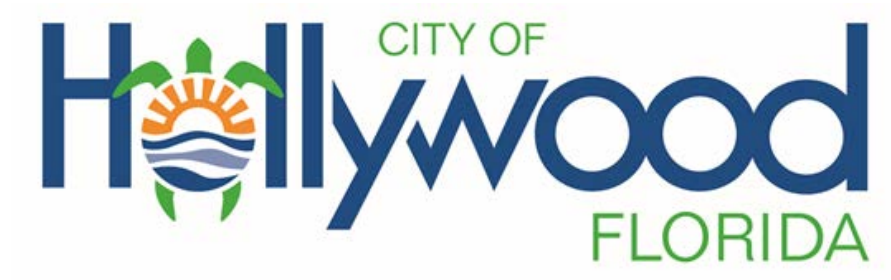


**CITY OF HOLLYWOOD, FLORIDA**  
**CONSTRUCTION MANAGEMENT AT RISK SERVICES**



**PHASE I**

**PRE-CONSTRUCTION SERVICES**

**Tidal Flooding Mitigation and Shoreline Protection**

**DCM-19-001187**

**FDEP22FRP13**

**Sites 1,2,6,9,10,13,17,18,19,20,21 and 22**

**DEPARTMENT OF DESIGN & CONSTRUCTION MANAGEMENT**

**2207 RALEIGH STREET**

**HOLLYWOOD, FLORIDA 33020**



CONSTRUCTION MANAGEMENT AT RISK  
SERVICES AGREEMENT

PHASE I

PRE-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 xxxxxxxxxxxx., a Florida authorized corporation to do business in the State of Florida as a Construction Manager at Risk (“CMAR”).

**WITNESSETH:**

Whereas, Owner desires to protect property from ocean water level fluctuations by installing or raising bulkheads along City owned property along varied areas adjacent to north and south lake and the intracoastal waterway; and

Whereas, it is the best interests of the City to obtain professional construction management services in order to insure quality timely and valued construction from a pre-approved professional Construction Manager at Risk (“CMAR”); and

Whereas, the City issued a Request for Proposals (“RFP”) in accordance with Section 287.055, Florida Statutes, entitled “Consultants’ Competitive Negotiation Act” (“CCNA”), and Section 255.103, Florida Statutes, entitled “Construction Management or Program Management Entities” and has competitively selected the CMAR per Resolution xxxxxxxxxxxx dated xxxxxxxx; and

Whereas, CMAR will provide professional construction management services for the project Hollywood Tidal Flooding Mitigation and Shoreline Protection FDEP 22FRP13 Sites 1,2,6,9,10,13,17,18,19,20,21 and 22 as directed by the Director of Design and Construction Management.

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

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ARTICLE 1  
GENERAL DESCRIPTION OF SCOPE OF SERVICES

1.1 The CMAR shall furnish professional construction management at risk services related to Pre-Construction Services as set forth in the Scope of Services attached as Exhibit "A" for the Hollywood Tidal Flooding Mitigation and Shoreline Protection project, upon issuance of City's NOTICE TO PROCEED by the DIRECTOR or his/her designee. The intent of the CONTRACT DOCUMENTS is for the CMAR to provide all of those services set forth in Exhibit "A", furnish any and all required materials, labor and equipment, 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 the CMAR consultants, trade contractors, and others employed or retained by the CMAR in connection with the Project.

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

1.3 Project Schedule/Time of Essence. The CMAR has provided the Owner with a preliminary schedule covering the pre-construction and construction of the PROJECT which is set forth in the attached Exhibit "B". This preliminary schedule shall serve as a

framework for the subsequent development of all detailed construction schedules described in the CONTRACT DOCUMENTS, including Exhibits. The CMAR shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the Project schedule, subject to delays in the schedule not the fault of the CMAR or its SUBCONTRACTORS. Time is of the essence in the performance of this contract.

1.4 Project Team. CMAR will use the project team identified in Exhibit "C". CMAR will not remove or replace any members of the project team except with the written approval of OWNER based upon good cause shown or as directed by OWNER as provided in the CONTRACT DOCUMENTS. Further, if any member of the project team discontinues service on the PROJECT for any reason whatsoever, CMAR shall promptly replace such team member with a qualified individual approved by OWNER, in writing, which approval shall not be unreasonably withheld.

#### 1.5 GUARANTEED MAXIMUM PRICE.

- a. Prior to the performance of construction services, the CMAR shall prepare and deliver to the PROJECT MANAGER, with a copy to the CONSULTANT, a GMP proposal. The CMAR shall include in the GMP proposal the following:
  - (i) a recital of the specific CONTRACT DOCUMENTS, including construction documents, drawings, specifications, and all addenda, used in the preparation of the GMP proposal;
  - (ii) the five elements of the GMP are as follows:
    - a. Cost of Work
    - b. Construction Fee
    - c. General Conditions Costs
    - d. Construction Contingency
    - e. Owners Contingency
  - (iii) A draft schedule of values;
  - (iv) A description of all other inclusions to , or exclusions from, the GMP;
  - (v) All assumptions and clarifications; and
  - (vi) The final construction schedule.
- b. The CMAR acknowledges that the CONTRACT DOCUMENTS may be incomplete at the time the CMAR delivers the GMP proposal, and that the CONTRACT DOCUMENTS may not be completed until after commencement of the Work/Services. Nevertheless, the GMP proposal shall include all costs for the WORK/Services required by the completed CONTRACT DOCUMENTS, and if the GMP is accepted by the OWNER, the CMAR shall be entitled to no increase in the GMP if the WORK required by the completed

CONTRACT DOCUMENTS: (i) is required by the CONTRACT DOCUMENTS for construction; (ii) is reasonably inferable from the incomplete documents; (iii) is consistent with the OWNER's programmatic goals and objectives; (iv) is consistent with the OWNERS's design and construction standards and the general industry standards for completion of the WORK/services; (v) is not a substantial enlargement of the Scope of Services/WORK; or (vi) substantially conforms to the nature, type, kind or quality of WORK/services depicted in the incomplete documents.

- c. If the GMP proposal is unacceptable to the OWNER, the OWNER shall promptly notify the CMAR in writing. Within fourteen calendar days of such notification, the OWNER, CONSULTANT and PROJECT MANAGER shall meet to discuss and resolve the differences, inconsistencies, or misunderstandings and to negotiate recommended adjustments to the WORK/services and/or to the GMP.
- d. The OWNER may, at its sole discretion and based upon its sole judgment (i) indicate its acceptance of a GMP proposal; (ii) reject the GMP proposal and terminate this contract.

#### 1.6 PRICE GUARANTEES.

- a. Upon execution of the Construction Contract, 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 the Construction Contract, 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 for 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 the Construction Contract, 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**

For the purpose of this Agreement, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- 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 CITY performance is pursuant to the CITY's position as the owner of a construction project. In the event 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 pursuant to the City's authority as a governmental body and shall not be attributable in any manner to CITY as a party to this contract.
- 2.4 **CONSTRUCTION MANAGER AT RISK ("CMAR").** The prime contractor that shall provide construction management at risk services 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. If the parties enter into a Phase II Construction Services Agreement, 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.
- 2.8 **CONTRACT DOCUMENTS:** The PROJECT MANUAL (including this contract and its Exhibits, Attachments and Forms), the trade contracts, drawings and

specifications, the Request For Qualifications and CMAR's response as negotiated and accepted by the CITY), any Addenda to the Project Manual, the record of the contract award by the City Commission, the Payment and Performance 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 .

- 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 Procurement Code.
- 2.10 DIRECTOR: The Director of the Department of Design and Construction Management of the CITY having the authority and responsibility for management of the specific project authorized under the CONTRACT DOCUMENTS.
- 2.11 FIELD ORDER: A written order which directs minor changes in the Scope of Services, but does not involve a change in the Contract Price (GMP) or contract time.
- 2.12 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.
- 2.13 GENERAL CONDITION ITEMS: The provision of facilities or performance of work/services by the 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 at cost and included as part of the GMP.
- 2.14 GUARANTEED MAXIMUM PRICE ("GMP"): 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 Contracts.
- 2.15 INSPECTOR: An employee of the CITY assigned by the Director to make observations of work performed by CMAR.
- 2.16 MATERIALS: Materials incorporated in the PROJECT, or used or consumed in the performance of the Scope of Services.



- 2.17 NOTICE TO PROCEED: One or more written notices to CMAR authorizing the commencement of the Scope of Services.
- 2.18 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.
- 2.19 PLANS AND/OR DRAWINGS: The official graphic representations of this construction project which are a part of the CONTRACT DOCUMENTS.
- 2.20 PRE-CONSTRUCTION FEE: The lump sum fee payable to the CMAR for the WORK performed during the pre-construction phase related to the PROJECT, accepted by the CITY and the CMAR, which fee includes all direct and indirect costs incurred by the CMAR in the proper performance of WORK during the pre-construction phase.
- 2.21 PROJECT: The construction, alteration or repair, and all services and incidents thereto, of a CITY facility as contemplated and budgeted by the OWNER as described in the CONTRACT DOCUMENTS, including the Scope of Services described in the attached Exhibit "A".
- 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 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 does not include 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, 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 **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 and is provided in accordance with the Scope of Services.
- 2.28 **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** **TERM AND TIME OF PERFORMANCE**

- 3.1 The term of this contract shall begin on the date it is fully executed by both parties and shall end on the date of commencement of the term of the contract between the CITY and a construction manager at risk for pre-construction services for the **Hollywood Tidal Flooding Mitigation and Shoreline Protection**, **not later than, xxxx**, unless terminated in accordance with Article 8. When the CONSULTANT determines it is necessary to extend the time for the PROJECT, the CONSULTANT shall notify the PROJECT MANAGER, and the term of this contract may be extended for a period of time not to exceed 60 calendar days in accordance with the CITY's Procurement Ordinance and as set forth in Section 9.20 herein.
- 3.2 All duties, obligations, and responsibilities of CMAR required by this contract shall be completed no later than **xxxx**. Time shall be deemed to be of the essence in performing the duties, obligations and responsibilities required by the CONTRACT DOCUMENTS.
- 3.3 At or before the above referenced completion date for this contract the CMAR following completion of cost estimating, value engineering and other services set forth in Article 4 will tender to the CITY a written GMP for final completion of the PROJECT. The City, by and through the DIRECTOR, the PROJECT MANAGER and/or other City personnel, will have the opportunity to negotiate the amount of the GMP with the CMAR. In the event a GMP which is satisfactory to City personnel in their reasonable discretion is not agreed upon in writing within 30 days of the tender of GMP, the CITY reserves the right to terminate this contract for convenience and the CMAR will immediately tender all documents, in accordance with the applicable provisions of the CONTRACT DOCUMENTS. The CMAR shall have no recourse from this termination and the CITY shall take such documents, as defined, in Section 9.1 of this contract, and commence negotiations with the second and third ranked firm, respectively. Conditions precedent to a Phase II contract for this project are the satisfactory final completion of Phase I and an agreed upon GMP. If a GMP is agreed to with the CMAR, a separate contract will be entered into between the parties.

**ARTICLE 4**  
**COMPENSATION FOR PRE-CONSTRUCTION PHASE SERVICES/PRE-CONSTRUCTION FEE**

4.1 CITY agrees to pay CMAR, in the manner specified in subsection 4.2, the total lump sum compensation in an amount not to exceed **xxxxxxxx (\$xxx0)** for work actually performed and completed pursuant to this Contract which amount shall be accepted by CMAR as full compensation for all such pre-construction service phase work. It is acknowledged and agreed by CMAR that this amount is the maximum payable and constitutes a limitation upon CITY's obligation to compensate CMAR for its services related to the Scope of Services set forth in Exhibits "A" and "A-1". This maximum amount, however, does not constitute a limitation, of any sort, upon CMAR's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services. No amount shall be paid to CMAR'S to reimburse its expenses.

4.2 The lump sum compensation in an amount not to exceed **xxxxxx dollars (\$xxxx)** shall be paid out in accordance with the percentage amount set forth as follows:

<u>Project Phases</u>	<u>Fee %</u>
Scheduling	10%
Constructability Review	20%
Cost Estimating	25%
Value Engineering	10%
Prequalification of Subcontractors	10%
Guaranteed Maximum Price (GMP)	25%

4.3 It is understood that the method of compensation is that of lump sum which means that CMAR shall perform all services set forth in Exhibit "A", and in CONTRACT DOCUMENTS, for the total compensation in the Lump sum amount, including all reimbursable expenses.

4.4 **METHOD OF BILLING AND PAYMENT**

4.4.1 CMAR may submit invoices for compensation no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed. Such invoices shall include the phase of the services for which invoice is submitted along with a detail of the task or services performed for that phase. An original invoice plus one copy are due within 15 days of the end of the month, except the final invoice which must be received no later than 60 days after this contract expires. Invoices shall designate the nature of the services performed and/or the expenses incurred.

4.4.2 CITY shall pay CMAR pursuant to Section 218.735, Florida Statutes. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to

instructions prescribed by PROJECT MANAGER. Payment may be withheld for failure of CMAR to comply with a term, condition, or requirement of the CONTRACT DOCUMENTS.

4.5 Notwithstanding any provision of the CONTRACT DOCUMENTS to the contrary, CITY may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied, or resolved in a manner satisfactory to the CONSULTANT AND/OR PROJECT MANAGER, and/or due to CMAR's failure to comply with Section 9.1 below. The amount withheld shall not be subject to payment of interest by CITY.

4.6 Payment shall be made to CMAR at:

XXXXXXXXXXXXXXXXXXXXX.

XXXXXXXXXXXXXXXXXXXXX.

XXXXXXXXXXXXXXXXXXXXX

**ARTICLE 5**  
**CHANGES IN SCOPE OF SERVICES**

Any change to the Scope of Services shall require a written amendment to the CONTRACT DOCUMENTS executed by the parties in accordance with Section 9.19 below.

**ARTICLE 6**  
**INDEMNIFICATION**

The CMAR shall indemnify, defend 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 CMAR and persons employed or utilized by the CMAR 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 7**  
**INSURANCE**

7.1 Prior to the commencement of work governed by the CONTRACT DOCUMENTS (including the pre-staging of personnel and material), the CMAR shall obtain insurance as specified in the schedules shown below. The CMAR will ensure that the insurance obtained will extend protection to all sub-contractors engaged

by the CMAR. As an alternative the CMAR may require all SUBCONTRACTORS to obtain insurance consistent with the schedules shown below.

The CMAR will not be permitted to commence work governed by the CONTRACT DOCUMENTS (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 the 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 the CMAR's failure to provide satisfactory evidence.

The CMAR shall maintain the required insurance throughout the entire term of the CONTRACT DOCUMENTS 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 the CMAR to maintain the required insurance shall not extend deadlines specified in the contract and any penalties and failure to perform assessments shall be imposed as if the work had not been suspended, except for the CMAR's failure to maintain the required insurance.

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

1. Certificate of Insurance; 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 the CMAR's insurance shall not be construed as relieving the CMAR from any liability or obligation assumed under the CONTRACT DOCUMENTS or imposed by law. The CITY, its employees and officials will be included as "Additional Insureds" 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.

## 7.2 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 OWNER. 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.

The CMAR shall furnish certificates of insurance to the Risk Manager for review and approval prior to the commencement of work governed by this contract. The Certificates shall clearly indicate that the 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 the 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 notification is given to the CITY by the insurer.

### **Sub Consultant**

Prior to the commencement of work governed by this contract CMAR will ensure that the insurance obtained will extend protection to all SUB CONSULTANTS engaged by CMAR. As an alternative, CMAR may require all SUB CONSULTANTS to obtain insurance consistent with the schedules shown below.

#### **7.2.1 Comprehensive General Liability:**

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

1. Premises Operations
2. Products and Completed Operations
3. Blanket Contractual Liability
4. Personal Injury Liability
5. Expanded Definition of Property Damage

The minimum limits acceptable shall be:

#### **i. Limits of Liability:**

Bodily Injury and Property Damage Liability	
Each Occurrence	\$1,000,000
General Aggregate Limit	\$2,000,000
Personal Injury	\$1,000,000
Products/Completed Operations	\$2,000,000

#### **ii. Endorsements Required:**

City of Hollywood included as an Additional Insured  
Broad Form Contractual Liability  
Waiver of Subrogation  
Premises/Operations  
Products/Completed Operations  
Independent Contractors

An Occurrence Form policy is preferred. If coverage is provided on a Claims Made policy, its provisions should include coverage for claims filed on or after the effective date of this contract. In addition, the period for which claims may be reported should extend for a minimum of 12 months following the acceptance of work by the CITY. The CITY, its employees and officials shall be named as Additional Insureds on all policies issued to satisfy the above requirements.

#### 7.2.2 Comprehensive Automobile Liability:

Recognizing that the work governed by this contract requires the use of vehicles, the 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:

**i. Limits of Liability:**

Bodily Injury and Property Damage Liability  
Combined Single Limit \$1,000,000  
Any Auto  
Including Hired, Borrowed or Non-Owned Autos

**ii. Endorsements Required:**

Waiver of Subrogation  
City of Hollywood included as an Additional Insured

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

#### 7.2.3 Workers' Compensation Insurance:

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

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

Limits of Liability: Statutory-State of Florida

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-VI, as assigned by the A.M. Best Company.

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

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

## **ARTICLE 8** **TERMINATION**

- 8.1 This contract may be terminated for cause by CITY or by CMAR if the party in breach has not corrected the breach within 30 days after written notice from the aggrieved party identifying the breach, or for convenience by CITY, without any cause, upon not less than 30 days' written notice by PROJECT MANAGER. This contract may also be terminated by PROJECT MANAGER upon such notice as PROJECT MANAGER deems appropriate under the circumstances in the event PROJECT MANAGER determines that termination is necessary to protect the public health, safety, or welfare.
- 8.2 Termination of this contract for cause shall include, but not be limited to, failure to suitably perform the work and failure to continuously perform the work in a manner calculated to meet or accomplish the objectives of CITY as set forth in the CONTRACT DOCUMENT notwithstanding whether any such breach was previously waived or cured. Upon the occurrence of a breach which is not cured within the cure period, in addition to all remedies available to it by law, the City may immediately, upon written notice to the CMAR, terminate this contract whereupon, all payments, advances, or other compensation paid by the City to the CMAR while the CMAR was in breach shall be immediately returned to the City. The City may suspend any payment or part thereof or order a Work stoppage until such time as the issues concerning compliance are resolved. CMAR understands and agrees the termination of this contract under this Article shall not release the CMAR from any obligation accruing prior to the effective date of the termination. In the event of termination due to a default, in addition to the foregoing, the CMAR shall be liable for all costs and expenses incurred by the City in the re-procurement of the Work under the CONTRACT DOCUMENTS.
- 8.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this contract, except that notice of termination by PROJECT



MANAGER, which PROJECT MANAGER deems necessary, to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Contract .

- 8.4 In the event this contract is terminated for convenience, CMAR shall be paid for any services performed to the date the contract is terminated; however, upon being notified of CITY's election to terminate, CMAR shall refrain from performing further services or incurring additional expenses under the terms of the CONTRACT DOCUMENTS. CMAR acknowledges and agrees that ten dollars (\$10.00) of the compensation to be paid by CITY, the adequacy of which is acknowledged by CMAR, is given as specific consideration to CMAR for CITY's right to terminate this contract for convenience.
- 8.5 In the event this contract is terminated, any compensation payable by CITY shall be withheld until all documents are provided to CITY pursuant to Section 9.1 below.

## **ARTICLE 9** **MISCELLANEOUS**

### 9.1 **OWNERSHIP OF DOCUMENTS**

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this contract are and shall remain the property of CITY. In the event of termination of this contract any reports, photographs, surveys, estimates, schedules, drawings, and other data and documents prepared by CMAR, whether finished or unfinished, shall become the property of CITY and shall be delivered by CMAR to the PROJECT MANAGER within seven days of termination of this contract by either party. Any compensation due to CMAR shall be withheld until all documents are received as provided in the CONTRACT DOCUMENTS. This shall apply to all documents produced in any phase of the work, regardless of whether a subsequent phase is undertaken with CMAR.

### 9.2 **AUDIT RIGHT AND RETENTION OF RECORDS**

CITY shall have the right to audit the books, records and accounts of CMAR that are related to the PROJECT. CMAR shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the PROJECT.

CMAR shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to the CONTRACT DOCUMENTS for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Statute), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three years after termination of this contract. 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. If the Florida Public Records Act is determined by CITY to be applicable to CMAR's records, CMAR shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CMAR. 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](mailto:PCERNY@HOLLYWOODFL.ORG)**

### 9.3 NONDISCRIMINATION

CMAR agrees that it will not discriminate against any employee or applicant for employment for work under this contract because of race, color, religion, gender, gender identity, sexual orientation, age, national origin, political affiliation, or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, gender, sexual orientation, age, national origin, political affiliation or disability. This provision shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships.

### 9.4 PUBLIC ENTITY CRIME ACT

CMAR represents that the execution of the CONTRACT DOCUMENTS 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 vendor list. Violation of this section shall result in termination of this Contract and recovery of all monies paid hereto, and may result in debarment from CITY's competitive procurement activities.

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.

### 9.5 INDEPENDENT CONTRACTOR

CMAR is an independent contractor under this Contract. Services provided by CMAR pursuant to the CONTRACT DOCUMENTS shall be subject to the supervision of CMAR. In providing such services, neither contractor nor its agents shall act as officers, employees, or agents of the CITY. The contract shall not constitute or make the parties a partnership or joint venture. The CITY is not responsible for any debt, default, act or omission of CMAR.

## 9.6 PREVAILING WAGE REQUIREMENT (REQUIRED BY FUNDING SOURCE)

9.6.1 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 him/her or his/her 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 by the United States Department of Labor for Broward County, Florida that is in effect prior to the date the CITY issued the Request for Qualifications (RFQ) for this PROJECT.

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.

9.6.2 Upon commencement of work, CMAR and all of its SUBCONTRACTORS shall post a notice in a prominent place at the work site stating the requirements of this section.

9.6.3 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.

9.6.4 CMAR and its SUBCONTRACTORS shall submit to the CITY on a regular basis, but not less than monthly, 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 CMAR and its SUBCONTRACTORS for a period of at least three years following completion of the work.

9.6.5 The CITY may withhold, or cause to be withheld from CMAR, so much 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 on 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.

9.6.6 The 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 his/her SUBCONTRACTORS.

9.7 THIRD PARTY BENEFICIARIES

Neither CMAR nor CITY intends 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.

9.8 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

CITY OF HOLLYWOOD:

Jose Cortes, Director  
Design and Construction Management  
2207 Raleigh Street  
Hollywood, Florida 33020

FOR CMAR :

XXXXXXXXXXXXXXXXXX.  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

9.9 ASSIGNMENT AND PERFORMANCE

Neither this contract nor any interest herein shall be assigned, transferred, or encumbered by either party. In addition, CMAR shall not subcontract any portion of the work required of it by the CONTRACT DOCUMENTS without written consent of the PROJECT MANAGER.

CMAR represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to CITY's satisfaction for the agreed compensation.

CMAR shall perform its duties, obligations, and services under this contract in a skillful and respectable manner. The quality of CONTRACTOR's performance and all interim and final product(s) provided to or on behalf of CITY shall be comparable to the best local and national standards.

#### 9.10 CONFLICTS

Neither CMAR nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CMAR's loyal and conscientious exercise of judgment related to its performance under the CONTRACT DOCUMENTS.

CMAR agrees that none of its officers or employees shall, during the term of this contract, serve as an 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 such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of CITY in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude CMAR or 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 such SUBCONTRACTORS, by written contract, from having any conflicts within the meaning of this section.

#### 9.11 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.

#### 9.12 TRUTH IN NEGOTIATION

CMAR shall execute and furnish to the CITY a Truth-in-Negotiation Certificate, stating that wage rates and other factual unit costs supporting compensation are accurate, complete and current at the time of execution of the contract. The original contract amount and any additions thereto shall be adjusted to exclude any significant sums when CITY determines the contract amount was increased due to inaccurate, incomplete or noncurrent wage rates or other factual costs.

#### 9.13 MATERIALITY AND WAIVER OF BREACH

CITY AND CMAR agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this contract and, therefore, is a material term hereof.

CITY's failure to enforce any provision of this contract shall not be deemed a waiver of such provision or modification of this contract. A waiver of any breach of a provision of this contract shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this contract.

#### 9.14 LIQUIDATED DAMAGES.

##### A. LIQUIDATED DAMAGES FOR SUBSTANTIAL COMPLETION.

1. The CMAR shall pay the Owner the sum of ten (10) 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 Completion.

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 ten (10) 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 or 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 procedures.

9.15 COMPLIANCE WITH LAWS

CMAR shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to the CONTRACT DOCUMENTS.

9.16 SEVERANCE

In the event a portion of this contract is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or CMAR elects to terminate this contract. An election to terminate this contract based upon this provision shall be made within seven days after the finding by the court becomes final

9.17 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 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.

9.18 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached, any document or events referred to herein, or any document incorporated into the CONTRACT DOCUMENTS by reference and a term, statement, requirement, or provision of the CONTRACT DOCUMENTS, the term, statement, requirement, or provision contained in the CONTRACT DCUMENTS shall prevail and be given effect.

9.19 APPLICABLE LAW AND VENUE

The CONTRACT DOCUMENTS shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for litigation or any proceedings concerning the CONTRACT DOCUMENTS shall be exclusively in Broward County, Florida.

9.20 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with

the same or similar formality as this contract and executed by the CITY and CMAR.

#### 9.21 PRIOR AGREEMENTS

This document incorporates and includes 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 the CONTRACT DOCUMENTS that are not contained in this document. 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 set forth in writing in accordance with Section 9.20 above.

#### 9.22 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 work place. Execution of this contract by CMAR shall serve, as CMAR's required certification that it either has or that it will establish a drug free work place.

#### 9.23 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth herein is acknowledged by the parties. The attached Exhibits A – Scope of services ; A-1 – Pre Construction Services Proposal; B- Project Schedule;C- Project Team and Roles; D- Phase II Construction Phase Agreement; are incorporated into and made a part of the CONTRACT DOCUMENTS.

#### 9.24 COUNTERPARTS

This contract may be executed in two or more copies by all parties, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**ARTICLE 10**  
**SUBCONTRACTORS AND PURCHASE ORDERS**

Unless waived in writing, for good cause, by the CONSULTANT or PROJECT MANAGER, CMAR must obtain competitive pricing and subcontract, in compliance with the requirements of this Article 10, for 100% of CMAR 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 the 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 CONTRACT DOCUMENTS; that the subcontractor shall be bound to the CMAR, to the same extent as CMAR is bound to the CITY, to name the CITY, its employees and officers as an additional insureds 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 shall approve as the selected subcontractor or supplier a bidder whose bid exceeds that of the bidder recommended by the 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 the CMAR is referred to herein as the "preferred subcontractor cost differential"), then the PROJECT MANAGER may designate that the Guaranteed Maximum Price shall be increased by the lesser 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.

IN WITNESS WHEREOF, the parties hereto have executed this contract on the day and date first above written, 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:

Approved by:

\_\_\_\_\_  
Services  
Patricia A. Cerny, MMC  
City Clerk

\_\_\_\_\_  
Stephanie Tinsley, Director of Financial

APPROVED AS TO FORM:

\_\_\_\_\_  
Douglas R. Gonzales,  
City Attorney

**Construction Management at Risk Agreement Phase I Pre-Construction Services**

**WHEN THE PRINCIPAL IS A CORPORATION:**

attest:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Name of Corporation

BY:

\_\_\_\_\_  
(Affix Corporate Seal)

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Official Title

**CERTIFICATE AS TO CORPORATE PRINCIPAL**

I, \_\_\_\_\_, certify that I am the Secretary of the corporation named as Principal in the within bond; that \_\_\_\_\_ who signed the said bond on behalf of the Principal was then \_\_\_\_\_ of said corporation; that I know his signature, and his signature thereto is genuine and that said Bond was duly signed, sealed and attested for and on behalf of said corporation by authority of its governing body.

\_\_\_\_\_  
Secretary (SEAL)

\_\_\_\_\_  
Printed Name of Secretary

**TO BE EXECUTED BY CORPORATE SURETY:**

attest:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Corporate Surety

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Business Phone Number

BY:

\_\_\_\_\_  
(Affix Corporate Seal)

\_\_\_\_\_  
Attorney-In-Fact

\_\_\_\_\_  
Name of Local Agency

\_\_\_\_\_  
Business Address

\_\_\_\_\_

**Construction Management at Risk Agreement Phase I Pre-Construction Services**

**WHEN THE CMAR IS AN INDIVIDUAL:**

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(Witness)  
(Signature of individual)

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(Witness)  
(Signature of individual)

**WHEN THE CMAR 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)

**WHEN THE CMAR IS A PARTNERSHIP:**

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
(Witness) (Name of Firm)

\_\_\_\_\_

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

BY: \_\_\_\_\_  
(Partner)

## **LIST OF EXHIBITS**

- A. Scope of Services
- A-1 CMAR Pre-Construction Services Fee Proposal
- B. Project Schedule
- C. Project Team and Roles
- D. Subcontractor and Material Supplier Payment Certification
- E. Tabulation of subcontractors and material suppliers
- F. Attachment B – Construction Services: Phase II Agreement
- G. Attachment C– FDEP Grant 22FRP13 dated 11/30/2022, FDEP Grant Amendment 1 dated 1/5/2024, FDEP Grant 22FRP13 Amendment 2 dated 11.25.2024, 2 CFR Part 200 subpart D.
- H. Attachment E- Davis Bacon Wage Rates General Decision Number: FL20240107 11/01/2024





## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

CMAR shall provide pre-construction services as set forth in Article 1 of the contract and s as set forth in this Exhibit.

The services of the CMARs shall include, but are not limited to, those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned. The CMAR shall also comply with all requirements of the Florida Building Code (FBC), permits issued and included as part of the Project Documents and any other applicable codes, regulations and procedures that are in effect as of the date the building permit(s) is issued. Notwithstanding any other provisions of the CONTRACT DOCUMENTS to the contrary, any substantially affected person may appeal any building code dispute or interpretation of the Chief Building Official of the City of Hollywood, Florida to the Broward County Board of Rules and Appeals.

#### **I. GENERAL PRECONSTRUCTION PHASE**

- A. Based upon the preliminary schedule set forth in Exhibit "B", CMAR shall develop a detailed project schedule, utilizing Critical path method ("CPM") logic sequencing, reflecting the design (remaining portion thereof) and construction of the overall project.
- B. CMAR shall utilize the completed detailed project schedule, to develop a project control schedule, which shall be presented in a bar graph format. The purpose of the project control schedule is to summarize the information contained in the CPM schedule in order to provide the project team with a management tool and an overall project visual aid to easily determine the schedule and status of the total project. The information derived from these two schedules are to become part of the CMAR's management plan developed by CMAR.
- C. CMAR shall periodically update on a monthly basis both the detailed project schedule and the project control schedule throughout the term of the preconstruction and construction phases of the project as part of CMAR's management activity.
- D. CMAR shall review project requirements, educational specifications, on and off-site development, survey requirements, preliminary budget, and make value engineering and constructability recommendations for revisions to the CITY and Consultant in the form of a written report prior to final payment for this phase.

## EXHIBIT "A"

- E. CMAR shall, subject to CITY's approval and compliance with existing CITY completion schedule, establish a preliminary master project schedule identifying all phases, critical path elements, responsibilities of the CITY, Consultant, outside agencies, third parties and any other impacts which would affect project schedule and progress and update them monthly throughout the duration of the contract.
- F. Where the project includes renovation or expansion of an existing facility, CMAR will assist the construction team in preparing an analysis package outlining the condition of the existing facility, existing structure, existing finishes, and existing equipment, code deficiencies, energy use, and life expectancy of other building systems by providing constructability, value engineering and cost estimates recommendations. The package should contain CMAR's recommendations, cost estimates and preliminary schedules. Such information shall be provided to the CITY and Consultant in the form of a written report prior to final payment for this phase.
- G. CMAR shall provide project delivery options for the design, bid, and bid packaging of the project for efficient scheduling, cost control and financial resource management. Such information shall be provided to the CITY and Consultant in the form of a written report prior to final payment for this phase.
- H. CMAR shall utilize information and reporting systems to provide the CITY with monthly reports containing accurate and current cost controls, work status, including but not limited to Work narrative, Work completed/anticipated, short term and long term schedules estimated expenditures, and project accounting systems of the project at all times. Such information shall be provided to the CITY and Consultant in the form of a written report, prior to final payment for this phase.
- I. CMAR shall prepare a report with the project team's participation which shall describe, as a minimum, the Work plan, job responsibilities, and written procedures for reports, meetings, inspections, changes to the project, building systems and delivery analysis and other relevant matters. Such information shall be provided to the CITY and Consultant prior to final payment for this phase.
- J. CMAR's personnel to be assigned during this phase and their duties and responsibilities to this project and the duration of their assignments are shown on Exhibit "C" and as set forth in the RFQ under the General Conditions. All required reports and documentation shall be submitted and approved by the CITY as pre-requisite to progress payments to CMAR by the CITY during this phase.

**II. DESIGN PHASE AS PART OF PRE-CONSTRUCTION PHASE**

- A. CMAR shall review and evaluate design development documents (if applicable) for clarity, consistency, completeness, and ease of construction in order to achieve the overall objective of the project. CMAR will also periodically review all CONTRACT DOCUMENTS for constructability and to help ensure compliance with all applicable laws, rules, codes, design standards, and ordinances. CMAR shall immediately notify CITY of any non-compliant CONTRACT DOCUMENTS. Such information shall be provided to the CITY and Consultant in the form of a written report in format as noted herein prior to final payment for this phase.

CMAR will be required to attend all project related meetings and include a summary of the meeting in its monthly report to the CITY.

- B. CMAR 's review of the design documents shall include the following activities:
1. Preparing a Master Checklist to be used as a guide for reviewing each technical discipline.
  2. Conducting reviews by preparing a "mark-up" set of documents and a list of comments corresponding to the "mark-up."
  3. Preparing and presenting a written report of constructability problems and concerns, including:
    - (a) recommendations
    - (b) checklist and comments
  4. Attending workshop meetings with the Consultant and the PROJECT MANAGER to review proposed changes and recommending the changes, which are to be implemented for the PROJECT.
  5. Verifying and conducting final review of changes to the construction Documents.
- C. CMAR's services shall be rendered compatible and in cooperation with the Consultant's services under the CITY's Agreement with the CONSULTANT. CMAR will be required to maintain a working relationship with and coordinate their activities with the Consultant and any additional consultants, testing labs and others that CITY designates for the project and report all findings as specified in Section 3.5 of the Pre Construction Services Contract.

## EXHIBIT "A"

- D. CMAR shall prepare detailed cost estimates and recommendations to CITY and Consultant at 100% Construction Documents phase of the PROJECT. Such information shall be provided to the CITY and CONSULTANT in the form of a written report prior to final payment for each phase.
- E. CMAR shall review all CONTRACT DOCUMENTS for the new and existing buildings and/or building sites and provide value engineering recommendations to minimize the CITY's capital outlay and maximize the CITY's operational resources. Such information shall be provided to the CITY and CONSULTANT in the form of a written report prior to final payment for this phase. All such recommendations shall be acknowledged and reviewed for incorporation into the CONSTRUCTION DOCUMENTS by the CONSULANT once authorized by the CITY in writing.
- F. CMAR will review all CONTRACT DOCUMENTS, all new and existing buildings' conditions and the building site to ensure proper coordination, constructability, clarity and completeness, and to minimize conflict, errors, omissions and unforeseen conditions. CMAR shall coordinate with the CONSULTANT to eliminate change orders due to errors, omissions and unforeseen conditions. CMAR agrees specifically that no change orders shall be requested by the CMAR or considered by the CITY for reasons that were or should have reasonably been known by CMAR involving unforeseen conditions, conflicts or questions of clarity in the CONTRACT DOCUMENTS, or between the CONTRACT DOCUMENTS and the existing conditions, utilities, and unforeseen underground conditions.
- G.
  - 1. CMAR shall periodically update the master project schedule and make recommendations for recovery of lost time. Such information shall be provided to the CITY and CONSULTANT in the form of a written report prior to final payment for this phase.
  - 2. CMAR will coordinate with the CONSULTANT and provide to the project construction team permitting applications and requirements for the projects. CMAR will periodically update cost estimates and make recommendations to keep the project within the target budget.

## EXHIBIT "A"

3. At completion of CMAR's review of the plans and specifications, except only as to specific matters as may be identified by appropriate written comments pursuant to this section, CMAR, without assuming the CONSULTANT's responsibilities, shall notify CITY in writing that the plans and specifications are consistent, practical, feasible and constructible and that the work described in the plans and specifications for the various bidding packages is constructible within the scheduled construction time.
4. **DISCLAIMER OF WARRANTY: THE CITY DISCLAIMS ANY WARRANTY THAT THE PLANS AND SPECIFICATIONS FOR THE PROJECT ARE ACCURATE, PRACTICAL, CONSISTENT, CONSTRUCTIBLE OR WITHOUT DEFECT.**
5. The CITY may select certain projects for expediting using fast-track construction. When this option is exercised, in writing, by the CITY, it shall be implemented in accordance with the following:

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- H. Design/Construction documents as noted herein shall be submitted by the Consultant for review and approval by CITY (including Building Code review and Building permit issuance for 100% completion documents) the CONTRACTOR and others, as applicable, having jurisdiction.
1. Foundation / Structural / LCCA / Site and Off-Site Package – 100% Documents
    - a. A separate 50% completion progress set (for information only) of building finish package drawings shall also be submitted which shall show all of the major characteristics of the project utilities and service, detailed site and floor plans, elevations, sections, schedules, etc.
    - b. Construction may begin after approvals and building permit is obtained for above package.
  2. Building Finish Package – 100% Documents
  3. As mutually agreed by the parties in writing.

## **EXHIBIT "A"**

- I. CMAR shall be responsible for preparing one construction cost estimate.
- J. The construction cost estimate shall be based on one hundred percent (100%) complete construction documents and shall be "permit ready" with sufficient detail to permit issuance of a building permit and to obtain all required approval of all governmental authorities having jurisdiction over the project. The construction cost estimate shall be used as the basis for negotiating the GMP for the PROJECT and the basis for monitoring status of the PROJECT throughout the construction phase.
- K. As a result of CMAR's constructability review or construction cost estimate and in order to reduce or control costs, CMAR shall analyze the building's structural, architectural, mechanical, electrical and plumbing systems and elements, and make cost/performance recommendations for the PROJECT MANAGER's and CONSULTANT's consideration. CMAR shall prepare its recommendation in the form of a written report to be presented to the project team.

### **III. BIDDING AND AWARD PHASE AS PART OF PRECONSTRUCTION PHASE**

- A. Upon obtaining all necessary approvals of the construction documents, including a building permit as required by the FBC and CITY approval of the latest statement of probable construction cost, CMAR shall obtain bids and commence awarding construction contracts.
- B. CMAR shall review the CITY's records of pre-qualified contractors, and prepare a list of those recommended for work pursuant to this contract. The CITY reserves the right to reject any or all subcontractors recommended for approval. CMAR shall maintain a list of all potential bidders, including M/WBEs and those who are approved as pre-qualified. In the event that this PROJECT is funded wholly or in part by grant funds or other governmental entity funding, CMAR shall comply with any and all requirements of the funding source or requirements of the governmental entity.
- C. CMAR shall evaluate potential participants to establish their qualifications (based on past work experience, similar projects, the building quality of those past projects, and other similar factors) presentation to the CITY. CMAR shall present its evaluation to the CITY in the form of a written report utilizing the attached forms as necessary, the subcontractors being considered, the scope of work recommended for that subcontractor, the subcontractor's qualifications and past work history, and CMAR's recommendation concerning the use of the listed subcontractors.

## EXHIBIT "A"

- D. CMAR shall prepare and issue the bid packages to cover the scope of the Work for this contract.
- E. CMAR, in coordination with the CITY, shall schedule pre-bid conferences as required and issue a written summary of the conference(s).
- F. CMAR and CITY shall jointly open and evaluate, at a mutually agreed upon location, at least three bids, if possible, for each portion of the WORK solicited. CMAR shall also make recommendations to the CITY for award to the lowest, responsive, and responsible bidder. A recommendation for award to other than the lowest bidder shall be justified in writing. CMAR will disclose any related party relationship in a bidding subcontractor in writing prior to the award of contracts. For the purposes of this agreement, a related party relationship shall constitute any instance of common ownership, common management, or an ownership stake in the bidding subcontractor. CMAR is required to present the bid tabulation summary and all supporting bid day documentation to the CITY after the bid opening. The referenced documentation as well as the awarding of any subcontracts is subject to the written approval of the CITY. The CMAR is not authorized to enter into any subcontract agreements without first obtaining written approval for each subcontractor.
- G. GMP: Upon completion of the design phase [construction documents 100% complete] and bidding, the CMAR shall present to the CITY the GMP for the CITY's review and approval in accordance with the provisions of the CONTRACT DOCUMENTS and the requirements set forth in this Exhibit.
- H. Should CMAR desire to submit a bid to self-perform any of the portions of the Work, this intention must be clearly conveyed to the CITY prior to the receipt of any other bids for the same scope of work. All bids to be received for this portion of the Work must be submitted directly to the CITY who will then open and evaluate at bid opening. When three or more bids are received for that portion of work, and the CONTRACTOR's CMAR's bid is the lowest and approved by the CITY, CMAR's bid shall be incorporated in the GMP as a lump sum. In the event where fewer than three bids are received for that portion of work which the CMAR intends to self-perform, the CITY shall reimburse CMAR for the actual cost of work performed, subject to the supporting documentation provisions as outlined in the CONTRACT DOCUMENTS.

**EXHIBIT A-1**  
**CONSTRUCTION MANAGER AT RISK PRE-CONSTRUCTION SERVICES FEE**  
**PROPOSAL**



**EXHIBIT B**  
**PRE-CONSTRUCTION PROJECT SCHEDULE**

**EXHIBIT C**  
**PROJECT TEAM AND ROLES**

EXHIBIT D



City of Hollywood, FL
Subcontractor and Material Supplier Payment Certification

(Check the category that applies to this certification. One form to be completed for each Subcontractor and Material Supplier)

- a. Local SBE Subcontractor/Material Supplier
b. Local MBE Subcontractor/Material Supplier
c. Other Subcontractor/Material Supplier

Release of Lien information (agrees with) or (does not come from) Payment Application.

Amount of Contract with Subcontractor or Material Supplier \$

Amount Paid to Date \$ Percentage Paid to Date

This is to certify that (Subcontractor of Material Supplier)

Received Partial or Final payment in the amount of \$ on (actual amount) (date)

from (Name of Prime Contractor) for labor or materials used on

(Contract/Project Name) (Contract/Project Number)

Printed Signed (Prime Contractor Official)

Sworn to and subscribed before me this day of A.D., 20

(Notary Public) Commission Expires Notary Seal

Printed Signed (Official of Subcontractor or Material Supplier of over \$1,000 value)

Sworn to and subscribed before me this day of A.D., 20

(Notary Public) Commission Expires Notary Seal

Due: Contractor shall provide a partial released of lien for each subcontractor and/or material supplier for amounts over \$1,000 based on the current schedule of values as attached to each Application and Certificate for Payment. This partial release of lien shall include the percentage of work completed this period and be provided to the City of Hollywood the earlier of 30 days after payment made to prime contractor or prior to the next payment request by the prime contractor.

## EXHIBIT D

**NOTE:** If the Contractor without reasonable cause fails to make payment to Subcontractors and/or Material Suppliers within 15 working days after receipt by the Contractor of full or partial payment, the Contractor shall pay the Subcontractor and/or Material Supplier a penalty in the amount of one percent (1%) of the amount due, per month, from the expiration of the period allowed herein for payment. Such penalty shall be in addition to the actual payments owed.

**CONSTRUCTION MANAGEMENT AT RISK MANAGEMENT**

**EXHIBIT E  
TABULATION OF SUBCONTRACTORS AND MATERIAL SUPPLIERS**

The Undersigned states that the following is a complete list of the proposed Subcontractors and Material Suppliers on this Project and the class of work to be performed by each, and that such list will not be added to nor altered without written consent of the City of Hollywood. Please add more lines if necessary.

<u>Subcontractor Name and Address</u>		<u>Class of Work or Material</u>	<u>Must provide Percentage or Price of Work/Materials to complete work</u>	<u>(Check appropriate Business Type)</u>		
				<u>Local Minority Business</u>	<u>Local Small Business</u>	<u>Other Business</u>
1.	_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.	_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.	_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.	_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.	_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Material Suppliers Name &amp;Address</u>		<u>Supply/ Material</u>		<u>Local Minority Business</u>	<u>Local Small Business</u>	<u>Other Business</u>
1.	_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.	_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.	_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.	_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Company Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

Title: \_\_\_\_\_

**Completion and submission of this form with the bid is mandatory for bid to be considered responsive.**

