

ARTICLE 14  
PERFORMANCE AND PAYMENT BOND AND QUALIFICATIONS OF SURETY

14.1 Within ten calendar days of being notified of the award and prior to any commencement of the WORK, CMAR shall execute and record a Performance Bond and a Payment Bond containing all the provisions of the Performance Bond and Payment Bond attached as Forms 4 and 5. In accordance with the requirements of Section 255.05, Florida Statutes, CMAR shall record in the Public Records of Broward County, Florida the Performance and Payment Bonds. CMAR shall deliver to OWNER evidence, reasonably acceptable to OWNER, of the recording of such Bonds. The delivery of such evidence is a condition precedent to OWNER's obligation to make any progress payments to CMAR.

14.1.1 Each Bond shall be in the amount of 100% of the GMP guaranteeing to CRA the completion and performance of the WORK covered in this CONTRACT as well as full payment if all suppliers, material providers, laborers, TRADE CONTRACTORS or SUBCONTRACTORS employed on 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 CRA, correct any defective or faulty WORK or materials that appear within one year after FINAL COMPLETION of the PROJECT.

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 CRA/CITY with evidence satisfactory to CRA/CITY, that such excess risk has been protected in an acceptable manner.

- 14.2.3 The CRA 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 CRA shall review and either accept or reject the surety company based on the financial information available to the CRA. A surety company that is rejected by the CRA may be substituted by the bidder or proposer with a surety company acceptable to the CRA, only if the bid amount does not increase. The ratings of Surety shall correspond to the amount of bonds as follows:

| <b>Amount of Bond</b>    | <b>Policy Holder's Ratings</b> | <b>Financial Size Category</b> |
|--------------------------|--------------------------------|--------------------------------|
| 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 CRA/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 CRA 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 that 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 CRA all financial records, supporting documents, statistical records and any other documents that relate to the PROJECT 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 CRA 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 CRA'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 CRA to perform the services required under the CONTRACT;

(b) upon request from the CRA/CITY'S custodian of public records or his/her designee, provide the CRA 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 CRA; and

(d) upon completion of the CONTRACT, CMAR shall transfer, at no cost to the CRA, all public records in possession of the CMAR or keep or maintain public records required by the CRA to perform the service. If the CMAR transfers all public records to the CRA 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 CRA upon request from the CRA/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 CRA/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](mailto: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 CRA to substantiate charges related to this CONTRACT (all of the foregoing referred to as "records").

16.1.2 CMAR shall require all SUBCONTRACTORS, TRADE CONTRACTORS, insurance agents and material suppliers (payees) to keep and maintain comparable records for the same time period and to permit the CRA/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 CRA/CITY or the CRA/CITY's representatives in accordance with this Article, discloses overcharges (of any nature) by the CMAR to the CRA in excess of one percent of the total billings, the cost of the CRA's audit (whether performed by the CRA or outside auditors) shall be reimbursed or paid to the CRA 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 CRA 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 CRA, 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 CRA, CMAR shall replace it without cost to CRA. 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 CRA 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 CRA.
- 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 and provided to the PROJECT MANAGER. 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 19.2.3, except in accordance with applicable environmental laws or regulations. Further, in performing the WORK, CMAR 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 and regulations.

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 at or on the PROJECT location, in violation of any applicable environmental laws and regulations, 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 CRA'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 Conservation 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 this Article 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 CRA 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 such permits and licenses.

Payment of all such permits, licenses and impact fees shall be made by CMAR as part of the GENERAL CONDITIONS COSTS 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 CONSTRUCTION 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 Certificate(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 CRA or the CONSULTANT, CMAR shall not use in the performance of the WORK any personnel deemed by the CRA or the CONSULTANT to be incompetent, careless, or unqualified to perform the WORK assigned to that person, or otherwise unsatisfactory to the CRA.

- 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 CRA.
- 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 CRA 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 SUBCONTRACTORS 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 CRA 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 CRA, 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 CRA 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 CRA 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 CRA 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 CRA 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 CRA for all excess costs incurred by the CRA.

- 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 CRA 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.
- 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 11<sup>th</sup> month after occupancy. CMAR shall deliver all as-built drawings,

warranties and guarantees to the PROJECT MANAGER as a condition for final payment.

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.

### 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, CRA 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 CRA 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, CRA 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 CRA, shall promptly correct such defective or nonconforming WORK within the time specified by CRA without cost to CRA, 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 CRA 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 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 CRA 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 subsection shall not apply to corrective WORK attributable solely to the acts or omissions of any separate contractor or SUBCONTRACTOR of the CRA unless CMAR is acting in such capacity or capacities. The cost to CMAR of performing any of its obligations under this subsection shall be within the GMP. CMAR's responsibility to make repairs and redo WORK under this subsection is in addition to CMAR's responsibility to the CRA for any other damages of any kind for which CMAR would be legally responsible.
- 23.6 If the CRA 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 CRA. Until such settlement, the CRA may withhold such sums as the CRA deems just and reasonable from monies, if any, due CMAR. If no monies are held by the CRA, reimbursement shall be made to the CRA 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 CRA 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 CRA. 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 CRA, may not submit a bid on a contract with CRA for the construction or repair of a public building or public work, may not submit bids on leases of real property to CRA, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with CRA, and may not transact any business with CRA 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 vendor 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 CRA'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 CRA, 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 CRA and shall be delivered by CMAR to CRA 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. 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 CRA in writing of any limitations on the authority of CMAR's representative; otherwise, CMAR's representative shall be considered to have full authority to execute 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  
CRA'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 CRA 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, CRA 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 CRA'S sole opinion shall be required for the completion of the PROJECT in an acceptable manner. All damages, costs and charges incurred by CRA, 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 CRA shall exceed the unpaid balance, then CMAR shall be liable and shall pay to CRA the amount of such 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 CRA 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 CRA 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 CRA 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 CRA 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 CRA and CONSULTANT of such delay, neglect or default, specifying the same. If CRA 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 CRA payment for all WORK executed and reasonable expenses sustained therein plus reasonable termination expenses. Any objection made by CRA to a Request for Payment shall be submitted to CONSULTANT in accordance with the provisions of Article 30.

#### ARTICLE 30

##### RESOLUTION OF DISPUTES

- 30.1 To prevent all disputes and litigation, it is agreed by the parties 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 subsection. 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 21 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 subsection is unacceptable to any of the parties, 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 subsection, the 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 CONTRACT 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, and shall be governed by the laws of the State of Florida. By entering into this CONTRACT, CMAR and CRA 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 CRA 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 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 subsection.

For CMAR:  
**Marc Kleisley**  
**Burkhardt Construction, Inc.**  
**Vice President**  
**1400 Alabama Avenue, Suite 20**  
**West Palm Beach, FL. 33401**

For CRA:

**Sarita Shamah,**  
**Senior Project Manager**  
**1948 Harrison Street**  
**Hollywood, FL 33020**

And to Consultant:

**Marwan Mufleh, P.E.**  
**Kimley Horn and Associates**  
**Principal**  
**1615 S Congress Ave #201**  
**Delray Beach, FL 33445**

#### 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 CRA or CONSULTANT has given notice of same.

The CMAR Construction schedule shall be based on the inclusion of 15 days of Inclement Weather Delays. No extension of the CONTRACT TIME due to inclement weather will be considered until after the number of Days of Inclement Weather has been reached. No increase in CONTRACT TIME will be made if the number of Days of Inclement weather is not reached.

Inclement weather by itself is not a cause for time extension. Only where duration and frequency of rain is abnormal as compared to average NOAA data for the PROJECT area and supported by PROJECT logs will time extensions be considered. No time extension will be allowed for weekend rain events unless the CMAR has received approval and has been working weekends on a regular basis.

In order to demonstrate that a delay is the result of exceptionally adverse weather conditions, the CMAR must demonstrate that Critical Path activities have been delayed by more Days than those cumulatively expected during the CONTRACT TIME, based upon the average number of Days of adverse weather conditions experienced in

the place where the PROJECT is located during the five years prior to the date of this CONTRACT, which average shall be based on the historical data of the U.S. National Oceanic and Atmospheric Administration, and that any float time in the Construction schedule has been exceeded.

Compliance with any specific hurricane warning or alert precautions that 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 CRA.

Suspension of the WORK caused by the designation of a hurricane warning, tropical storm or other alert by NOAA, regardless of whether the CRA 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 AND CONDITIONS

- 33.1 Third Party Beneficiaries: Neither CMAR nor CRA 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.
- 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 CRA in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, CMAR agrees that 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 CRA 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 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 CRA that it enter into contracts only with firms that certify the establishment of a drug-free workplace under Section 440.102(15), Florida Statutes. 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 under Section 440.102(15), Florida Statutes.
- 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 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 payment by or tentative approval or acceptance by the CRA, or the failure of the CRA to perform any inspection 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, CRA 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: The CONTRACT and 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 or CONTRACT DOCUMENTS shall be found by a court of competent jurisdiction to be invalid or otherwise unenforceable, the remainder of this CONTRACT or CONTRACT DOCUMENTS shall not be affected thereby, and each remaining provision, term, covenant or condition of the CONTRACT and 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 CONTRACT on the day and date first above in two counterparts, each of which shall, without proof or accounting for the other counterparts, be deemed an original contract.

THE HOLLYWOOD, FLORIDA, COMMUNITY REDEVELOPMENT AGENCY  
Party of the First Part

By: \_\_\_\_\_

JOSH LEVY, CHAIRPERSON

ATTEST:

*Phyllis Lewis*

APPROVED AS TO FINANCE:  
HOLLYWOOD, FLORIDA COMMUNITY  
REDEVELOPMENT AGENCY  
ONLY:

BY: \_\_\_\_\_

JORGE A. CAMEJO,  
EXECUTIVE DIRECTOR, COMMUNITY  
REDEVELOPMENT AGENCY

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

*Damaris G. Henlon* for \_\_\_\_\_ DM  
DOUGLAS R. GONZALES  
GENERAL COUNSEL

## Construction Management at Risk Agreement Phase II Construction Services

CONTRACTOR

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)

\_\_\_\_\_  
(Witness)

BY:

\_\_\_\_\_  
(Partner)

WHEN THE CONTRACTOR IS A CORPORATION:

ATTEST:

Sharon Burkhardt

Secretary Sharon H. Burkhardt

Burkhardt Construction, Inc.

\_\_\_\_\_  
(Correct Name of Corporation)

BY:

Vincent G. Burkhardt  
(President) Vincent G. Burkhardt

