

**City of Flagler Beach
Flagler County, Florida**

**RFQ
CONSTRUCTION MANAGER ADVISER**

For The

**FLAGLER BEACH FISHING PIER
215 SOUTH OCEAN SHORE BOULEVARD
CITY PROJECT NO: 260**



DECEMBER 2024

**The City of Flagler Beach
105 South 2d Avenue
Flagler Beach, FL 32136**

CITY OF FLAGLER BEACH



ADVERTISEMENT FOR RFQ NO. FB-242911

CONSTRUCTION MANAGER ADVISER

FOR THE CONSTRUCTION OF
FLAGLER BEACH FISHING PIER REPLACEMENT
City Project No. 260

NOTICE IS HEREBY GIVEN THAT THE CITY OF FLAGLER BEACH IS ISSUING THIS INVITATION TO SOLICIT A REQUEST FOR QUALIFICATIONS (RFQ) FROM LICENSED AND INSURED CONSTRUCTION MANAGERS FOR THE CONSTRUCTION OF CITY OF FLAGLER BEACH PIER REMOVAL AND REPLACEMENT 2024 - 2026 PROJECT ACCORDING TO THE SCOPE OF WORK OF THE PLANS AND SPECIFICATIONS. RFQs WILL BE RECEIVED FOR A SINGLE, LUMP SUM CONTRACT AS INDICATED IN THIS SOLICITATION.

IT IS THE INTENT AND PURPOSE OF THE CITY OF FLAGLER BEACH THAT THIS RFQ PROMOTES COMPETITIVE SELECTION. IT IS THE BIDDER'S RESPONSIBILITY TO ADVISE THE FINANCE DIRECTOR IF ANY LANGUAGE, REQUIREMENTS, ETC., OR ANY COMBINATION THEREOF, INADVERTENTLY RESTRICTS OR LIMITS THE REQUIREMENTS STATED IN THIS ITB

All applicants must be properly licensed in the State of Florida and include proof of insurance, licenses, and certificates as required by all local, State of Florida, and Federal agencies.

Interested CMAs may secure the, construction documents, specifications and other pertinent information by visiting the city website bid page: <http://www.cityofflaglerbeach.com/Bids.aspx> or the website www.demandstar.com. These documents may also be obtained by contacting the City Clerk, Penny Overstreet at 386-517-2000 ext. 233 or poverstreet@cityofflaglerbeach.com

Sealed RFQ packages must be addressed to the attention of **Penny Overstreet, City Clerk**. They must be received on or before **2:00 PM, Wednesday January 15, 2025**.

No submissions will be accepted after this deadline.

All questions regarding this RFQ must be directed to the City Clerk's office For further information, contact: Penny Overstreet, City Clerk. Preferred method of contact email: poverstreet@cityofflaglerbeach.com Phone Contact: (386) 517-2000, ext. 233.

Sealed RFQ packages must have the project title and Project Number on outside of package. The City of Flagler Beach reserves the right to reject any and all RFQ packages and to waive any informality in them, as may be in the best interest of the City.

MAILING ADDRESS:
105 S. 2nd Street
Flagler Beach, FL 32136

WALK-IN DELIVERY ADDRESS:
105 S 2nd Street
Flagler Beach, FL 32136

Date of Distribution: **FRIDAY NOVEMBER 29, 2023**
RFQs DUE BY: **WEDNESDAY, JANUARY 15, 2025 by 2:00 PM EST**
Interviews (if necessary): **Late January 2025**

END

ADVERTISEMENT FOR RFQs

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RFQ – Construction Manager Adviser Flagler Fishing Pier

TOC

1. REQUEST FOR QUALIFICATIONS

The City of Flagler Beach (City) is seeking responses from Florida-licensed Construction Manager Advisers (CMAs) in good standing, to provide their qualifications to perform certain construction manager services (“CM Services”) in accordance with Florida Statutes Section 255.103, *et. seq.*, as determined by the City.

The City intends to construct the project using the General Contractor delivery process, but reserves the right to execute the project using a Construction Manager Agent (CMA) approach as well. Responses should address the proposer’s specific qualifications for the project described below.

The City’s “Qualification Based Selection” (QBS) is to comply with Florida statutes and the City procurement regulations. This procedure provides for an orderly process of:

- Solicitation of professional qualifications;
- Evaluation and ranking of qualifications;
- Establishment of a ranked list of service providers; and
- Negotiation of scope of services and fees.

2. PROJECT DESCRIPTION

Flagler Beach Fishing Pier is located at 215 South Ocean Shore Boulevard in Flagler Beach, Florida. The project consists of the reconstruction of the historic Flagler Beach Fishing Pier that was initially built in 1928. The pier has suffered significant damage due to several storms and hurricanes and was deemed inoperable in 2022.

To maintain the historical significance of the pier, the western-most 113 ft of the pier will be kept and rehabilitated where necessary. The new portion of the pier will be 715’-8” long, totaling an 828’-10” long pier. To improve resiliency for future storm events the deck elevation will be increased from 17.8 feet NAVD88 to 28 feet NAVD88.

The old pier structure is constructed entirely of timber. Deficiencies to the western-most portion were identified in an inspection performed by M&N in November of 2022 and repairs are identified on the contract drawings. The new portion of the pier will be constructed of concrete with timber decking.

Similar to the old pier, the new pier will also have a T-head at the eastern-most end. The T-shape will be 32’ wide by 20’ long. The new pier will be 25 feet wide, while the old pier was 20 feet wide. The new pier structure will consist of 24” square prestressed concrete piles, concrete pile caps and beams with timber decking.

Utilities will include convenience power, low voltage A/V devices, lighting, potable water, and fire water. Refer to the electrical and mechanical sections for additional detail.

Additional architectural components will include:

- Lighting
- Binocular Platform
- Fish cleaning stations
- Shade canopies
- Bench with end table

3. PROJECT CONTACTS

Mr. Bill Freeman: City Engineer
bfreeman@cityofflaglerbeach.com
386-517-2000 ext. 230

Dr. Lee Richards: Engineering Coordinator
lrichards@cityofflaglerbeach.com
386-517-2000 ext. 249

Ms. Christine Novak: Project Manager
cnovak@cityofflaglerbeach.com
386-517-2000 ext. 242

Mr. Brian Shaw: Engineer of Record (EOR)
Moffatt & Nichol

4. REQUIRED SERVICES (SCOPE OF WORK)

The design portion of this project is 100% – completed by the EOR firm of Moffatt & Nichol. The CMA’s services will only be required for the construction phase of the construction.

Throughout the project, the CM shall provide the City with professional construction management adviser services and represent the City’s interests in completing the project on time, within budget, and as planned with a minimum of difficulties. It is anticipated that AIA Document A133-2009 will form the basis of the agreement for the CMA Services to be entered into for the project; provided however, the City reserves the right to change, modify or amend the Form Contract in formulating the final contract to be entered into by the City.

CMA services shall include, but are not limited to construction services as CMA through project completion. For purposes of this RFQ, proposers should describe their qualifications to provide CMA Services as those services are generally described in the Form Contract (see Attachment N).

5. RESPONSE, FORMAT, CONTENT, AND EVALUATION CRITERIA

Responses must include the following information in this sequence. Respondents are invited to include innovative methods and/or procedures, which they can provide to assist in ensuring

successful completion of the project. Unique qualities and/or capabilities and cost efficiencies may be identified. For each of the specific areas listed below, your responses should include a description of responders' qualification to service as a CMA.

Written Requirements for Responses to Request for Qualifications	Possible Points For Each Section of Proposal
1. Cover Letter (limit to one page)	0
2. Complete the Forms as provided on Attachments A through D	5
3. <u>COMPANY PROFILE</u> . Describe your firm's history, size, resources, philosophy of service, typical volume of work, financial stability, and basic construction management techniques and methods. Describe how your particular expertise, experience and/or techniques can be an advantage to the District in completing the projects.	20
4. <u>PROJECT APPROACH</u> . Describe your approach to Providing CMA Services described in the Form Contract. a. Preconstruction Services, b. Construction Services as CM/A. Discuss how you would provide leadership to facilitate teamwork and communications among all parties involved in the project. c. Proposed Team: Identify personnel to whom construction management responsibilities will be assigned by names, titles, roles, qualifications, and experience.	30
5. <u>HOME OFFICE SUPPORT</u> . Describe your home office support staff by name, position, and show how pay requests will be received, approved, and prepared for payment.	10

6. PAST PERFORMANCE. Per Attachment E, list four (4) recent and relevant projects where your firm provided CMA services, demonstrating your firm's ability to serve as the City's representative for project construction oversight and performing all of the duties listed in the Form Contract. Additional points will be awarded for direct experience constructing concrete and/or wood fishing piers.

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6. SELECTION TIMELINE AND PROCEDURES

The schedule for the selection process is outlined in the RFQ Advertisement.

1. A selection committee, composed of at least three City staff members, will independently evaluate all submittals. They will be scored based on the responses in Section E above.
2. The individual scores will be averaged and ranked from highest to lowest score.
3. The City, at its discretion, may interview the three top-scoring firms. These interviews will also be scored based on their presentations and factored into the step 2 rankings to produce a final ranking.
4. The Firm with the highest net score will be recommended to the City Commission for award of the contract.
5. All persons or entities who submit responses to this Request for Qualifications will be notified when the City has chosen to hire the CMA for the project, or has determined to submit a new Request for Qualifications.

7. PROPOSAL GUIDELINES

1. The City will not be liable for any costs incurred in the preparation and production of a proposal or any work performed prior to the execution of a contract for Construction Manager Adviser Services.
2. All responses and other materials submitted will become the property of the City.
3. All information contained in the RFQ and acceptable provisions of the selected firm's response may be made a part of the contract for CMA Services.
4. Upon the City's request, a respondent may be asked to submit additional information to supplement their response.
5. The City reserves the rights to:
 - a. Waive any informalities or irregularities and reject any or all responses received as a result of this RFQ;
 - b. Negotiate the scope of services, contract terms and compensation for CMA Services to be provided;
 - c. Conduct investigations required to determine the respondent's performance record and ability to perform the work specified a part of the RFQ.

**SECTION 00 11 53
REQUEST FOR QUALIFICATION FORMS**

Project Name: **FLAGLER BEACH FISHING PIER REPLACEMENT 2024-2026 City Project No.: 260**

Company Name: _____

Contact Name: _____

E-mail Address: _____

Mailing Address: _____

Phone Number: _____

Fax Number: _____

Contractor License Number: _____

The CITY will post addenda information at Onvia DemandStar, Inc., at the following web address: www.demandstar.com. For technical assistance with this website, please contact Onvia Services at 1-800-711-1712. All Bidders should check the Onvia DemandStar website at least seven (7) calendar days before the date fixed to verify information regarding Addenda. Failure to do so could result in rejection of the submittal as unresponsive. Bidders shall sign, date, and return all addenda with their bid. It is the sole responsibility of the Bidder to ensure he/she obtains information related to Addenda. Oral and other interpretations or clarifications will be without legal effect.

The following Addenda were received:

Addendum No. _____ Date Received _____

Addendum No. _____ Date Received _____

Addendum No. _____ Date Received _____

Addendum No. _____ Date Received _____

Addendum No. _____ Date Received _____

Addendum No. _____ Date Received _____

The Bidder acknowledges the receipt, execution, and return of the following attachments:

- Attachment A: Certificate of Corporation
- Attachment B: Contractor Questionnaire
- Attachment C: Required Disclosure
- Attachment D: Bidder Information
- Attachment E: Experience of Bidder
- Attachment F: Sworn Statement Under section 287.133(3) (a), Florida Statutes, on Public Entity Crimes
- Attachment G: Affidavit of Non-Collusion
- Attachment H: Certification of Non-Segregated Facilities
- Attachment I: Drug-Free Work Place
- Attachment J: Conflict of Interest Statement
- Attachment K: Compliance with Public Records Law
- Attachment L: Americans with Disabilities Act Affidavit
- Attachment M: List of Licenses and Certifications
- Attachment N: AIA Document C-132-2019 Form Contract

Name: _____

Authorized Signature: _____

Date: _____

Title: _____

ACKNOWLEDGEMENT

<p>STATE OF FLORIDA</p> <p>COUNTY OF _____</p> <p>Sworn to (or affirmed) and subscribed before me by means of online notarization <input type="checkbox"/> OR physical presence <input type="checkbox"/></p> <p>this _____ day of _____, 20____.</p> <p>Personally Known <input type="checkbox"/> OR Produced identification <input type="checkbox"/></p> <p>Type of Identification Produced: _____</p>	<p>_____ Signature of Notary Public Print, Type or Stamp Commissioned Name of Notary Public below:</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------

END OF SECTION

**ATTACHMENT A
CERTIFICATE OF CORPORATION**

Please include a copy of your Certificate of Corporation from the State of Florida with this attachment.

STATE OF FLORIDA

COUNTY OF _____

I HEREBY CERTIFY that a meeting of the Board of Directors of _____, a corporation under the laws of the State of _____, was held on __, 20____. The following resolution was duly passed and adopted:

“RESOLVED, that _____ as _____ President of the corporation is hereby authorized to execute the Contract dated _____ 20 _____, between The City of Flagler Beach, a municipal corporation and this corporation, and that execution thereof, attested by the Secretary of the corporation and with corporate seal affixed, shall be the official act and deed of this corporation.”

I further certify that said resolution is now in full force and effect.

IN WITNESS THEREOF, I have hereunto set my hand and affixed the official seal of the corporation

This _____ day of _____, 20____.

Corporate Secretary

END OF ATTACHMENT A

**SECTION 00 11 53
REQUEST FOR QUALIFICATION FORMS**

**ATTACHMENT B
CONTRACTOR QUESTIONNAIRE**

DATE: _____

NAME OF BIDDER: _____

BUSINESS ADDRESS: _____

PHONE NUMBER: _____

CONTRACTOR'S FL LICENSE #: _____

EXPIRATION DATE: _____

The undersigned warrants the truth and accuracy of all statements and answers herein contained. Include additional sheets as necessary.

1. How many years has your organization been in business as a Construction Manager?

2. How many years has your organization been in business as a Construction Manager Adviser?

3. Name of Project Manager and length of time with your company?

4. Describe in detail and give the date and owner, including phone numbers and contact person(s), of the last four (4) projects that you have completed similar in type, size, and nature as the project proposed?

5. Have you ever failed, or been alleged to have failed, to complete work awarded to you? If so, please list the project and explain the reasons why?

6. Have you ever failed, or been alleged to have failed, to complete work within the Contract Time? If so, please list the project and explain the reasons why?

7. Have you ever had a bond or letter of credit called by the owner of a project? If so, when?

Bidder Name: _____

Signature: _____

Title: _____

Attach the corporate information sheet from the Florida Department of State, Division of Corporation's, web site.

ACKNOWLEDGEMENT

<p>STATE OF FLORIDA COUNTY OF _____</p> <p>Sworn to (or affirmed) and subscribed before me by means of online notarization <input type="checkbox"/> OR physical presence <input type="checkbox"/></p> <p>this _____ day of _____, 20____.</p> <p>Personally Known <input type="checkbox"/> OR Produced identification <input type="checkbox"/></p> <p>Type of Identification Produced: _____</p>	<p>_____ Signature of Notary Public Print, Type or Stamp Commissioned Name of Notary Public below:</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------

END OF ATTACHMENT B

**ATTACHMENT C
REQUIRED DISCLOSURE**

The following disclosure is of all material facts pertaining to any felony conviction or any pending felony charges in the last three (3) years in this State or any other state of the United States against (1) the Bidder, any business entity related to or affiliated with the Bidder or (3) any present or former owner of the Bidder or of any such related or affiliated entity. This disclosure shall not apply to any person or entity which is only a stockholder, which person or entity owns twenty percent (20%) or less of the outstanding shares of the Bidder whose stock is publicly owned and traded:

Bidder Name: _____

Signature: _____

Title: _____

Date: _____

END OF ATTACHMENT C

**ATTACHMENT D
BIDDER INFORMATION**

List the full legal name of each officer of the Corporation.

President: _____

Signature: _____ Date: _____

Vice-President: _____

Signature: _____ Date: _____

Secretary: _____

Signature: _____ Date: _____

Treasurer: _____

Signature: _____ Date: _____

List the Corporate Officer that will sign the contract: _____

END OF ATTACHMENT D

**ATTACHMENT E
EXPERIENCE OF BIDDER**

Bidder Name: _____

Authorized Signature: _____ Date: _____

Is your company currently involved in any active litigation? ____ Yes ____ No

If Yes, explain: _____

Has your company ever been sued? ____ Yes ____ No

If Yes, explain and/or submit court decision or judgment, as applicable: _____

The Bidder must demonstrate the successful completion of four (4) projects of similar complexity, nature, size, and dollar amount in the capacity of CMA. Any material misrepresentation, as determined by the City of Flagler Beach, shall result in disqualification.

On the following pages, provide the requested information regarding experience within the past ten (10) years on four (4) projects. These projects must be new or rehabilitation projects. Preferred projects should be for a coastal community on or near the beach. Additional credit will be awarded for Fishing Piers, either concrete or wood.

Project #1:

Contract Date: _____

Contract Amount: \$ _____

Project Name: _____

Project Location: _____

General Scope of Work: _____

Client Name and Address: _____

Client Contact Phone: _____

Client Contact Email: _____

Was the project completed on schedule? ____ Yes ____ No

Total Amount of Change Orders: \$ _____

Reasons for Change Orders: _____

Please attach photos of the finished project.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

Project #2:

Contract Date: _____

Contract Amount: \$ _____

Project Name: _____

Project Location: _____

General Scope of Work: _____

Client Name and Address: _____

Client Contact Phone: _____

Client Contact Email: _____

Was the project completed on schedule? _____ Yes _____ No

Total Amount of Change Orders: \$ _____

Reasons for Change Orders: _____

Please attach photos of the finished project.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

Project #3:

Contract Date: _____

Contract Amount: \$ _____

Project Name: _____

Project Location: _____

General Scope of Work: _____

Client Name and Address: _____

Client Contact Phone: _____

Client Contact Email: _____

Was the project completed on schedule? ____ Yes ____ No

Total Amount of Change Orders: \$ _____

Reasons for Change Orders: _____

Please attach photos of the finished project.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

Project #4:

Contract Date: _____

Contract Amount: \$ _____

Project Name: _____

Project Location: _____

General Scope of Work: _____

Client Name and Address: _____

Client Contact Phone: _____

Client Contact Email: _____

Was the project completed on schedule? ____ Yes ____ No

Total Amount of Change Orders: \$ _____

Reasons for Change Orders: _____

Please attach photos of the finished project.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

END OF ATTACHMENT E

**ATTACHMENT F
SWORN STATEMENT UNDER SECTION 287.133(3) (a),
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

This sworn statement is submitted to: **The City of Flagler Beach** (Public entity)

By: _____
(Individual's name and title)

For: _____
(Name of entity submitting sworn statement)

Whose business address is: _____

Federal Employer Identification Number (FEIN): _____

(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement)

1. I understand that a "public entity crime" as defined in Section 287.133(1)(g), Florida Statutes, means a violation of any State or Federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
2. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crimes, with or without an adjudication of guilt, in any Federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.

3. I understand that an “affiliate” as defined in Section 287.133(1)(a), Florida Statutes, means: A predecessor or successor of a person convicted of a public entity crime: or an entity under the control of any natural person who is active in the management of the entity and how has been convicted of a public entity crime. The term “affiliate” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one (1) person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm’s length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding thirty-six (36) months shall be considered an affiliate.

4. I understand that a “person” as defined in Section 287.133(1) (e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term “person” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)

_____ Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agent who is active in management of the entity, nor the affiliate of the entity, has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, members or agent who are active in management of the entity, or an affiliate of the entity, has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, members or agents who are active in management of the entity, or an affiliate of the entity, has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

However, there has been a subsequent proceeding before an Administrative Law Jury of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Administrative Law Jury

determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order.)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CITY OF FLAGLER IS FOR THE CITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31, OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE CITY PRIOR TO ENTERING IN TO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUES, FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

Signature: _____

Date: _____

State of: _____

County of: _____

PERSONALLY APPEARED BEFORE ME, the undersigned authority,

_____ who, after first being sworn by me,
(Name of individual signing)

affixed his/her signature in the space provided above on this _____ day of _____, 20 ____.

ACKNOWLEDGEMENT

STATE OF FLORIDA

COUNTY OF _____

Signature of Notary Public

Print, Type or Stamp Commissioned Name of Notary Public below:

Sworn to (or affirmed) and subscribed before me by means of

online notarization OR physical presence

this _____ day of _____, 20 ____.

Personally Known OR Produced identification

Type of Identification Produced: _____

END OF ATTACHMENT F

**ATTACHMENT G
AFFIDAVIT OF NON-COLLUSION**

The undersigned bidder or agent, being duly sworn on oath, says that he/she has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to include anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding. He/She further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee gift, commission or thing of value on account of such sale.

OATH AND AFFIRMATION

I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FACTS AND INFORMATION CONTAINED IN THE FOREGOING BID FOR PUBLIC WORKS ARE TRUE AND CORRECT.

Dated this _____ day of _____, 20 ____.

(Bidder Name)

(Title)

(Signature)

ACKNOWLEDGEMENT

STATE OF FLORIDA

COUNTY OF _____

Signature of Notary Public

Print, Type or Stamp Commissioned Name of Notary Public below:

Sworn to (or affirmed) and subscribed before me by means of

online notarization OR physical presence

this _____ day of _____, 20 ____.

Personally Known OR Produced identification

Type of Identification Produced: _____

END OF ATTACHMENT G

RFQ – Construction Manager Adviser Flagler Fishing Pier

**ATTACHMENT H
CERTIFICATION OF NON-SEGREGATED FACILITIES**

The Bidder certifies that they do not maintain or provide for their employees any segregated facilities at any of his establishments, and that they do not permit their employees to perform their services at any location, under their control, where segregated facilities are maintained. The Bidder certifies further that they will not maintain or provide for their employees any segregated facilities at any location under their control where segregated facilities are maintained. The Bidder agrees that a breach of this certification will be a violation of the Equal Opportunity clause in any contract resulting from acceptance of this Bid. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage and dressing areas, parking lots, drinking fountains, recreation or entertainment area, transportation and housing facilities provided for employees which are segregated by explicit directive, or are in fact segregated on the basis of race, color, religious disability or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where they have obtained identical certifications from proposed subcontractors for specific time periods) they will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certifications in his files.

The nondiscriminatory guidelines as promulgated in Section 202, Executive Order 11246, and as amended by Executive Order 11375 and as amended, relative to Equal Opportunity for all persons and implementations of rules and regulations prescribed by the United States Secretary of Labor are incorporated herein.

Name: _____

Signature: _____

Date: _____

Title: _____

Official Address: _____

END OF ATTACHMENT H

**ATTACHMENT I
DRUG-FREE WORKPLACE**

The undersigned vendor in accordance with Florida Statute 287.087 hereby certifies that

_____ does hereby: (Name of Business)

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are proposed a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under proposal, the employee will propose by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893, Florida Statutes, or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of the matters set forth above.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Name: _____

Signature: _____

Date: _____

Title: _____

END OF ATTACHMENT I

**ATTACHMENT J
CONFLICT OF INTEREST STATEMENT**

Before me, the undersigned authority, personally appeared _____,
who was duly sworn, deposes, and states:

1. I am the _____ of _____ with a local office in _____ and principal office in _____.
2. The above-named entity is submitting an Expression of Interest for the City of Flagler Beach project described as bid number _____.
3. The Affiant has made diligent inquiry and provides the information contained in this Affidavit based upon his own knowledge.
4. The Affiant states that only one submittal for the above project is being submitted and that the above-named entity has no financial interest in other entities submitting proposals for the same project.
5. Neither the Affiant nor the above-named entity has directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive pricing in connection with the entity's submittal for the above project. This statement restricts the discussion of pricing data until the completion of negotiations and execution of the Agreement for this project.
6. Neither the entity nor its affiliates, nor anyone associated with them, is presently suspended or otherwise ineligible from participating in contract lettings by any local, state, or federal agency.
7. Neither the entity, nor its affiliates, nor anyone associated with them have any potential conflict of interest due to any other clients, contracts, or property interests for this project.
8. I certify that no member of the entity's ownership, management, or staff has a vested interest in any aspect of or Department of the City of Flagler Beach.
9. I certify that no member of the entity's ownership or management is presently applying for an employee position or actively seeking an elected position with City of Flagler Beach.
10. In the event that a conflict of interest is identified in the provision of services, I, on behalf of the above-named entity, will immediately notify the City of Flagler Beach in writing.

Signature of Affiant

ACKNOWLEDGEMENT

STATE OF FLORIDA

COUNTY OF _____

Signature of Notary Public

Print, Type or Stamp Commissioned Name of Notary Public
below:

Sworn to (or affirmed) and subscribed before me by means of

online notarization OR physical presence

this _____ day of _____, 20____.

Personally Known OR Produced identification

Type of Identification Produced: _____

END OF ATTACHMENT J

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

**ATTACHMENT K
COMPLIANCE WITH THE PUBLIC RECORDS LAW**

Upon award recommendation or thirty (30) days after receiving submittals, they become "public records" and shall be subject to public disclosure consistent with Chapter 119, Florida Statutes. Proposers must invoke the exemptions to disclosure provided by law in the response to the solicitation and must identify the data or other materials to be protected, and must state the reasons why such exclusion from public disclosure is necessary.

If the company submits information exempt from public disclosure, the company must identify with specificity which pages/paragraphs of their bid/proposal package are exempt from the Public Records Act, identifying the specific exemption section that applies to each. The protected information must be submitted to the City of Flagler Beach in a separate envelope marked accordingly.

Company Name: _____

Authorized representative Printed Name: _____

Authorized Representative Signature: _____

Date: _____

END OF ATTACHMENT K

**ATTACHMENT L
AMERICANS WITH DISABILITIES ACT AFFIDAVIT**

The undersigned CONTRACTOR swears that the information herein contained is true and correct and that none of the information supplied was for the purpose of defrauding the CITY.

The CONTRACTOR will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The CONTRACTOR agrees to comply with the rules, regulations and relevant orders issued pursuant to the Americans with Disabilities Act (ADA), 42 USC s. 12101 et seq. It is understood that in no event shall the CITY be held liable for the actions or omissions of the CONTRACTOR or any other party or parties to the Agreement for failure to comply with the ADA. The CONTRACTOR agrees to hold harmless and indemnify the CITY, its agents, officers or employees from any and all claims, demands, debts, liabilities or causes of action of every kind or character, whether in law or equity, resulting from the CONTRACTOR's acts or omissions in connection with the ADA.

Name: _____

Authorized Signature: _____

Date: _____

Title: _____

Affix Corporate Seal:

ACKNOWLEDGEMENT

<p>STATE OF FLORIDA</p> <p>COUNTY OF _____</p> <p>Sworn to (or affirmed) and subscribed before me by means of online notarization <input type="checkbox"/> OR physical presence <input type="checkbox"/></p> <p>this _____ day of _____, 20____.</p> <p>Personally Known <input type="checkbox"/> OR Produced identification <input type="checkbox"/></p> <p>Type of Identification Produced: _____</p>	<p>_____ Signature of Notary Public Print, Type or Stamp Commissioned Name of Notary Public below:</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------

END OF ATTACHMENT L

RFQ – Construction Manager Adviser Flagler Fishing Pier

**ATTACHMENT M
LIST OF LICENSES and CERTIFICATIONS**

License/Cert. Name	Number	Issuing Authority	Expiration Date

END OF ATTACHMENT M

**ATTACHMENT N
AIA DOCUMENT A133-2009
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND
CONSTRUCTION MANAGER AS
ADVISER**

AGREEMENT made as of the « » day of « » in the year « »
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

City of Flagler Beach
105 S. Second Street
Flagler Beach, FL 32136

and the Construction Manager Adviser:
(Name, legal status, address, and other information)

To Be Determined

for the following Project:
(Name, location, and detailed description)

Flagler Beach Fishing Pier
215 South Oceanshore Blvd.
Flagler Beach, FL 32136

The Engineer:
(Name, legal status, address, and other information)

Engineer of Record: Brian Shaw
Moffatt & Nichol
501 East Kennedy Blvd., Suite 1910
Tampa, Florida 33602

The Owner and Construction Manager Adviser agree as follows.

Throughout the project, the CM shall provide the City with professional construction management adviser services and represent the City's interests in completing the project on time, within budget, and as planned with a minimum of difficulties. AIA Document A133-2019 (this Form Contract) will form the basis of the agreement for the CMA Services to be entered into for the project.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	CONSTRUCTION MANAGER ADVISER'S RESPONSIBILITIES
3	SCOPE OF CONSTRUCTION MANAGER ADVISER'S BASIC SERVICES
4	SUPPLEMENTAL AND ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

§ 1.1.1 The Owner's program for the Project:

This Contract will cover services for the construction phase of the project. The Drawings and Specifications will be provided to serve as the "program" for the Project.

« »

§ 1.1.2 The Project's physical characteristics and general scope of work:

1.1.2.a. *The existing remains of the current timber pier will be demolished excluding the westernmost 100 feet.*

1.1.2.b. Structural reinforcement of the remaining 100 feet of timber pier.

1.1.2.c. Construction of a temporary steel construction trestle spanning over/across the dune to a distance of approximately 700 feet in waters that range from zero to 15 feet deep.

1.1.2.c. Construction of a new ocean pier with concrete piles, caps, and pre-stressed stringers along with timber breakaway deck panels and timber handrails.

1.1.2.d. Procurement and installation of tensile shade structures and other pier deck components, including (but not limited to) benches, tables, and fish cleaning stations, fire extinguisher cabinets, and signage as shown in the contract documents.

1.1.2.e. Installation of potable water and fire water systems on the Pier.

1.1.2.f. Installation of electrical and lighting systems on the Pier.

1.1.2.g. Development of a maintenance of traffic plan and temporary facilities and controls to allow for safe vehicular and pedestrian access along A1A and on the beach under the trestle and new Pier.

1.1.2.h. Implementation of environmental monitoring and response plans in accordance with the environmental permits with consideration for all relevant endangered and threatened species.

1.1.2.i. Implementation of construction safety plans in accordance with all applicable regulatory requirements (including FEMA), local ordinances (including coordination with local governments and law enforcement), and with the typical ambient conditions expected at Flagler Beach (including development of a hurricane response plan for approval).

<< >>

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
\$18,000,000 ±15%

<< >>

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

100% Complete

.2 Construction commencement date:

January 2025

.3 Substantial Completion date or dates:

April 2026

.4 100% Construction Completion Date:

June 2026

§ 1.1.5 The Owner intends the following procurement method for the Project:
Negotiated Contract.

<< >>

§ 1.1.6 The Owner's requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction are set forth below:
Not Used.

<< >>

§ 1.1.7 The Owner's anticipated Sustainable Objective for the Project:
Not Used.

<< >>

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager Adviser shall complete and incorporate AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager Adviser as Adviser Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E235–2019 is incorporated into this Agreement, the Owner and Construction Manager Adviser shall incorporate the completed E235–2019 into the agreements with the consultants and General Contractor performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.8 Other Project information:
Not Used.

<< >>

§ 1.1.9 The Owner identifies the following representative in accordance with Section 5.5:

RFQ – Construction Manager Adviser Flagler Fishing Pier

Bill Freeman, PE, City Engineer
bfreeman@cityofflaglerbeach.com
386-517-2000 ext. 230

Christine Novak, Project Manager
cnovak@cityofflaglerbeach.com
386-517-2000 ext. 242

§ 1.1.10 The persons or entities, in addition to the Owner’s representative, who are required to review the Construction Manager Adviser’s submittals to the Owner are as follows:

Not Used

§ 1.1.11 The Owner shall retain the following consultants and General Contractor:
(List name, legal status, address, and other contact information.)

.1 Land Surveyor:

« »
« »
« »
« »
« »

.2 Geotechnical Engineer:

Tierra, Inc.
591 Susan B. Britt Court • Winter Garden, FL 34787
Phone (407) 877-1354
Fax (407) 654-7347

.3 Civil Engineer:

Moffatt & Nichol
501 E. Kennedy Blvd.
Suite 1910
Tampa, Florida 33602
813-258-8818

Brian Shaw, PE, Engineer of Record

.4 General Contractor, as defined in Section 1.4:

To be determined

.5 Separate General Contractor, as defined in Section 1.4:

« »

.6 Other, if any:

(List any other consultants retained by the Owner.)

« »

§ 1.1.12 The Construction Manager Adviser identifies the following representative in accordance with Section 2.5:
(List name, address, and other contact information.)

To be determined.« »

<< »

<< »

<< »

<< »

§ 1.1.13 The Construction Manager Adviser’s staffing plan as required under Section 3.3.3 shall include:
(List any specific requirements and personnel to be included in the staffing plan, if known.)

<< »

§ 1.1.14 The Construction Manager Adviser’s consultants retained under Basic Services, if any:
(List name, legal status, address, and other contact information of any consultants.)

<< »

§ 1.1.15 The Construction Manager Adviser’s consultants retained under Supplemental Services:

<< »

§ 1.1.16 Other Initial Information on which this Agreement is based:

<< »

§ 1.2 The Owner and Construction Manager Adviser may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Construction Manager Adviser shall appropriately adjust the Construction Manager Adviser’s services, schedule for the Construction Manager Adviser’s services, and the Construction Manager Adviser’s compensation. The Owner shall adjust the Owner’s budget for the Cost of the Work and the Owner’s anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party’s sole risk and without liability to the other party and its General Contractor or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 1.4 The term “General Contractor” refers to persons or entities who perform Work under contracts with the Owner that are administered by the Construction Manager Adviser and Engineer. The term “General Contractor” is used to refer to such persons or entities, whether singular or plural. The term does not include the Owner’s own forces, or Separate General Contractor, which are persons or entities who perform construction under separate contracts with the Owner not administered by the Construction Manager Adviser and Engineer.

**ARTICLE 2 CONSTRUCTION
MANAGER
ADVISER’S RESPONSIBILITIES**

§ 2.1 The Construction Manager Adviser shall provide the services as set forth in this Agreement.

§ 2.2 The Construction Manager Adviser shall perform its services consistent with the skill and care ordinarily provided by Construction Manager Advisers practicing in the same or similar locality under the same or similar circumstances. The Construction Manager Adviser shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project.

§ 2.3 The Construction Manager Adviser shall provide its services in conjunction with the services of an Engineer as described in AIA Document B132™–2019, Standard Form of Agreement Between Owner and Engineer, Construction Manager Adviser as Adviser Edition. The Construction Manager Adviser shall not be responsible for actions taken by the Engineer.

§ 2.4 The Construction Manager Adviser shall coordinate its services with those services provided by the Owner, the Engineer, the General Contractor, and the Owner’s other consultants and Separate General Contractor. The Construction Manager Adviser shall be entitled to rely on, and shall not be responsible for, the accuracy and completeness of services and information furnished by the Owner, the Engineer, and the Owner’s other consultants and Separate General Contractor. The Construction Manager Adviser shall provide prompt written notice to the Owner if the Construction Manager Adviser becomes aware of any error, omission, or inconsistency in such services or information.

§ 2.5 The Construction Manager Adviser shall identify a representative authorized to act on behalf of the Construction Manager Adviser with respect to the Project.

§ 2.6 The Construction Manager Adviser, as soon as practicable after execution of the Agreement, shall notify the Owner in writing of the names and qualifications of its proposed key staff members. Within 14 days of receipt of the names and qualifications of the Construction Manager Adviser’s proposed key staff members, the Owner may reply to the Construction Manager Adviser in writing, stating (1) whether the Owner has reasonable objection to a proposed key staff member or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection. The Construction Manager Adviser shall not staff any employees on the Project to whom the Owner has made reasonable and timely objection. The Construction Manager Adviser shall not change its key staff members without the Owner’s consent, which shall not be unreasonably withheld or delayed.

§ 2.7 Except with the Owner’s knowledge and consent, the Construction Manager Adviser shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Construction Manager Adviser’s judgment with respect to this Project.

§ 2.8 The Construction Manager Adviser shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Construction Manager Adviser normally maintains, the Owner shall pay the Construction Manager Adviser as set forth in section 11.7.

§ 2.8.1 The Grantee shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Agreement. The Department, its employees, and officers shall be named as an additional insured on any general liability policies. The minimum limits shall be \$250,000 for each occurrence and \$500,000 policy aggregate.

§ 2.8.2 If the Grantee’s duties include the use of a commercial vehicle, the Grantee shall maintain automobile liability, bodily injury, and property damage coverage. Insurance clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The Department, its employees, and officers shall be named as an additional insured on any automobile insurance policy.

The minimum limits shall be as follows:

**\$200,000/300,000
\$200,000/300,000**

**Automobile Liability for Company-
Owned Vehicles, if applicable
Hired and Non-owned Automobile
Liability Coverage**

§ 2.8.3 The Construction Manager Adviser may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as

the coverages required under Sections 2.8.1 and 2.8.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.8.4 The Construction Manager Adviser shall provide workers' compensation, in accordance with Chapter 440, F.S. and employer liability coverage with minimum limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policies shall cover all employees engaged in any work under the Grant.

§ 2.8.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ 2.8.6 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager Adviser shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager Adviser's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.8.7 The Construction Manager Adviser shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.8.

§ 2.9 The Construction Manager Adviser shall assist the Owner, Engineer, and other Project participants in establishing written protocols for the development, use, transmission, reliance, and exchange of digital data, including building information models for the Project.

§ 2.10 A centralized electronic document management system will be used on the Project, and the Construction Manager Adviser shall be responsible for managing and maintaining the centralized electronic document management system. The centralized electronic document management system shall include the following: *(List any items that are to be included in the centralized electronic management system.)*

« »

§ 2.11 The Construction Manager Adviser shall retain all Project related documents and information it receives, and the Owner and Engineer shall have access to the documents and information. The Construction Manager Adviser shall transmit the documents and information to the Owner at final completion.

ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER ADVISER'S BASIC SERVICES

§ 3.1 Definition

The Construction Manager Adviser's Basic Services consist of those described in this Article 3, and include usual and customary Preconstruction and Construction Phase Services. Services not set forth in this Article 3 are Supplemental or Additional Services. The Owner, Construction Manager Adviser, and General Contractor may agree, in consultation with the Engineer, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently.

§ 3.2 Preconstruction Phase

Not Used

§ 3.3 Construction Phase

§ 3.3.1 The Construction Manager Adviser shall provide on-site administration of the Contracts for Construction in cooperation with the Engineer as set forth below and in AIA Document A232™-2019, General Conditions of the Contract for Construction, Construction Manager Adviser as Adviser Edition. If the Owner and Contractor modify AIA Document A232-2019, those modifications shall not affect the Construction Manager Adviser's services under this Agreement unless the Owner and the Construction Manager Adviser amend this Agreement.

§ 3.3.2 Subject to Section 4.2 and except as provided in Section 3.3.30, the Construction Manager Adviser's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates on the date the Engineer issues the final Certificate for Payment.

§ 3.3.3 The Construction Manager Adviser shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed.

§ 3.3.4 The Construction Manager Adviser shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the General Contractor with each other and with those of the Construction Manager Adviser, the Owner and the Engineer. The Construction Manager Adviser shall coordinate the activities of the General Contractor in accordance with the latest approved Project schedule and the Contract Documents.

§ 3.3.5 The Construction Manager Adviser shall review and analyze the construction schedules provided by the General Contractor to update the Project schedule, incorporating the activities of the Owner, Engineer, and General Contractor on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery and procurement of products, including those that must be ordered in advance of construction. The Project schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager Adviser shall update and reissue the Project schedule as required to show current conditions. If an update indicates that the previously approved Project schedule may not be met, the Construction Manager Adviser shall recommend corrective action to the Owner and Engineer.

§ 3.3.6 The Construction Manager Adviser shall schedule and conduct meetings to discuss matters such as procedures, progress, coordination, and scheduling of the Work, and to develop solutions to issues identified. The Construction Manager Adviser shall prepare and promptly distribute minutes to the Owner, Engineer and General Contractor.

§ 3.3.7 In accordance with the Contract Documents and the latest approved Project schedule, and utilizing information from the General Contractor, the Construction Manager Adviser shall review, analyze, schedule and coordinate the overall sequence of construction and assignment of space in areas where the General Contractor is performing Work.

§ 3.3.8 The Construction Manager Adviser shall coordinate all tests and inspections required by the Contract Documents or governmental authorities, observe the on-site testing and inspections, and arrange for the delivery of test and inspection reports to the Owner and Engineer.

§ 3.3.9 The Construction Manager Adviser shall endeavor to obtain satisfactory performance from each of the General Contractor. The Construction Manager Adviser shall recommend courses of action to the Owner when requirements of a Contract are not being fulfilled.

§ 3.3.10 The Construction Manager Adviser shall monitor and evaluate actual costs for activities in progress and estimates for uncompleted tasks and advise the Owner and Engineer as to variances between actual costs and budgeted or estimated costs. If a Contractor is required to submit a Control Estimate, the Construction Manager Adviser shall meet with the Owner and Contractor to review the Control Estimate. The Construction Manager Adviser shall promptly notify the Contractor if there are any inconsistencies or inaccuracies in the information presented. The Construction Manager Adviser shall also report the Contractor's cost control information to the Owner.

§ 3.3.11 The Construction Manager Adviser shall develop cash flow reports and forecasts for the Project and include them in the Construction Manager Adviser's progress reports.

§ 3.3.12 The Construction Manager Adviser shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.

§ 3.3.12.1 The Construction Manager Adviser shall develop and implement procedures for the review and processing of Applications for Payment by General Contractor for progress and final payments.

§ 3.3.12.2 Not more frequently than monthly, the Construction Manager Adviser shall review and certify the amounts due the respective General Contractor as follows:

- .1 Where there is only one Contractor responsible for performing the Work, the Construction Manager Adviser shall, within seven days after the Construction Manager Adviser receives the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager Adviser determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Engineer.

§ 3.3.12.3 The Construction Manager Adviser's certification for payment shall constitute a representation to the Owner, based on the Construction Manager Adviser's evaluations of the Work and on the data comprising the General Contractor's Applications for Payment, that, to the best of the Construction Manager Adviser's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the General Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion; (2) results of subsequent tests and inspections; (3) correction of minor deviations from the Contract Documents prior to completion; and (4) specific qualifications expressed by the Construction Manager Adviser. The issuance of a Certificate for Payment shall further constitute a recommendation to the Engineer and Owner that the Contractor be paid the amount certified.

§ 3.3.12.4 The certification of an Application for Payment or a Project Application for Payment by the Construction Manager Adviser shall not be a representation that the Construction Manager Adviser has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, procedures, or sequences for a Contractor's own Work; (3) reviewed copies of requisitions received from General Contractor and suppliers and other data requested by the Owner to substantiate each Contractor's right to payment; or (4) ascertained how or for what purpose that General Contractor has used money previously paid on account of the Contract Sum.

§ 3.3.13 The Construction Manager Adviser shall obtain and review the safety programs developed by General Contractor. The Construction Manager Adviser's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the General Contractor, Sub-Contractors, agents or employees of the General Contractor or Sub-Contractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager Adviser.

§ 3.3.14 The Construction Manager Adviser shall determine in general that the Work of the General Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Engineer of defects and deficiencies in the Work. The Construction Manager Adviser shall have the authority to reject Work that does not conform to the Contract Documents and shall notify the Engineer about the rejection. The failure of the Construction Manager Adviser to reject Work shall not constitute acceptance of the Work. The Construction Manager Adviser shall record any rejection of Work in its daily log and include information regarding the rejected Work in its progress reports to the Engineer and Owner pursuant to Section 3.3.22.1. Upon written authorization from the Owner, the Construction Manager Adviser may require and make arrangements for additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed, and the Construction Manager Adviser shall give timely notice to the Engineer of when and where the tests and inspections are to be made so that the Engineer may be present for such procedures.

§ 3.3.15 The Construction Manager Adviser shall advise and consult with the Owner and Engineer during the performance of its Construction Phase Services. The Construction Manager Adviser shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Construction Manager Adviser shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the General Contractor, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Construction Manager Adviser shall not be responsible for General Contractor's failure to perform the Work in accordance with

the requirements of the Contract Documents. The Construction Manager Adviser shall be responsible for the Construction Manager Adviser's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the General Contractor, Sub-Contractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 3.3.16 The Construction Manager Adviser shall transmit to the Engineer requests for interpretations, and requests for information of the meaning and intent of the Drawings and Specifications, and provide its written recommendation. The Construction Manager Adviser shall assist in the resolution of questions that may arise.

§ 3.3.17 The Construction Manager Adviser shall review requests for changes, assist in negotiating General Contractor' proposals, submit recommendations to the Engineer and Owner, and, if the proposed changes are accepted or required by the Owner, prepare Change Orders or Construction Change Directives that incorporate the Engineer's modifications to the Contract Documents.

§ 3.3.18 The Construction Manager Adviser shall assist the Initial Decision Maker in the review, evaluation and documentation of Claims, subject to Section 4.2.2.7.

§ 3.3.19 Utilizing the submittal schedules provided by each Contractor, the Construction Manager Adviser shall prepare, and revise as necessary, a Project submittal schedule incorporating information from the Owner, Owner's consultants, Owner's Separate General Contractor and vendors, governmental agencies, and participants in the Project under the management of the Construction Manager Adviser. The Project submittal schedule and any revisions shall be submitted to the Engineer for approval.

§ 3.3.20 The Construction Manager Adviser shall promptly review all Shop Drawings, Product Data, Samples, and other submittals from the General Contractor for compliance with the submittal requirements of the Contract, coordinate submittals with information contained in related documents, and transmit to the Engineer those that the Construction Manager Adviser recommends for approval. The Construction Manager Adviser's actions shall be taken in accordance with the Project submittal schedule approved by the Engineer, or in the absence of an approved Project submittal schedule, with such reasonable promptness as to cause no delay in the Work or in the activities of the General Contractor, the Owner, or the Engineer.

§ 3.3.20.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the General Contractor by the Contract Documents, the Construction Manager Adviser shall review those submittals for sequencing, constructability, and coordination. The Construction Manager Adviser shall discuss its findings with the Owner and the Engineer, and coordinate resolution, as necessary, of any such impacts.

§ 3.3.21 The Construction Manager Adviser shall keep a daily log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require.

§ 3.3.21.1 The Construction Manager Adviser shall collect, review for accuracy, and compile the General Contractor' daily logs; and include them in the Construction Manager Adviser's reports prepared and submitted in accordance with section 3.3.21.2.

§ 3.3.21.2 The Construction Manager Adviser shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager Adviser shall submit written progress reports to the Owner and Engineer, showing percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of remaining and outstanding submittals;
- .4 Request for information, Change Order, and Construction Change Directive status reports;
- .5 Tests and inspection reports;
- .6 Status report of nonconforming and rejected Work;
- .7 Daily logs;
- .8 Summary of all General Contractor' Applications for Payment;

- .9 Cumulative total of the Cost of the Work to date including the Construction Manager Adviser's compensation and reimbursable expenses at the job site, if any;
- .10 Cash-flow and forecast reports;
- .11 Photographs to document the progress of the Project;
- .12 Status reports on permits and approvals of authorities having jurisdiction; and
- .13 Any other items the Owner may require:

« »

§ 3.3.21.3 In addition, for Projects constructed on the basis of the Cost of the Work, the Construction Manager Adviser shall include the following additional information in its progress reports:

- .1 General Contractor' work force reports;
- .2 Equipment utilization report;
- .3 Cost summary, comparing actual costs to updated cost estimates; and
- .4 Any other items as the Owner may require:

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§ 3.3.22 Utilizing the documents provided by the General Contractor, the Construction Manager Adviser shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Owner, Engineer, and General Contractor. Upon completion of the Project, the Construction Manager Adviser shall deliver them to the Owner.

§ 3.3.23 The Construction Manager Adviser shall arrange for the delivery, storage, protection and security of Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Work.

§ 3.3.24 With the Owner's maintenance personnel, the Construction Manager Adviser shall observe the General Contractor' final testing and start-up of utilities, operational systems and equipment and observe any commissioning as the Contract Documents may require.

§ 3.3.25 When the Construction Manager Adviser considers each Contractor's Work or a designated portion thereof substantially complete, the Construction Manager Adviser shall, jointly with that Contractor, prepare for the Engineer a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager Adviser shall assist the Engineer in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

§ 3.3.26 When the Work of all of the General Contractor, or designated portion thereof, is substantially complete, the Construction Manager Adviser shall prepare, and the Construction Manager Adviser and Engineer shall execute, a Certificate of Substantial Completion. The Construction Manager Adviser shall submit the executed Certificate to the Owner and General Contractor. The Construction Manager Adviser shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager Adviser shall perform an inspection to confirm the completion of the Work of the General Contractor and make recommendations to the Engineer when the Work of all of the General Contractor is ready for final inspection. The Construction Manager Adviser shall assist the Engineer in conducting the final inspection.

§ 3.3.27 The Construction Manager Adviser shall forward to the Owner, with a copy to the Engineer, the following information received from the General Contractor: (1) certificates of insurance ; (2) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (3) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (4) any other documentation required of the General Contractor under the Contract Documents, including warranties and similar submittals.

§ 3.3.28 The Construction Manager Adviser shall coordinate receipt, and delivery to the Owner, of other items provided by the General Contractor, such as keys, manuals, and record drawings. The Construction Manager

Adviser shall forward to the Engineer a final Project Application for Payment and Project Certificate for Payment, or a final Application for Payment and final Certificate for Payment, upon the General Contractor' compliance with the requirements of the Contract Documents.

§ 3.3.29 Duties, responsibilities and limitations of authority of the Construction Manager Adviser as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Construction Manager Adviser, Engineer, and General Contractor. Consent shall not be unreasonably withheld.

§ 3.3.30 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Construction Manager Adviser shall, without additional compensation, conduct a meeting with the Owner and Engineer to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Construction Manager Adviser shall provide the listed Supplemental Services only if specifically designated in the table below as the Construction Manager Adviser's responsibility, and the Owner shall compensate the Construction Manager Adviser as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Construction Manager Adviser is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Construction Manager Adviser's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Construction Manager Adviser or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility <i>(Construction Manager Adviser, Owner or not provided)</i>
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§ 4.1.1.1	Measured drawings	
§ 4.1.1.2	Tenant-related services	
§ 4.1.1.3	Commissioning	
§ 4.1.1.4	Development of a commissioning plan	
§ 4.1.1.5	Sustainable Project Services pursuant to Section 4.1.3	
§ 4.1.1.6	Furniture, furnishings and equipment delivery, and installation coordination	
§ 4.1.1.7	Furniture, furnishings and equipment procurement assistance	
§ 4.1.1.8	Assistance with site selection	
§ 4.1.1.9	Assistance with selection of the Engineer	
§ 4.1.1.10	Furnish land survey	
§ 4.1.1.11	Furnish geotechnical engineering services	
§ 4.1.1.12	Provide insurance advice	
§ 4.1.1.13	Provide supplemental Project risk analysis and mitigation strategies	
§ 4.1.1.14	Stakeholder relationships management	
§ 4.1.1.15	Owner moving coordination	
§ 4.1.1.16	Coordination of Owner's Separate General Contractor	
§ 4.1.1.17	Other Supplemental Services	

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Construction Manager Adviser's responsibility is provided below.

(Describe in detail the Construction Manager Adviser's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

« »

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

« »

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager Adviser shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager Adviser as Adviser Edition, attached to this Agreement. The Owner shall compensate the Construction Manager Adviser as provided in Section 11.2.

§ 4.2 Construction Manager Adviser's Additional Services

§ 4.2.1 The Construction Manager Adviser may provide Additional Services after execution of this Agreement, without invalidating this Agreement. Except for services required due to the fault of the Construction Manager Adviser, any Additional Services provided in accordance with this Section 4.2 shall entitle the Construction Manager Adviser to compensation pursuant to Section 11.3.

§ 4.2.2 Upon recognizing the need to perform the following Additional Services, the Construction Manager Adviser shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Construction Manager Adviser shall not proceed to provide the following Additional Services until the Construction Manager Adviser receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6. Services necessitated by sections 6.4 and 6.6 shall not be considered additional services;
- .2 Services necessitated by the enactment or revision of codes, laws, regulations or official interpretations after the date of this Agreement;
- .3 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's other consultants or General Contractor;
- .4 Preparation of documentation for alternate bid or proposal requests proposed by the Owner;
- .5 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .6 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Construction Manager Adviser is party thereto;
- .7 Consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such Work; or
- .8 Assistance to the Initial Decision Maker.

§ 4.2.3 To avoid delay in the Construction Phase, the Construction Manager Adviser shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Construction Manager Adviser's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Construction Manager Adviser of the Owner's determination. The Owner shall compensate the Construction Manager Adviser for the services provided prior to the Construction Manager Adviser's receipt of the Owner's notice:

- .1 Providing assistance to the Initial Decision Maker in evaluating an extensive number of Claims submitted by a Contractor or others in connection with the Work.
- .2 Services required in an emergency to coordinate the activities of a Contractor or General Contractor in the event of risk of personal injury or serious property damage, consistent with Section 3.3.15.

§ 4.2.4 Except for services required under Section 3.3.30, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work, or (2) the anticipated date of Substantial Completion identified in the Initial Information, whichever is earlier, shall be compensated as Additional Services to the extent the Construction Manager Adviser incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within « » (« ») months of the date of this Agreement, through no fault of the Construction Manager Adviser, extension of the Construction Manager Adviser's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager Adviser and Engineer. The Owner and the Engineer, in consultation with the Construction Manager Adviser, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner acknowledges that accelerated, phased, or fast-track design and construction provides a benefit, but also carries with it the risk of additional costs. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall retain an Engineer to provide services, duties and responsibilities as described in AIA Document B132–2019, Standard Form of Agreement Between Owner and Engineer, Construction Manager Adviser as Adviser Edition. The Owner shall provide the Construction Manager Adviser with a copy of the scope of services in the agreement executed between the Owner and Engineer, and any further modifications to the Engineer’s scope of services in the agreement.

§ 5.5 The Owner shall identify a representative authorized to act on the Owner’s behalf with respect to the Project. The Owner shall render decisions pertaining to documents the Construction Manager Adviser submits in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager Adviser’s services.

§ 5.6 Unless provided by the Construction Manager Adviser, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.7 Unless provided by the Construction Manager Adviser, the Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.8 The Owner shall provide the Supplemental Services designated as the Owner’s responsibility in Section 4.1.1.

§ 5.9 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager Adviser as Adviser Edition, attached to this Agreement.

§ 5.10 The Owner shall coordinate the services of its own consultants with those services provided by the Construction Manager Adviser. Upon the Construction Manager Adviser’s request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner’s consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Construction Manager Adviser in this Agreement, or authorize the Construction Manager Adviser to furnish them as an Additional Service, when the Construction Manager Adviser requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and General Contractor maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.11 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.12 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner’s needs and interests.

§ 5.13 The Owner shall provide prompt written notice to the Construction Manager Adviser and Engineer if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Engineer’s Instruments of Service or any fault or defect in the Construction Manager Adviser’s services.

§ 5.14 The Owner reserves the right to perform construction and operations related to the Project with the Owner’s own forces, and to award contracts in connection with the Project which are not part of the Construction Manager Adviser’s

responsibilities under this Agreement. The Construction Manager Adviser shall notify the Owner if any such independent action will interfere with the Construction Manager Adviser's ability to perform the Construction Manager Adviser's responsibilities under this Agreement. When performing construction or operations related to the Project, the Owner agrees to be subject to the same obligations and to have the same rights as the General Contractor.

§ 5.15 The Owner shall communicate with the General Contractor and the Construction Manager Adviser's consultants through the Construction Manager Adviser about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager Adviser shall include the Engineer in all communications that relate to or affect the Engineer's services or professional responsibilities. The Owner shall promptly notify the Engineer of the substance of any direct communications between the Owner and the Construction Manager Adviser otherwise relating to the Project. Communications by and with the Engineer's consultants shall be through the Engineer.

§ 5.16 Before executing the Contracts for Construction, the Owner shall coordinate the Construction Manager Adviser's duties and responsibilities set forth in the Contracts for Construction with the Construction Manager Adviser's services set forth in this Agreement. The Owner shall provide the Construction Manager Adviser a copy of the executed agreements between the Owner and General Contractor, including the General Conditions of the Contracts for Construction.

§ 5.17 The Owner shall provide the Construction Manager Adviser access to the Project site prior to commencement of the Work and shall obligate the General Contractor to provide the Construction Manager Adviser access to the Work wherever it is in preparation or progress.

§ 5.18 Within 15 days after receipt of a written request from the Construction Manager Adviser, the Owner shall furnish the requested information as necessary and relevant for the Construction Manager Adviser to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Engineer and shall include the General Contractor's general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work includes the compensation of the Construction Manager Adviser and Construction Manager Adviser's Consultants during the Construction Phase only, including compensation for reimbursable expenses at the job site, if any. The Cost of the Work does not include the compensation of the Engineer; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2 and 6.4. Evaluations of the Owner's budget for the Cost of the Work, and the estimates of the Cost of the Work prepared by the Construction Manager Adviser, represent the Construction Manager Adviser's judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager Adviser nor the Owner has control over the cost of labor, materials; or equipment; the General Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Construction Manager Adviser cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Construction Manager Adviser.

§ 6.3 If the Engineer is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager Adviser's cost estimates and the Engineer's cost estimates, the Construction Manager Adviser and the Engineer shall work together to reconcile the cost estimates.

§ 6.4 If the Construction Manager Adviser's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Construction Manager Adviser, in consultation with the Engineer, shall make appropriate

recommendations to the Owner to adjust the Project’s size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Construction Manager Adviser and Engineer in making such adjustments.

§ 6.5 If the Construction Manager Adviser’s estimate of the Cost of the Work exceeds the Owner’s budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 terminate in accordance with Section 9.5;
- .3 in consultation with the Construction Manager Adviser and Engineer, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .4 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to revise the Project program, scope, or quality to reduce the Cost of the Work pursuant to Section 6.5.3, or if the bids or proposals received from the prospective General Contractor, in the aggregate, exceed the Owner’s budget for the Cost of the Work, and the Owner chooses to revise the Project program, scope, or quality to reduce the Cost of the Work , the Construction Manager Adviser shall cooperate with the Owner and Engineer to develop the necessary revisions, update the cost estimate, and obtain additional bids. The Construction Manager Adviser will perform the services described in Sections 6.4 and 6.6 without additional compensation.

ARTICLE 7 COPYRIGHTS AND LICENSSES

The Construction Manager Adviser and the Construction Manager Adviser’s consultants, if any, shall not own or claim a copyright in the Instruments of Service. The Construction Manager Adviser, the Construction Manager Adviser’s consultants, if any, and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Construction Manager Adviser shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Construction Manager Adviser waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Construction Manager Adviser waive all rights against each other and against the General Contractor, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232–2019, General Conditions of the Contract for Construction. The Owner or the Construction Manager Adviser, as appropriate, shall require of the General Contractor, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Construction Manager Adviser shall indemnify and hold the Owner and the Owner’s officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys’ fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Construction Manager Adviser, its employees and its consultants in the performance of professional services under this Agreement. The Construction Manager Adviser’s obligation to indemnify and hold the Owner and the Owner’s officers and employees harmless does not include a duty to defend. The Construction Manager Adviser’s duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.

§ 8.1.4 The Construction Manager Adviser and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Construction Manager Adviser's services, the Construction Manager Adviser may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Construction Manager Adviser shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box.)

8.2.4.1 Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: (Specify)

If the Owner and Construction Manager Adviser do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim,

dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Construction Manager Adviser grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Construction Manager Adviser under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Construction Manager Adviser in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Construction Manager Adviser’s option, cause for suspension of performance of services under this Agreement. If the Construction Manager Adviser elects to suspend services, the Construction Manager Adviser shall give seven days’ written notice to the Owner before suspending services. In the event of a suspension of services, the Construction Manager Adviser shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Construction Manager Adviser all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Construction Manager Adviser’s services. The Construction Manager Adviser’s fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Construction Manager Adviser shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Construction Manager Adviser shall be compensated for expenses incurred in the interruption and resumption of the Construction Manager Adviser’s services. The Construction Manager Adviser’s fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Construction Manager Adviser, the Construction Manager Adviser may terminate this Agreement by giving not less than seven days’ written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager Adviser for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Construction Manager Adviser terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Construction Manager Adviser for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Construction Manager Adviser's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Construction Manager Adviser terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Construction Manager Adviser the following termination fee:
(Set forth below the amount of any termination fee, or the method for determining any termination fee.)

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§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of Florida, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2019, General Conditions of the Contract for Construction, except for purposes of this Agreement, the term "Work" shall include the work of all General Contractor under the administration of the Construction Manager Adviser and the Engineer.

§ 10.3 The Owner and Construction Manager Adviser, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Construction Manager Adviser shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Construction Manager Adviser by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Construction Manager Adviser to execute certificates, the proposed language of such certificates shall be submitted to the Construction Manager Adviser for review at least 14 days prior to the requested dates of execution. If the Owner requests the Construction Manager Adviser to execute consents reasonably required to facilitate assignment to a lender, the Construction Manager Adviser shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Construction Manager Adviser for review at least 14 days prior to execution. The Construction Manager Adviser shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Construction Manager Adviser.

§ 10.6 Unless otherwise required in this Agreement, the Construction Manager Adviser shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Construction Manager Adviser shall have the right to include photographic or artistic representations of the design of the Project among the Construction Manager Adviser’s promotional and professional materials. The Construction Manager Adviser shall provide professional credit for the Engineer and the General Contractor in the Construction Manager Adviser’s promotional materials for the Project. The Construction Manager Adviser shall be given reasonable access to the completed Project to make such representations. However, the Construction Manager Adviser’s materials shall not include the Owner’s confidential or proprietary information if the Owner has previously advised the Construction Manager Adviser in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Construction Manager Adviser in the Owner’s promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Construction Manager Adviser or Owner receives information specifically designated as “confidential” or “business proprietary,” the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days’ notice to the other party, when required by law, arbitrator’s order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or General Contractor in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and General Contractor are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties’ intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Construction Manager Adviser’s Basic Services described under Article 3, the Owner shall compensate the Construction Manager Adviser as follows:

§ 11.1.1 For Preconstruction Phase Services in Section 3.2:
Not Used.

« »

§ 11.1.2 For Construction Phase Services in Section 3.3:
To be determined.

« »

§ 11.2 For the Construction Manager Adviser’s Supplemental Services designated in Section 4.1.1, and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Construction Manager Adviser as follows:
To be determined.

« »

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Construction Manager Adviser as follows:
To be determined.

« »

§ 11.4 Compensation for Supplemental and Additional Services of the Construction Manager Adviser’s consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Construction Manager Adviser plus « » percent (« » %), or as follows:
To be determined.

« »

§ 11.5 The hourly billing rates for services of the Construction Manager Adviser and the Construction Manager Adviser’s consultants are set forth below. The rates shall be adjusted in accordance with the Construction Manager Adviser’s and Construction Manager Adviser’s consultants’ normal review practices.
To be determined.)

« »

Employee or Category	Rate (\$0.00)
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§ 11.6 Compensation for Reimbursable Expenses

§ 11.6.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Construction Manager Adviser and the Construction Manager Adviser’s consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Professional photography, and presentation materials requested by the Owner;
- .8 If required by the Owner, and with the Owner’s prior written approval, the Construction Manager Adviser’s consultants’ expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Construction Manager Adviser’s consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Construction Manager Adviser and the Construction Manager Adviser’s consultants plus « » percent (« » %) of the expenses incurred.

§ 11.7 Construction Manager Adviser’s Insurance. If the types and limits of coverage required in Section 2.8 are in addition to the types and limits the Construction Manager Adviser normally maintains, the Owner shall pay the Construction Manager Adviser for the additional costs incurred by the Construction Manager Adviser for the additional coverages as set forth below.

(Insert the additional coverages the Construction Manager Adviser is required to obtain in order to satisfy the requirements set forth in Section 2.8, and for which the Owner shall reimburse the Construction Manager Adviser.)

« »

§ 11.8 Payments to the Construction Manager Adviser

§ 11.8.1 Initial Payment

§ 11.8.1.1 An initial payment of « » (\$ « ») shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner’s account in the final invoice.

§ 11.8.2 Progress Payments

§ 11.8.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Construction Manager Adviser’s invoice. Amounts unpaid « » (« ») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager Adviser.
(Insert rate of monthly or annual interest agreed upon.)

« » % « »

§ 11.8.2.2 The Owner shall not withhold amounts from the Construction Manager Adviser’s compensation to impose a penalty or liquidated damages on the Construction Manager Adviser, or to offset sums requested by or paid to General Contractor for the cost of changes in the Work, unless the Construction Manager Adviser agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.8.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

« »

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager Adviser and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager Adviser.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document C132™–2019, Standard Form Agreement Between Owner and Construction Manager Adviser as Adviser
- .2 Building Information Modeling Exhibit, if completed:

Not used.

- .3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

[« »] **AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager Adviser as Adviser Edition, dated as indicated below:**
(Insert the date of the E235-2019 incorporated into this agreement.)

To be determined.

[« »] Other Exhibits incorporated into this Agreement:

(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits identified in Section 4.1.2.)

« »

- .4 Other documents:
(List other documents, if any, forming part of the Agreement.)

« »

This Agreement is entered into as of the day and year first written above.

OWNER *(Signature)*

« »« »

(Printed name and title)

CONSTRUCTION MANAGER ADVISER *(Signature)*

« »« »

(Printed name and title)

END OF DOCUMENT