RESOLUTION NO. R-2021-031

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA, RANKING CONSTRUCTION MANAGEMENT AT RISK FIRMS AND AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO NEGOTIATE PHASE 1 PRECONSTRUCTION SERVICES WITH THE HIGHEST RANKED FIRM, MOSS AND ASSOCIATES, LLC., TO PROVIDE CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR THE NEW POLICE HEADQUARTERS, A GENERAL OBLIGATION BOND PROJECT.

WHEREAS, on March 12, 2019, the City held a Special Election where a majority of voters decided to fund a variety of Citywide public improvement projects to be funded by a General Obligation Bond ("GOB"), and the New Police Headquarters Project was one of the projects approved by the voters; and

WHEREAS, it is in the best interest of the City to enter into an agreement with a qualified general contractor to provide professional Construction Management at Risk services that are required to implement the Police Headquarters project approved by the GOB; and

WHEREAS, as provided for in Section 255.103, Florida Statutes, entitled "Construction Management Entities", the City has followed the procedures set forth in Section 287.055, Florida Statutes, entitled "Consultants' Competitive Negotiation Act" (CCNA) and the City's Procurement Code to advertise for Statements of Qualifications for Construction Management at Risk services; and

WHEREAS, the project was advertised on www.bidsync.com on October 20, 2020, with the Request for Qualifications number 4642-20-DCM; and

WHEREAS, on November 23, 2020, the Office of the City Clerk and the Department of Design and Construction Management received Statement of Qualifications packages from five Construction Management at Risk firms; and

WHEREAS, the five firms that submitted Statements of Qualifications were:

1. Kaufman Lynn Construction
2. Lemartec Corporation
3. Moss and Associates, LLC.
4. Stiles | Pirtle Joint Venture
5. The Weitz Company, LLC.

; and

WHEREAS, on December 10, 2020, members of the Selection Committee comprised of in-house professionals including the Deputy City Manager, the Chief of Police, the Assistant Director of Design and Construction Management, the Director of Communications, Marketing and Economic Development, and the Director of Information Technology met in a publicly advertised meeting to evaluate the Statements of Qualifications and to determine the firms to be invited to present their qualifications for further consideration; and

WHEREAS, the Request for Qualifications and Section 287.055(4)(b), Florida Statutes, require that a minimum of three consulting firms be selected; and

WHEREAS, upon review of the Statements of Qualifications, the following firms were selected and ranked based upon the published selection criteria, and invited to present their qualifications in the second meeting of the Selection Committee:

1. Kaufman Lynn Construction
2. Moss and Associates, LLC.
3. Stiles | Pirtle Joint Venture

; and

WHEREAS, on January 13, 2021, the short-listed firms provided 30-minute presentations, followed by a 30-minute question and response period, and the Selection Committee completed the evaluation process and ranked the firms following the stipulated guidelines/criteria in the Statement of Qualifications package; and

WHEREAS, it is the recommendation of the Selection Committee to rank the three firms in the following order for consideration, with the lowest point value indicating the highest ranking, per the Combined Score Sheet:

1. Moss and Associates, LLC.	2.55 Points
2. Stiles | Pirtle Joint Venture	3.31 Points
3. Kaufman Lynn Construction	3.74 Points

; and

WHEREAS, the Department of Design and Construction Management recommends that the City Commission authorize the appropriate City officials to negotiate the Construction Manager at Risk Agreements, as included in the Request for Qualifications package, with the highest-ranked consultant, to provide Construction Manager at Risk services as set forth above; and

WHEREAS, upon negotiating the Phase 1 Pre-Construction Services Agreement with the highest rank firm, if the contract amount falls within the City Manager's authority pursuant to Section 38.38 of the Procurement Code, the City Manager will execute the agreement; however, if the contract amount exceeds his authority, the agreement will be brought back to the City Commission for consideration at a later date; and

WHEREAS, after execution of the Phase I Pre-Construction Services Agreement, the parties will negotiate the Phase II-Construction Services Agreement for consideration by the City Commission at a later date; and

WHEREAS, funding has been provided pursuant to Resolution No. R-2020-236, which continued the appropriation for previously approved capital projects from FY 2020 to FY 2021; and

WHEREAS, funds for the preconstruction services portion of this project are available in account number 333.209901.52100.563010.001190.000.000.

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

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

Section 2: That it authorizes the appropriate City officials to negotiate the Professional Services Agreement attached as "CMAR Phase I Pre-Construction" for preconstruction phase services with the highest-ranked firm, Moss and Associates, LLC., together with such non-material changes as may be subsequently agreed to by the City Manager and approved as to form and legal sufficiency by the City Attorney.

Section 3: That, if the negotiated CMAR Phase I Pre-Construction services amount falls within the City Manager's authority pursuant to Section 38.38 of the Procurement Code, the City Manager is authorized to execute the attached Agreement. In the event that the contract amount is above the City Manager's authority, the Agreement will be brought back to the City Commission at a later date for consideration and approval.

Section 4: That if the appropriate City officials are unable to negotiate an agreement with the highest-ranked firm, then they are authorized to terminate negotiations with that firm and commence negotiations with the next highest-ranked firm and execute an agreement, if possible, in accordance with Section 3.

Section 5: That this Resolution shall be in full force and effect immediately upon its passage and adoption.

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA, RANKING CONSTRUCTION MANAGEMENT AT RISK FIRMS AND AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO NEGOTIATE PHASE 1 PRECONSTRUCTION SERVICES WITH THE HIGHEST RANKED FIRM, MOSS AND ASSOCIATES, LLC., TO PROVIDE CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR THE NEW POLICE HEADQUARTERS, A GENERAL OBLIGATION BOND PROJECT.

PASSED AND ADOPTED this 3 day of February, 2021.

JOSH LEVY, MAYOR

ATTEST:

PATRICIA A. CERNY, MMC
CITY CLERK

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

DM

DOUGLAS R. GONZALES
CITY ATTORNEY

CITY OF HOLLYWOOD, FLORIDA

CONSTRUCTION MANAGEMENT AT RISK SERVICES

PHASE I

PRE-CONSTRUCTION SERVICES

<INSERT PROJECT NAME>
<INSERT PROJECT NUMBER>

DEPARTMENT OF DESIGN & CONSTRUCTION MANAGEMENT
2207 RALEIGH STREET
HOLLYWOOD, FLORIDA 33020

THIS AGREEMENT is made this _____day of _____, 20____by and between the City of Hollywood, a municipal corporation of the State of Florida ("City") and _____, a _____ corporation authorized to do business in the State of Florida ("CMAR")._

WITNESSETH:

Whereas, the City desires to construct **<brief description of project>** at **<location of project>**; 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 Qualifications ("RFQ") in accordance with _____, and has competitively selected the CMAR; and

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

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

[THIS SPACE LEFT INTENTIONALLY BLANK]

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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 _____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 PROJET and has, and shall maintain, any and all licenses, permits and other authorizations necessary to act as a construction manager for the Project.

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

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

d. The CMAR assumes full responsibility to the OWNER for the improper acts and omissions of its consultants, the trade contractors, and others employed or retained by it in connection with the Project.

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 six elements of the GMP as follows:

      a. Guaranteed Maximum Cost of the Work/Services detailed by each subcontract, trade, or bid division;
      b. The CONTINGENCY for the Work/Services;
      c. Guaranteed Maximum staffing costs, detailed by expense category;
      d. Guaranteed Maximum General Condition costs, including but not limited to bond and insurance costs, detailed by expense category; and
      e. Guaranteed Maximum for overhead and profit.
      f. 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 Exhibit "D", the CMAR guarantees that the sum of the actual cost of the WORK, the CMAR's CONTINGENCY, the CMAR's staffing costs, the general conditions cost, and CMAR's overhead and profit, shall not exceed the amount set forth in the agreed upon GMP. All costs and expenses that would cause this sum to exceed the GMP shall be borne by the CMAR unless adjusted by the OWNER/PROJECT MANGER through a CHANGE ORDER.

b. Upon execution of Exhibit "D", the CMAR guarantees that the actual cost of the WORK/services, CMAR'S staffing costs, general conditions costs and CMAR's overhead and profit shall not exceed the guaranteed maximum 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 Exhibit "D", the CMAR certifies that all factual unit costs supporting the GMP proposal are accurate, complete and current at the time of negotiations, and that any other factual unit costs that may be furnished to the OWNER in the future to support

any additional amounts that may be authorized will also be accurate and complete. Payments to the CMAR shall be reduced if the OWNER determines such amounts were originally included due to the materially inaccurate, incomplete, or non-current factual unit costs.

ARTICLE 2
DEFINITIONS

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 construction services for the **<Project Name>** or, not later than, **<specify date>**, 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 **<specify date>**. 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 **<INSERT AMOUNT>** 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 **<INSERT AMOUNT** shall be paid out in accordance with the percentage amount set forth as follows:

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

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:

<Contractor's Name and Address>

_____

_____

_____

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 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:

<Amounts to be filled in should be provided by Risk Management – please delete this note>

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-VI, 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.

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:

<FILL IN AMOUNT> Combined Single Limit (CSL)

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

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

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:

<FILL IN AMOUNT> Combined Single Limit (CSL)

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

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

The CITY, its employees and officials shall be named as Additional 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:

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

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

Coverage shall be provided by a company or companies authorized to transact business in the state of Florida and the company or companies must maintain a minimum rating of A-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.

7.2.4 Builder's Risk Insurance Requirements:

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

Theft	Aircraft
Windstorm	Vehicles

Hail	Smoke
Explosion	Fire
Riot	Collapse
Civil Commotion	Flood

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

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

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, 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 (IF 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:

Armando Linares, Director

Department of Design and Construction Management

2207 Raleigh Street

Hollywood, Florida 33020

FOR CMAR :

_____

_____

_____

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 deem 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 _____ 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 _____ 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 and B, and Forms 1, 2, 3 and 4 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:

_____
PATRICIA A. CERNY, MMC
CITY CLERK

APPROVED AS TO FORM & LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE CITY OF HOLLYWOOD, FLORIDA ONLY.

_____
DOUGLAS R. GONZALES
CITY ATTORNEY

APPROVED AS TO FINANCE:

BY: _____
, DIRECTOR
OF FINANCIAL SERVICES

CONSTRUCTION MANAGEMENT AT RISK SERVICES CONTRACT FOR PRE-CONSTRUCTION SERVICES

CONTRACTOR

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)	
_____ BY:	_____
(Witness)	(Partner)

CONSTRUCTION MANAGEMENT AT RISK SERVICES CONTRACT FOR PRE-CONSTRUCTION SERVICES

WHEN THE CMAR IS A CORPORATION:

ATTEST:

_____
Secretary

_____
(Correct Name of Corporation)

(SEAL) BY: _____
(President)