluations, data, and all other documentation developed by CMAr under this Contract shall be kept confidential, and shall not be disclosed to any third parties without the prior written consent and approval of the Owner.

ARTICLE 15

RIGHT OF REVIEW AND AUDIT

15.1 Owner may review any and all of the services performed by CMAr under this Contract. Owner is granted the right to audit, at Owner's election, all of CMAr's records and billings relating to the performance of this Contract. CMAr agrees to retain such records for a minimum of three (3) years following completion of this Contract. Any payment, settlement, satisfaction, or release made or provided during the course of performance of this Contract shall be subject to City's rights as may be disclosed by an audit under this Article.

EXECUTED this the ___ day of _____, 2022, by Owner, signing by and through its City Manager, duly authorized to execute same by the City Council on _____, 2022, and by CMAr, acting through its duly authorized officials.

**CITY OF MESQUITE
(OWNER)**

(CONSTRUCTION MANAGER-AT-RISK)

BY _____
Cliff Keheley
City Manager

BY _____

PRINTED
NAME: _____

TITLE: _____

ATTEST:

ATTEST:

BY _____
Sonja Land
City Secretary

BY _____
Corporate Secretary

APPROVED AS TO FORM:

BY _____
Sr. Assistant City Attorney

Exhibit 1

CMaR's Proposal

Exhibit 2

Insurance Requirements