RESOLUTION NO. R-2022-271

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA, RANKING CONSTRUCTION MANAGEMENT AT RISK FIRMS AND AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE CONTINUING SERVICES AGREEMENTS WITH THE HIGHEST-RANKED FIRMS IN EACH TIER LEVEL TO PROVIDE CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR GENERAL OBLIGATION BOND, CITY CAPITAL IMPROVEMENT PROJECTS, AND OTHER CITY PROJECTS.

WHEREAS, it is in the best interest of the City to enter into Continuing Services Agreements ("CSAs") with multiple Construction Management at Risk ("CMAR") contractors to provide CMAR services that may be required to implement future capital improvements, General Obligation Bond ("GOB"), or other City projects; and

WHEREAS, services to be accomplished under these CSAs may include various future unidentified projects that may include but not be limited to capital improvements, GOB, or other City projects with an individual, project-estimated construction value not to exceed $4,000,000.00 pursuant to Section 287.055 (2)(g), Florida Statutes; and

WHEREAS, the City has followed the procedures set forth in Section 287.055, F.S., entitled "Consultants' Competitive Negotiation Act" ("CCNA"), Section 255.103, F.S., entitled "Construction Management or Program Management Entities", and the City's Procurement Code to advertise and solicit Statements of Qualifications ("SOQs") from CMAR firms; and

WHEREAS, Request for Qualifications No. RFQ-4721-22-GJ ("RFQ") was issued on March 23, 2022 to promote competition and solicit SOQs from CMAR firms in three tiers with individual submittals and rankings for each; and

WHEREAS, Tier 1 is for construction projects with an estimated cost under $500,000.00, Tier 2 is for construction projects with an estimated cost from $500,000.00 to $2,000,000.00, and Tier 3 is for construction projects with an estimated cost from $2,000,000.00 to $4,000,000.00; and

WHEREAS, on May 3, 2022, the Office of the City Clerk, Division of Procurement Services, and the Department of Design and Construction Management ("DCM") received SOQs from CMAR firms for each tier as follows:

Tier 1 (up to $500,000.00):

1. Asset Builders, LLC, dba Messam Construction
2. DPR Construction, A General Partnership
3. FHP Tectonics Corp.
4. Journey C & D Group, Inc.
5. Kalex Construction and Development, Inc.
6. Llorens Contracting, LLC
7. Maceda Contractors, LLC
8. One Day Came, Inc.
9. PCL Construction, Inc.
10. State Contracting & Engineering Corporation
11. Waypoint Contracting, Inc.

Tier 2 ($500,000.00 to $2,000,000.00):

1. Asset Builders, LLC, dba Messam Construction
2. DPR Construction,
3. FHP Tectonics Corp.
4. Kalex Construction and Development, Inc.
5. Moss & Associates, LLC
6. One Day Came, Inc.
7. PCL Construction, Inc.
8. State Contracting & Engineering Corporation
9. Waypoint Contracting Inc.

Tier 3 ($2,000,000.00 to $4,000,000.00):

1. Asset Builders, LLC
2. DPR Construction, Inc.
3. FHP Tectonics Corp.
4. Gulf Building, LLC
5. James B. Pirtle Construction Company, Inc. d/b/a Pirtle Construction Company
6. Kaufman Lynn Construction, Inc.
7. Lebolo Construction Management, Inc.
8. Lego Construction Co.
9. Moss & Associates, LLC.
10. One Day Came, Inc.
11. PCL Construction, Inc.
12. State Contracting & Engineering Corporation
13. The Whiting-Turner Contracting Company ; and

WHEREAS, a Selection Committee was created consisting of the Deputy Director of DCM, the Assistant Director of Parks, Recreation and Cultural Arts, and DCM's Construction Support Services Manager; and

WHEREAS, on June 9, 2022, the Selection Committee met in a publicly advertised meeting to evaluate SOQs, and ranked the participating CMAR firms as follows:

Tier 1 (up to $500,000.00):

1. State Contracting & Engineering Corporation	285 points
2. DPR Construction Inc.	278 points
3. Waypoint Contracting, Inc.	272 points
4. PCL Construction, Inc.	270 points
5. Journey C & D Group, Inc.	267 points
6. Asset Builders, LLC, dba Messam Construction	265 points
7. Llorens Contracting, LLC	259 points
8. FHP Tectonics Corp.	258 points
9. Kalex Construction and Development, Inc.	255 points
10. Once Day Came, Inc.	245 points
11. Maceda Contractor, LLC (not qualified)	158 points

Tier 2 ($500,000.00 to $2,000,000.00):

1. Moss & Associates, LLC.	293 points
2. State Contracting and Engineering Corporation	288 points
3. DPR Construction, A General Partnership	280 points
4. Waypoint Contracting, Inc.	276 points
5. PCL Construction, Inc.	272 points
6. Asset Builders, LLC, dba Messam Construction	262 points
7. FHP Tectonics Corp.	256 points
8. Kalex Construction and Development, Inc.	252 points
9. One Day Came, Inc	243 points

Tier 3 ($2,000,000.00 to $4,000,000.00):

1. Moss & Associates, LLC.	292 points
2. State Contracting & Engineering Corporation	288 points
3. Gulf Building, LLC.	282 points
4. Kaufman Lynn Construction, Inc.	283 points
5. DPR Construction	281 points
6. James B Pirtle Const. Co, Inc. dba Pirtle Construction Co	281 points
7. Lebolo Construction Management, Inc	281 points
8. The Whiting-Turner Contracting Company	275 points
9. Lego Construction Co.	274 points

10. PCL Construction, Inc.	273 points
11. Asset Builders, LLC dba Messam Construction	244 points
12. FHP Tectonics Corp.	242 points
13. One Day Came, Inc.	214 points

; and

WHEREAS, in accordance with Section 287.055 4(b), F.S., the City shall select, in order of preference, no fewer than three firms deemed to be the most highly qualified to perform these services; and

WHEREAS, the Selection Committee ranked the CMAR firms and recommends the award of CSAs to the following highest ranked firms, in the following order, for consideration and individual project negotiation based on staffing and project-specific qualifications on an as-needed basis:

Tier 1 (up to $500,000.00):

1. State Contracting and Engineering Corporation	285 points
2. DPR Construction, A General Partnership	278 points
3. Waypoint Contracting, Inc.	272 points
4. PCL Construction, Inc.	270 points
5. Journey C & D group, Inc.	267 points
6. Asset Builders, LLC, dba Messam Construction	265 points
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5.	DPR Construction	281 points
6.	James B Pirtle Construction. Company, Inc. d/b/a Pirtle Construction Company	281 points
7.	Lebolo Construction Management, Inc	281 points
8.	Whiting-Turner Contracting Company	275 points
9.	Lego Construction Co.	274 points
10.	PCL Construction, Inc.	273 points
11.	Asset Builders, LLC d/b/a Messam Construction	244 points
12.	FHP Tectonics Corp	242 points

;and

WHEREAS, CMAR services for specific projects will be requested on an "as needed–when needed" basis; and

WHEREAS, the initial term of the CSAs will be for three years with the right to renew the contracts for two subsequent one-year terms based on satisfactory performance and mutual agreement; and

WHEREAS, in addition to the CSA contracts, the selected firms will be required to execute Phase 1 Preconstruction Contracts and Phase II Construction Contracts when retained for the specific project in accordance with Section 255.103, F.S.; and

WHEREAS, DCM recommends that the City Commission authorize the appropriate City officials to execute the attached Continuing Service Agreement with each of the recommended highest-ranked firms to provide CMAR services as set forth above.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA.

Section 1: That the foregoing 'WHEREAS" clauses are ratified and confirmed as being true and correct and are incorporated in this Resolution.

Section 2: That it approves and authorizes the appropriate City officials to execute the attached Continuing Service Agreement with each of the highest-ranked firms in each of the Tier levels, together with such non-material changes as may be subsequently agreed to by the City Manager and approved as to form and legal sufficiency by the City Attorney.

Section 3: That this Resolution shall be in full force and effect immediately upon its passage and adoption.

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA, APPROVING THE RANKING OF CONSTRUCTION MANAGEMENT AT RISK FIRMS, AND AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE CONTINUING SERVICES AGREEMENTS WITH THE HIGHEST RANKED FIRMS TO PROVIDE CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR GENERAL OBLIGATION BOND, CITY CAPITAL IMPROVEMENT PROJECTS, AND OTHER CITY PROJECTS.

PASSED AND ADOPTED this 21 day of September, 2022.

JOSH LEVY, MAYOR

ATTEST:

PATRICIA A. CERNY, MMC
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY for the use and reliance of the City of Hollywood, Florida, only.

DR

DOUGLAS R. GONZALES
CITY ATTORNEY

CITY OF HOLLYWOOD, FLORIDA

CONSTRUCTION MANAGEMENT AT RISK SERVICES AGREEMENT

PHASE II

CONSTRUCTION SERVICES

<INSERT PROJECT NAME>
<INSERT PROJECT NUMBER>

DEPARTMENT OF DESIGN & CONSTRUCTION MANAGEMENT
2600 HOLLYWOOD BOULEVARD
HOLLYWOOD, FLORIDA 33022

CONSTRUCTION MANAGEMENT AT RISK
SERVICES AGREEMENT

PHASE II

CONSTRUCTION SERVICES

This Agreement made this _____ day of _____in the year _____, by and between the City of Hollywood, a municipal corporation of the State of Florida ("Owner") and _____("CMAR").

RECITALS:

Whereas, Owner desires to construct **<brief description of project>** at **<location of project>**; and

Whereas, it is in the best interests of Owner to obtain professional construction management services in order to insure quality, timely and valued construction from a pre-approved professional construction manager at risk; and

Whereas, Owner, through a Request for Qualifications (RFQ), has competitively selected CMAR; and

Whereas, CMAR will provide professional construction management services for the **<Project Name>** project as directed by the Director.

NOW, THEREFORE, Owner and CMAR, for considerations herein set forth, agree as follows:

[THIS SPACE LEFT INTENTIONALLY BLANK]

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ARTICLE 1
SCOPE OF WORK/SERVICES

1.0 It is the intent of CITY to describe in the Contract Documents a functionally complete project (or part thereof as applicable) to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied by CMAR, whether or not specifically called for by the Contract Documents. When words which have a well-known technical or trade meaning are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of permit issuance. CITY shall have no duties other than those duties and obligations expressly set forth within the Contract Documents.

1.1 Upon the issuance of a Notice to Proceed by the Director or his/her designee, CMAR shall furnish professional construction management at risk services for the construction phase of the PROJECT described in the attached Exhibits "A, through F" and in accordance with the CONTRACT DOCUMENTS including the Drawings, Specifications and Addenda prepared by the CONSULTANT for the Project, as well as the construction service responsibilities set forth in Article 3 of this contract. Further, CMAR shall furnish any and all required materials, labor and equipment, and incidentals and enter into and cause to be performed all trade contracts necessary to achieve correct and timely completion of the construction of the entire PROJECT in accordance with the CONTRACT DOCUMENTS and warrant all work and services as provided in the CONTRACT DOCUMENTS.

1.2 By executing the CONTRACT DOCUMENTS, the CMAR makes the following express representations and warranties to the Owner:

a. The CMAR is professionally qualified to act as a construction manager for the Project and has, and shall maintain, any and all licenses, permits and other authorizations necessary to act as a construction manager for the Project.

b. The CMAR is financially solvent and has sufficient working capital to perform its obligations under the CONTRACT DOCUMENTS; and

c. The CMAR has become familiar with the project site and the local conditions under which the PROJECT is to be designed, constructed and operated, and it will review the Consultant's Design and Construction documents and provide comments in accordance with the CONTRACT DOCUMENT requirements. If the PROJECT involves modifications to any existing structure(s) or other man-made feature(s) on the Project site, the CMAR has reviewed all as-built and record drawings, plans and specifications of which CMAR has been informed by Owner and thoroughly inspected the existing structure(s) and man-made feature(s) to identify existing deficiencies and ascertain the specific locations

of pertinent structural components. Claims by CMAR resulting from CMAR's failure to familiarize itself with the site or pertinent documents shall be deemed waived; and

d. The CMAR assumes full responsibility to the Owner for the improper acts and omissions of its consultants, the trade contractors, and others employed or retained by it in connection with the Project.
e. The CMAR has performed all services outlined in the Phase I- Preconstruction Services Contract, attached as Exhibit "G".

NOTHING CONTAINED HEREIN SHALL LIMIT OR RESTRICT ANY OTHER REPRESENTATION OR WARRANTY SET FORTH ELSEWHERE IN THE CONTRACT DOCUMENTS.

1.3 PRICE GUARANTEES.

a. Upon execution of Exhibit "D", the CMAR guarantees that the sum of the actual cost of the WORK, the CMAR's CONTINGENCY, the CMAR's staffing costs, the general conditions cost, and CMAR's overhead and profit, shall not exceed the amount set forth in the agreed upon GMP. All costs and expenses that would cause this sum to exceed the GMP shall be borne by the CMAR unless adjusted by the OWNER/PROJECT MANGER through a CHANGE ORDER.

b. Upon execution of Exhibit "D", the CMAR guarantees that the actual cost of the WORK/services, CMAR'S staffing costs, general conditions costs and CMAR's overhead and profit shall not exceed the guaranteed maximum or each such category and that all costs and expenses that would cause any of these individual categories to exceed the guaranteed maximum for each such category in the agreed upon GMP shall be borne by the CMAR unless adjusted by the OWNER/PROJECT MANAGER through a CHANGE ORDER.

c. Upon execution of Exhibit "D", the CMAR certifies that all factual unit costs supporting the GMP proposal are accurate, complete and current at the time of negotiations, and that any other factual unit costs that may be furnished to the OWNER in the future to support any additional amounts that may be authorized will also be accurate and complete. Payments to the CMAR shall be reduced if the OWNER determines such amounts were originally included due to the materially inaccurate, incomplete, or non-current factual unit costs.

ARTICLE 2
DEFINITIONS

2.1 CHANGE ORDER: A written document that complies with Section 38.48 of the City's Procurement Code.

2.2 CITY COMMISSION: The CITY Commission of the CITY of Hollywood, its successors and assigns.

2.3 CITY OR OWNER: The CITY of Hollywood, Florida, a Florida Municipal Corporation. In all respects hereunder, CITY'S performance is pursuant to the CITY'S position as the owner of a construction project. In the event the CITY exercises its regulatory authority as a governmental body, the exercise of such authority and the enforcement of any rules, regulations, laws and ordinances shall be deemed to have occurred as to City's authority as a governmental body and shall not be attributable in any manner to the CITY as a party to this contract.

2.4 CONSTRUCTION MANAGER AT RISK ("CMAR"). The prime contractor that provide construction management at risk services under this contract, including but not limited to preparation of cost estimates, constructability reviews, value engineering and assist in systems life cost cycle analysis, scheduling, bidding and submission of a GMP, as defined below, for construction and construction management. Upon execution of this contract, the CMAR shall serve, from that point forward as the General Contractor.

2.5 CONSULTANT: The individual, partnership, corporation, association, joint venture, or any combination thereof, consisting of properly registered professional architects and/or engineers, which has entered into an agreement to provide professional services to the OWNER for the PROJECT.

2.6 CONSTRUCTION CONTINGENCY: An established sum included in the Guaranteed Maximum Price and shall be in amount which the parties believe, in their best judgement, is reasonable to cover construction related costs which were not specifically foreseeable or quantifiable as of the date the GMP was established, including but not limited to : correction of minor defects or omissions in the Work not caused by the CMAR's negligence, cost overruns due to the default of any Subcontractor or Supplier, minor changes caused by unforeseen or concealed site conditions, minor changes in the Work not involving adjustment in the GMP or extension of the completion date and not inconsistent with the approved final Plans and Specifications, and written agreed upon City requested changes to the Work.

2.7 CONSTRUCTION MANAGEMENT AT RISK CONTRACT: The method of construction contracting whereby CMAR provides construction services for the PROJECT. The fee is a dollar amount negotiated for profit, overhead and on and off-site general and administrative costs. All subcontracts are generally awarded by the CMAR based on competitive bids received in response to invitations to bid issued by the CMAR. The total price paid to the CMAR is either the fee plus the costs, or the GMP, whichever is less.

2.8 CONTRACT DOCUMENTS: The PROJECT MANUAL (including this contract and its Exhibits, Attachments and Forms), drawings and specifications, the Request For Qualifications and/or Proposals, as applicable, and CMAR's response as negotiated and accepted by the CITY, any Addenda to the PROJECT MANUAL Project Manual, the record of the contract award by the CITY the Performance Bond and Payment Bond, the Notice of Award, the Notice(s) to Proceed, the Purchase Order and all agreed upon modifications issued after execution of the Contract are the documents which are collectively referred to as the CONTRACT DOCUMENTS as referenced in the attached Exhibit "D".

2.9 CONTRACT PRICE: The amount established in the CONTRACT DOCUMENTS as the Guaranteed Maximum Price (GMP), as may be amended if so warranted, by a CHANGE ORDER issued in conformity with the Contract Documents and Section 38.48 of the City's Purchasing Ordinance.

2.10 CONTRACT TIME: The time between the project initiation date specified in the Notice to Proceed and final completion, including any milestone dates thereof, established in the CONTRACT DOCUMENTS, as may be amended by any CHANGE ORDER.

2.11 DIRECTOR: The Director of the Department of Design and Construction Management of the CITY having the authority and responsibility for management of the PROJECT authorized under the CONTRACT DOCUMENTS.

2.12 FIELD ORDER: A written order consistent with the City's Procurement Ordinance.

2.13 FINAL COMPLETION: The date certified by the CONSULTANT and PROJECT MANAGER in the Final Certificate of Payment on which all conditions and requirements of any permits and regulatory agencies have been satisfied; and the documents (if any) required to be provided by CMAR have been received by the PROJECT MANAGER, and to the best of CONSULTANT'S and PROJECT MANAGER's information and belief, has been fully completed in accordance with the terms and conditions of the CONTRACT DOCUMENTS.

2.14 GENERAL CONDITION ITEMS: The provision of facilities or performance services by CMAR for items which do not lend themselves readily to inclusion in one of the separate trade contracts. Payment for the General Condition items will be a cost and included as part of the GMP.

2.15 GUARANTEED MAXIMUM PRICE. The term 'Guaranteed Maximum Price" or "GMP" shall mean the sum certain agreed to between the City and the CMAR and set forth in the Phase II Construction Services Contract as the maximum total Project price that the CMAR guarantees not to exceed for the construction of the Project for all services within the Pre-Construction and Construction Services Agreements

2.16 INSPECTOR: An employee of the CITY assigned by the DIRECTOR to make observations of work performed by CMAR.

2.17 MATERIALS: Materials incorporated in the PROJECT, or used or consumed in the performance of the Scope of Services.

2.18 NOTICE TO PROCEED: One or more written notices to CMAR authorizing the commencement of the Scope of Services.

2.19 OWNER'S CONTINGENCY: A sum established by the OWNER, to be included in the GMP, subject to adjustment to include any buyout or sales tax project savings, which may be utilized by the OWNER for OWNER requested changes, additive bid alternates and deductive credits, differing/unforeseen existing conditions.

2.20 PLANS AND/OR DRAWINGS: The official graphic representations of the PROJECT which are a part of the CONTRACT DOCUMENTS.

2.21 PROJECT: The construction, alteration or repair, and all services and incidents thereto, of a CITY facility as contemplated and budgeted by the CITY as described in the CONTRACT DOCUMENTS, including the work described herein.

2.22 PROJECT MANAGER: An employee of the CITY, expressly designated as PROJECT MANAGER in writing by the DIRECTOR, who is the representative of the CITY, concerning the CONTRACT DOCUMENTS.

2.23 PROJECT MANUAL: The official documents setting forth information and requirements; contract forms, bonds, and certificates; general and supplementary conditions of the CONTRACT DOCUMENTS; the specifications; and the plans and drawings of the PROJECT.

2.24 RESIDENT PROJECT REPRESENTATIVE: An authorized representative of the CONSULTANT on the PROJECT.

2.25 SUBCONTRACTOR: A person, firm or corporation having a direct contract with the CMAR, including one who furnishes material worked to a special design according to the PROJECT MANUAL for this work, but not including a person, firm or corporation merely furnishing material not so worked.

2.26 SUBSTANTIAL COMPLETION: That date on which, as certified in writing by CONSULTANT, the Work/Scope of Services, or a portion thereof designated by the PROJECT MANAGER in his/her sole discretion, is at a level of completion in substantial compliance with the CONTRACT DOCUMENTS such that all conditions of permits and regulatory agencies have been satisfied and the OWNER or its designee can enjoy beneficial use or occupancy and can use or operate the Work in all respects for its intended purpose(s).

2.27 SURETY: The surety company which is bound by the performance bond and payment bond with and for CMAR who is primarily liable, and which surety company is responsible for CMAR's acceptable and timely performance of the work under the CONTRACT DOCUMENTS and for the payment of all debts pertaining thereto in accordance with Section 255.05, Florida Statutes, as

amended from time to time. All surety companies shall be authorized to conduct suretyship business under Florida Law and have a Florida Resident Agent.

2.28 WORK: The totality of the obligations, including construction and other services required by the CONTRACT DOCUMENTS including all labor, materials, equipment and service provided or to be provided by CMAR to fulfill CMAR's obligations. The Work may constitute the whole or a part of the PROJECT.

2.29 WRITTEN NOTICE: Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent to the last known business address by registered mail, other traceable delivery service, email, facsimile, or text message.

ARTICLE 3
CMAR's RESPONSIBILITIES

3.1 The CMAR shall provide the construction services described in Exhibits "A through F", this Contract and the CONTRACT DOCUMENTS.

3.2 CMAR shall cause all materials and other parts of the Work to be readily available as and when required or needed for or in connection with the construction, furnishing and equipping of the improvements.

3.3 CMAR shall plan, record, and update, at least monthly, the construction schedule of the PROJECT. The schedule shall indicate the dates for the commencement and completion of the various stages of construction and shall be revised as required by the conditions of the work. The Progress Schedule shall encompass all of the work of all trades necessary for the construction of the Project and shall be sufficiently complete and comprehensive to enable progress to be monitored on a weekly basis.

3.4 SUPERINTENDENCE AND SUPERVISION:

3.4.1 The instructions of CITY are to be given through CONSULTANT, which instructions are to be strictly and promptly followed in every case. CMAR shall keep on the Project site during its progress, a competent, full time, English speaking Superintendent or Supervisor ("Superintendent") and any necessary assistants, all satisfactory to the CONSULTANT and PROJECT MANAGER. The Superintendent or Supervisor shall not be changed except with the written consent of PROJECT MANAGER, unless the Superintendent or Supervisor proved to be unsatisfactory to CMAR and ceases to be in its employ. The Superintendent or Supervisor shall represent CMAR and all direction given to the Superintendent or Supervisor shall be as binding as if given to CMAR and will be confirmed in writing by CONSULTANT. CMAR shall give efficient supervision to the Work, using its best skill and attention.

3.4.2 CMAR's Superintendent or Supervisor shall record, at a minimum, the following information in a bound log on a daily basis: the day; date; weather conditions and how any weather conditions affected the progress of the

work; time of commencement of work for the day; the work being performed; materials, labor, personnel, equipment and subcontractors at the PROJECT site; visitors to the PROJECT site including representatives of CITY, CONSULTANT, regulatory authorities; any special or unusual conditions or occurrences encountered; and the time of termination of work for the day. All information shall be recorded in the daily log in ink. The daily log shall be kept on the PROJECT site and shall be available at all times for inspection and copying by the PROJECT MANAGER and CONSULTANT.

3.4.3 CMAR, CONSULTANT and PROJECT MANAGER shall meet at least every two weeks or as otherwise determined by CONSULTANT and/or PROJECT MANAGER during the course of the WORK to review and agree upon the WORK performed to date and to establish the controlling items of work for the next two weeks. CONSULTANT shall publish, keep, and distribute minutes of, and any comments on, each such meeting.

3.4.4 CMAR shall supervise and direct the work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the CONTRACT DOCUMENTS. CMAR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction.

3.5 CMAR shall use reasonable efforts to verify all dimensions, quantities and details shown on the drawings, specifications or other data received from CONSULTANT, and shall notify CONSULTANT of all errors, omissions and discrepancies found therein within three calendar days of discovery. CMAR will not be allowed to take advantage of any error, omission or discrepancy, as full instructions will be furnished by CONSULTANT.

3.6 DIFFERING SITE CONDITIONS:

In the event that during the course of the work, CMAR encounters an underground utility that was not shown on the CONTRACT DOCUMENTS; or subsurface or concealed conditions at the project site which differ materially from those shown on the CONTRACT DOCUMENTS and from those ordinarily encountered and generally recognized as inherent in work of the character called for in the CONTRACT DOCUMENTS; or unknown physical conditions of the PROJECT site, of an unusual nature, which differ materially from that ordinarily encountered and generally recognized as inherent in work of the character called for in the CONTRACT DOCUMENTS, CMAR without disturbing the conditions and before performing any work affected by such conditions, shall, no later than 9:00 a.m. the next day after their discovery, notify CONSULTANT in writing of the existence of the aforesaid conditions. CONSULTANT shall, within one business day after receipt of CMAR's written notice, investigate the site conditions identified by the CMAR. If, in the sole opinion of CONSULTANT, the conditions do materially so differ and cause an increase or decrease in CMAR's cost of, or the time required for the performance of any part of the work, whether or not charged as a result of the conditions, CONSULTANT shall recommend an equitable adjustment to the CONTRACT PRICE, or the CONTRACT TIME, or both, which is subject to written approval by the PROJECT

MANAGER. If CONSULTANT and CMAR cannot agree on an adjustment in the CONTRACT PRICE or CONTRACT TIME, the adjustment shall be determined by the CONSULTANT in accordance with Article 30. No request by CMAR for an equitable adjustment or change to the CONTRACT PRICE or CONTRACT TIME under this provision shall be allowed unless the CMAR has given written notice within 30 days from when the CMAR knew or should have known of such conditions and the written notice shall detail the facts relating to such request. .

No request for an equitable adjustment or change to the CONTRACT PRICE or CONTRACT TIME for different site conditions shall be allowed if made after the date certified by CONSULTANT as the date of SUBSTANTIAL COMPLETION.

3.7 SUBMITTALS:

3.7.1 CMAR shall provide submittals (including but not limited to shop drawings, product samples, product data, warranties, closeout submittals, reports and photographs) as required by the specifications. The submittals serve as CMAR's coordination documents and demonstrate the suitability, efficiency, technique of manufacture, installation requirements, detailing and coordination of specified products, components, assemblies and systems, and evidence compliance or noncompliance with the CONTRACT DOCUMENTS. CMAR's submittals are not part of the CONTRACT DOCUMENTS but are documents prepared and utilized by the CMAR to coordinate the WORK.

3.7.2 Within ten calendar days after the date of the first NOTICE TO PROCEED, CMAR shall provide to CONSULTANT, a list of all submittals required for permitting. Within 20 calendar days after the date of the NOTICE TO PROCEED, CMAR shall submit to CONSULTANT (with a copy to the PROJECT MANAGER) a comprehensive list of required items and shall identify the critical items. Approval of this list (the Submittal Schedule) by CONSULTANT shall in no way relieve CMAR from providing complete submittals as required by the CONTRACT DOCUMENTS and providing services, products, materials, equipment, systems and assemblies, fully in accordance with the CONTRACT DOCUMENTS.

3.7.3 After the approval of the submittal schedule, CMAR shall promptly request submittals from the various manufacturers, fabricators, and suppliers.

3.7.4 CMAR shall thoroughly review and check the submittals and provide them to the CONSULTANT in accordance with the requirements for such submittals specified in Division 1 of the specifications. Each submittal and required copy shall indicate CMAR's review of that submittal in the form required by the CONTRACT DOCUMENTS.

3.7.5 CMAR shall maintain a Submittal Log which shall include, at a minimum, the date of each submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection.

3.7.6 If the submittals indicate deviations or departures from the requirements of the CONTRACT DOCUMENTS, CMAR shall make specific mention of such in its letter of transmittal. Failure to point out such deviations or departures shall not relieve CMAR from its responsibility to comply with the CONTRACT DOCUMENTS.

3.7.7 CONSULTANT shall have no duty to review partial or incomplete submittals except as may be provided otherwise within the CONTRACT DOCUMENTS.

3.7.8 Provided such submittals conform to the approved submittal schedule, CONSULTANT shall review and approve submittals as expeditiously as possible, within ten calendar days from the date received, unless said submittals are rejected by CONSULTANT for material reasons or the submittals are of substantial building systems which require more time for thorough review. CONSULTANT's approval of submittals will be general and shall not relieve CMAR of responsibility for the accuracy of such drawings, nor for the proper fitting and construction of the WORK, nor for the furnishing of materials or work required by the CONTRACT DOCUMENTS. No WORK for which submittals are required shall be performed until said submittals have been approved by CONSULTANT. Approval shall not relieve CMAR from responsibility for errors or omissions on the submittals or for compliance with the requirements of the CONTRACT DOCUMENTS.

3.7.9 No review or approval will be given to partial submittals for items which interconnect and/or are interdependent where necessary to properly evaluate the submittal. It is CMAR's responsibility to assemble the submittals for all such interconnecting and/or interdependent items, check them and then provide one submittal to CONSULTANT along with comments as to compliance, noncompliance, or features requiring special attention.

3.7.10 Additional information provided by the CMAR on any submittal shall be typewritten or lettered in ink.

3.7.11 CMAR shall submit the number of copies required by the CONTRACT DOCUMENTS plus the number required by jurisdictional authorities (when submittals are to be made to such authorities). Resubmissions of submittals

shall be made in the same quantity until final approval is obtained from CONSULTANT.

3.7.12 CMAR shall keep one set of CONSULTANT approved submittals at the project site at all times.

3.8 FIELD LAYOUT OF THE WORK AND RECORD DRAWINGS:

3.8.1 The entire responsibility for establishing and maintaining line and grade in the field lies with CMAR. CMAR shall maintain an accurate and precise record of the location and elevation of all pipe lines, conduits, structures, manholes, handholes, fittings and other accessories/features and shall prepare a complete site survey sealed by a Florida registered Professional Surveyor which shall be submitted as a project record document at the time of requesting final payment. Final surveys shall be submitted in hardcopy on mylar and as an electronic media submittal prepared in accordance with requirements for electronic media submittals as specified elsewhere in the PROJECT MANUAL. The cost of all such field layout and recording work is included in the prices bid for the appropriate items.

3.8.2 CMAR shall maintain in a safe place at the project site, one record copy of all drawings, plans, specifications, addenda, written amendments, change orders, field orders, submittals and written interpretations and clarifications in good order and annotated to show all changes made during construction. Each of these documents shall be clearly marked by CMAR as "Project Record Document." These Project Record Documents together with all approved samples and a counterpart of all approved submittals shall be available at all times to CONSULTANT for reference. Upon final completion of the PROJECT and prior to Final Payment, these Project Record Documents, including submittals and other Project Record Documents required elsewhere in the PROJECT MANUAL and specifications shall be delivered to the PROJECT MANAGER.

3.8.3 Prior to, and as a condition precedent to Final Payment, CMAR shall submit to CITY, CMAR's record drawings or as-built drawings acceptable to CONSULTANT.

3.8.4 CMAR shall deliver to CONSULTANT for delivery to the CITY all equipment data, along with its recommended spare parts list, maintenance manuals, manufacturer's warranties and operations manuals as may be required within the PROJECT MANUAL for the CITY's employees and agents to maintain and operate any equipment provided as part of the WORK.

3.9 INSPECTION AND TESTING:

3.9.1 CONSULTANT and PROJECT MANAGER shall at all times have access to the WORK, and CMAR shall provide for use by the CONSULTANT the facilities described in Division 1 of the specifications for such access and for inspecting, measuring and testing.

3.9.1.1 Should the CONTRACT DOCUMENTS, CONSULTANT's instructions, any laws, ordinances, or public authority require any of the Work to be specially tested or approved, CMAR , shall update the CONSULTANT on a weekly basis by providing a two week look-ahead schedule denoting all activity to be performed and highlighting those activities that need testing and approval. If the testing or approval is to be made by an authority other than CITY, timely notice shall be given of the date fixed for such testing or approval. Testing shall be made promptly, and where practicable, at the source of supply. If any of the WORK that requires approval is covered up without approval or consent of CONSULTANT, it must, if required by CONSULTANT, be uncovered for examination and properly restored to the satisfaction of the CONSULTANT.

3.9.1.2 Reexamination of any of the WORK may be ordered by CONSULTANT with prior written approval by the PROJECT MANAGER, and if so ordered, the WORK must be uncovered by the CONTRACTOR. If such WORK is found to be in accordance with the CONTRACT DOCUMENTS, CITY shall pay the cost of reexamination and replacement by means of a CHANGE ORDER. If such WORK is not in accordance with the CONTRACT DOCUMENTS, CMAR shall pay such cost to be deducted from the CMAR's fee at no additional cost to CITY.

3.9.2 No inspector, employee or agent of the City shall have the authority to permit deviations from, nor to modify any of the provisions of the CONTRACT DOCUMENTS nor to delay the contract by failure to inspect the materials and WORK with reasonable promptness without the written permissions or instructions of CONSULTANT and PROJECT MANAGER.

3.9.3 The payment of any compensation, whatever may be its character or form, or the giving of any gratuity or the granting of any favor by CMAR to any inspector, directly or indirectly, is strictly prohibited, and any such act on the part of the CMAR will constitute a breach of this contract.

3.10 TAXES/DIRECT OWNER PURCHASE OPTION

3.10.1 CMAR shall pay all applicable sales, consumer, use and other taxes required by law. CMAR is responsible for reviewing the pertinent state statutes and regulations involving state taxes and complying with all requirements.

3.10.2 Taxes shall be a reimbursable cost under Section 8.3.4(6) except income and franchise taxes. All such taxes that are required as of the time of contract execution shall be included in the GMP.

3.10.3 The CITY, in its sole discretion, may choose to exercise the Owner direct purchase option CMAR has included in its GMP and shall pay all sales, consumer, use and other similar taxes for the WORK or portions thereof provided by CMAR which are legally enacted at

the time the GMP is established, whether or not yet effective. OWNER reserves the right to delete portions of the WORK and to direct purchase materials to realize a true savings pursuant to an owner direct purchase Option ("ODP"). CMAR hereby agrees to permit OWNER to direct purchase from its suppliers at prices quoted to CMAR and for OWNER to retain any true savings generated thereby.

3.10.4 In accordance with the provisions of subsection 3.10.3 of this contract, CITY may exercise its right to implement an OPD/ Sales Tax Savings Program, with respect to this contract. This Article describes the procedures by which this program will be implemented and administered if the CITY subsequently determines to do so. Pursuant to these procedures, CITY may order and pay for all such purchases, as well as take title to all such purchases, directly from the supplier or manufacturer.

3.10.5 At the time the GMP is established, but not later than concurrently with submission of the required Schedule of Values, CITY, CONSULTANT, and CMAR shall endeavor to identify the specific items and the estimated costs of the potential "ODP". CMAR shall identify a separate line item cost for each potential ODP item. CMAR CONTRACTOR must clearly and separately identify any CONTINGENCY or allowance amount associated with any ODP line items. The GMP must include the total cost of the WORK, including the cost of the ODP items and their associated sales taxes.

3.10.6 Based upon review of the CONTRACT DOCUMENTS, CMAR shall recommend potential ODP items to the PROJECT MANAGER and CONSULTANT. After reviewing CMAR's recommendations and the applicable CONTRACT DOCUMENTS, and after consultation with CONSULTANT, PROJECT MANAGER shall make the final determination as to which items, if any, will be purchased as ODP items.

3.10.7 After PROJECT MANAGER identifies the ODP items, CMAR shall prepare a standard purchase order requisition on a purchase order form provided by CITY, to specifically identify the materials which CITY has elected to purchase directly. The purchase order requisition form shall include the following information:

Project Name;
CONTRACTOR Name;
Manufacturer/Supplier Name;
Name, address, telephone number and contact person for Manufacturer/ Supplier;
Manufacturer or brand model or specification number of the item;
The quantity and unit of measure needed as estimated by CONTRACTOR;

The price quoted by the Manufacturer/Supplier for the materials or equipment identified;
All sales tax associated with the price quote;
Delivery address;
Delivery dates;
Delivery instructions;
Vendor identification number;
Mailing address for invoices.

3.10.8 All purchase order requisitions prepared by CMAR must be sent to CITY's Department of Design and Construction Management, with a copy to the CONSULTANT, and they must be expressly approved by PROJECT MANAGER before a purchase order is issued to the applicable Manufacturer/Supplier. In preparing the standard purchase order requisition, CMAR shall include all terms and conditions, which may have been negotiated by the CMAR with the Manufacturer/Supplier {e.g. payment terms, warranties, etc.). To the extent any such terms or conditions differ from the standard terms and conditions included in CITY's standard purchase order requisition form, such differences must be specifically identified to CITY by the CMAR prior to submitting the requisition for review by the City Attorney's Office and Procurement Director. Upon the additional terms or conditions being reviewed and accepted, CMAR shall submit the required purchase order requisition. All shipping expenses associated with any ODP item (including all freight insurance) must be included in the cost of that item and not charged as a separate item.

3.10.9 All purchase order requisitions prepared by CMAR must be submitted to the PROJECT MANAGER and CONSULTANT no less than 21 calendar days prior to the need for the ordering of the subject ODP item, in order to provide sufficient time for its review.

3.10.10 CMAR is responsible for ensuring that all necessary attachments to the purchase order requisition {e.g., shop drawings, details, specification sheets, etc.) required to properly place the order with the Manufacturer/Supplier, have been attached to the purchase order requisition at the time it is sent to PROJECT MANAGER for review. Once approved by the DIRECTOR OR PROJECT MANAGER, PROJECT MANAGER shall forward the completed purchase order requisition, with all attachments, to the Manufacturer/Supplier, with a copy to CMAR.

3.10.11 The CITY shall take title to ODP items from the Manufacturer/Supplier at the time of purchase or delivery, as applicable, according to the terms of purchase and delivery. The CITY assumes the risk of loss with respect to ODP items in that it bears the economic burden of insurance for loss or damage, and directly enjoys the economic benefit of proceeds of such insurance as an additional named insured.

3.10.12 As ODP items are delivered to the job site, CMAR shall visually inspect all shipments from Manufacture/Suppliers, and approve the vendor's shipping record for material delivered. CMAR shall assure that each delivery of an ODP item is accompanied by the appropriate documentation to adequately identify the purchase order number against which the purchase is made and to confirm that the correct type and quantity of the ODP item has been delivered in the appropriate condition. CMAR's approval will include a legible signature (printed) of the person who inspected the delivered items, dated as of the date of delivery.

3.10.13 All invoices from the Manufacturer/Supplier must be directed and sent to PROJECT MANAGER at the Department of Design and Construction Management by CMAR. It is the responsibility of CMAR to review all such invoices and confirm in writing their accuracy in relation to the delivery ticket and the OPD items actually delivered before forwarding them to PROJECT MANAGER for processing and payment. CMAR shall obtain from the Manufacturer/Supplier all releases, warranties and other necessary supporting documentation which may be required by CITY and shall insure that all such releases, warranties and supporting documentation have been attached to the invoice before forwarding the invoice to PROJECT MANAGER for processing and payment. CMAR is responsible for obtaining from the Manufacturer/Supplier all operating information and manuals, spare parts and all other items required to be provided by the Manufacturer/Supplier.

3.10.14 CMAR shall review all such items for compliance with the requirements of the DOCUMENTS and shall organize and deliver all such items to PROJECT MANAGER as part of its requirements for achieving SUBSTANTIAL COMPLETION of the WORK.

3.10.15 CMAR, PROJECT MANAGER and CONSULATANT shall review on a quarterly basis, the ODPs that have been delivered and paid for the previous quarter. CMAR's shall prepare a log of ODPs, showing the amount equal to the value of any ODPs, including sales taxes, paid for by CITY. At a time of its choosing, but prior to completion of the WORK, CITY shall prepare an appropriate CHANGE ORDER, for CMAR's execution, which reduces the CONTRACT PRICE by the total cost paid by CITY for the ODPs, together with the amount of sales tax savings that have been realized as a result of CITY's ODPs. Further, the CHANGE ORDER shall allocate to the OWNER's CONTINGENCY any sales tax savings .

3.10.16 Nothing in this Article relieves CMAR from its responsibility for the requisitioning of the order, scheduling, coordinating, insuring, delivery, unloading, storage, installation, repair, operation and warranty of all ODP items. All such obligations remain the responsibility of CMAR and have been paid for by CITY as a part of the CONTRACT PRICE (which always included these

responsibilities and obligations) as fully as if there had been no CITY ODP purchase whatsoever.

ARTICLE 4
PRIORITY OF PROVISIONS

4.1 The CONTRACT DOCUMENTS shall be interpreted so as to eliminate inconsistencies or conflicts, but in the event of any conflict, requirements for greater quantity and/or more expensive work shall govern such interpretation.

4.2 In case of conflicts between the provisions of this contract, any ancillary documents executed contemporaneously herewith or prior hereto, or any other of the CONTRACT DOCUMENTS, the provisions of this Contract (including all Exhibits) shall prevail.

4.3 Anything shown on the drawings and not mentioned in the specifications or mentioned in the specifications and not shown on the drawings shall have the same effect as if shown or mentioned respectively in both. In the event of a conflict among the CONTRACT DOCUMENTS, the most stringent requirements applicable to the CMAR shall control.

4.4 The organization of the specifications into divisions and sections and the arrangement of drawings shall not control CMAR in dividing the WORK among subcontractors or in establishing the extent of the WORK to be performed by any trade. The organization of the specifications and the arrangement of the drawings is for the convenience of CMAR and is not intended to relieve CMAR from its obligation to conduct a complete study of the drawings, specifications and addenda for the purpose of directing and coordinating the various subcontractors and suppliers as to their respective responsibilities.

ARTICLE 5
CONSULTANT'S AUTHORITY

5.1 CONSULTANT will provide overall technical and management services to assist the CITY in maintaining schedules, establishing budgets, controlling costs, and achieving quality.

5.2 If at any time the CONSULTANT observes or becomes aware of any fault or defect in the WORK or of any nonconformance with the CONTRACT DOCUMENTS, CONSULTANT will promptly notify the PROJECT MANAGER and CMAR in writing and will direct that all reasonable steps be taken to correct such fault, defect or nonconformance. The CONSULTANT shall have the authority to reject work that does not in its opinion, or in the opinion of the PROJECT MANAGER, conform to the CONTRACT DOCUMENTS.

5.3 CONSULTANT shall monitor the overall quality, progress and cost of the WORK.

5.4 CONSULTANT shall not have control over construction means, methods, techniques, sequences and procedures employed by CMAR in the performance of the WORK, but shall be responsible for using its best efforts to review and, if unacceptable, disapprove such and shall recommend a course of action to the

CITY based on the fact that the requirements of the CONTRACT DOCUMENTS are not being met by CMAR.

5.5 The CITY will be assisted by CONSULTANT in the areas of on-site review of WORK in progress, review of pay requests submitted by CMAR, assisting in the interpretation of the intent of the CONTRACT DOCUMENTS for the proper execution of the WORK, and such other assistance as the CITY may request.

5.6 The CONSULTANT shall have no authority to order or approve any deviation from the CONTRACT DOCUMENTS, whether or not such deviation affects the cost of the WORK, or the date of SUBSTANTIAL COMPLETION. In the event any such deviation is sought by CONSULTANT or CMAR, prior written approval from the PROJECT MANAGER must be obtained.

ARTICLE 6
TIME FOR PERFORMANCE

6.1 CONTRACT TIME:

6.1.1 CMAR shall be instructed to commence the WORK by written NOTICES TO PROCEED issued by the PROJECT MANAGER. The first NOTICE TO PROCEED will not be issued until CMAR's submission to PROJECT MANAGER of all required documents and after execution of the contract by both parties. Preliminary work, including submission of a project schedule, schedule of values, submittals, submittal schedule, and other documents required for permitting, and performance of work that does not require permits, shall be submitted within ten calendar days after the date of the NOTICE TO PROCEED. Receipt of all permits by CMAR is a condition precedent to the issuance of a second NOTICE TO PROCEED for all other work. The WORK to be performed pursuant to the second NOTICE TO PROCEED shall be completed within ten calendar days of the Project Initiation Date specified in the second NOTICE TO PROCEED

6.1.2 Time is of the essence throughout this contract. The PROJECT shall be SUBSTANTIALLY COMPLETED within **<Number> calendar days** from the date of the second NOTICE TO PROCEED. The total PROJECT shall be completed and ready for final payment within **30 calendar days** from the date certified by CONSULTANT as the date of SUBSTANTIAL COMPLETION in accordance with Article 8.

6.1.3 LIQUIDATED DAMAGES.

A. LIQUIDATED DAMAGES FOR SUBSTANTIAL COMPLETION.

1. The CMAR shall pay the OWNER the sum of _____ Dollars per day for each and every calendar day of unexcused delay in achieving SUBSTANTIAL COMPLETION beyond the date set forth in the CONTRACT DOCUMENTS for SUBSTANTIAL COMPLETION of each phase, if phased, or the PROJECT, if not phased.

2. OWNER and CMAR acknowledge that any sums due and payable by the CMAR shall be payable, not as a penalty, but as liquidated damages representing a reasonable estimate of delay damages, inconvenience, additional overhead and costs likely to be sustained by the OWNER as estimated at the time of executing the CONTRACT DOCUMENTS. If the OWNER reasonably believes in its discretion that SUBSTANTIAL COMPLETION will be delayed, the OWNER shall be entitled, but not required, to withhold from any amounts otherwise due the CMAR an amount then believed by the OWNER to be adequate to recover liquidated damages applicable to such delays. If and when in the OWNER's discretion the CMAR overcomes the delay in achieving the SUBSTANTIAL COMPLETION, or any part thereof, for which the OWNER has withheld payment, the OWNER shall promptly release to the CMAR those funds withheld, but no longer applicable, as liquidated damages.

3. Partial use or occupancy of the PROJECT may not result in the Scope of Services/Work being deemed substantially completed, and such partial use or occupancy may not be evidence of SUBSTANTIAL COMPLETIOIN.

   SUBSTANTIAL COMPLETION, in the context of this contract, does not refer to any prior dates on which the OWNER employs other contractors to work on the same site.

B. LIQUIDATED DAMAGES FOR FINAL COMPLETION.

1. If the CMAR fails to achieve FINAL COMPLETION within 60 days of the date of SUBSTANTIAL COMPLETION, the CMAR shall pay the OWNER the sum of _____Dollars per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth for completion of the WORK or PROJECT.

2. Any sums due and payable hereunder by the CMAR shall be payable, not as a penalty, but as liquidated damages representing a reasonable estimate of delay damages, inconvenience, additional overhead and costs likely to be sustained by the OWNER, as estimated at or before the time of executing this contract. When the OWNER reasonably believes that FINAL COMPLETION will be inexcusably delayed, the OWNER shall be entitled, but not required, to withhold from any amounts otherwise due the CMAR an amount then believed by the OWNER to be adequate to recover liquidated damages applicable to such delays.

3. Prior to being entitled to receive final payment, and as a condition precedent thereto, the CMAR shall provide the OWNER, in the form and manner required by the OWNER, the following:

a. An affidavit that the CMAR's obligations to all subcontractors, laborers, equipment or suppliers, or other third parties in connection with the PROJECT, have been paid or otherwise satisfied;

b. Such other documents as required by the PROJECT MANUAL from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who may have a claim against the person or entity that retained it, including but not limited to final releases of bond;

c. All product warranties, operating manuals, instruction manuals and other documents customarily required of the CMAR or reasonably required by the OWNER, including but not limited to those required elsewhere in the CONTRACT DOCUMENTS, as part of its Project Closing procedure.

6.1.4 CMAR shall be responsible for reimbursing CITY, in addition to liquidated damages, for all costs incurred by CONSULTANT in administering the construction of the PROJECT beyond the completion dates specified above or beyond an approved extension of time granted to CMAR, whichever date is later. Such costs shall be deducted from the monies due CMAR for performance of work under this contract by means of unilateral credit change orders issued periodically to CITY as costs are incurred by CONSULTANT and agreed to by CITY.

6.15 Extensions to the CONTRACT TIME for delays caused by the effects of inclement weather shall be submitted as a request for change in CONTRACT TIME pursuant to Article 6.3. These time extensions are justified only when rains or other inclement weather conditions or related adverse soil conditions prevent CMAR from productively performing controlling items of work identified on the accepted schedule or updates resulting in CMAR being unable to work at least 50% of the normal workday on controlling items of work identified on the accepted schedule or updates due to adverse weather conditions.

6.2 SUBSTANTIAL COMPLETION DATE:

When CMAR considers that the WORK, or portion thereof designated by PROJECT MANAGER pursuant to Article 6.4 hereof, has reached SUBSTANTIAL COMPLETION , CMAR shall so notify PROJECT MANAGER and CONSULTANT in writing. CONSULTANT and PROJECT MANAGER shall then promptly inspect the WORK.

When CONSULTANT, on the basis of such an inspection, determines that the WORK or designated portion thereof is substantially complete, CONSULTANT will then prepare a Certificate of Substantial Completion in the form attached hereto as Form 1 which shall establish the Date of SUBSTANTIAL COMPLETION ; shall state the responsibilities of CITY and CMAR for security, operation, safety, maintenance, services, damage to the WORK , insurance,

and warranties; and shall list all work yet to be completed (Punch List) to satisfy the requirements of the CONTRACT DOCUMENTS for FINAL COMPLETION . The failure to include any items of corrective work on such list does not alter the responsibility of CMAR to complete all of the work in accordance with the CONTRACT DOCUMENTS. The Certificate of Substantial Completion shall be submitted to the PROJECT MANAGER, after execution by CMAR, and CONSULTANT, indicating their written acceptance of such certificate.

6.3 NOTIFICATION OF CHANGE OF CONTRACT TIME OR CONTRACT PRICE:

6.3.1 Any claim for a change in the CONTRACT TIME or CONTRACT PRICE shall be made by written notice and delivered by CMAR to the CONSULTANT with a copy to PROJECT MANAGER within five calendar days of the commencement of the event giving rise to the claim and stating the general nature of the claim. Notice of the nature and elements of the claim shall be delivered within 20 calendar days after the date of such written notice. Thereafter, within ten calendar days of the termination of the event giving rise to the claim, notice of the extent of the claim with supporting data shall be delivered unless CONSULTANT allows an additional period of time to ascertain more accurate data in support of the claim and shall be accompanied by CMAR's written statement that the adjustment claimed is justified as a result of the occurrence of said event. All claims for adjustment in the CONTRACT TIME or CONTRACT PRICE shall be determined by CONSULTANT in accordance with Article 30 hereof, if CONSULTANT and CMAR cannot otherwise agree. NO CLAIM FOR AN ADJUSTMENT IN THE CONTRACT TIME OR CONTRACT PRICE WILL BE VALID IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.

6.3.2 The CONTRACT TIME will be extended in an amount equal to time lost due to delays beyond the control of and through no fault or negligence of CMAR if a claim is made therefore as provided in subsections 6.3.1 and 7.81of this contract. Such delays shall include, but not be limited to, acts or neglect by any separate independent contractors employed by CITY, fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

6.4 USE OF COMPLETED PORTIONS:

6.4.1 CITY shall have the right, at its sole option, to take possession of and use of any completed or partially completed portions of the PROJECT. Such possession and use shall not be deemed an acceptance of any of the WORK not completed in accordance with the CONTRACT DOCUMENTS. If such possession and use increases the cost of or delays of the work, CMAR shall be entitled to reasonable extra compensation, or reasonable extension of time or both, by appropriate adjustment pursuant to Article 7.4 or 7.6 hereof.

6.4.2 In the event CITY takes possession of any completed or partially completed portions of the PROJECT , the following shall occur:

6.4.3 CITY shall give notice to CMAR in writing at least 15 calendar days prior to CITY's intended occupancy of a designated area.

6.4.4 CMAR shall complete to the point of SUBSTANTIAL COMPLETION the designated area and request inspection and issuance of a Certificate of SUBSTANTIAL COMPLETION on the form attached hereto as Form 1 from CITY.

6.4.4.1 Upon CONSULTANT's issuance of a Certificate of SUBSTANTIAL COMPLETION, CITY will assume full responsibility for maintenance, services, subsequent damages of or by the CITY and the public, adjustment of insurance coverage and start of warranty for the occupied area.

6.4.4.2 CMAR shall complete all items noted on the Certificate of SUBSTANTIAL COMPLETION within the time specified in Section 6.1 and request final acceptance of the portion of the WORK occupied. Upon completion of final inspection and receipt of an application for final payment, CONSULTANT shall issue a Final Certificate of Payment relative to the occupied area.

6.4.4.3 If the CITY finds it necessary to occupy or use a portion or portions of the WORK to SUBSTANTIALCOMPLETION thereof, such occupancy or use shall not commence prior to a time mutually agreed upon by CITY and CMAR and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. Insurance on the unoccupied or unused portion or portions shall not be canceled or lapsed on account of such partial occupancy or use. Consent of CMAR and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

ARTICLE 7
CHANGES IN THE WORK OR TERMS OF CONTRACT DOCUMENTS

7.1 Without invalidating the contract and without notice to the surety, CITY reserves and shall have the right, from time to time, to make such increases, decreases or other changes in the character or quantity of the work as may be considered necessary or desirable to complete fully and acceptably the proposed construction in a satisfactory manner. Any extra or additional work within the scope of this PROJECT must be accomplished by means of an appropriate CHANGE ORDER in accordance with the requirements of the CONTRACT DOCUMENTS and Section 38.48 of the Purchasing Ordinance.

7.2 Any changes to the terms of the CONTRACT DOCUMENTS must be contained in a written document, executed by the parties hereto, with the same formality and of equal dignity prior to the initiation of any work reflecting such change. This section shall not prohibit the issuance of CHANGE ORDERS executed only by CITY as hereinafter provided.

7.3 The PROJECT MANAGER through the CONSULTANT may direct CMAR to expedite the WORK by whatever means CMAR may use, including, without limitation, increasing staffing or working overtime to bring the work back within the progress schedule. If the expediting of WORK is required due to reasons outside the control or responsibility of CMAR, then the additional costs incurred shall be the subject of an appropriate adjustment issued pursuant to Article 7.4 or Article 7.6, below as applicable.

7.4 CHANGE ORDERS:

7.4.1 Changes in the quantity or character of the WORK within the scope of the PROJECT which are not properly executed, or the subject of field orders or supplemental instructions, including all changes resulting in changes in the CONTRACT PRICE , or the CONTRACT TIME , shall be authorized only by written CHANGE ORDERS approved and issued in accordance with the provisions of the CONTRACT DOCUMENTS and the requirements set forth in §38.48 of the CITY's Purchasing Ordinance which is deemed to be incorporated by reference herein as though set forth in full.

7.4.2 CMAR's fee on such changes which exceeds GMP shall be determined as follows:

(a) A mutually acceptable fixed fee, or

(b) If none can be agreed upon, a fee based upon a percentage of the net change to the Cost of the Work resulting from the CHANGE ORDER , in accordance with Article 8.3, hereof, not to exceed five percent .

A Subcontractor's percentage markup on CHANGE ORDERS for overhead and profit shall be reasonable, but in no event shall the aggregate of the Subcontractor's overhead and profit markups exceed 15%. In the event

Subcontractor is affiliated with the CMAR by common ownership or management, or is effectively controlled by CMAR, no fee will be allowed on the Subcontractor costs. In the event there is more than one level of Subcontractor such as second and third tier Subcontractors, the sum of all of the Subcontractors' percentage markups for overhead and profit shall not in the aggregate exceed 20%.

7.4.3 CMAR shall not start WORK on any changes requiring an increase in the CONTRACT PRICE or the CONTRACT TIME until a CHANGE ORDER setting forth adjustments is prior to receiving written authorization through the PROJECT MANAGER, it does so at its own risk and assume all associated responsibility and costs. Upon receipt of an approved CHANGE ORDER, CMAR shall promptly proceed with the WORK set forth within the document.

7.4.4 In the event satisfactory adjustment cannot be reached for any item requiring a change in the CONTRACT PRICE or CONTRACT TIME, and a CHANGE ORDER has not been issued, CITY reserves the right at its sole option to either terminate this contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the disputed work; or submit the matter in dispute to CONSULTANT as set forth in Article 30 hereof. Upon receipt of a CHANGE ORDER, CMAR shall promptly proceed with the change in the work involved and advise the CONSULTANT and PROJECT MANAGER in writing within seven calendar days of CMAR's agreement or disagreement with the method, if any, provided in the CHANGE ORDER for determining the proposed adjustment in the CONTRACT PRICE or CONTRACT.

7.4.5 On approval of any contract change increasing the CONTRACT PRICE, CMAR shall ensure that the Performance Bond and Payment Bond are increased so that each reflects the total CONTRACT PRICE contract price as increased and shall provide a copy of the revised bonds to the PROJECT MANAGER.

7.5 FIELD ORDERS AND SUPPLEMENTAL INSTRUCTIONS:

7.5.1 In accordance with Section 38.48 of the Procurement Code, the CONSULTANT shall have the right to approve and issue changes setting forth written interpretations of the intent of the CONTRACT DOCUMENTS and ordering minor changes in work execution, providing the Field Order involves no change in the CONTRACT PRICE or CONTRACT TIME.

7.5.2 CONSULTANT shall have the right to approve and issue Supplemental Instructions setting forth written orders, instruction, or interpretations concerning the CONTRACT DOCUMENTS, provided such supplemental instructions involve no change in the CONTRACT PRICE or CONTRACT TIME.

7.6 CONTRACT PRICE ELEMENT ADJUSTMENT MEMORANDA:

CONTRACT PRICE
FIXED FEE WITH A GUARANTEED MAXIMUM PRICE (GMP)

a.	Direct Construction Cost	$_____
b.	CMAR-staff	$_____
c.	Construction Phase Fee	$_____
d.	General Conditions	$_____
e.	Construction Contingency	$_____
f.	Owner's Contingency	$_____
TOTAL GMP (ALL INCLUSIVE)		$_____

The PROJECT MANAGER shall have the right to issue certain Contract Price Element Adjustment Memoranda which shall address the reallocation of sums between the Contract Price Elements within the CONTRACT PRICE. In no event shall the Contract Price be modified except by following an appropriate CHANGE ORDER. The following specific Memoranda are contemplated, but additional or different Memoranda may be required and issued, provided, they do not result in a change to the CONTRACT PRICE, and provided that amounts shall only be transferred from Elements a. through e. above with prior approval of the CMAR and the CITY.

At the completion of the WORK, a Memorandum will be issued in conjunction with a final CHANGE ORDER to remove any remaining sums within the Direct Construction Cost and General Conditions and reduce the GMP in accordance with subsection 7.4 and subsection 8.2 of this Agreement.

When major subcontracts of the PROJECT are bid and have been executed, if the sum of the subcontracts are below such WORK, a Memorandum may be issued by mutual agreement of the CMAR and the PROJECT MANAGER.

During the progress of construction, the construction contingency within the GMP may be decreased and the surplus transferred to the City Allowance Account by issuance of a Memoranda by mutual written consent of the CMAR and the PROJECT MANAGER.

At the FINAL COMPLETION OF THE PROJECT, after calculation of any savings in accordance with subsection 8.2 below, a Memorandum will be issued in conjunction with a Final CHANGE ORDER to remove any remaining sums within the OWNER's CONTINGENCY AND the CONSTRUCTION CONTINGENCY the GMP shall be reduced in accordance with subsections 7.4 and 8.2 of this Agreement.

7.7 NO DAMAGES FOR DELAY:

No claim for damages or any claim other than for an extension of time, shall be made or asserted against CITY by reason of any delays. CMAR shall not be entitled to an increase in the CONTRACT PRICE or payment or compensation of any kind from CITY for direct, indirect, consequential, impact or other costs, expenses or damages, including, but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, Eichleay Formula Costs, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by CMAR for hindrance or delays due solely to fraud, bad faith or active interference on the part of CITY or its agents. Otherwise, CMAR shall be entitled only to extensions of the CONTRACT TIME as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

7.8 EXCUSABLE DELAY: COMPENSABLE & NON-COMPENSABLE

7.8.1 Excusable Delay: Delay which extends the completion of the WORK which is caused by circumstances beyond the control of CMAR or its subcontractors, materials persons, suppliers, or vendors is Excusable Delay. CMAR is entitled to a time extension of the CONTRACT TIME for each day the WORK is delayed due to excusable delay. CMAR shall document its claim for any time extensions as provided in Article 6, subsection 6.3 hereof.

Failure of CMAR to comply with Article 6, subsection 6.3 hereof as to any particular event of delay shall be deemed conclusively to constitute a waiver, abandonment or relinquishment of any and all claims resulting from that particular event of delay.

7.8.2 Excusable Delay may be compensable or non-compensable.

(a) Compensable Excusable Delay. Excusable Delay is only compensable when: (i) the delay extends the CONTRACT TIME; and (ii) is due solely to fraud, bad faith or active interference on the part of CITY or its agents. In no event shall CMAR be compensated for interim or non-critical delays, which do not extend the CONTRACT TIME.

If CMAR is entitled to an increase in the CONTRACT PRICE as a result of a Compensable Excusable Delay pursuant to this subsection and the General Conditions set forth in this Agreement, the CONTRACT PRICE will be increased by the sum of $_____ per day for which such compensation is payable. Such increase will be reflected in an approved CHANGE ORDER.

(b) Non-Compensable Excusable Delay. When Excusable Delay is not due solely to fraud, bad faith or active interference on the part of

CITY or its agents, then CMAR shall be entitled only to a time extension and no further compensation for the delay.

ARTICLE 8
PAYMENTS AND COST OF THE WORK

8.1 In full consideration of the full and complete performance of the WORK and all other obligations of CMAR hereunder, the CITY shall pay to CMAR a sum of money not to exceed the CONTRACT PRICE which is defined to be the total of: (i) CMAR's direct construction cost; (ii) so much of the CMAR's general conditions as may have been expended; (iii) so much of the approved amount of the construction contingency as may have been expended; and (iv) CMAR'S construction management fee. The CONTRACT PRICE shall not exceed the sum shown in Exhibit "D" and in accordance with Article 1 as the GMP, adjusted to take into account any approved CHANGE ORDERS , and shall mean those costs necessarily incurred and paid by CMAR in connection with the performance of all the work.

8.2 After completion and acceptance of the work, in the event that the cost of the WORK plus the CMAR's fee are less than the GMP after giving effect to adjustments to the GMP made in accordance with this contract then the difference between the cost of the WORK plus the CMAR's fee on the one hand and the GMP on the other hand is the "savings". Prior to making this calculation and for the purpose of this calculation only, the remaining balance of the CITY's money shall be deducted from the GMP. In the event that CMAR's total approved expenditures for this PROJECT shall exceed the GMP , CMAR shall pay such excess from its own funds, and the CITY shall not be required to pay any amount that exceeds the GMP; and CMAR shall have no claim against the CITY on account thereof.

8.3 The term 'Cost of the Work" shall mean the sum of all direct costs necessarily and reasonably incurred and paid by CMAR in the performance of the WORK . Such costs shall be at rates not higher than those customarily paid in the locality of the project except with the prior written consent of CITY. The Cost of the Work shall include only those items set forth in this Article 8.3 and shall not include any items listed in Article 8.4. Cost of the Work shall be determined as follows:

8.3.1 SUBCONTRACTOR COSTS:

(a) CMAR's Direct Construction Cost, as generally described on Exhibit "A", attached hereto, to be 100% performed by subcontractors selected in accordance with Article 11, below. Where the WORK is covered by unit prices contained in the CONTRACT DOCUMENTS or an applicable subcontract, the Cost of the Work shall be determined by application of unit prices to the quantities of items involved.

(b) By mutual acceptance of a lump sum which SUBCONTRACTOR, CONTRACTOR and CITY acknowledge contains a component for overhead and profit, which shall be subject to the limitation of subcontractor fees set forth in Article7, subsection 7.4.3. Whenever a change in subcontractor work is to be based on mutual acceptance of a lump sum,

whether the amount is an addition, credit or no change-in-cost, CMAR shall submit an initial cost estimate obtained from the subcontractor and acceptable to CONSULTANT. The breakdown shall list the quantities and unit prices for materials, labor, equipment and other items of cost. Whenever a change involves more than one SUBCONTRACTOR and the change is an increase in the GMP, overhead and profit percentage of each SUBCONTRACTOR and CMAR, if applicable, shall be itemized separately.

(c) If the subcontract provides that the SUBCONTRACTOR is to be paid on the basis of Cost of the Work plus a fee, the subcontractor's Cost of the Work shall be determined in the same manner as CMAR's Cost of the Work, subject to the limitation on subcontractor's fees set forth in Article 7, subsection 7.4.3.

(d) If changes to subcontracted work affect the GMP, such changes shall be accomplished in accordance with Article 7, subsection 7.4, Change Orders. The amount of decrease in the GMP for any change that results in a net decrease in cost, will be the amount of the actual net decrease. When both additions and decreases are involved in any one change, the combined effect shall be figured on the basis of the net change in the GMP, if any.

8.3.2 CONTRACTOR'S LABOR COSTS:

Payroll costs for employees in the direct employ of CMAR in the performance of the WORK described in the CONTRACT DOCUMENTS, are as follows: (a) salaries plus labor burden of _____percent (_____) as set forth in the schedule of job classifications agreed upon by CITY and CONTRACTOR, subject to audit by CITY; or (b) at the CITY's applicable prevailing wage rates. Payroll costs for employees not employed full time on the work covered by the contract shall be appointed on the basis of the time the employees spent on the WORK. Payroll costs shall include salaries and wages plus the labor burden to cover costs including social security contributions, unemployment, excise and payroll taxes, workers' compensation, health insurance, sick leave, vacation and holiday pay.

8.3.3 MATERIALS AND EQUIPMENT:

Cost of all materials and equipment furnished and incorporated in the WORK , including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith, adjusted in accordance with Article 10, pertaining to Discounts, Rebates and Refunds; rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with the terms of said agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the WORK.

8.3.4 MISCELLANEOUS COSTS:

(a) The cost, as documented by CMAR's detailed receipts, of telephone, telegrams, postage, photographs, blueprints, office supplies, first aid supplies and related miscellaneous costs reasonably incurred in direct support of the WORK at the PROJECT location.

(b) Premiums (Net) on bonds and insurance, including subcontractor bonds, if any that CMAR is obligated to secure and maintain under the terms of the CONTRACT DOCUMENTS and such other insurance and bonds as may be required, subject to the written approval of the CITY. Premiums paid, as part of CMAR's cost, shall be net of trade discounts, volume discounts, dividends and other adjustments. All insurance and bonds shall be provided by companies acceptable to the CITY.

Self-insurance by CMAR or insurance through any affiliates of CMAR shall not be permitted without the CITY's prior written approval. City's approval shall not be required on a subcontractor bond, and premiums thereof shall be considered a Cost of the Work.

(c) The cost of obtaining and using any utility services required for the WORK that are not paid directly by CITY, including fuel and sanitary services at the project site.

(d) The cost of removal of debris from the site. The PROJECT site, lay-down locations, and staging sites will be kept clear of all debris on a daily basis. All subcontracts shall require SUBCONTRACTORS to remove all debris daily created by their activities, and CMAR shall exercise its best efforts to enforce such requirements or effect the removal of the debris of the subcontractors who fail in this regard. Provided, however, CMAR shall not be required to remove debris created by the CITY's separate contractors except pursuant to Change Order procedures set forth herein and in accordance with Section 38.48 of the Purchasing Ordinance.

(e) The cost and expenses, actually sustained by CMAR in connection with the WORK, of protecting and repairing adjoining property, if required, except to the extent that any such cost or expense is:

(1) The responsibility of CMAR under Article 13, reimbursable by insurance or otherwise;

(2) Due to the failure of CMAR to comply with the requirements of the CONTRACT DOCUMENTS with respect to insurance; or

(3) Due to the failure of any officer of CMAR or any of its representatives having supervision or direction of the WORK to exercise good faith or the standard of care normally exercised in the conduct of the business of a general contractor experienced in the performance of work of the magnitude, complexity and type encompassed by the CONTRACT DOCUMENTS, in any of which events any such expenses shall not be included in CMAR's costs.

(f) Federal, state, municipal, sales, use and other taxes required by law, as applicable to the PROJECT , all with respect to service performed or materials furnished for the WORK , it being understood that none of the foregoing includes, federal, state or local income or franchise taxes.

(g) All reasonable costs and expenditures necessary for the operation of the project job site office(s), including cost of field computer equipment and software.

(h) The proportion of necessary transportation, travel and subsistence expenses of CMAR's employees, excluding travel time, incurred in discharge of duties connected with the WORK except for local travel to and from the site of the WORK.

(i) Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the WORK , and cost less market value of such items used but not consumed which remain the property of CMAR .

(j) Deposits lost for causes other than CMAR's negligence, royalty payments and fees for permits and licenses.

(k) Cost of premiums for additional bonds and insurance required because of changes in the WORK.

(l) Cost of special consultants, including, but not limited to, engineers, architects, testing laboratories, surveyors employed for services specifically related to the WORK.

(m) Any other expenses or changes incurred, with the prior written approval of the CONSULTANT, in the performance of the WORK.

8.4 Overhead EXCLUSIONS TO COST OF THE WORK:

is defined as any and all other costs, not referenced in Article 8.3, of CMAR and its operation which are not in direct support of the PROJECT. CMAR agrees to furnish and perform, as a part of CMAR's Fee and without reimbursement, said overhead items. The term "Cost of the Work" shall not include any of the following:

8.4.1 Payroll costs and other compensation of CMAR's officers, executives, principals (of partnership and sole proprietorship), general managers, estimators, purchasing and contracting agents, clerks and other personnel employed by CMAR as approved by CONSULTANT, whether at the site or in its principal or a branch office, for general administration that are not specifically included in the General Conditions are to be considered administrative costs covered by CMAR's fee.

8.4.2 Other than those expenses authorized on Exhibit "B, expenses of CMAR's principal and branch offices.

8.4.3 Any part of CMAR's capital expenses, including interest on CMAR's capital spent for the WORK and charges against CMAR for delinquent payments.

8.4.4 Other overhead, general expense costs or charges of any kind and the cost of any item not specifically and expressly included in subsection 8.3.

8.4.5 Costs in excess of the Guaranteed Maximum Price.

8.4.6 Entertainment and meal expenses, car allowances and charges of a personal nature.

8.4.7 Bonuses, pensions, profit sharing or other special labor charges not set forth in subsection 8.3.2, above.

8.4.8 Any outside legal or accounting fees incurred without prior written approval from the City Attorney, which approval is at the sole discretion of the City Attorney.

8.5 PROGRESS PAYMENTS:

8.5.1 CMAR may make a Request for Payment for WORK completed during the PROJECT at intervals of not more than once a month. CMAR's request shall show a complete breakdown of the PROJECT components, the percentages completed and the amount due in proportion to the percentages of the WORK completed or, as to General Conditions, at cost. Each request shall be accompanied by such supporting evidence as may be reasonably required by CONSULTANT, as more particularly described in subsection 8.5.4 below. CMAR shall submit with each Request for Payment, an updated progress schedule acceptable to CONSULTANT and either release of liens relative to the WORK which is the subject of the Request or consent of the surety as to such payment.

8.5.2 Ten percent of all monies earned by CMAR shall be retained by CITY until FINAL COMPLETION and acceptance by CITY in accordance with Article 8.9 hereof, except for the following items: General Conditions and self-performed Work performed on a cost reimbursement basis, if any.

8.5.3 After 50% of the WORK has been completed, the PROJECT MANAGER may reduce the retainage to five percent of all monies previously earned and all monies earned thereafter. After 90% of the WORK has been completed, the PROJECT MANAGER may reduce the retainage to two and one-half percent of all monies previously earned and all monies earned thereafter. Any reduction in retainage shall be in the sole discretion of the PROJECT MANAGER, shall be recommended by CONSULTANT, and CMAR shall have no entitlement to a reduction. Any interest earned on retainage shall accrue solely to the benefit of CITY.

8.5.4 CITY may withhold, in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:

8.5.4.1 Defective Work not remedied by CMAR and/or its SUBCONTRACTORS.

8.5.4.2 Claims filed or reasonable evidence indicating probable filing of claims by other parties against CMAR

8.5.4.3. Failure of CMAR to make payments properly to SUBCONTRACTORS or for material or labor.

8.5.4.4. Damage to another contractor not remedied.

8.5.4.5 Liquidated damages.

8.5.5 The Schedule of Values, prepared in accordance with Exhibit "A", shall list the cost of materials, the cost of labor, the cost of equipment and the cost of subcontractor work separately for all the portions of the WORK delineated. Each monthly Application for Payment shall be for a sum equal to: (i) that portion of CMAR's direct construction cost equal to the percentage of the WORK completed; plus (ii) an appropriate amount of the CMAR's fee as related to the percentage of the WORK completed. The calculation of the percentage of the WORK completed shall be in accordance with the approved Progress Schedule; provided, however, prior to the date of the Final Request, and unless subject to reduction pursuant to subsection 8.5.3, the aggregate of CMAR's fee payments shall not exceed 90% of CMAR's fee as stated in subsection 8.3.

CMAR's direct construction cost shall be segregated and detailed in a manner satisfactory to the CONSULTANT and the PROJECT MANAGER to evaluate the charges. The Request for Payment shall indicate the percentage of completion of each portion of the WORK, and the total WORK, as of the end of the period covered by the Request for Payment. The Schedule of Values shall be used as one basis for reviewing the Request for Payment when such amounts are approved.

If the CONSULTANT, in its good faith judgement, determines that the portion of the GMP then remaining unpaid will not be sufficient to complete the WORK in accordance with the CONTRACT DOCUMENTS, no additional payments will be due to CMAR unless and until CMAR, at its sole cost, performs a sufficient portion of the WORK so that such portion of the GMP then remaining unpaid is determined by the CONSULTANT to be sufficient to so complete the WORK.

8.6 The CONSULTANT and PROJECT MANAGER shall review each such Request for Payment and may make such exceptions, as the CONSULTANT and the PROJECT MANAGER reasonably deem necessary or appropriate under the state of circumstances then existing. In no event shall the CITY be required to make

payment for items of CMAR's cost to which the CONSULTANT or the PROJECT MANAGER reasonably take exception.

8.7 CMAR shall remain solely liable for SUBCONTRACTORS' work and for any unpaid laborers, material suppliers SUBCONTRACTORS in the event it is later discovered that said WORK is deficient or that any of said laborers, material suppliers or subcontractors did not receive payments due them on the PROJECT.

8.8 Within 30 days after FINAL COMPLETION of the WORK and acceptance thereof by the CITY, CMAR shall submit a Final Request for Payment (Final Request) which shall set forth all amounts due and remaining unpaid to CMAR (including the unpaid portion of the CMAR's fee).

8.9 Except for the CMAR's fee, CMAR shall use the sums paid to it pursuant to this Article solely for the purpose of performance of the WORK and the construction, furnishing and equipping of the WORK in accordance with the CONTRACT DOCUMENTS and payments of bills incurred by CMAR in performance of the WORK.

8.10 CMAR shall promptly pay all bills for labor and material performed and furnished by its subcontractors, suppliers and materials providers, in connection with the construction, furnishing and equipping of the WORK and the performance of the WORK.

8.11 PROJECT COST SAVINGS:

At FINAL COMPLETION of the PROJECT, the CITY and CMAR shall share in any cost savings as follows: 75% City and 25% CMAR. Cost savings are defined as the difference between the GMP (including authorized amendments) and the approved final invoice amounts. CMAR's 25% share in the cost savings shall be capped at a maximum of 1.5% of the total GMP (including authorized amendments).

Any remaining monies in the Direct Construction Cost and/or General Conditions shall vest in the CITY and shall reduce the GMP.

To the extent any portion of the CONTINGENCY remains unallocated on the date of FINAL COMPLETION and after the issuance of the final payment for the PROJECT , the remaining portion shall be returned to the City in full (to be excluded from any cost savings allocation and returned to the CITY in whole).

ARTICLE 9
CONTINGENCIES

9.0 THE CONSTRUCTION CONTINGENCY:

An agreed upon sum included in the GMP for the purpose of defraying CMAR's actual approved expenditures due to unforeseen circumstances relating to CMAR's direct construction costs, or to cover other costs arising during construction, such as: anticipated costs that exceed a particular line item within the

estimated CMAR's direct construction cost; increases in SUBCONTRACTOR costs due to insolvency, preferred SUBCONTRACTOR cost differentials generated by contract selection of SUBCONTRACTORS (PROJECT MANAGER's designation of preferred SUBCONTRACTORS shall be subject to the provisions of subsection 11.2); correction of defective WORK ; payment of deductible amounts for loss covered by Builder's Risk; and any other cost agreed to mutually in writing between the PROJECT MANAGER and CMAR .

Any costs to be applied against the CONTINGENCY must first be approved by the CONSULTANT and the CITY in writing. CMAR will be required to furnish documentation evidencing the expenditures charged to the CONTINGENCY prior to release of funds by the CITY. At FINAL COMPLETION of the PROJECT, any remaining monies in the Construction Contingency shall vest in the CITY and will be excluded from any cost savings sharing pursuant to subsection 8.11. The GMP shall be reduced in the amount of the Construction Contingency remaining monies, if any.

9.1 Direct Costs Buy Out Savings. In the event that CMAR awards contracts for portions of the WORK which are less than the amounts budgeted in the GMP approved by the OWNER for such portions of the WORK, such buyout savings shall be first utilized to offset shortfalls on other bid packages. If, after offsetting any shortfalls, buyout savings remain, at the time provided on Exhibit "D" for the award of subcontracts, all buyout savings shall be transferred to the OWNER's CONTINGENCY.

9.2 Within 90 days of the execution of this Contract and monthly thereafter, CMAR is required to submit, in writing, a buyout reconciliation of all subcontracts that have been awarded since and as a product of the initial bid opening date. The result of this reconciliation is to be presented in association with a modified schedule of values reflecting the Direct Cost Buyout Savings as set forth in subsection 9.1. above.

ARTICLE 10
DISCOUNTS, REBATES AND REFUNDS

10.1 All cash discounts obtained on payments made by CMAR shall accrue to the CITY unless CMAR actually advanced its own funds, prior to receipt of funds from CITY, to make the payment giving rise to the discount. When CMAR becomes aware that a cash discount may be available to CITY, CMAR shall, prior to advancing its own funds, notify CONSULTANT of such opportunity so CITY can make the required payment to achieve the discount for the CITY. CMAR shall only advance its own funds if PROJECT MANAGER declines to make the early payment. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to CITY, and CMAR shall make provisions so that they may be obtained.

ARTICLE 11
SUBCONTRACTS AND PURCHASE ORDERS

11.1 Unless waived in writing for good cause by CONSULTANT or PROJECT MANAGER, CMAR must obtain competitive pricing and subcontracts, in compliance with the requirements of this Article for 100% of CMAR's direct construction cost required under this contract. Subcontracts and purchase orders, involving amounts not in excess of $25,000.00 may be awarded without the prior approval of the CONSULTANT. All other subcontracts and purchase orders shall be awarded according to the following procedure:

CMAR shall prepare for CONSULTANT'S and PROJECT MANAGER'S review and approval a list of SUBCONTRACTORS and suppliers for each bid who meet CMAR's schedule of minimum requirements. CMAR shall obtain bids from a minimum of three such SUBCONTRACTORS for each subcontract, when available. After receiving such bids, CMAR shall analyze them and make recommendations to the CONSULTANT for awards. When the CONSULTANT and the PROJECT MANAGER have approved the award of any such subcontract or purchase order, CMAR shall contract solely in its own name and behalf, and not in the name or behalf of the CITY, with the specified SUBCONTRACTOR or supplier. The subcontract shall provide that the SUBCONTRACTOR shall perform its portion of the WORK in accordance with all applicable provisions of this contract and the other CONTRACT DOCUMENTS ; that the SUBCONTRACTOR shall be bound to CMAR , to the same extent as CMAR is bound to the CITY, to name the CITY as an additional insured on its comprehensive general liability insurance; that the subcontractor shall provide an insurance certificate evidencing the same; that CMAR shall have the right to terminate the subcontract in the same manner and by the same method as provided for termination of this contract by the CITY, or as otherwise provided in the subcontract, whichever is more protective of the CITY'S interest; and that, in the event this contract is terminated for any reason, the SUBCONTRACTOR shall, at the CITY'S option, perform its subcontract for the CITY, or for a contractor designated by the CITY, without additional or increased cost, provided the SUBCONTRACTOR is paid in accordance with its subcontract. CMAR shall sign and cause each SUBCONTRACTOR to sign an Assignment of Rights under Construction Subcontract. Nothing contained herein shall impose on the CITY an obligation to assume any subcontract or make any payments to any SUBCONTRACTOR to perform, and nothing contained herein shall create any contractual relationship between the CITY and any SUBCONTRACTOR. If the CONSULTANT and the PROJECT MANAGER approve as the selected SUBCONTRACTOR or supplier, a bidder whose bid exceeds that of the bidder recommended by CMAR, whose bid complies with the CONTRACT DOCUMENTS (the amount by which the bid of the selected SUBCONTRACTOR exceeds the bid of the bidder recommended by CMAR is referred to herein as the "preferred subcontractor cost differential"), then the PROJECT MANAGER may designate that the GMP shall be increased by the amount of the preferred subcontractor cost differential or the Contingency Allowance. All subcontracts shall, so far as applicable, contain unit prices and any other feasible formula for use in determination of the cost of changes in the WORK.

11.2 If the CITY designates a bidder as the selected SUBCONTRACTOR or supplier, and the s bid exceeds that of the recommended bidder selected by the CMAR , whose bid complies with the CONTRACT DOCUMENTS (the amount by which the bid of the CITY's selected subcontractor exceeds the amount of the bid of the CMAR's selected bidder is referred to herein as the preferred subcontractor cost differential), then the PROJECT MANAGER may designate that the GMP shall be increased by the amount of the preferred subcontractor cost differential.

11.3 All subcontracts shall, so far as practicable, contain unit prices and any other feasible formula for use in determination of the cost of changes in the WORK.

ARTICLE 12
INSURANCE

12.1 Prior to the commencement of WORK governed by this contract (including the pre-staging of personnel and material), CMAR shall obtain insurance as specified in the schedules shown below. CMAR will ensure that the insurance obtained will extend protection to all SUBCONTRACTORS engaged by CMAR. As an alternative, CMAR may require all SUBCONTRACTORS to obtain insurance consistent with the schedules shown below.

CMAR will not be permitted to commence WORK governed by this contract (including pre-staging of personnel and material) until satisfactory evidence of the required insurance has been furnished to the CITY as specified below. Delays in the commencement of WORK, resulting from the failure of CMAR to provide satisfactory evidence of the required insurance, shall not extend deadlines specified in this contract and any penalties and failure to perform assessments shall be imposed as if the WORK commenced on the specified date and time, except for CMAR's failure to provide satisfactory evidence.

CMAR shall maintain the required insurance throughout the entire term of this contract and any extensions specified in any attached schedules. Failure to comply with this provision may result in the immediate suspension of all work until the required insurance has been reinstated or replaced. Delays in the completion of work resulting from the failure of CMAR to maintain the required insurance shall not extend deadlines specified in this contract and any penalties and failure to perform assessments shall be imposed as if the WORK had not been suspended, except for CMAR's failure to maintain the required insurance.

CMAR shall provide, to the CITY, as satisfactory evidence of the required insurance, either:

1. Certificate of Insurance with endorsements; or

2. Certified copy of the actual insurance policy.

The CITY, at its sole option, has the right to request a certified copy of any or all insurance policies required by the CONTRACT DOCUMENTS. All insurance policies must specify that they are not subject to cancellation, non-renewal,

material change, or reduction in coverage unless a minimum of 30 days prior notification is given to the CITY by the insurer.

The acceptance and/or approval of CMAR's insurance shall not be construed as relieving CMAR from any liability or obligation assumed under the CONTRACT DOCUMENTS or imposed by law. The CITY, its employees and officers shall be named as "Additional Insured" on all policies, except for Workers' Compensation. In addition, the CITY will be named as an Additional Insured and Loss Payee on all policies covering CITY-owned property. Any deviations from these General Insurance Requirements must be requested in writing on the CITY prepared form entitled "**Request for Waiver of Insurance Requirements**" and approved by the CITY's Risk Manager.

12.2 INSURANCE LIMITS OF LIABILITY:

All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and satisfactory to the CITY. All companies shall have a Florida resident agent and be rated a minimum A-X, as per A.M. Best Company's Key Rating Guide, latest edition.

CMAR shall furnish certificates of insurance to the CITY's Risk Manager for review and approval prior to the commencement of Work governed by the CONTRACT DOCUMENTS contract. The Certificates shall clearly indicate that CMAR has obtained insurance of the type, amount and classification required by these provisions, in excess of any pending claims at the time of contract award to CMAR. All insurance policies must specify that they are not subject to cancellation, non-renewal, material change, or reduction in coverage unless a minimum of 30 days prior to notification is given to the CITY by the insurer. .

12.2.1 Comprehensive General Liability:

[Amounts should be provided by Risk Management]

Prior to the commencement of WORK governed by this contract, CMAR shall obtain General Liability Insurance. Coverage shall be maintained throughout the life of the contract and include, as a minimum:

1. Each Occurrence
2. Products and Completed Operations
3. General Liability
4. Personal Adv. & Injury
5. General Aggregate

The City of Hollywood shall be listed as additional insured.

The minimum limits acceptable shall be:

<FILL IN AMOUNT> Each Occurrence
<FILL IN AMOUNT> General Aggregate

12.2.2 Comprehensive Automobile Liability:

Recognizing that the WORK governed by this contract requires the use of vehicles, CMAR, prior to the commencement of WORK, shall obtain Vehicle Liability Insurance. Coverage shall be maintained throughout the life of the contract and include, as a minimum, liability coverage for:

Owned, Non-Owned, and Hired Vehicles

The minimum limits acceptable shall be:

<FILL IN AMOUNT> Combined Single Limit (CSL)

If split limits are provided, the minimum limits acceptable shall be:

<FILL IN AMOUNT> per Person
<FILL IN AMOUNT> per Occurrence
<FILL IN AMOUNT> Property Damage

The CITY, its employees and officials shall be named as Additional Insured on all policies issued to satisfy the above requirements.

12.2.3 Workers' Compensation Insurance:

[Amounts should be provided by Risk Management]

Prior to the commencement of WORK governed by this contract, CMAR shall obtain Workers' Compensation Insurance with limits sufficient to respond to the applicable state statutes.

In addition, CMAR shall obtain Employers' Liability Insurance with limits of not less than:

<FILL IN AMOUNT> Bodily Injury by Accident
<FILL IN AMOUNT> Bodily Injury by Disease, policy limits
<FILL IN AMOUNT> Bodily Injury by Disease, each employee

Coverage shall be maintained throughout the entire term of the contract.

Coverage shall be provided by a company or companies authorized to transact business in the State of Florida and the company or companies must maintain a minimum rating of A-X, as assigned by the A.M. Best Company.

If CMAR has been approved by the Florida's Department of Labor, as an authorized self-insurer, the CITY shall recognize and honor CMAR's status. CMAR may be required to submit a Letter of Authorization issued by the Department of Labor and a Certificate of Insurance, providing details on CMAR's Excess Insurance Program.

If CMAR participates in a self-insurance fund, a Certificate of Insurance will be required. In addition, CMAR may be required to submit updated financial statements from the fund upon request from the CITY.

12.2.4 Professional Liability

[Amounts should be provided by Risk Management]

The minimum limits of liability shall be:

<FILL IN AMOUNT> each claim / <FILL IN AMOUNT> Aggregate
Deductible not to exceed 100,000

If coverage is provided on a claims made basis, an extended reporting period of (5) years will be required.

12.2.5 Pollution Liability

[Amounts should be provided by Risk Management]

Limits of liability
Each Occurrence <FILL IN AMOUNT>
Including non-owned disposal sites

12.2.6 Cyber Liability

[Amounts should be provided by Risk Management]

Limits of liability
Each Occurrence <FILL IN AMOUNT>

12.2.7 Builder's Risk Insurance Requirements:

CMAR shall be required to purchase and maintain, throughout the life of the contract, and until the PROJECT is accepted by the City, Builder's Risk Insurance on an All Risk of Loss form. Coverage shall include:

Theft	Aircraft
Windstorm	Vehicles

Hail	Smoke
Explosion	Fire
Riot	Collapse
Civil Commotion	Flood

The policy limits shall be no less than the amount of the finished PROJECT and coverage shall be provided on a completed value basis. Property located on the construction premises, which is intended to become a permanent part of the Project site, shall be included as property covered. The policy shall be endorsed permitting the City to occupy the building prior to completion without effecting the coverage. The City of Hollywood shall be named as Additional Insured and Loss Payee. The Builder's Risk Insurance shall be provided on or before the execution of this contract.

Deductible not to exceed $100,000

ARTICLE 13
INDEMNIFICATION

CMAR shall indemnify and hold harmless the CITY, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of the CONTRACT DOCUMENTS. These provisions shall survive the expiration or earlier termination of the CONTRACT DOCUMENTS. Nothing in this contract shall be construed in any way to affect the sovereign immunity of the CITY or the rights of the CITY as set forth in Section 768.28, Florida Statutes.

ARTICLE 14
PERFORMANCE AND PAYMENT BOND AND QUALIFICATIONS OF SURETY

14.1 Within ten calendar days of being notified of the award, CMAR shall furnish a Performance Bond and a Payment Bond containing all the provisions of the Performance Bond and Payment Bond attached as Forms 4 and 5.

14.1.1 Each Bond shall be in the amount of 100% of the GMP guaranteeing to CITY the completion and performance of the WORK covered in this contract as well as full payment if all suppliers, material providers, laborers, or SUBCONTRACTORS employed pursuant to the PROJECT. Each Bond shall be with a surety company which is qualified pursuant to subsection 14.2.

14.1.2 Each Bond shall continue in effect for one year after FINAL COMPLETION and acceptance of the WORK with liability equal to 100% of the CONTRACT PRICE, or an additional bond shall be conditioned that CMAR will, upon notification by CITY, correct any defective or faulty WORK or materials which appear within one year after FINAL COMPLETION of the contract.

14.1.3 Pursuant to the requirements of Section 255.05(1)(a), Florida Statutes, as may be deemed amended from time to time, CMAR shall ensure that the bond(s) referenced above shall be recorded in the public records of Broward County and provide the PROJECT MANAGER with evidence of such recording.

14.2 QUALIFICATIONS OF SURETY:

14.2.1 Each bond must be executed by a surety company in recognized standing, authorized to do business in the State of Florida as surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five years.

14.2.2 The Surety Company shall hold a current certificate of authority as acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of

the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, revised September 1, 1973 (31 DFR Section 223.10, Section 223.111). Further, the Surety Company shall provide CITY with evidence satisfactory to CITY, that such excess risk has been protected in an acceptable manner.

14.2.3 The CITY will accept a surety bond from a company with a rating of B+ or better for bonds up to $2 million, provided, however, that if any surety company appears on the watch list that is published quarterly by Intercom of the Office of the Florida Insurance Commissioner, the CITY shall review and either accept or reject the surety company based on the financial information available to the CITY. A surety company that is rejected by the CITY may be substituted by the bidder or proposer with a surety company acceptable to the CITY, only if the bid amount does not increase. The ratings of Surety shall correspond to the amount of bonds as follows:

Amount of Bond	Policy Holder's Ratings	Financial Size Category
500,001 to 1,000,000	B+	Class I
1,000,001 to 2,000,000	B+	Class II
2,000,001 to 5,000,000	A	Class III
5,000,001 to 10,000,000	A	Class IV
10,000,001 to 25,000,000	A	Class V
25,000,001 to 50,000,000	A	Class VI
50,000,001 or more	A	Class VII

ARTICLE 15
INDEPENDENT CONTRACTOR

In performing the WORK, CMAR shall be deemed an independent contractor and not an agent or employee of the CITY. CMAR shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the WORK under this contract, unless the CONTRACT DOCUMENTS give other specific instructions concerning these matters.

ARTICLE 16
PROJECT RECORDS

16.1 CITY or its designee shall have the right to inspect and copy the books and records and accounts of CMAR and all major SUBCONTRACTORS including but not limited to books, records, correspondence, instructions, drawings, receipts, payment records, vouchers, and memoranda which relate in any way to the PROJECT, and to any claim for additional compensation made by CMAR which relate to the PROJECT. CMAR shall preserve and make available to CITY all financial records, supporting documents, statistical records and any other

documents which relate to the PROJECT t and to any claim for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Statute), if applicable, and, if the Public Records Act is not applicable, for a period of three years following FINAL COMPLETION of the PROJECT. During the PROJECT and for the appropriate record retention period, CMAR shall provide CITY access to its books and records at CMAR's usual place of business upon (72 hours written notice. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three years, whichever is longer, the books, records and accounts shall be retained until resolution of the audit findings. Any incomplete or incorrect entry in such books, records and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.

CMAR acknowledges that if Chapter 119, Florida Statutes entitled "Public Records Law" is applicable to this contract the provisions of Section 119.0701, Florida Statute are also applicable and CMAR acknowledges its obligations to comply with said requirements with regard to public records and shall:

(a) keep and maintain public records required by the City to perform the services required under the contract;

(b) upon request from the City's custodian of public records or his/her designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

(c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of the CONTRACT DOCUMENTS and following the completion of the contract if the CMAR does not transfer the records to the City; and

(d) upon completion of the contract, CMAR shall transfer, at no cost to the City, all public records in possession of the CMAR or keep or maintain public records required by the City to perform the service. If the CMAR transfers all public records to the City upon completion of the contract, the CMAR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CMAR keeps and maintains public records upon completion of the contract, the CMAR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

IF THE CMAR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CMAR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT DOCUMENTS, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS AT: CITY CLERK'S OFFICE, 2600 HOLLYWOOD BOULEVARD, HOLLYWOOD, FLORIDA 33020 OR AT (954) 921-3211, PCERNY@HOLLYWOODFL.ORG

16.1.1 CMAR's records shall include, but not be limited to accounting records (hard copy, as well as computer readable data), written policies and procedures; subcontractor files (including proposals of successful and unsuccessful bidders and bid recaps), surety files and bond company files, original estimates, estimating work sheets, correspondence, change order files (including, but not limited to, documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends and any other supporting evidence deemed necessary by the CITY to substantiate charges related to this contract (all of the foregoing hereinafter referred to as records).

16.1.2 CMAR shall require all SUBCONTRACTORS, insurance agents and material suppliers (payees) to keep and maintain comparable records for the same time period and to permit the CITY to review, inspect and audit such records. CMAR shall include such requirements in all written subcontracts and purchase orders issued.

16.2 If an audit inspection or other examination by the City or the CITY's representatives in accordance with this Article, discloses overcharges (of any nature) by the CMAR to the CITY in excess of one percent of the total billings, the cost of the CITY's audit (whether performed by the CITY or outside auditors) shall be reimbursed or paid to the CITY by CMAR Any adjustments and/or records shall be made within a reasonable amount of time (not to exceed 30 days) from presentation of the CITY findings to CMAR.

ARTICLE 17
SURVEY

As required by the technical specifications (or, in absence of technical specification requirements concurrent with the Final Request for Payment), the CMAR shall furnish final surveys in electronic media utilizing CAD Standards as designated by the PROJECT MANAGER, in addition to three sets of hard copy, showing the exact locations of all structures and underground site Services installed by CMAR , including all water, sewer, gas, fuel, telephone, security and electric lines and main, and locations of all easements for such Services. Such surveys shall be prepared by a licensed Florida surveyor who shall certify that the WORK is installed and erected entirely upon the Project Site and within the building restriction lines, if any, and does not overcharge or encroach upon any easement or right-of-way of others.

ARTICLE 18
CMAR'S RESPONSIBILITY FOR THE WORK

18.1 CMAR shall accept full responsibility for the WORK against all loss or damage of whatsoever nature sustained until final acceptance by CITY, and shall promptly repair any damage done from any cause whatsoever.

18.2 CMAR shall be responsible for all materials, equipment and supplies pertaining to the PROJECT. In the event any such materials, equipment and supplies are lost, stolen, damaged or destroyed prior to final acceptance by CITY; CMAR shall replace it without cost to CITY. CMAR shall be responsible to protect all materials, equipment and supplies, keeping them free from deterioration, weathering, rusting or other action detrimental to the materials.

18.3 CITY reserves the right to award other contracts in connection with the PROJECT. CMAR shall afford other persons or contractors reasonable opportunity for the introduction and storage of materials and the execution of work under such separate contracts. CMAR shall properly connect and coordinate the WORK with the work of any other persons or contractors that might contract separately with CITY.

18.4 If any part of CMAR's WORK depends on proper execution of the WORK of any other persons, CMAR shall inspect and promptly report to CONSULTANT any defects in such work that render it unsuitable for such proper execution and results. CMAR's failure to so inspect and report shall constitute an acceptance of the other person's work as fit and proper for the reception of CMAR's WORK, except as to defects which may develop in other contractor's work after the execution of CMAR's WORK.

18.5 CMAR shall conduct its operations and take all reasonable steps to coordinate the prosecution of the WORK so as to create no interference or impact on any other contractor on the Project site. Should such interference or impact occur, and CMAR failed to take reasonable steps, CMAR shall be liable to the affected contractor for the cost of such interference or impact.

To ensure the proper execution of subsequent WORK, CMAR shall inspect the WORK already in place and shall at once report to CONSULTANT any discrepancy between the executed WORK and the requirements of the CONTRACT DOCUMENTS

ARTICLE 19
OCCUPATIONAL HEALTH AND SAFETY

19.1 In compliance with applicable federal and state laws, any toxic substance listed in such laws delivered as a result of the Project must be accompanied by a Material Safety Data Sheet (MSDS) which may be obtained from the manufacturer. The MSDS must include the following information:

19.1.1 The chemical name and the common name of the toxic substance.

19.1.2 The hazards or other risks posed by the use of the toxic substance, including:

(1) The potential for fire, explosion, corrosion, and reaction;

(2) The known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the toxic substance; and

(3) The primary routes of entry and symptoms of overexposure.

19.1.3 The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the toxic substance, including appropriate emergency treatment in case of overexposure.

19.1.4 The emergency procedure for spills, fire, disposal, and first aid.

19.1.5 A description in lay terms of the known specific potential health risks posed by the toxic substance intended to alert any person reading this information.

19.1.6 The year and month, if available, that the information was compiled and the name, address, and emergency telephone number of the manufacturer responsible for preparing the information.

19.2 CMAR agrees that it shall not knowingly transport to, use, generate, dispose of, or install at the project site any Hazardous Substance, (as defined in Section 20.5), except in accordance with applicable environmental laws. Further, in performing the WORK, CMAR TRACTOR shall not knowingly cause any release of hazardous substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable environmental laws.

19.2.1 In the event CMAR encounters on the PROJECT any Hazardous Substance, or what CMAR reasonably believes to be a Hazardous Substance, which is being introduced to the WORK, or exists on the Project location, in violation of any applicable environmental laws, CMAR shall immediately stop WORK in the area affected and report the condition to the CONSULTANT and PROJECT MANAGER. .

19.2.2 The PROJECT MANAGER through the CONSULTANT may direct CMAR, by utilization of CITY'S allowance]account funds, to remediate and/or render harmless the Hazardous Substance in accordance with applicable permits then in existence, but CMAR not be required to remediate and/or render harmless the Hazardous Substance absent such direction. If CMAR is not so directed, CMAR shall not be required to resume WORK in any area affected by the Hazardous Substance until such time as the Hazardous Substance has been remediated and/or rendered harmless.

19.2.3 For purposes of this contract, the term "Hazardous Substance" shall mean and include, but shall not be limited to, any element, constituent, chemical, substance, compound or mixture, which is defined in or included under or regulated by any local, state, or federal law, rule, ordinance, by-law, or regulation pertaining to Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), The Resource Conversation and Recovery Act (RCRA), The Toxic Substances Control Act (TSCA), The Clean Water Act (CWA), the Clean Air Act (CAA), and The Marine Protection Research and Sanctuaries Act (MPRSA), The Occupational Safety and Health Act (OSHA), The Superfund Amendments and Reauthorization Act of 1986(SARA), or other state superior lien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as Environmental Laws). It is CMAR's responsibility to comply with Article 20 of this contract based on the law in effect at the time its services are rendered and to comply with any amendments to those laws for all services rendered after the effective date of any such amendments.

ARTICLE 20
PERMITS, LICENSES AND IMPACT FEES

20.1 The parties agree that the Public Bid Disclosure Act does not apply to this contract because the CITY is reimbursing CMAR the actual amount or direct cost of permits, licenses and impact fees required by law for the PROJECT. Accordingly, CITY permits, licenses and impact fees are not listed. CMAR shall obtain all required permits and licenses as required for completion of the PROJECT. Such permits and licenses, along with any corresponding general and specific conditions and requirements, shall become a part of the CONTRACT DOCUMENTS. CMAR shall comply with all conditions and requirements of said permits and licenses.

Payment of all such permits and licenses, and impact fees shall be made by CMAR as part of the General Conditions within the GMP and shall include all federal, state, and local application, permit, and surcharge fees. CMAR shall be responsible for paying any and all fees, penalties, and fines imposed as a result of CMAR's failure to obtain such permits and licenses prior to the commencement of the WORK and shall pay such costs by deducting them from its r fee.

20.2 If applicable, Local Business Taxes must be paid as required by Section 205.065, Florida Statutes, and evidence of such payment must be submitted within ten days of execution of this contract.

20.3 It is CMAR's responsibility to have and maintain appropriate Certificates(s) of Competency, valid for the WORK to be performed and valid for the jurisdiction in which the WORK is to be performed for all persons working on the PROJECT for whom a Certificate of Competency is required.

ARTICLE 21
PERSONNEL

21.1 All personnel used or employed by CMAR in the performance of the WORK shall be qualified by training and experience to perform their assigned tasks. At the request of the CITY or the CONSULTANT, CMAR shall not use in the performance of the WORK any personnel deemed by the CITY or the CONSULTANT to be incompetent, careless, or unqualified to perform the WORK assigned to that person, or otherwise unsatisfactory to the CITY.

21.2 CMAR agrees that in the performance of the WORK called for by this contract, it will employ only such labor, and engage SUBCONTRACTORS that employ only such labor, as will not delay or interfere with the speedy and lawful progress of the PROJECT and as will be acceptable to and work in harmony with all other workers employed on the Project site or on any other building, structure, or other improvement which CMAR or any other contractor may then be erecting or altering on behalf of the CITY.

21.3 CMAR agrees that it shall not employ any labor that will interfere with labor harmony at the project site or with the introduction and storage of materials and the execution of WORK by other contractors or by SUBCONTRACTORS.

21.4 CMAR shall furnish the CONSULTANT on request, resumes of CMAR's key personnel involved in the day-to-day WORK on the PROJECT.

21.5 PREVAILING WAGE REQUIREMENT:

21.5.1 CMAR shall be responsible for ensuring payment of the rate of wages and fringe benefits, or cash equivalent, for all laborers, mechanics and apprentices employed by it or its SUBCONTRACTORS on the WORK covered by this contract which shall be not less than the prevailing rate of wages and fringe benefits or cash equivalent for similar skills or classifications of Work as established by the General Wage Decision of the United States Department of Labor for Broward County, Florida that is in effect prior to the date the CITY issued the invitation for bids for this project (Exhibit "C"). If the General Wage Decision fails to provide for a fringe benefit rate for any worker classification, then the fringe benefit rate applicable to such worker classification shall be the fringe benefit rate that has a basic wage rate closest in dollar amount to the WORK classification for which no fringe benefit rate has been provided.

21.5.2 Upon commencement of WORK, CMAR and all of its SUB-CONTRACTORS shall post a notice in a prominent place at the project site stating the requirements of this section.

21.5.3 If any questions should arise concerning the applications of this section, which are not specifically addressed, the CITY may, but is not required to, rely on rules, regulations, practices, administrative rulings and court decisions governing applications of the Davis-Bacon Act.

21.5.4 CMAR and SUBCONTRACTORS shall submit to the CITY on a monthly basis, the attached Form 2, for payroll sheets, which have been certified under oath by CMAR and/or SUBCONTRACTORS as to their accuracy and compliance with the provisions of this Section. The certified payroll sheets shall contain the following: name and address of each employee; his/her current classification; rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid. Such records shall be maintained by the CMAR and its SUBCONTRACTORS for a period of at least three years following completion of the WORK.

21.5.5 The CITY may withhold, or cause to be withheld from CMAR, a portion of any requisitioned payment as may be considered necessary to pay laborers, mechanics and apprentices the full amount of wages required by this Section. The CITY, or its designee, may enter onto the job site and conduct such inquiries of CMAR's workers and its SUBCONTRACTOR's workers to determine whether this Section is being complied with.

If CMAR or its SUBCONTRACTOR fails to pay any laborers, mechanics or apprentices employed or working on the job site all or part of the wages required by this Section, then the CITY may, after written notice to CMAR, take such action as may be necessary to cause suspension of any further payments or advances until such violations have been corrected. If the violations are not corrected, the CITY may terminate CMAR's right to proceed with the WORK or such part of the WORK for which there has been a failure to pay the required wages and take such steps as are necessary to complete the WORK, whereupon CMAR and its sureties shall be liable to the CITY for all excess costs incurred by the CITY.

21.5.6 CMAR shall insert in any subcontracts such language as is necessary to require all of its SUBCONTRACTORS to comply with the requirements of this Section. CMAR shall be responsible for noncompliance by any of its SUBCONTRACTORS. This section shall be deemed part of any contract entered into between CMAR and any of its SUBCONTRACTORS.

ARTICLE 22
CMAR's WARRANTIES

22.1 CMAR warrants to CITY that all materials and equipment under this contract will be new unless otherwise specified and that all of the WORK will be of good quality free from faults and defects and in conformance with the CONTRACT DOCUMENTS. All WORK not conforming to these requirements, including substitutions not properly approved and authorized by the PROJECT MANAGER and CONSULTANT may be considered defective. If required by CONSULTANT, CMAR shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Article 23 herein.

22.2 CMAR shall provide a one year warranty and shall coordinate and supervise the completion of warranty work during the warranty period. CMAR shall participate with the OWNER in conducting warranty inspections held during the sixth month and 11th month after occupancy. CMAR shall deliver all as-built drawings, warranties and guarantees to the PROJECT MANAGER.

CMAR shall provide a warranty summary report at the end of each warranty inspection. This report shall provide at a minimum:

(a) description of each warranty item during the period;
(b) date item reported to CMAR;
(c) date item corrected. If more than one trip required, document each.
(d) description of action taken to cure warranty items;
(e) signature of PROJECT MANAGER acknowledging warranty items have been completed; and
(f) other pertinent information, if applicable.

Refusal of CMAR to provide any work required in the warranty phase of the PROJECT shall be a basis for non-payment of any and all warranty phase fees otherwise due and payable at the time of refusal.

The CMAR has carefully examined the site of the PROJECT, to the extent available, and adjacent areas, has suitably investigated the nature and location of the WORK and satisfied itself as to the general and local conditions which are applicable, including but not limited to : (a) conditions related to site access and to the transportation, disposal, handling and storage of materials, (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the site and existing site conditions including: location, size, utility capacities and connection options of external utilities ; (e) the surface conditions of the ground and the subsurface conditions of the land as identified by the site geotechnical report and soil borings provided by the CONSULTANTS and/or CITY and (f) the character and availability of the equipment and facilities which will be needed prior to and during the performance of the WORK.

All PROJECT Construction Cost estimates provided by CMAR for the WORK, based on 50%(or greater percentage of completion), Plans and Drawings and Specification Submittals, produced by the CONSULTANT, will be complete and accurate; will incorporate the cost for the means and methods required to complete the WORK; and will incorporate the cost for all schedule constraints shown on the Contract Schedule necessary to complete the WORK within the CONTRACT TIME.

ARTICLE 23
DEFECTIVE WORK

23.1 CONSULTANT shall have the authority to reject or disapprove work which CONSULTANT finds to be defective. If required by CONSULTANT, CMAR shall promptly either correct all defective work or remove such defective work and replace it with non-defective work. CMAR shall pay all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel. Such costs shall be included in the GMP.

23.2 Should CMAR fail or refuse to remove or correct any defective work or to make any necessary repairs in accordance with the requirements of the CONTRACT DOCUMENTS within the time indicated in writing by CONSULTANT, CITY shall have the authority to cause the defective work to be removed or corrected, or make such repairs as may be necessary at CMAR's expense. Any expense incurred by CITY in making such removals, corrections or repairs shall be paid for out of any monies due or which may become due to CMAR and deducted from the GMP, or may be charged against the Performance Bond. In the event of failure of CMAR to make all necessary repairs promptly and fully, CITY may declare a default.

23.3 If, within one year after the date of FINAL COMPLETION or such longer period of time as may be prescribed by the terms of any applicable special warranty required by the CONTRACT DOCUMENTS, any of the work is found to be defective or not in accordance with the CONTRACT DOCUMENTS, CMAR, after receipt of written notice from CITY, shall promptly correct such defective or nonconforming work within the time specified by CITY without cost to CITY, to do so. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation, which CMAR might have under the CONTRACT DOCUMENTS.

23.4 Failure to reject any defective work or material shall not in any way prevent later rejection when such defect is discovered, or obligate CITY to final acceptance.

23.5 CMAR shall: (i) replace any part of the WORK that fails to conform with the requirements of this contract that appear during progress of the work on the PROJECT; (ii) remedy any defects in the WORK due to faulty materials or workmanship which appear within a period of one year from the time of FINAL COMPLETION of the WORK or portions thereof hereunder or within such longer period of time as may be set forth in the CONTRACT DOCUMENTS or as may be required by law; and (iii) replace, repair or restore any parts of the PROJECT or furniture, fixtures, equipment or other items placed therein (whether by the CITY or any other party) that are injured or damaged by any such parts of the WORK that do not conform to the requirements of this contract or are due to defects in the WORK . The provisions of this Article shall not apply to corrective work attributable solely to the acts or omissions of any separate contractor or subcontractor of the CITY unless CMAR is acting in such capacity or capacities. The cost to CMAR of performing any of its obligations under this Article shall be within the GMP. CMAR 's responsibility to make repairs and redo work under this Article is in addition to CMAR' s responsibility to the CITY for any other damages of any kind for which CMAR would be legally responsible.

23.6 If the CITY and CMAR deem it inexpedient to require the correction of work damaged or not performed in accordance with the CONTRACT DOCUMENTS, an equitable deduction from the CONTRACT PRICE and the GMP shall be made by agreement between CMAR and the CITY. Until such settlement, the CITY may withhold such sums as the CITY deems just and reasonable from monies, if any, due CMAR. If no monies are held by the CITY, reimbursement shall be made to the CITY within 30 days by CMAR.

23.7 CMAR's express warranty herein shall be in addition to, and not in lieu of, any other warranties or remedies the CITY may have under this contract, at law, or in equity for defective WORK.

ARTICLE 24
SIGNAGE

24.1 Any requirements for a project sign shall be as set forth within the Technical Specifications section.

24.2 All construction signage located at the project location shall be subject to the prior written approval of the CONSULTANT and PROJECT MANAGER. CMAR recognizes that all signage may be disallowed, in the CONSULTANT's and PROJECT MANAGER's sole discretion, and that existing signage or advertising on construction field offices, trailers, construction fences, and other construction elements or aids, may be required to be masked or deleted at no cost or expense to the CITY. Such signage will be considered an overhead expense pursuant to subsection 8.4 and if allowed shall not be included within the Cost of the Work.

ARTICLE 25
PUBLIC ENTITY CRIMES ACT

25.1 CMAR represents that the execution of this contract will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with CITY, and may not transact any business with CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vender list. Violation of this section shall result in termination of this contract and recovery of all monies paid pursuant to this contract, and may result in debarment from CITY's competitive procurement activities.

25.2 In addition, to the foregoing, CMAR further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a public entity crime and that it has not been formally

charged with committing an act defined as a public entity crime regardless of the amount of money involved and regardless of whether CMAR has been placed on the convicted vendor list.

ARTICLE 26
OWNERSHIP OF CONTRACT DOCUMENTS

Any and all drawings, specifications, designs, models, photographs, reports, surveys, and other data submitted by CMAR and provided in connection with the CONTRACT DOCUMENTS are and shall remain the property of the CITY whether the PROJECT for which they are made is completed or not. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by CMAR become the property of CITY and shall be delivered by CMAR to CITY within seven days of termination of the CONTRACT DOCUMENTS by either party. Any compensation due to CMAR shall be withheld until all documents are received as provided herein. CMAR shall adhere to Chapter 119, Florida Statutes, entitled "Public Records Act" and the requirements set forth in Article 16 of this Agreement.

ARTICLE 27
CMAR's REPRESENTATIVE

CMAR shall advise, the CITY, in writing of any limitations on the authority of CMAR's representative; otherwise, CMAR's representative shall be considered to have full authority to executive any and all instruments requiring CMAR's signature and to act on behalf of CMAR with respect to all matters arising out of this contract.

ARTICLE 28
CITY's RIGHT TO TERMINATE CONTRACT

28.1 In the event that CMAR fails to begin the WORK within ten calendar days after the project initiation date, fails to perform the WORK with sufficient workers and equipment or with sufficient materials to insure the prompt completion of the WORK, or shall perform the WORK unsuitably, or cause it to be rejected as defective and unsuitable, or shall discontinue the prosecution of the WORK pursuant to the accepted schedule or its SUBCONTRACTOR fails to perform any material term set forth in the CONTRACT DOCUMENTS or if CMAR shall become insolvent or be declared bankrupt, or commits any act of bankruptcy or insolvency, or shall make an assignment for the benefit of creditors, or for any other cause whatsoever shall not carry on the WORK in an acceptable manner, PROJECT MANAGER may give notice in writing to CMAR and its Surety of such delay, neglect or default, specifying the same.

If CMAR , within a period of ten calendar days after such notice, shall not proceed in accordance therewith, then CITY may upon written certificate from CONSULTANT of the fact of such delay, neglect or default and CMAR'S failure to comply with such notice, terminate the services of CMAR , exclude CMAR from the project site and take the prosecution of the WORK out of the hands of CMAR , and appropriate or use any or all materials and equipment that are an integral

part of the WORK on the project site as may be suitable and acceptable. In such case, CMAR shall not be entitled to receive any further payment until the PROJECT is completed.

In addition, CITY may enter into an agreement for the completion of the PROJECT according to the terms and provisions of the CONTRACT DOCUMENTS, or use such other methods as in CITY'S sole opinion shall be required for the completion of the PROJECT according to the terms and provisions of the CONTRACT DOCUMENTS, or use such other methods as in CITY'S sole opinion shall be required for the completion of the PROJECT in an acceptable manner. All damages, costs and charges incurred by CITY, together with the costs of completing the PROJECT, shall be deducted from any monies due or which may become due to CMAR. In case the damages and expenses so incurred by CITY shall exceed the unpaid balance, then CMAR shall be liable and shall pay to CITY the amount of said excess.

28.2 If after notice of termination of CMAR's right to proceed, it is determined for any reason that CMAR was not in default, the rights and obligations of CITY and CMAR shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause as set forth in subsection 28.3 below.

28.3 This contract may be terminated for convenience in writing by CITY upon ten days written notice to CMAR (delivered by certified mail, return receipt requested) of intent to terminate and the date on which such termination becomes effective. In such case, CMAR shall be paid for all work executed and expenses incurred prior to termination in addition to termination settlement costs reasonably incurred by CMAR relating to commitments which had become firm prior to the termination. Payment shall include reasonable profit for work and/or services performed. No payment shall be made for profit for work and/or services that have not been performed.

28.4 Upon receipt of Notice of Termination pursuant to this Article , CMAR shall promptly discontinue all affected work unless the Notice of Termination directs otherwise and deliver or otherwise make available to the CITY all data, drawings, specifications, reports, estimates, summaries and such other information as may have been required by the CONTRACT DOCUMENTS whether completed or in process.

ARTICLE 29
CMAR's RIGHT TO STOP WORK OR TERMINATE CONTRACT

If CONSULTANT fails to review and approve or state in writing reasons for rejection of any Request for Payment within 20 days after it is properly presented, or if CITY fails either to pay CMAR within 30 days after presentation by CONSULTANT of any sum certified by CONSULTANT, or to notify CMAR and CONSULTANT in writing of any objection to the Request for Payment, then CMAR may give written notice to CITY and CONSULTANT of such delay, neglect or default, specifying the same. If CITY or CONSULTANT (where applicable), within a period of ten calendar days after such notice shall not remedy the delay, neglect, or default upon which the notice is based, then CMAR may stop work or terminate

this contract and recover from CITY payment for all work executed and reasonable expenses sustained therein plus reasonable termination expenses. Any objection made by CITY to a Request for Payment shall be submitted to CONSULTANT in accordance with the provisions of Article 30 hereof.

ARTICLE 30
RESOLUTION OF DISPUTES

30.1 To prevent all disputes and litigation, it is agreed by the parties hereto that CONSULTANT shall decide all questions, claims, difficulties and disputes of whatever nature which may arise relative to the technical interpretation of the CONTRACT DOCUMENTS and fulfillment of this contract as to the character, quality, amount, value of any work done and materials furnished, or proposed to be done or furnished under or by reason of, the CONTRACT DOCUMENTS, and CONSULTANT's estimates and decisions upon all claims, questions, difficulties and disputes shall be final and binding to the extent provided in this Article . Any claim, question, difficulty or dispute which cannot be resolved by mutual agreement of PROJECT MANAGER and CMAR shall be submitted to CONSULTANT in writing within 2) calendar days. CONSULTANT shall notify PROJECT MANAGER and CMAR in writing of CONSULTANT's decision within 21 calendar days from the date of the submission of the claim, question, difficulty or dispute, unless CONSULTANT requires additional time to gather information or allow the parties to provide additional information. All nontechnical administrative disputes shall be determined by the PROJECT MANAGER pursuant to the time periods provided herein. During the pendency of any dispute and after a determination thereof, CMAR, CONSULTANT, and PROJECT MANAGER shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction.

30.2 In the event the determination of a dispute under this Article is unacceptable to any of the parties hereto, the party objecting to the determination must notify the other party in writing within ten days of receipt of the written determination. The notice must state the basis of the objection and must be accompanied by a statement that any CONTRACT PRICE adjustment claimed is the entire adjustment to which the objecting party has reason to believe it is entitled as a result of the determination. Within 60 days after FINAL COMPLETION of the WORK, the parties shall participate in mediation to address all objections to any mediator mutually agreed upon by the parties. Should any objection not be resolved in mediation, the parties retain all their legal rights and remedies provided under State law. If a party objecting to a determination, fails to comply in strict accordance with the requirements of this Article, said party specifically waives all of its rights provided hereunder, including its rights and remedies under State law.

30.3 The CONTRACT DOCUMENTS, inclusive of the contract, shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the exclusive jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue sites, and shall be governed by the laws of the State of Florida. By entering into this contract, CMAR and CITY

hereby expressly waive any rights either party may have to trial by jury of any civil litigation related to, or arising out of the PROJECT. CMAR, pursuant to Article 11 of this contract, shall specifically bind all SUBCONTRACTORS to the provisions of this contract.

Pending resolution of any dispute arising under this contract, other than termination hereof, CMAR shall proceed diligently with performance of this contract and the CITY shall continue to make payments in accordance with the CONTRACT DOCUMENTS.

ARTICLE 31
NOTICES

Notices: All notices to be given hereunder shall be in writing, and may be given by depositing the same in the United States Mail addressed to the party to be notified, postpaid, return receipt requested, or by delivering the same in person to such party with written receipt of acknowledgement of delivery by a person at the address (s) set forth below. All notices to be given to the parties hereto shall be sent to or made to the addresses shown below. The place for giving notice shall remain the same as set forth herein unless changed in the manner provided in this Article.

For CMAR :

_____

_____

_____

For City:

Director
Department of Design and Construction Management
2207 Raleigh Street
Hollywood, FL 33020

And to Consultant:

_____

_____

_____

ARTICLE 32
HURRICANE PRECAUTIONS

During such periods of time as are designated by the United States Weather Bureau as being a hurricane warning or alert, CMAR shall take all precautions necessary to secure the project site in response to all threatened storm events, regardless of whether the CITY or CONSULTANT has given notice of same.

Compliance with any specific hurricane warning or alert precautions which are within the normal scope of work of CMAR , i.e. normal construction clean-up of debris and securing all loose items at the site, will not constitute additional work and will be performed at no additional cost to the CITY.

Additional work (which is over and beyond removal of debris and securing of loose items) relating to hurricane warning or alert at the project site will be addressed by a change order in accordance with Article7, subsection 7.4.

Suspension of the work caused by a threatened or actual storm event, regardless of whether the CITY has directed such suspension, will entitle CMAR to additional CONTRACT TIME as non-compensable, excusable delay, and shall not give rise to a claim of compensable delay.

ARTICLE 33
OTHER TERMS & CONDITIONS

33.1 Third Party Beneficiaries: Neither CMAR nor CITY intend to directly or substantially benefit a third party by this contract. Therefore, the parties agree that there are no third party beneficiaries to this contract and that no third party shall be entitled to assert a claim against either of them based upon the CONTRACT DOCUMENTS. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under the CONTRACT DOCUMENTS.

33.2 Conflicts: Neither CMAR nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic to, or incompatible with, CMAR's loyal and conscientious exercise of judgment related to its performance under this contract. CMAR agrees that none of its employees shall, during the term of this contract, serve as an adverse, hostile or expert witness against CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, CMAR agrees that I such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her opinion, which is adverse or prejudicial to the interests of CITY in any such pending or threatened legal or administrative proceeding. The limitations of this Article shall not preclude CMAR and any other persons from representing themselves in any action or in any administrative or legal proceeding. In the event CMAR is permitted to utilize SUBCONTRACTORS to perform any services required by the CONTRACT DOCUMENTS, CMAR agrees to prohibit its SUBCONTRACTORS, by written contract, from having any conflicts as within the meaning of this Article.

33.3 Joint Preparation: The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of the CONTRACT DOCUMENTS has been their joint effort. The language agreed to expresses their mutual intent and the resulting document

shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

33.4 Drug Free Workplace: It is a requirement of CITY that it enter into contracts only with firms that certify the establishment of a drug-free workplace. Execution of this contract by CMAR shall also serve as CMAR's required certification that it either has or that it will establish a drug-free workplace.

33.5 Assignment: Neither the CONTRACT DOCUMENTS nor any interest herein shall be assigned or transferred by CMAR.

33.6 Waiver: No consent or waiver, express or implied, by either party to this contract to or of any breach or default by the other in the performance of any obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other or future breach or default by such party hereunder, nor deemed to be a modification of this contract. Failure on the part of any party hereto to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder, provided however this section shall not alter or amend the notice provisions set forth in the Construction Documents including but not limited to, in Article 6. Inspection by, payment by or tentative approval or acceptance by the CITY, or the failure of the CITY to perform any inspection hereunder shall not constitute a final acceptance of the WORK or any part thereof and shall not release CMAR from any of its obligations hereunder.

33.7 Construction of Terms: Unless the context clearly intends the contrary, words singular or plural in number shall be deemed to include the other and pronouns having masculine or feminine gender shall be deemed to include the other. The term "person" shall be deemed to include an individual, corporation, unincorporated organization, partnership, trust, government and governmental agency or subdivision, as the context shall require.

33.8 Prohibition Against Contingent Fees.

CMAR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CMAR, to solicit or secure this contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CMAR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this contract. For a breach or violation of this provision, CITY shall have the right to terminate this contract without liability at its discretion, or to deduct from the CONTRACT PRICE or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

33.9 Captions: The captions used for the Articles of this Contract are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of the intent of this Contract or any Article hereof.

33.10 Entire Agreement; Severability; Amendments: These Contract Documents incorporate and include all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this contract that are not contained in the CONTRACT DOCUMENTS. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document in accordance with Article 7. In the event any provision of the Contract Documents shall be found by a court of competent jurisdiction to be invalid or otherwise unenforceable, the remainder of this contract shall not be affected thereby and each remaining provision, term, covenant or condition of the Contract Documents shall continue to be effective.

33.11 Counterparts: This contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and date first above in two (2) counterparts, each of which shall, without proof or accounting for the other counterparts, be deemed an original contract.

THE CITY OF HOLLYWOOD, a municipal corporation of the State of Florida

By: _____
Josh Levy, Mayor

ATTEST:

_____
Patricia A. Cerny, MMC
City Clerk

Approved by:

_____
Cintya Ramos, Director of Financial Services

Approved As To Form & Legal Sufficiency
for the use and reliance of the City of
Hollywood, Florida, only.

_____
Douglas R. Gonzales, City Attorney

Party of the Second Part

WHEN THE CONTRACTOR IS AN INDIVIDUAL:

Signed, sealed and delivered in the presence of:

(SEAL)	(Witness) (Signature of individual)
(SEAL)	(Witness) (Signature of individual)

WHEN THE CONTRACTOR IS A SOLE PROPRIETORSHIP OR OPERATES UNDER A TRADE NAME:

Signed, sealed and delivered in the presence of:

Witness	(Name of Firm)
(SEAL)	(Witness) (Signature of individual)

CONSTRUCTION MANAGEMENT AT RISK AGREEMENT FOR PHASE II CONSTRUCTION SERVICES

WHEN THE CONTRACTOR IS A PARTNERSHIP:
Signed, sealed and delivered in the presence of:

_____ _____
(Witness) (Name of Firm)

_____ BY: _____
(Witness) (Partner)

WHEN THE CONTRACTOR IS A CORPORATION:
ATTEST:

_____
Secretary

_____
(Correct Name of Corporation)

(SEAL) BY: _____
(President)