

MEMORANDUM

DATE: December 12, 2023

TO: ****ORIGINAL****
CITY CLERK

FROM: Nathaniel Rubel – Assistant Procurement Director
Procurement Management Division

SUBJECT: Record Retention

CONTRACT: #20220044 Amendment #2
CONTRACT TITLE: Westport Wastewater Treatment Facility Nutrient
Reduction Improvements Construction Manager at
Risk

VENDOR NAME: Wharton-Smith, Inc.
VENDOR ADDRESS: 750 Monroe Road
CITY & STATE: Sanford, FL 32771

APPROVED BY COUNCIL: March 27, 2023
7g) - Award Contract #20220044 for Construction Manager at Risk
Preconstruction Services for the Westport Wastewater Treatment Facility Nutrient
Reduction Improvements in the amount of \$210,305.

CONTRACT AMOUNT: \$210,305.00
CONTRACT TERM: 180 calendar days – 3/28/2023 through 09/24/2023, with
no option to renew.

AMENDMENT #1: Approved by Council July 10, 2023.

7k) Approve Amendment #1 to Contract #20220044 with Wharton-Smith, Inc. the
Westport Wastewater Treatment Facility Nutrient Reduction Improvement
Project.

-Add additional time with a revised Contract end date of December 17, 2023 and
a revised Contract amount of \$6,932,008.00 (Estimated).

AMENDMENT #2: Approved by Council December 11, 2023.

7d) Approve Amendment #2 to Contract #20220044 with Wharton-Smith, Inc. the
Westport Wastewater Treatment Facility Nutrient Reduction Improvement
Project.

-Approve GMP of \$33,918,660.00 and project schedule for a revised Contract end date of December 31, 2026 and a revised Contract amount of \$40,850,668.00 (Estimated).

Please see the attached for (1) original contract for your records.



CONTRACT ADDENDUM #2

This Addendum #2 to the Westport Wastewater Treatment Facility Nutrient Reduction Improvements for Construction Management at Risk ("CMAR") services Contract #20220044 ("Addendum") is executed this 12th day of December 2023, by and between the CITY OF PORT ST. LUCIE, a Florida municipal corporation ("City") and the Contractor (defined below).

Contractor's Full Legal Name:	Wharton-Smith, Inc., a Florida Profit Corporation
Solicitation No./Event ID:	20220044
Solicitation Title/Event Name:	Westport Wastewater Treatment Facility Nutrient Reduction Improvements Construction Manager at Risk ("CMAR")
Contract Award Date:	March 27, 2023
Initial Current Contract Term:	180 Days
Current Contract Expiration Date:	December 17, 2023
Requested Contract Expiration Date:	December 31, 2026
Initial Contract Amount:	\$ 210,305.00 (Pre-Construction)
Current Contract Amended Amount:	\$ 6,932,008.00 (Including Early Estimated GMP #1 – \$6,721,703.00)
Requested Financial Change Amount:	Estimated \$33,918,660.00
New Contract Amount:	\$ 40,850,668.00 (Estimated)
Addendum No.:	2
Addendum Type:	Terms Revision

RECITALS

WHEREAS, on March 27, 2023, City Council awarded Contract #20220044 for Construction Manager at Risk (“CMAR”) Pre-construction Services for the Westport Wastewater Treatment Facility Nutrient Reduction Improvements (“Project”) to Contractor (“Contract”) as amended; and

WHEREAS, the Contract is attached hereto as Exhibit “A” and incorporated herein by reference; and

WHEREAS, the Contractor developed the Guaranteed Maximum Pricing (“GMP”) as required by the Contract; and

WHEREAS, the early estimated GMP was included in the Early Package #1 as Addendum #1; and

WHEREAS, a subsequent GMP will be provided for nutrient removal at the Westport Wastewater Treatment Facility; and

WHEREAS, the City and Contractor wish to amend the Contract to approve the GMP #2 which contains the estimated GMP and authorize the Contractor to proceed with construction and related activity for the Project,

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. **RECITALS.** The foregoing “Whereas” clauses are hereby incorporated as forming the intent and purpose of this Addendum.
2. **TERMS.** The parties agree to incorporate the GMP #2, attached hereto as Exhibit “B” and amend the Contract as follows:
 - a. Term. The parties agree that the Contract Term is hereby extended to December 31, 2026.
 - b. Pricing. The GMP for the Project is estimated at \$ \$40,640,363.00.
3. **EFFECTIVE DATE.** This Addendum #2 shall be effective as of the date it is fully executed.
4. **E-VERIFY.** In accordance with section 448.095, the Contractor agrees to comply with the following:
 - A. Contractor must register with and use the E-Verify system to verify the work authorization status of all new employees of the Contractor. Contractor must provide City with sufficient proof of compliance with this provision before beginning work under this Contract.
 - B. If Contractor enters into a contract with a subcontractor, Contractor must require each and every subcontractor to provide the Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Contractor shall maintain a copy of each and every such affidavit(s) for the duration of the Contract and any renewals thereafter.
 - C. The City shall terminate this Contract if it has a good faith belief that a person or an entity with which it is contracting has knowingly violated section 448.09(1), Florida Statutes.

- D. Contractor shall immediately terminate any contract with any subcontractor if Contractor has, or develops, a good faith belief that the subcontractor has violated section 448.09(1), Florida Statutes. If City has or develops a good faith belief that any subcontractor of Contractor knowingly violated section 448.09(1), Florida Statutes, or any provision of section 448.095, Florida Statutes, the City shall promptly notify the Contractor and order the Contractor to immediately terminate the Contract with the subcontractor.
- E. The City shall terminate this Contract for violation of any provision in this section. If the Contract is terminated under this section, it is not a breach of contract and may not be considered as such. If the City terminates this Contract under this section, the Contractor may not be awarded a public contract for a least one (1) year after the date on which the Contract was terminated. A contractor is liable for any additional costs incurred by the City as a result of the termination of a contract.
- F. The City, Contractor, or any subcontractor may file a cause of action with a circuit or county court to challenge a termination under section 448.095(5)(c), Florida Statutes, no later than twenty (20) calendar days after the date on which the Contract was terminated. The parties agree that such a cause of action must be filed in accordance with the Venue provision in Section XXI of the Contract.


5. SUCCESSORS AND ASSIGNS. This Addendum #2 shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.

6. ENTIRE AGREEMENT. Except as expressly modified by this Addendum #2, the Contract shall be and remain in full force and effect in accordance with its terms and shall constitute the legal, valid, binding and enforceable obligations to the parties. This Addendum #2 and the Contract (including any written amendments thereto), collectively, are the complete agreement of the parties and supersede any prior agreements or representations, whether oral or written, with respect thereto.

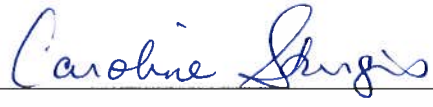
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have caused this Addendum #2 to be duly executed by their authorized representatives.

CONTRACTOR

Contractor's Full Legal Name: (PLEASE TYPE OR PRINT)	Wharton-Smith, Inc.
Authorized Signature:	 Gregory L. Williams
Printed Name and Title of Person Signing:	Gregory L. Williams, VP of Operations
Date:	11/22/2023
Company Address:	750 Monroe Road, Sanford, FL 32771

CITY OF PORT ST. LUCIE

Authorized Signature:	
Printed Name and Title of Person Signing:	Caroline Sturgis, Director, Office of Management & Budget, and Procurement
Date:	12/12/2023
City Address:	121 S.W. Port St. Lucie Blvd., Port St. Lucie, FL 34984