

This Construction Manager at Risk (CMAR) Pre-Construction Services Agreement, (hereby after the Agreement or Contract), made and entered into in multiple counterparts, effective on the last date executed by a party hereto, by and between:

ST. CHARLES PARISH

(“SCP”)

and

WOODWARD DESIGN + BUILD, LLC

(“CMAR”)

(each a “Party” or collectively the “Parties”) for Pre-Construction Services in connection with the following Project:

**Project name: Hahnville Branch Library
Construction Project
 (“Project”)**

the Construction Documents for which have been or will be prepared by Grace Hebert Curtis Architects LLC. (“Design Professional” or “DP”).

In consideration for the mutual covenants and obligations contained herein, SCP and CMAR agree as set forth herein.

Article 1 Scope of Work

- 1.1** CMAR shall perform all needed services in the Pre-Construction Services Phase of the Project, and provide all materials, equipment, tools, and labor necessary to satisfactorily complete all work, deliverables and services described in and reasonably inferable from the Contract Documents (collectively “Scope of Work”, “Project Work” or “the Work”). The Parties agree that this Agreement shall not be effective as a contract for Construction Phase services until such time as the Parties execute a Construction Services Agreement if they agree upon a Guaranteed Maximum Price (GMP), Contract Time, and Construction Phase Fee. Execution of this Pre-Construction Services Agreement is in no way an indication or commitment that the Construction Services contract will be executed with CMAR or any third party and does not imply any obligation on the part of SCP to do so. Any reference to Construction-Phase Services in this Agreement is for informational purposes and is not indicative that CMAR will be awarded the Construction Services Agreement. Any reliance by CMAR on this Pre-Construction Services Agreement is indicative that a Construction Services contract will be executed at CMAR’s own risk. SCP will not be liable for such reliance or for any costs associated therewith.
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- 1.2 Sub-phasing of Construction Phase.** During the Pre-Construction Services Phase, CMAR shall provide recommendations regarding accelerated or fast-track scheduling, procurement, or phased construction. CMAR shall consider cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues. If SCP elects to construct the Project in phases, SCP will give written notice to CMAR, requesting a phased GMP. The GMP for the phased Scope of Work will be incorporated into the Agreement according to Section 2.1.10 of the “Exhibit A – CMAR General Conditions”.
- 1.3** CMAR shall provide services for the Pre-Construction Services Phase in accordance with this Agreement and “Exhibit A – CMAR General Conditions”.

During the Pre-Construction Services Phase, CMAR shall prepare itemized cost estimates in accordance with Section 2.1.9 of “Exhibit A – CMAR General Conditions” and provide a GMP, using the format set forth in “Exhibit C – Cost of the Work – Schedule of Values” (template), which excludes the Pre-Construction Services Phase Fee, for SCP’s review and approval for all the Work required to complete the Project.

If the GMP proposed by CMAR is acceptable to SCP, the Parties shall execute a separate Construction Services Agreement, in the form of a Construction Contract and Construction Contract General Conditions, to establish the GMP and Construction Phase Fee, and to incorporate into the Agreement the Construction Documents.

If the GMP proposed by CMAR is not acceptable to SCP, SCP may terminate the Agreement or act as otherwise provided for in the “Exhibit A – CMAR General Conditions.”

Article 2 Contract Documents

- 2.1** The “Contract Documents” are comprised of the following. In the event of a conflict in the Contract Documents, the Contract Documents will be applied in the following order of precedence:
- 2.1.1** This Agreement without Exhibits and any amendments or change orders thereto.
- 2.1.2** Exhibit A– CMAR General Conditions
- 2.1.3** Exhibit B – Project Program
- 2.1.4** Exhibits C.1, C.2, & C.3 – Affidavits
- 2.1.5** The following other documents, if any, forming part of the Agreement:
- Unit Price Schedules
 - CMAR’s Allowances
 - All applicable permits
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- 2.1.6** Any other items stipulated by the Parties as included in the Contract Documents, including supplements and addenda to the documents identified herein.

Article 3 Interpretation and Intent

- 3.1** The Contract Documents are complementary and must be interpreted in harmony to avoid conflict or ambiguity, with words and phrases interpreted consistent with construction and design industry standards.
- 3.2** Terms, words, and phrases used in the Contract Documents shall have the meanings as defined in the “Exhibit A – CMAR General Conditions” or this Agreement, and if not specifically defined, their ordinary and common meaning.
- 3.3** The Contract Documents form the entire Agreement between SCP and CMAR and by incorporation herein are as fully binding on the Parties as if set forth herein. No oral representations or other agreements have been made by the Parties except as specifically stated in the Contract Documents.

Article 4 Ownership of Documents

- 4.1** SCP, through its separate agreement with the Design Professional, has and shall continue to have ownership of all drawings, specifications, and other documents and electronic data furnished by Design Professional.
- 4.2** SCP shall also have ownership of documents or electronic data like those described in Article 4.1 above created by or in the possession of CMAR as well as any estimates, schedules, value engineering submissions, or other work product or deliverable furnished by CMAR to SCP.

Article 5 Contract Time

- 5.1** SCP and CMAR mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents. CMAR understands that the time(s) for completion(s) set forth in these documents are essential to SCP and a material consideration for this Agreement.
- 5.2** For the Pre-Construction Services Phase, the Work and Contract Time shall commence within ten (10) days of execution of this Agreement, unless the Parties mutually agree otherwise in writing. For the Construction Phase Services, if that contract is awarded to CMAR, the Work shall commence onsite within ten (10) days of the date set in SCP’s Notice-to-Proceed (NTP) to CMAR unless the Parties mutually agree otherwise in writing. Contract Time shall start on the date as set in the NTP.

5.3 Substantial Completion

- 5.3.1** Substantial Completion of the Work shall be achieved as mutually agreed upon.
- 5.3.2** Interim milestones and/or Substantial Completion of identified portions or phases of the
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Work shall be achieved as described in Section 7.8 of Exhibit A – CMAR General Conditions once agreed upon by SCP, CMAR and DP, subject to adjustments in accordance with the Contract Documents.

54 Final Completion

5.4.1 Final Completion of the Work shall be achieved within an agreed upon number of calendar days after the date established for Substantial Completion of the Work, unless otherwise mutually agreed by amendment or change order.

5.4.2 Interim milestones and/or Final Completion of identified portions or phases of the Work shall be achieved as described in Section 7.9 of Exhibit A – CMAR General Conditions, subject to adjustments in accordance with the Contract Documents.

Ascertained and Liquidated Damages. CMAR understands and acknowledges that if Substantial Completion is not achieved by the Substantial Completion Date provided in Article 5.3.1, and Article 5.3.2 above or as later established for identified portions or phases of the Work, SCP will suffer damages, which are difficult to accurately quantify and ascertain. CMAR agrees that, without the necessity or formality of putting CMAR in default therefore, if Substantial Completion for each portion or phase of the Work is not timely achieved, CMAR shall pay SCP One Thousand dollars (\$1,000.00) per day as ascertained and liquidated damages, and not as a penalty, for each calendar day that Substantial Completion for each portion or phase extends beyond the Substantial Completion Date(s). In addition, if Final Completion is not attained within the period defined by Article 5.4 above, CMAR shall pay SCP One Thousand dollars (\$1,000.00) per day as additional ascertained and liquidated damages, and not as a penalty, for each calendar day that Final Completion extends beyond the required date. The liquidated damages provided for herein shall be in lieu of all liability for all extra costs, losses, expenses, claims, penalties, and any other damages, whether special or consequential, and of whatsoever nature incurred by SCP which are occasioned by any delay in CMAR achieving Substantial Completion or Final Completion on or after the established dates.

Notwithstanding anything stated herein, the above-stated ascertained and liquidated damages shall in no way limit SCP's other rights (e.g., "recovery measures" or termination) or limit SCP's entitlement to damages for any breach other than for delay for which CMAR may be responsible pursuant to the terms of this Agreement or applicable law. If for any reason ascertained and liquidated damages as set forth in this section are unenforceable, SCP shall be entitled to recover its actual damages sustained because of any delay in the completion of this Project.

Article 6 Pre-Construction Services Phase Fee and Guaranteed Maximum Price

61 SCP shall pay CMAR a Pre-Construction Services Phase Fee for the Pre-Construction Services and, if the Agreement is amended to include Construction Phase Services, a Construction Phase Fee for Construction Phase Services as provided in the Contract Documents. CMAR's Construction Phase Fee, plus the Cost of the Work, Contingencies and Allowances, each as defined in "Exhibit A – CMAR General Conditions", will comprise the GMP to be established in compliance with "Exhibit A – CMAR General Conditions". Unless otherwise agreed to,

CMAR's GMP is deemed to include all required taxes (including sales and use taxes), as well as all applicable bond and insurance costs.

61.1 The Pre-Construction Services Phase Fee, as defined in Section 1.2 of the "Exhibit A – CMAR General Conditions", shall be a not to exceed amount of fifty thousand dollars (\$50,000.00).

61.2 Section 1.2.29 of Exhibit A – CMAR General Conditions describes "Pre-Construction Services" to also include services listed in the Project Program. These services may include, but are not limited to:

- Clearing and demolition
- Additional topographic, or subsurface utility surveys or field investigations (potholing) prior to construction
- Utility abandonment and/or relocation

61.3 Additional services not previously listed in the Project Program may include purchasing of long lead time items such as HVAC systems, structural steel, and other items that would normally delay the initiation of a construction project because of material procurement.

61.4 The fee for said potential additional services as listed in 6.1.2 and 6.1.3 above, shall be limited to a not to exceed fee of One Million Five Hundred Thousand Dollars \$1,500,000.00, issued via Task Order on an as needed basis, upon mutual agreement between SCP, DP and CMAR of scope and fee for each individual task.

61.5 The Construction Phase Fee, as defined in Section 1.2 of the "Exhibit A – CMAR General Conditions", shall be a fixed fee.

62 If the GMP requires an adjustment due to changes in the Scope of Work during the Construction Phase, the cost of such changes shall be determined in accordance with Section 10 of the "Exhibit A – CMAR General Conditions".

63 For SCP-caused construction delays, either agreed to or awarded, CMAR will provide all the necessary extended Construction General Conditions for a daily sum as provided for in Sections 9.7 and 10.4 of the "Exhibit A – CMAR General Conditions". The specific amount of extended Construction General Conditions will be determined by the SCP on a case-by-case basis prior to issuance of a change order and must be determined to be fair and reasonable to the satisfaction of SCP and the Construction Management Professional.

Article 7 Procedure for Payment

7.1 Progress Payments. CMAR shall submit to SCP a monthly CMAR's Application for Payment.

7.1.1 For Pre-Construction Services, CMAR shall submit to SCP a monthly CMAR's Application for Payment based on the flat, hourly billing rates for the Pre-

Construction Services Phase as set forth in this Agreement. The total of all CMAR's approved applications for payment for Pre-Construction Services Phase services shall constitute an Allowance to be included in the GMP per Section 7.10 of "Exhibit A – CMAR General Conditions", payable upon execution of the contract amendment for Construction. In the event the Agreement is terminated, the total of all CMAR's approved applications for payment for Pre-Construction Services Phase services shall be immediately payable as provided for in the "Exhibit A – CMAR General Conditions" Section 12.

There will be no other costs or multipliers added to the all-inclusive, flat rates. No overtime shall be charged unless specifically authorized by SCP, and the overtime rate shall be no more than 1.5 times the hourly rate. Subconsultants' and Subcontractors' costs shall be considered direct costs and compensation for services by them shall be based on original invoices submitted by them to CMAR with no additional markup by the Subconsultant and Subcontractor firm(s) nor CMAR.

7.12 During the Pre-Construction Services Phase, CMAR may be required to perform Physical Work at the project site. The cost to SCP for Physical Work shall be negotiated and agreed upon between SCP and CMAR prior to performance in accordance with Section 10.4.1(b) or 10.4.1(c) of "Exhibit A – CMAR General Conditions". Physical Work shall only be authorized for payment upon completion or as approved by SCP. The amount to be paid for Physical Work during the Pre-Construction Services Phase is described above in Sections 6.1.2 through 6.1.4. This amount is not included in the Pre-Construction Services Phase Fee provided for in Section 6.1.1.

7.13 Payment for CMAR's Construction Services shall be made in accordance with Section 7 of the "Exhibit A – CMAR General Conditions". All costs that exceed the GMP and are not authorized by change order shall be paid by CMAR and not SCP.

Article 8 Termination for Convenience

8.1 This Agreement may be terminated for the convenience of SCP as provided for in Section 12.1 of the "Exhibit A – CMAR General Conditions".

Article 9 Representatives of the Parties; Authority

9.1 St. Charles Parish's Representatives.

9.1.1 SCP designates **Leann Benedict, MLIS, Director, St. Charles Parish Library**
(name, title)

as "St. Charles Parish's Senior Representative", who has the authority and responsibility set forth in the Contract Documents, including the authority and responsibility for avoiding and resolving disputes under Section 11 of the "Exhibit A – CMAR General Conditions".

912 SCP designates **Andre R. Ford, P.E., Senior Parish Engineer**

(name, title)

as “St. Charles Parish’s Representative(s)”, who has the authority and responsibility set forth in the Contract Documents.

92 CMAR’s Representatives.

921 CMAR designates **Ken Flower, President, Woodward Design + Build, LLC**

(name, title, company name)

as “CMAR’s Senior Representative”, who has the authority and responsibility set forth in the Contract Documents, including the authority and responsibility for avoiding and resolving disputes under Section 11 of the “Exhibit A – CMAR General Conditions”.

922 CMAR designates **Tom Abernathy, Project Executive, Woodward Design + Build, LLC**

(name, title, company name)

as the “CMAR Representative,” who has the authority and responsibility set forth in the Contract Documents.

923 CMAR designates **John Eichensehr, Superintendent, Woodward Design + Build, LLC**

(name, title, company name)

as the “Superintendent”, who has the authority and responsibility set forth in the Contract Documents.

924 **CMAR’s Representatives and Superintendent**, as approved by SCP, shall not be replaced without SCP’s prior written approval.

925 **CMAR** warrants and shall ensure that only individuals who are authorized to legally bind **CMAR** will sign documents associated with this Agreement.

Article 10 Bonds and Insurance

10.1 Prior to, and as a condition for CMAR to perform Pre-Construction Services Phase Services, CMAR shall procure, deliver, and maintain insurance coverage as provided in Section 6 of the “Exhibit A – CMAR General Conditions.” Prior to, and as a condition for CMAR to perform Construction Phase Services and SCP’s issuance of a Notice-To-Proceed, CMAR shall procure, deliver, and maintain Performance and Payment Bonds and insurance coverage, as provided in Section 6 of the “Exhibit A – CMAR General Conditions.”

CMAR:
Woodward Design + Build, LLC
By Its Authorized Representative

(Signature)

(Title)

(Date)

St. Charles Parish:

(Signature)

(Title)

(Date)