

RESOLUTION NO. R-2019-025

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

WHEREAS, it is in the best interest of the City to enter into a continuing services agreement with multiple Construction Management at Risk Contractors to provide professional construction management at risk services that may be required to implement future capital improvement projects; and

WHEREAS, the City has followed the procedures set forth in 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 the City's Procurement Ordinance Section 38.40 C(6) to advertise for statements of qualifications for construction management at risk firms; and

WHEREAS, services to be accomplished under this contract may include various but not as yet identified capital improvements projects with an individual project estimated construction value not to exceed \$2,000,000.00; and

WHEREAS, on January 22, 2019, the Office of the City Clerk and the Architecture Engineering and Mobility Division received statements of qualifications packages from six construction management at risk firms as follows:

1. Kapco Consulting
2. State Contracting & Engineering Corp.
3. Lego Construction Co.
4. T & G Corporation
5. D. Stephenson Construction Inc.
6. Burke Constructors

; and

WHEREAS, a selection committee of in-house professionals consisting of the City Engineer, the Deputy Director from the Hollywood CRA, the Parking Administrator, the Assistant Director of Public Works and the Interim Assistant Director of PRCA was enlisted for this endeavor; and

WHEREAS, on January 31, 2019, the selection committee met for the first time in a publicly advertised meeting to evaluate statements of qualifications and to short-list the participating consulting firms; and

WHEREAS, on January 31, 2019, upon review of the statement of qualifications, the firms were ranked based upon specific selection criteria, and the top five ranked firms were invited to present their team to the committee on February 11, 2019, as follows:

1. State Contracting & Engineering Corp.
2. Lego Construction Co.
3. T & G Corporation
4. D. Stephenson Construction Inc.
5. Burke Constructors ; and

WHEREAS, on February 11, 2019, the selection committee completed the evaluation process and ranked the firms following the stipulated guidelines/criteria in the statement of qualification package; and

WHEREAS, the following describes the overall and final results of the selection process:

- | | | |
|----------------------------------|-----------|-------|
| 1. State Contracting & Eng. Corp | 12 Points | |
| 2. D. Stephenson Construction | 21 Points | |
| 3. Lego Construction | 21 Points | |
| 4. Burke Construction | 31 Points | |
| 5. T & G Construction | 34 Points | ; and |

WHEREAS, in accordance with Section 287.055 4(b), Florida Statutes, the statement of qualifications stated that a minimum of three firms would be selected; and

WHEREAS, it is the recommendation of the Evaluation Committee to rank the three firms in the following order for consideration and individual project negotiation on a rotating, as needed basis

1. State Contracting and Eng. Corp.
2. D. Stephenson Construction Inc.
3. Lego Construction Co. ; and

WHEREAS, Construction Management at Risk services for specific projects will be requested on an "as needed – when needed" basis, and the initial term of the continuing contract(s) will be for three years with the right to renew the contract(s) for two subsequent one year terms based on satisfactory performance and mutual agreement; and

WHEREAS, the Architecture, Engineering and Mobility Division recommends that the City Commission authorize the appropriate City officials to execute the attached continuing Construction Management at Risk services contracts with the three highest ranked contractors to provide Construction Management at Risk services as set forth above.

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

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

Section 2: That the City Commission ranks the Construction Management at Risk Contractors companies as follows:

1. State Contracting and Eng. Corp.
2. D. Stephenson Construction Inc.
3. Lego Construction Co.

Section 3: That it authorizes the appropriate City officials to execute the attached continuing service contracts with each of the highest ranked firms, 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 4: That this Resolution shall be in full force and effect immediately upon its passage and adoption.

PASSED AND ADOPTED this 20 day of February, 2019.



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.



DOUGLAS R. GONZALES, CITY ATTORNEY 

CITY OF HOLLYWOOD, FLORIDA
CONSTRUCTION MANAGEMENT AT RISK SERVICES
AGREEMENT



PHASE I

PRE-CONSTRUCTION SERVICES

<INSERT PROJECT NAME>
<INSERT PROJECT NUMBER>

DEPARTMENT OF DEVELOPMENT SERVICES
ARCHITECTURE, ENGINEERING & MOBILITY DIVISION
2600 HOLLYWOOD BLVD
HOLLYWOOD, FLORIDA 33020





CONSTRUCTION MANAGEMENT AT RISK
SERVICES AGREEMENT

PHASE I

PRE-CONSTRUCTION SERVICES

BETWEEN THE CITY OF HOLLYWOOD, FLORIDA, AND CONTRACTOR
FOR
PROFESSIONAL CONSTRUCTION MANAGEMENT SERVICES
FOR
<Project Name>

Whereas, the CITY of Hollywood 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 (CM), and

Whereas, the CITY, through a Request for Qualifications (RFQ), has competitively selected the Construction Manager, and

Whereas the selected firm will provide professional construction management services for the **<Project Name>** project as directed by the Director of the Department of Public Services.

This agreement made this _____ day of _____ in the year _____.

By and between the CITY of Hollywood, Florida, hereinafter called the "Owner" and _____, hereinafter called the "Contractor" as a

Construction Management at Risk Firm
Phase I Pre-Construction Services

Witnesseth, that the owner and the firm for the considerations herein set forth, agrees as follows:

Construction Agreement
Construction Management at Risk
<Project Name>
Hollywood, Florida

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(A) ARTICLE 1

SCOPE OF WORK

The Contractor shall furnish professional Construction Management at Risk Services (Pre-Construction – Phase I) for the project described below and Scope of Services shown in Exhibit A attached hereto, upon issuance of Contractor's Notice to Proceed by the Director of the Department of Public Services.

- 1.1 CONTRACTOR hereby agrees to furnish all of the labor, materials, equipment services and incidentals necessary to perform all services described in Exhibit A, including the proposal of a Guaranteed Maximum Price (GMP), for the Project known as the <Project Name>, prepared by <Consultant Name>

ARTICLE 2

(B) DEFINITIONS

- 2.01 CHANGE ORDER: A written document ordering a change in the Contract Price or Contract Time or a material change in the Work as determined by the PROJECT MANAGER.
- 2.02 CITY COMMISSION: The CITY Commission of the CITY of Hollywood, its successors and assigns.
- 2.03 CITY OR OWNER: The CITY of Hollywood, Florida, a Florida Municipal Corporation, which is the party hereto for which this Contract is to be performed. In all respects hereunder, 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 exercises 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.
- 2.04 CONSULTANT: The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects and/or engineers, which has entered into an agreement to provide professional services to the Owner for this project.
- 2.05 CONTINGENCY: An established sum included in the Guaranteed Maximum Price (GMP) for the purpose of defraying actual expenses that may arise due to

unforeseen circumstances of the Project for which the contingency is established.

- 2.06 CONTRACT: This Construction Agreement.
- 2.07 CONTRACT DOCUMENTS: The Project Manual (including this Agreement and its Exhibits, Attachments and Forms), drawings and specifications, the Request For Qualifications and CONTRACTOR's response thereto (as negotiated and accepted by the CITY), any Addenda to the Project Manual, the record of the contract award by the CITY Commissioners, the Contract, the Performance Bond and Payment Bond, the Notice of Award, the Notice(s) to Proceed, the Purchase Order and all agreed upon modifications issued after execution of the Contract are the documents which are collectively referred to as the Contractor Documents.
- 2.08 CONTRACT PRICE: The amount established in the Contract as the Guaranteed Maximum Price (GMP), as may be amended if so warranted, by a Change Order issued in conformity with the Contract Documents.
- 2.09 CONTRACTOR: An individual, partnership, corporation, association, joint venture, or any combination thereof, which has entered into the contract with the Owner for construction of CITY of Hollywood, Florida, facilities and incidents thereto. The construction manager at risk for this project is **<Contractor Name>**. CONTRACTOR, for purposes of this agreement shall have the same meaning as Construction Manager at Risk.
- 2.10 DIRECTOR: The Director of the Department of Development Services of the CITY of Hollywood, Florida, having the authority and responsibility for management of the specific projects authorized under this Agreement.
- 2.11 FINAL COMPLETION: The date certified by the CONSULTANT and PROJECT MANAGER in the Final Certificate of Payment in which all conditions and requirements of any permits and regulatory agencies have been satisfied; and the documents (if any) required to be provided by CONTRACTOR 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.
- 2.12 GENERAL CONDITION ITEMS: The provision of facilities or performance of work by the CONTRACTOR 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 Guaranteed Maximum Price.

- 2.13 GUARANTEED MAXIMUM PRICE CONSTRUCTION CONTRACT: The method of construction contracting whereby the CONTRACTOR provides design phase consulting services (pre-construction services) and management responsibility for the project (general conditions). The fee is a dollar amount negotiated for profit, overhead and off-site general and administrative costs. All subcontracts are generally awarded by the CONTRACTOR based on competitive bids received in response to invitations to bid issued by the CONTRACTOR. The total price paid to the CONTRACTOR is either the fee plus the costs, or the Guaranteed Maximum Price (GMP), whichever is less.
- 2.14 INSPECTOR: An employee of the CITY of Hollywood, Florida, assigned by the Director to make observations of work performed by a Contractor.
- 2.15 MATERIALS: Materials incorporated in this Project, or used or consumed in the performance of the Work.
- 2.16 NOTICE TO PROCEED: One or more written notices to CONTRACTOR authorizing the commencement of Work.
- 2.17 PLANS AND/OR DRAWINGS: The official graphic representations of this construction project which are a part of the Contract Documents.
- 2.18 PRICING DOCUMENTS: The set of documents upon which the GMP contract is negotiated is comprised of the following: (i) the CITY approved Contract Documents, (ii) the Estimated CONTRACTOR's Direct Construction Cost (including unit prices, quantities and explanatory notes), (iii) the CONTRACTOR's General Condition Items, (iv) schedules developed by the CONTRACTOR and approved by the PROJECT MANAGER, and any other documents or exhibits utilized to derive the GMP.
- 2.19 PROJECT: The construction, alteration or repair, and all services and incidents thereto, of a CITY of Hollywood, Florida facility as contemplated and budgeted by the Owner as described in the Contract Documents, including the work described herein.
- 2.20 PROJECT MANAGER: An employee of the CITY of Hollywood, expressly designated as PROJECT MANAGER in writing by the DIRECTOR, who is the representative of the CITY, concerning the Contract Documents.
- 2.21 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.

- 2.22 RESIDENT PROJECT REPRESENTATIVE: An authorized representative of CONSULTANT on the Project.
- 2.23 SUBCONTRACTOR: A person, firm or corporation having a direct contract with the CONTRACTOR, 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.
- 2.24 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 it in all respects for its intended purpose(s).
- 2.25 SURETY: The surety company or individual which is bound by the performance bond and payment bond with and for CONTRACTOR who is primarily liable, and which surety company or individual is responsible for CONTRACTOR's acceptable and timely performance of the work under the contract and for the payment of all debts pertaining thereto in accordance with Section 255.05, Florida Statutes, as amended from time to time. All surety companies or individuals shall be authorized to conduct suretyship business under Florida Law and have a Florida Resident Agent.
- 2.26 WORK: The totality of the obligations, including construction and other services required by the Contract Documents, whether completed or partially completed, including all labor, materials, equipment and service provided or to be provided by CONTRACTOR to fulfill CONTRACTOR's obligations. The work may constitute the whole or a part of the project.
- 2.27 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 by registered mail or other traceable delivery service to the last known business address. Electronic, facsimile (FAX) or other telephonic transmission shall not be considered as written notice.

ARTICLE 3

TERM AND TIME OF PERFORMANCE

- 3.1 The term of this Agreement 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 agreement between the CITY and the CONTRACTOR for construction services for the **<Project Name>** or, no later than, **<specify date>**, unless terminated in accordance with Article 8. The CITY's PROJECT MANAGER shall have the authority to extend the term of this Agreement for a period of time not-to-exceed sixty (60) calendar days only when such extension of time is necessitated by the CITY's Consultant/Architect for the Project. Any such extension shall be accomplished by an amendment to this Agreement in accordance with the "AMENDMENTS" provisions stated in Section 9.18 herein.
- 3.2 All duties, obligations, and responsibilities of CONTRACTOR required by this Agreement 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 this Agreement.
- 3.3 At or before the above referenced completion date for this contract the CONTRACTOR, following completion of cost estimating, value engineering and other services set forth in Article 4 will tender to the CITY a written Guaranteed Maximum Price (GMP) for final completion of this 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 CONTRACTOR. 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 CONTRACTOR will immediately tender all documents, in accordance with the applicable provisions of this agreement. The CONTRACTOR shall have no recourse from this termination and the CITY shall take such documents, as defined, in 9.1 herein, 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 CONTRACTOR, a separate agreement will be entered into between the parties.

ARTICLE 4

COMPENSATION

4.1.1 CITY agrees to pay CONTRACTOR, in the manner specified in Section 4.2, the total Lump Sum Compensation in the amount of <INSERT AMOUNT>

for work actually performed and completed pursuant to this Agreement, which amount shall be accepted by CONTRACTOR as full compensation for all such work. It is acknowledged and agreed by CONTRACTOR that this amount is the maximum payable and constitutes a limitation upon CITY's obligation to compensate CONTRACTOR for its services related to the Scope of Services set forth in Exhibit A attached hereto and in this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon CONTRACTOR'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 CONTRACTOR to reimburse its expenses.

4.1.2 The Lump Sum Compensation in the amount of <INSERT AMOUNT> shall be paid out accordance with the percentage amount set forth therein as follows:

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

4.1.2 It is understood that the method of compensation is that of Lump Sum which means that CONTRACTOR shall perform all services set forth in Exhibit A, and in this Agreement, for the total compensation in the Lump Sum amount, including all reimbursable expenses.

4.2 METHOD OF BILLING AND PAYMENT

4.2.1. CONTRACTOR 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 fifteen (15) days of the end of the month, except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed and/or the expenses incurred.

4.2.2. CITY shall pay CONTRACTOR within thirty (30) calendar days of receipt of CONTRACTOR's proper statement. 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 CONTRACTOR to comply with a term, condition, or requirement of this Agreement.

4.3 Notwithstanding any provision of this Agreement 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 PROJECT MANAGER, and/or due to CONTRACTOR's failure to comply with Section 9.1 herein. The amount withheld shall not be subject to payment of interest by CITY.

4.4 Payment shall be made to CONTRACTOR at:

<Contractor's Name and Address>

ARTICLE 5

CHANGES IN SCOPE OF SERVICES

- 5.1 Any change to the Scope of Services must be accomplished by a written amendment, executed by the parties in accordance with Section 9.18 herein.

ARTICLE 6

INDEMNIFICATION

- 6.1 The CONTRACTOR shall indemnify and hold harmless the CITY, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of this Contract. These provisions shall survive the expiration or earlier termination of this Contract. 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 Florida Statutes 768.28, as amended from time to time.

ARTICLE 7

INSURANCE

- 7.1 Without limiting any of the other obligations or liability of the Contractor, Contractor shall provide, pay for, and maintain in force throughout the contract term and any extension term(s), the insurance coverages set forth in this section. The Contractor shall furnish original certificates to the City's Procurement Director and receive approval by the City's Risk Manager, prior to the commencement of any work. Any sub-contractor used by the contractor shall supply such similar insurance required of the contractor. Such certificates shall name the City as an Additional Insured.

Notice of cancellation and /or restriction; should the policy be cancelled before the expiration date, notice will be delivered to the City of Hollywood.

Coverage shall be provided by a company of companies authorized to transact business in the State of Florida and the company must maintain a minimum rating of A-, V11 as assigned by the A.M. Best Company.

7.2 COMPREHENSIVE GENERAL LIABILITY:

Commercial General Liability Insurance naming the City as an Additional Insured with not less than the following limits:

| | |
|---------------------------------|-------------|
| General Aggregate | \$1,000,000 |
| Products-Comp/Op Aggregate | \$1,000,000 |
| Personal and Advertising injury | \$1,000,000 |
| Each Occurrence | \$1,000,000 |
| Damages to rented premises | \$50,000 |

7.3 COMMERCIAL AUTOMOBILE LIABILITY

Commercial Automobile Liability Insurance with not less than the following limits and naming the City as an Additional Insured

| | |
|-----------------------|-----------|
| Combined Single Limit | \$500,000 |
|-----------------------|-----------|

Coverage shall include contractual liability assumed under this agreement, owned, hired and non-owned vehicles

7.4 WORKER'S COMPENSATION INSURANCE

Worker's Compensation Insurance covering the contractor and the contractor's employees not less than the following limits:

| | |
|-----------------------|-----------|
| Each Accident | \$100,000 |
| Disease Policy Limit | \$500,000 |
| Disease Each Employee | \$100,000 |

7.5 PROFESSIONAL LIABILITY

Recognizing that the work governed by this contract involves the furnishing of advice or services of a professional nature, the Contractor shall purchase and maintain, throughout the life of the contract, Professional Liability Insurance which will respond to damages resulting from any claim arising out of the performance of professional services or any error or omission of the Contractor arising out of the work governed by this contract.

The minimum limits of liability shall be:

\$1,000,000 Each Claim / \$2,000,000

7.6 BUILDER'S RISK INSURANCE REQUIREMENTS

The Contractor 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.

7.7 SUBCONTRACTORS

Any SubContractor used by the contractor shall supply such similar insurance required of the contractor. Such certificates shall name the City as Additional Insured on the general liability and auto liability policies.

ARTICLE 8

TERMINATION

- 8.1 This Agreement may be terminated for cause by action of the CITY or by CONTRACTOR if the party in breach has not corrected the breach within thirty (30) days after written notice from the aggrieved party identifying the breach, or for convenience by action of CITY, without any cause, upon not less than thirty (30) days' written notice by PROJECT MANAGER. This Agreement 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 Agreement for cause shall include, but not be limited to, failure to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives of CITY as set forth in this Agreement notwithstanding whether any such breach was previously waived or cured.
- 8.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement, 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 Agreement.
- 8.4 In the event this Agreement is terminated for convenience, CONTRACTOR shall be paid for any services performed to the date the Agreement is terminated; however, upon being notified of CITY's election to terminate, CONTRACTOR shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. CONTRACTOR acknowledges and agrees that ten dollars (\$10.00) of the compensation to be paid by CITY, the adequacy of which is hereby acknowledged by CONTRACTOR, is given as specific consideration to CONTRACTOR for CITY's right to terminate this Agreement for convenience.
- 8.5 In the event this Agreement is terminated, any compensation payable by CITY shall be withheld until all documents are provided to CITY pursuant to Section 9.1 herein.

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 Agreement are and shall remain the property of CITY. In the event of termination of this Agreement, any reports, photographs, surveys, estimates, schedules, drawings, and other data and documents prepared by CONTRACTOR, whether finished or unfinished, shall become the property of CITY and shall be delivered by CONTRACTOR to the PROJECT MANAGER within seven (7) days of termination of this Agreement by either party. Any compensation due to CONTRACTOR shall be withheld until all documents are received as provided herein. This shall apply to all documents

produced in any phase of the work, regardless of whether a subsequent phase is undertaken with CONTRACTOR.

9.2 AUDIT RIGHT AND RETENTION OF RECORDS

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

CONTRACTOR 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 this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Statue.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) 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 CONTRACTOR's records, CONTRACTOR shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONTRACTOR. 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.

9.3 NONDISCRIMINATION

CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement 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

CONTRACTOR represents that the execution of this Contract will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a

conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with CITY, and may not transact any business with CITY IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted 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, CONTRACTOR 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 CONTRACTOR has been placed on the convicted vendor list.

9.5 INDEPENDENT CONTRACTOR

CONTRACTOR is an independent contractor under this Agreement. Services provided by CONTRACTOR pursuant to this Agreement shall be subject to the supervision of CONTRACTOR. In providing such services, neither contractor nor its agents shall act as officers, employees, or agents of the CITY. This Agreement 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 the Contractor.

9.6 PREVAILING WAGE REQUIREMENT

9.6.1 The CONTRACTOR 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 payment 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 Requests 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, the CONTRACTOR and all of its SUB-CONTRACTORS 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 CONTRACTOR and SUBCONTRACTORS shall submit to the CITY on a regular basis, but not less than monthly, payroll sheets, which has been certified under oath by CONTRACTOR and/or SUBCONTRACTORS as to their accuracy and compliance with the provisions of this Section. The certified payroll sheets shall contain the following: name and address of each employee; his/her current classification; rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid. Such records shall be maintained by the CONTRACTOR and its SUBCONTRACTORS for a period of at least three (3) years following completion of the work.
- 9.6.5 The CITY may withhold, or cause to be withheld from the CONTRACTOR, 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 inquires of the CONTRACTOR'S workers and his/her subcontractor's workers to determine whether this section is being complied with. If the CONTRACTOR 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 the CONTRACTOR, 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 the CONTRACTOR'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 the CONTRACTOR and its sureties shall be liable to the CITY for all excess costs incurred by the CITY.
- 9.6.6 The CONTRACTOR shall insert in any subcontracts such language as is necessary to require all of his/her SUBCONTRACTORS to comply with the requirements of this section. The CONTRACTOR shall be responsible for noncompliance by any of his/her SUBCONTRACTORS. This section shall be deemed part of any contract entered into between the CONTRACTOR and any of his/her SUBCONTRACTORS.

9.7 THIRD PARTY BENEFICIARIES

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

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:

Shiv Newaldass, Director
Department of Development Services
2600 Hollywood Boulevard
Hollywood, Florida 33022

FOR CONTRACTOR:

<Name and Address of Representative>

9.9 ASSIGNMENT AND PERFORMANCE

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

CONTRACTOR 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.

CONTRACTOR shall perform its duties, obligations, and services under this Agreement 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 CONTRACTOR nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONTRACTOR's loyal and conscientious exercise of judgment related to its performance under this Agreement.

CONTRACTOR agrees that none of its officers or employees shall, during the term of this Agreement, 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, CONTRACTOR 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 CONTRACTOR or any other persons from representing themselves in any action or in any administrative or legal proceeding.

In the event CONTRACTOR is permitted to utilize subcontractors to perform any services required by this Agreement, CONTRACTOR agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this section.

9.11 CONTINGENCY FEE

CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Agreement 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 CONTRACTOR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement. For a breach or violation of this provision, CITY shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

9.12 MATERIALITY AND WAIVER OF BREACH

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

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

9.13 COMPLIANCE WITH LAWS

CONTRACTOR shall comply with all federal state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

9.14 SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or CONTRACTOR elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

9.15 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 this Agreement 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.

9.16 PRIORITY OF PROVISIONS

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

9.17 APPLICABLE LAW AND VENUE

This Agreement 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 this Agreement shall be in Broward County, Florida.

9.18 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 Agreement and executed by the CITY and CONTRACTOR.

9.19 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 this Agreement 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 9.18 above.

9.20 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 Agreement by CONTRACTOR shall serve, as CONTRACTOR's required certification that it either has or that it will establish a drug free work place.

9.21 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 this Agreement.

9.22 COUNTERPARTS

This contract may be executed in two (2) 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

- 10.1 Unless waived in writing, for good cause, by the CONSULTANT or PROJECT MANAGER, the CONTRACTOR must obtain competitive pricing and subcontract, in compliance with the requirements of this Article 10, for One Hundred Percent (100%) of the CONTRACTOR's Direct Construction Cost required under this Contract. Subcontracts and purchase orders, involving amounts not in excess of Twenty Five Thousand Dollars (\$25,000) may be awarded without the prior approval of the CONSULTANT. All other subcontracts and purchase orders shall be awarded according to the following procedure:

The CONTRACTOR shall prepare for CONSULTANT'S and PROJECT MANAGER'S review and approval a list of subcontractors and suppliers for each bid who meet the CONTRACTOR'S schedule of minimum requirements. The CONTRACTOR shall obtain bids from a minimum of three (3) such subcontractors for each subcontract, when available. After receiving such bids, the CONTRACTOR 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, the CONTRACTOR shall contract solely in its own name and behalf, and not in the name or behalf of the CITY, with the specified subcontractor or supplier. The subcontract shall provide that the subcontractor shall perform its portion of the Work in accordance with all applicable provisions of this Contract and the other Contract Documents; that the subcontractor shall be bound to the CONTRACTOR, to the same extent as the CONTRACTOR is bound to the CITY, to name the CITY as an additional insured on its comprehensive general liability insurance; that the subcontractor shall provide an insurance certificate evidencing the same; that the CONTRACTOR 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. The CONTRACTOR 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 CONTRACTOR, 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 CONTRACTOR 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 amount of the preferred subcontractor cost differential or the Contingency Allowance. All subcontracts shall, so far as applicable, contain unit prices and any other feasible formula for use in determination of the cost of changes in the Work.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement 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, FLORIDA
Party of the First Part

By: _____
JOSH LEVY, MAYOR

ATTEST:

PATRICIA A. CERNY, MMC
CITY CLERK

CONTRACTOR
Party of the Second Part

WHEN THE CONTRACTOR IS AN INDIVIDUAL:

Signed, sealed and delivered in the presence of:

(SEAL)

(Witness)
(Signature of individual)

(SEAL)

(Witness)
(Signature of individual)

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

Signed, sealed and delivered in the presence of:

Witness

(Name of Firm)

(SEAL)

(Witness)

(Signature of individual)

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

(Witness)

(Name of Firm)

(Witness)

BY:

(Partner)

WHEN THE CONTRACTOR IS A CORPORATION:
ATTEST:

Secretary

(Correct Name of Corporation)

(SEAL)

BY:

(President)

APPROVED AS TO FORM & LEGALITY
SUFFICIENCY for the use and reliance
Of the City of Hollywood, Florida only.

APPROVED AS TO FINANCE:

DOUGLAS R. GONZALES, CITY ATTORNEY

BY:

CINTYA RAMOS, DIRECTOR OF
FINANCIAL SERVICES

LIST OF EXHIBITS

EXHIBITS:

- A. Scope of Services
- B. Prevailing Wages
- C. Purchasing Ordinance 38.47

SCOPE OF SERVICES

The scope of work defining preconstruction services to be provided by the Construction Manager (CONTRACTOR) for this project, are as follows:

I. SCHEDULING

- (A) The CONTRACTOR 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) The CONTRACTOR 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 CONTRACTOR's management plan developed by the CONTRACTOR.
- (C) CONTRACTOR 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 the CONTRACTOR's management activity.

II. CONSTRUCTABILITY REVIEW

- (C) The CONTRACTOR 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.
- (B) CONTRACTOR'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.

SCOPE OF SERVICES (CONTINUED)

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.

III. COST ESTIMATING

- (A) The CONTRACTOR shall be responsible for preparing three (3) Construction Cost Estimates. The Project Manager shall have the option of reducing the number of estimates depending on the percentage of the construction documents that is complete by the time this contract is executed.
- (B) The CONTRACTOR shall prepare the first Construction Cost Estimate based on design development documents and shall estimate the cost of the major elements and subcomponents of the project. The purpose of the first Construction Cost Estimate is to verify the owner's ability to complete the project within the established construction budget. The cost information derived from this estimate shall directly relate to the CONTRACTOR's recommendations in the Constructability and Value Engineers Report relative to ways to reduce and/or control costs.
- (C) The second Construction Cost Estimate shall be done on or before the fifty percent (50%) construction document stage. Based on the results of this estimate the CONTRACTOR should be prepared to offer recommendations on whether or not the scope of the project need to be changed to be able to complete the project within the established budget.

SCOPE OF SERVICES (CONTINUED)

- (D) The third 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 third Construction Cost Estimate shall be used as the basis for negotiating the Guaranteed Maximum Price (GMP) for the project and the basis for monitoring status of the project throughout the construction phase.

IV. VALUE ENGINEERING

As a result of the CONTRACTOR'S Constructability Review or Construction Cost Estimate and in order to reduce or control costs, the CONTRACTOR 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. The CONTRACTOR shall prepare its recommendation in the form of a written report to be presented to the project team.

V. GUARANTEED MAXIMUM PRICE (GMP)

Utilizing the information arrived at by formulating a schedule and cost estimates along with the results achieved by performing a constructability review and Value Engineering, the CONTRACTOR shall determine a (GMP). Based upon the definition as set forth in Section 2.13 of this agreement.

- (A) The CONTRACTOR shall present the GMP in writing to the owner.
- (B) The final GMP shall include all pricing documents as set forth in Section 2.18 of this agreement.

VI. PREQUALIFICATION OF SUBCONTRACTORS

- (A) The CONTRACTOR shall conduct a community outreach program to identify potential local subcontractors who may be selected to participate in the project.
- (B) The CONTRACTOR 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).

(A) **CHANGE ORDER** means changes, due to unanticipated conditions or developments, made to an executory contract which do not substantially alter the character of the work contracted for, and which do not vary so substantially from the original specifications as to constitute a new undertaking. Such changes must reasonably and conscientiously be viewed as being in fulfillment of the original scope of the contract rather than as departing therefrom. Further, such changes, when viewed against the background of the work described in the contract and the language used in the specifications, must clearly be directed either to the achievement of a more satisfactory result or the elimination of work not necessary to the satisfactory completion of the contract.

(B) (1) *City Manager's authority.* Subject to the restrictions contained in division (2) below, the City Manager is hereby authorized to approve and initiate work on the following types of change orders determined in his judgment, to be in the public interest, as follows:

(a) All change orders decreasing the cost of the contract to the city which do not materially alter the character of the work contemplated by the contract.

(b) A change order, consisting of one or more changes permitted by subsection (A) above, where the net change, taking into account both increases and decreases in cost, increases the cost of the contract to the city, by an amount not in excess of \$50,000.

(c) On a unit price contract, all change orders consisting of unit quantity increases at the unit price bid, which do not exceed 15% of the original unit quantity for each line item.

(2) Notwithstanding the provisions of division (1) above, the City Manager is not authorized to approve a change unit order under either of the following conditions:

(a) Where the sum of all change orders issued under the contract exceeds \$100,000 or 10% of the original contract amount, whichever is greater.

(b) Where the cumulative effect of all approved change orders will result in the extension of a contract completion date by more than 60 calendar days.

(C) All change orders that the City Manager is not authorized to approve must be formally approved by the City Commission before work may be authorized to begin; and no claim against the city for extra work in furtherance of such change order shall be allowed unless said prior approval has been obtained, notwithstanding any other provision, contractual or otherwise.

(D) Change orders shall not artificially be distributed or divided so as to bring the amount within the approval level of the City Manager and any such proposed change order shall include within it all logically connected work required to be done at the time of the proposal.

(E) Notwithstanding the foregoing provisions, the following change orders relating to utility construction projects or design and construction management projects are authorized to be processed in the following manner:

(1) Construction changes which require timely and expedited action in the field and which do not exceed the total monetary value of \$5,000 may be authorized by the Manager of

Engineering Support Services for utility construction projects and by the Senior Project Manager or Assistant Director for the Department of Public Services for design and construction management projects. For construction projects which include services provided by a construction manager engaged by the city, the Manager of Engineering Support Services or the Senior Project Manager or Assistant Director for the Department of Public Services must obtain the construction manager's written concurrence that a construction change is necessary and that such change is consistent with the project's original scope of services. A construction change as previously described, may only occur when, prior to the commencement of any work, a written change order is executed by the individuals authorized herein and the construction contractor.

(2) Construction changes which require timely and expedited action in the field and which exceed \$5,000 but do not exceed \$10,000 may be authorized by the Director of Services or the Director of the Department of the Director of Public Services For construction projects which include services provided by a construction manager engaged by the city, the Director of Public Services must obtain the construction manager's written concurrence that a construction change is necessary and that such change is consistent with the project's original scope of services prior to the execution of a change order. A construction change, as previously described, may only occur when, prior to the commencement of any work, a written change order is executed by the individuals authorized herein and the construction contractor.

(3) Construction changes which require timely and expedited action in the field and which exceed \$10,000 but do not exceed \$50,000, and upon the recommendation of the Director of Public Services, may be authorized by the City Manager or his designated representative. For construction projects which include services provided by a construction manager engaged by the city, the Director of Public Services must obtain the construction manager's written concurrence that a construction change is necessary and such change is consistent with the project's original scope of services prior to the execution of a change order. A construction change, as previously described, may only occur when,

(4) All change orders authorized in accordance with this division (E) are subject to the written confirmation or approval as to the availability of sufficient funding for each change order by the official authorizing such change orders.

(F) On a monthly basis, all change orders authorized in accordance with subdivision (B)(1) which exceed 10% of the original contract amount and all change orders authorized in accordance with division (E) shall be presented to the City Commission, for informational purposes.

('72 Code, § 11½-42) (Ord. O-75-18, passed 2-19-75; Am. Ord. O-89-11, passed 3-1-89; Am. Ord. O-93-33, passed 7-21-93; Am. Ord. O-95-19, passed 4-4-95; Am. Ord. 0-98-09, passed 5-20-98; Am. Ord. 0-99-33, passed 10-20-99

CITY OF HOLLYWOOD, FLORIDA

**CONSTRUCTION MANAGEMENT AT RISK SERVICES
AGREEMENT**



PHASE II

CONSTRUCTION SERVICES

**<INSERT PROJECT NAME>
<INSERT PROJECT NUMBER>**

**DEPARTMENT OF DEVELOPMENT SERVICES
ARCHITECTURE, ENGINEERING & MOBILITY DIVISION
2600 HOLLYWOOD BOULEVARD
HOLLYWOOD, FLORIDA 33022**



CONSTRUCTION MANAGEMENT AT RISK
SERVICES AGREEMENT

PHASE II

CONSTRUCTION SERVICES

BETWEEN THE CITY OF HOLLYWOOD, FLORIDA, AND CONTRACTOR
FOR
PROFESSIONAL CONSTRUCTION MANAGEMENT SERVICES
FOR
<Project Name>

Whereas, the CITY of Hollywood desires to construct **<brief description of project>** at
<location of project> and

Whereas, it is in 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 (CM), and

Whereas, the CITY, through a Request for Qualifications (RFQ), has competitively
selected the Construction Manager, and

Whereas the selected firm will provide professional construction management services
for the **<Project Name>** project as directed by the Director of Public Services.

This agreement made this _____ day of _____ in the year _____, by and between
the CITY of Hollywood, Florida, hereinafter called the "Owner" and
_____ hereinafter called the "Contractor" as a
Construction Management at Risk Firm for Phase II Construction Services.

Witnesseth, that the owner and the firm for the considerations herein set forth, agrees
as follows:

Construction Agreement
Construction Management at Risk
<Project Name>
Hollywood, Florida

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ARTICLE 1

SCOPE OF WORK

The Contractor shall furnish professional Construction Management at Risk Services for the project described in Exhibit A attached hereto, upon issuance of Contractor's Notice to Proceed by the Director of the Department of Development Services.

The Contractor shall furnish the following Services as specifically authorized by Contractor's Notice to Proceed issued by the Department of Public Services.

1.0 The contract price elements are as follows:

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

| | |
|---|-----------------|
| a. Direct Construction Cost (Exhibit A) | \$ _____ |
| b. General Conditions Cost (Exhibit B) | \$ _____ |
| c. Construction Phase Fee | \$ _____ |
| d. Overhead / Profit | \$ _____ |
| e. Contingency | \$ _____ |
| f. Design Phase Fee | \$ _____ |
| TOTAL GMP (ALL INCLUSIVE) | \$ _____ |

1.1 CONTRACTOR hereby agrees to furnish all of the labor, materials, equipment services and incidentals necessary to perform all of the work described in the Contract Documents Including Drawings, Specifications and Addenda for the Project known as the **<Project Name>** prepared by **<Consultant Name>** the CONSULTANT.

ARTICLE 2

6 DEFINITIONS
7

2.0 CHANGE ORDER: A written document ordering a change in the Contract Price or Contract Time or a material change in the Work as determined by the PROJECT MANAGER. Any Change Orders must meet all requirements of §38.47 of the City Purchasing Ordinance (Exhibit I) which is deemed as being incorporated by reference herein.

2.1 CITY COMMISSION: The CITY Commission of the CITY of Hollywood, it's successors and assigns.

- 2.2 CITY OR OWNER: The CITY of Hollywood, Florida, a Florida Municipal Corporation, which is the party hereto for which this Contract is to be performed. In all respects hereunder, CITY'S performance is pursuant to the CITY'S position as the owner of a construction project. In the event the CITY exercises its regulatory authority as a governmental body, the exercise of such authority and the enforcement of any rules, regulations, laws and ordinances shall be deemed to have occurred as to City's authority as a governmental body and shall not be attributable in any manner to the CITY as a party to this contract.
- 2.3 CONSULTANT: The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects and/or engineers, which has entered into an agreement to provide professional services to the Owner for this project.
- 2.4 CONTINGENCY: An established sum included in the Guaranteed Maximum Price (GMP) for the purpose of defraying actual expenses that may arise due to unforeseen circumstances/conditions of the Project for which the contingency is established. Use of the monies set-a-side in the contingency shall be determined by the City's Project Manager
- 2.5 CONTRACT: This Construction Agreement.
- 2.6 CONTRACT DOCUMENTS: The Project Manual (including this Agreement and its Exhibits, Attachments and Forms), drawings and specifications, the Request For Qualifications and/or Proposals, as applicable, and CONTRACTOR's response thereto (as negotiated and accepted by the CITY), any Addenda to the Project Manual, the record of the contract award by the CITY Commissioners, the Contract, the Performance Bond and Payment Bond, the Notice of Award, the Notice(s) to Proceed, the Purchase Order and all agreed upon modifications issued after execution of the Contract are the documents which are collectively referred to as the Contract Documents as referenced in Exhibit D.
- 2.7 CONTRACT PRICE: The amount established in the Contract as the Guaranteed Maximum Price (GMP), as may be amended if so warranted, by a Change Order issued in conformity with the Contract Documents.
- 2.8 CONTRACT TIME: The time between the project initiation date specified in the Notice to Proceed for this phase and final completion, including any milestone dates thereof, established in the contract, as may be amended by any change order.
- 2.9 CONTRACTOR: An individual, partnership, corporation, association, joint venture, or any combination thereof, which has entered into the contract with the Owner for construction of CITY of Hollywood, Florida, facilities and incidents thereto. The construction manager at risk for this project is <Contractor

Name>. CONTRACTOR, for purposes of this agreement shall have the same meaning as Construction Manager at Risk.

- 2.10 **DIRECTOR**: The Director of the Department of Development Services of the CITY of Hollywood, Florida, having the authority and responsibility for management of the specific projects authorized under this Agreement.
- 2.11 **FIELD ORDER or SUPPLEMENTAL INSTRUCTION**: A written order which directs minor changes or interruptions of the Contract Documents in accordance with Article 7, but which does not involve a change in the Contract Price or Contract Time.
- 2.12 **FINAL COMPLETION**: The date certified by the CONSULTANT and PROJECT MANAGER in the Final Certificate of Payment in which all conditions and requirements of any permits and regulatory agencies have been satisfied; and the documents (if any) required to be provided by CONTRACTOR 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 by the CONTRACTOR 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 Guaranteed Maximum Price.
- 2.14 **GUARANTEED MAXIMUM PRICE CONSTRUCTION CONTRACT**: The method of construction contracting whereby the CONTRACTOR provides design phase consulting services (pre-construction services) and management responsibility for the project (general conditions). The fee is a dollar amount negotiated for profit, overhead and on and off-site general and administrative costs. All subcontracts are generally awarded by the CONTRACTOR based on competitive bids received in response to invitations to bid issued by the CONTRACTOR. The total price paid to the CONTRACTOR is either the fee plus the costs, or the Guaranteed Maximum Price (GMP), whichever is less.
- 2.15 **INSPECTOR**: An employee of the CITY of Hollywood, Florida, assigned by the Director to make observations of work performed by a Contractor.
- 2.16 **MATERIALS**: Materials incorporated in this Project, or used or consumed in the performance of the Work.
- 2.17 **NOTICE TO PROCEED**: One or more written notices to CONTRACTOR authorizing the commencement of Work.

- 2.18 PLANS AND/OR DRAWINGS: The official graphic representations of this construction project which are a part of the Contract Documents.
- 2.19 PRICING DOCUMENTS: The set of documents upon which the GMP contract is negotiated is comprised of the following: (i) the CITY approved Contract Documents, (ii) the Estimated and Actual Selected Qualified Bids CONTRACTOR's Direct Construction Cost (including unit prices, quantities and explanatory notes), (iii) the CONTRACTOR's General Condition Items, (iv) schedules developed by the CONTRACTOR and approved by the PROJECT MANAGER, and any other documents or exhibits utilized to derive the GMP.
- 2.20 PROJECT: The construction, alteration or repair, and all services and incidents thereto, of a CITY of Hollywood, Florida facility as contemplated and budgeted by the Owner as described in the Contract Documents, including the work described herein.
- 2.21 PROJECT MANAGER: An employee of the CITY of Hollywood, expressly designated as PROJECT MANAGER in writing by the DIRECTOR, who is the representative of the CITY, concerning the Contract Documents.
- 2.22 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.
- 2.23 RESIDENT PROJECT REPRESENTATIVE: An authorized representative of the CONSULTANT on the Project.
- 2.24 SUBCONTRACTOR: A person, firm or corporation having a direct contract with the CONTRACTOR, 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.
- 2.25 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 it in all respects for its intended purpose(s).
- 2.26 SURETY: The surety company or individual which is bound by the performance bond and payment bond with and for CONTRACTOR who is primarily liable, and which surety company or individual is responsible for CONTRACTOR's acceptable and timely performance of the work under the contract and for the payment of all debts pertaining thereto in accordance with Section 255.05,

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

- 2.27 WORK: The totality of the obligations, including construction and other services required by the Contract Documents, whether completed or partially completed, including all labor, materials, equipment and service provided or to be provided by CONTRACTOR to fulfill CONTRACTOR's obligations. The work may constitute the whole or a part of the project.
- 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 by registered mail or other traceable delivery service to the last known business address. Electronic, facsimile (FAX) or other telephonic transmission shall not be considered as written notice.

ARTICLE 3

CONTRACTOR'S SERVICES AND RESPONSIBILITIES

3.1 INTENTION OF CITY:

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

3.2 THE CONTRACTOR:

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

3.3 THE CONTRACTOR:

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

3.4 SUPERINTENDENCE AND SUPERVISION:

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

3.4.2 Daily, CONTRACTOR's SUPERINTENDENT shall record, at a minimum, the following information in a bound log: the day; date; weather conditions and how any weather conditions affected the progress of the work; time of commencement of work for the day; the work being performed; materials, labor, personnel, equipment and subcontractors at the project site; visitors to the project site including representatives of CITY, CONSULTANT, regulatory authorities; any special or unusual conditions or occurrences encountered; and the time of termination of work for the day. All information shall be recorded in the daily log in ink. The daily log shall be kept on the project site and shall be available at all times for inspection and copying by the PROJECT MANAGER and CONSULTANT.

3.4.3 The CONTRACTOR, CONSULTANT and PROJECT MANAGER shall meet at least every two (2) weeks or as otherwise determined by the CONSULTANT and/or PROJECT MANAGER during the course of the work to review and agree upon the work performed to date and to establish the controlling items of work for the next two weeks. The CONSULTANT shall publish, keep, and distribute minutes and any comments thereto of each such meeting.

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

3.5 CONTRACTOR TO CHECK DRAWINGS, SPECIFICATIONS AND DATA:

CONTRACTOR shall use reasonable effort to verify all dimensions, quantities and details shown on the drawings, specifications or other data received from CONSULTANT, and shall notify CONSULTANT of all errors, omissions and discrepancies found therein within three (3) calendar days of discovery. CONTRACTOR will not be allowed to take advantage of any error, omission or discrepancy, as full instructions will be furnished by CONSULTANT. CONTRACTOR shall not be liable for damages resulting from errors, omissions or discrepancies in the Contract Documents unless CONTRACTOR recognized or should have recognized such error, omission or discrepancy and failed to report it to CONSULTANT.

3.6 DIFFERING SITE CONDITIONS:

In the event that during the course of the work, CONTRACTOR encounters an underground utility that was not shown on the Contract Documents; or subsurface or concealed conditions at the project site which differ materially from those shown on the Contract Documents and from those ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract Documents; or unknown physical conditions of the project site, of an unusual nature, which differ materially from that ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract Documents, CONTRACTOR, without disturbing the conditions and before performing any work affected by such conditions, shall, no later than 9:00 a.m. the next day after their discovery, notify CONSULTANT in writing of the existence of the aforesaid conditions. CONSULTANT shall, within one (1) business day after receipt of CONTRACTOR's written notice, investigate the site conditions identified by the CONTRACTOR. If, in the sole opinion of CONSULTANT, the conditions do materially so differ and cause an increase or decrease in CONTRACTOR's cost of, or the time required for, the performance of any part of the work, whether or not charged as a result of the conditions, CONSULTANT shall recommend an equitable adjustment to the contract price, or the Contract Time, or both, which is subject to written approval by the PROJECT MANAGER. If CONSULTANT and CONTRACTOR cannot agree on an adjustment in the contract price or Contract Time, the

adjustment shall be determined by the CONSULTANT in accordance with Article 30.

No request by CONTRACTOR for an equitable adjustment or change to the contract price or Contract Time under this provision shall be allowed unless the CONTRACTOR has given written notice within detailing the facts for such request a reasonable time (not exceeding thirty (30) days from when the CONTRACTOR knew or should have known of such conditions) in accordance with the provisions of this Section. No request for an equitable adjustment or change to the contract price or Contract Time for different site conditions shall be allowed if made after the date certified by CONSULTANT as the date of Substantial Completion.

3.7 SUBMITTALS

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

3.7.2 Within ten (10) calendar days after the date of the first Notice to Proceed, CONTRACTOR shall submit to CONSULTANT a list of all submittals required for permitting. Within twenty (20) calendar days of the date of the Notice to Proceed, CONTRACTOR shall submit to CONSULTANT (with a copy to the PROJECT MANAGER) a comprehensive list of items for which submittals are to be submitted and shall identify the critical items. Approval of this list (the Submittal Schedule) by CONSULTANT shall in no way relieve CONTRACTOR from submitting complete submittals as required by the Contract Documents and providing services, products, materials, equipment, systems and assemblies, fully in accordance with the Contract Documents.

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

3.7.4 CONTRACTOR shall thoroughly review and check the submittals and submit them to the CONSULTANT in accordance with the requirements for such submittals specified in Division 1 of the specifications. Each

submittal and required copy thereof shall indicate the CONTRACTOR's review of that submittal in the form required by the Contract Documents.

- 3.7.5 The CONTRACTOR shall maintain a Submittal Log which shall include, at a minimum, the date of each submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection.
- 3.7.6 If the submittals indicate deviations or departures from the requirements of the Contract Documents, CONTRACTOR shall make specific mention thereof in its letter of transmittal. Failure to point out such deviations or departures shall not relieve CONTRACTOR from its responsibility to comply with the Contract Documents.
- 3.7.7 The CONSULTANT shall have no duty to review partial or incomplete submittals except as may be provided otherwise within the Contract Documents.
- 3.7.8 Provided such Submittals conform to the approved Submittal schedule, CONSULTANT shall review and approve submittals as expeditiously as possible, within ten (10) calendar days from the date received, unless said Submittals are rejected by CONSULTANT for material reasons or the Submittals are of substantial building systems which require more time for thorough review. CONSULTANT's approval of Submittals will be general and shall not relieve CONTRACTOR of responsibility for the accuracy of such drawings, nor for the proper fitting and construction of the work, nor for the furnishing of materials or work required by the Contract Documents. No work for which submittals are required shall be performed until said Submittals have been approved by CONSULTANT. Approval shall not relieve CONTRACTOR from responsibility for errors or omissions on the Submittals or for compliance with the requirements of the Contract Documents.
- 3.7.9 No review or approval will be given to partial Submittals for items, which interconnect and/or are interdependent where necessary to properly evaluate the Submittal. It is CONTRACTOR's responsibility to assemble the Submittals for all such interconnecting and/or interdependent items, check them and then make one Submittal to CONSULTANT along with its comments as to compliance, noncompliance, or features requiring special attention.
- 3.7.10 Additional information provided by the CONTRACTOR on any Submittal shall be typewritten or lettered in ink.

3.7.11 CONTRACTOR shall submit the number of copies required by the Contract Documents plus the number required by jurisdictional authorities (when submittals are to be made to such authorities). Resubmissions of Submittals shall be made in the same quantity until final approval is obtained from CONSULTANT.

3.7.12 CONTRACTOR shall keep one set of CONSULTANT approved Submittals at the project site at all times.

3.8 FIELD LAYOUT OF THE WORK AND RECORD DRAWINGS:

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

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

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

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

3.9 INSPECTION AND TESTING:

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

3.9.1.1 Should the Contract Documents, CONSULTANT's instructions, any laws, ordinances, or public authority require any of the Work to be specially tested or approved, CONTRACTOR, shall provide and update weekly for the CONSULTANT a two (2) week look-ahead schedule denoting all activity to be performed and highlighting those that need testing and approval. If the testing or approval is to be made by an authority other than CITY, timely notice shall be given of the date fixed for such testing. Testing shall be made promptly, and where practicable, at the source of supply. If any of the Work which requires approval is covered up without approval or consent of CONSULTANT, it must, if required by CONSULTANT, be uncovered for examination and properly restored to the satisfaction of the CONSULTANT.

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

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

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

3.10 TAXES

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

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

ARTICLE 4

PRIORITY OF PROVISIONS

- 4.1 The Contract Documents shall be interpreted so as to eliminate inconsistencies or conflicts, but in the event of any conflict, requirements for greater quantity and/or more expensive work shall govern such interpretation.
- 4.2 In case of conflicts between the provisions of this Contract, any ancillary documents executed contemporaneously herewith or prior hereto, or any other of the Contract Documents, the provisions of this Contract (including all Exhibits) shall prevail.
- 4.3 Anything shown on the drawings and not mentioned in the specifications or mentioned in the specifications and not shown on the drawings shall have the same effect as if shown or mentioned respectively in both. In the event of a conflict among the Contract Documents, the most stringent requirements applicable to the CONTRACTOR shall control.
- 4.4 The organization of the Specifications into divisions and sections and the arrangement of drawings shall not control CONTRACTOR in dividing the Work among subcontractors or in establishing the extent of the work to be performed by any trade. The organization of the Specifications and the arrangement of the Drawings is for the convenience of the CONTRACTOR and is not intended to relieve the CONTRACTOR from its obligation to conduct a complete study of the Drawings, Specifications and Addenda for the purpose of directing and

coordinating the various subcontractors and suppliers as to their respective responsibilities.

ARTICLE 5

CONSULTANT'S AUTHORITY

- 5.1 CONSULTANT will provide overall technical and management services to assist the CITY in maintaining schedules, establishing budgets, controlling costs, and achieving quality.
- 5.2 If at any time the CONSULTANT observes or becomes aware of any fault or defect in the Work or of any nonconformance with the Contract Documents, CONSULTANT will promptly notify the PROJECT MANAGER and contractor in writing and will direct that all reasonable steps be taken to correct such fault, defect or nonconformance. The CONSULTANT shall have the authority to reject work that does not in its opinion, or in the opinion of the PROJECT MANAGER, conform to the Contract Documents.
- 5.3 CONSULTANT shall monitor the overall quality, progress and Cost of the Work.
- 5.4 CONSULTANT shall not have control over construction means, method, techniques, sequences and procedures employed by CONTRACTOR in the performance of the work, but shall be responsible for using its best efforts to review and, if unacceptable, disapprove such and shall recommend a course of action to the CITY requirements of the Contract Documents are not being met by CONTRACTOR.
- 5.5 The CITY will be assisted by CONSULTANT in the areas of on-site review of work in progress, review of pay requests submitted by the CONTRACTOR, assisting in the interpretation of the intent of the Contract Documents for the proper execution of the work, and such other assistance as the CITY may request.
- 5.6 The CONSULTANT shall have no authority to order or approve any deviation from the Contract Documents, whether or not such deviation affects the Cost of the Work, or the date of Substantial Completion. In the event any such deviation is sought by CONSULTANT or CONTRACTOR, prior written approval from the PROJECT MANAGER must be obtained.

ARTICLE 6

TIME FOR PERFORMANCE

6.1 CONTRACT TIME:

- 6.1.1 CONTRACTOR shall be instructed to commence the work by written Notice to Proceed issued by the PROJECT MANAGER. The first Notice to Proceed will not be issued until CONTRACTOR's submission to CITY of all required documents and after execution of the CONTRACT by both parties. Preliminary work, including submission of a Project Schedule, Schedule of Values, Submittals, Submittal Schedule, and other documents required for permitting, and performance of work that do not require permits, shall be submitted within ten (10) calendar days after the date of the Notice to Proceed. Receipt of all permits by CONTRACTOR is a condition precedent to the issuance of a second Notice to Proceed for all other work. The Work to be performed pursuant to the second Notice to Proceed shall be completed within ten (10) calendar days of the Project Initiation Date specified in the second Notice to Proceed.
- 6.1.2 Time is of the essence throughout this contract. The project shall be substantially completed within <Number> calendar days from the date of the second Notice to Proceed. The total project shall be completed and ready for final payment in accordance with Article 8 within 30 calendar days from the date certified by CONSULTANT as the date of Substantial Completion.
- 6.1.3 Upon failure of CONTRACTOR to substantially complete the project within the specified period of time, plus approved time extensions, CONTRACTOR shall pay to CITY the sum of One Thousand Five Hundred Dollars (\$1,500.00) for each calendar day after the time specified in Article 6.1.2, plus any approved extensions for Substantial Completion. After Substantial Completion should CONTRACTOR fail to complete the remaining work within the time specified in Article 6.1.2 above, plus approved time extensions thereof, for completion and Five Hundred Fifty Dollars (\$500.00) for each calendar day after the time specified in Article 6.1.2 above, plus any approved extensions, for completion and readiness for final payment. These amounts are not penalties but are liquidated damages to CITY for its inability to obtain full beneficial occupancy of the project.

Liquidated damages are hereby fixed and agreed upon between the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by CITY as a consequence of such delay, and both parties desiring to obviate any questions of dispute concerning the amount of said damages and the cost and effect of the failure of CONTRACTOR to complete the Contract on time. The above-stated liquidated damages shall apply separately to each phase of the project for which a time for completion is given.

- 6.1.4 PROJECT MANAGER is authorized to deduct liquidated damages from monies due to CONTRACTOR for the work under this contract or as much thereof as PROJECT MANAGER may, at its option, deem just and reasonable.
- 6.1.5 CONTRACTOR shall be responsible for reimbursing CITY, in addition to liquidated damages, for all costs incurred by CONSULTANT in administering the construction of the Project beyond the completion dates specified above or beyond an approved extension of time granted to CONTRACTOR, whichever date is later. Such costs shall be deducted from the monies due CONTRACTOR for performance of work under this contract by means of unilateral credit change orders issued periodically to CITY as costs are incurred by CONSULTANT and agreed to by CITY.
- 6.1.6 Extensions to the Contract Time for delays caused by the effects of inclement weather shall be submitted as a request for change in Contract Time pursuant to Article 6.3. These time extensions are justified only when rains or other inclement weather conditions or related adverse soil conditions prevent CONTRACTOR from productively performing controlling items of work identified on the accepted schedule or updates resulting in CONTRACTOR being unable to work at least fifty (50%) of the normal workday on controlling items of work identified on the accepted schedule or updates due to adverse weather conditions.

6.2 SUBSTANTIAL COMPLETION DATE:

When CONTRACTOR considers that the Work, or portion thereof designated by PROJECT MANAGER pursuant to Article 6.4 hereof, has reached Substantial Completion, CONTRACTOR shall so notify PROJECT MANAGER and CONSULTANT in writing. CONSULTANT and PROJECT MANAGER shall then promptly inspect the work.

When CONSULTANT, on the basis of such an inspection, determines that the work or designated portion thereof is substantially complete, CONSULTANT will then prepare a Certificate of Substantial Completion in the form attached hereto as Form 1 which shall establish the Date of Substantial Completion; shall state the responsibilities of CITY and CONTRACTOR for security, operation, safety, maintenance, Services, damage to the work, insurance, and warranties; shall list all work yet to be completed (Punch List) to satisfy the requirements of the Contract Documents for final completion. The failure to include any items of corrective work on such list does not alter the responsibility of CONTRACTOR to complete all of the work in accordance with the Contract Documents. The Certificate of Substantial Completion shall be submitted to the PROJECT MANAGER, after execution by CONTRACTOR, and CONSULTANT, indicating their written acceptance of such certificate.

6.3 NOTIFICATION OF CHANGE OF CONTRACT TIME OR CONTRACT PRICE:

6.3.1 Any claim for a change in the Contract Time or Contract Price shall be made by written notice and delivered by CONTRACTOR to the CONSULTANT with a copy to PROJECT MANAGER within five (5) calendar days of the commencement of the event giving rise to the claim and stating the general nature of the claim. Notice of the nature and elements of the claim shall be delivered within twenty (20) calendar days after the date of such written notice. Thereafter, within ten (10) calendar days of the termination of the event giving rise to the claim, notice of the extent of the claim with supporting data shall be delivered unless CONSULTANT allows an additional period of time to ascertain more accurate data in support of the claim and shall be accompanied by CONTRACTOR's written statement that the adjustment claimed justified as a result of the occurrence of said event. All claims for adjustment in the Contract Time or contract price shall be determined by CONSULTANT in accordance with Article 30 hereof, if CONSULTANT and CONTRACTOR cannot otherwise agree. NO CLAIM FOR AN ADJUSTMENT IN THE CONTRACT TIME OR CONTRACT PRICE WILL BE VALID IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.

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

6.4 USE OF COMPLETED PORTIONS:

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

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

7.4.3 CITY shall give notice to CONTRACTOR in writing at least fifteen (15) calendar days prior to CITY's intended occupancy of a designated area.

7.4.4 CONTRACTOR shall complete to the point of Substantial Completion the designated area and request inspection and issuance of a Certificate of Substantial Completion in the form attached hereto as Form 1 from CITY.

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

6.4.4.2 CONTRACTOR shall complete all items noted on the Certificate of Substantial Completion within the time specified in article 6.1 and request final acceptance of the portion of the Work occupied. Upon completion of final inspection and receipt of an application for final payment,

CONSULTANT shall issue a Final Certificate of Payment relative to the occupied area.

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

ARTICLE 7

CHANGES IN THE WORK OR TERMS OF CONTRACT DOCUMENTS

- 7.1 Without invalidating the Contract and without notice to the surety, CITY reserves and shall have the right, from time to time, to make such increases, decreases or other changes in the character or quantity of the work as may be considered necessary or desirable to complete fully and acceptably the proposed construction in a satisfactory manner. Any extra or additional work within the scope of this project must be accomplished by means of an appropriate Change Order in accordance with the requirements of the Contract Documents.
- 7.2 Any changes to the terms of the Contract Documents must be contained in a written document, executed by the parties hereto, with the same formality and of equal dignity prior to the initiation of any work reflecting such change. This section shall not prohibit the issuance of Change Orders executed only by CITY as hereinafter provided.
- 7.3 The PROJECT MANAGER through the CONSULTANT may direct the CONTRACTOR to expedite the work by whatever means the CONTRACTOR may use, including, without limitation, increasing staffing or working overtime to bring the work back within the progress schedule. If the expediting of Work is required due to reasons outside the control or responsibility of the CONTRACTOR, then the additional costs incurred shall be the subject of an appropriate adjustment issued pursuant to Article 7.4 or Article 7.6, below as applicable.

7.4 CHANGE ORDERS:

- 7.4.1 Changes in the quantity or character of the work within the scope of the project which are not properly executed, or the subject of Field Orders or Supplemental Instructions, including all changes resulting in changes in the contract price, or the Contract Time, shall be authorized only by written change orders approved and issued in accordance with the provisions of the Contract Documents and the applicable §38.47 of the CITY's Purchasing Ordinance which is deemed to be incorporated by reference herein as though set forth in full.
- 7.4.2 Without invalidating the Contract and without notice to any surety, CITY reserves and shall have the right, from time to time to make such increases, decreases or other changes in the character or quantity of the work as may be considered necessary or desirable to complete fully and acceptably the proposed construction in a satisfactory manner. Any changes, increases or decreases to the work within the scope of this project must be accomplished by means of appropriate Change Orders.
- 7.4.3 The CONTRACTOR's fee on such changes which exceeds GMP shall be determined as follows:
- (a) A mutually acceptable fixed fee, or if none can be agreed upon,
 - (b) A fee based upon a percentage of the net change to the Cost of the Work resulting from the Change Order, in accordance with Article 8.3, hereof, not to exceed five percent (5%).

Subcontractor's percentage markup on change orders for overhead and profit shall be reasonable, but in no event shall the aggregate of the subcontractor's overhead and profit markups exceed fifteen percent (15%). In the event subcontractor is affiliated with the CONTRACTOR by common ownership or management, or is effectively controlled by the CONTRACTOR, no fee will be allowed on the subcontractor costs. In the event there is more than one level of subcontractors such as second and third tier subcontractors, the sum of all of the subcontractor's percentage markups for overhead and profit shall not in the aggregate exceed twenty percent (20%).

- 7.4.4 Pursuant to the CITY purchasing ordinance, all changes to construction contracts which exceeds the GMP must be approved in advance in accordance with the value of the Change Order or the calculated value of the time extension. All Change Orders with a value of fifty thousand (\$50,000.00) or more shall be approved in advance by the City Commission, or, all Change Orders with a value of less than \$50,000.00 shall be approved in advance by the City Manager or his authorized

designee. All Change Orders shall comply with §38.47 of the City's Purchasing Ordinance.

7.4.5 CONTRACTOR shall not start work on any changes requiring an increase in the contract price or the Contract Time until a Change Order setting forth adjustments is approved and issued by the CITY. If the CONTRACTOR commences work pertaining to a Change Order prior to receiving written authorization through the Project Manager then they do so at their own risk and assume all associated responsibility and costs. Upon receipt of a Change Order, CONTRACTOR shall promptly proceed with the work set forth within the document.

7.4.6 In the event satisfactory adjustment cannot be reached for any item requiring a change in the Contract Price or Contract Time, and a Change Order has not been issued, CITY reserves the right at its sole option to either terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the disputed work; or submit the matter in dispute to CONSULTANT as set forth in Article 30 hereof. During the pendency of the dispute, and upon receipt of a Change Order, CONTRACTOR shall promptly proceed with the change in the work involved and advise the CONSULTANT and PROJECT MANAGER in writing within seven (7) calendar days of CONTRACTOR's agreement or disagreement with the method, if any, provided in the Change Order for determining the proposed adjustment in the Contract Price or Contract Time.

7.4.7 On approval of any Contract change increasing the contract price, CONTRACTOR shall ensure that the Performance Bond and Payment Bond are increased so that each reflects the total contract price as increased.

7.4.8 To avoid delays to the project and to mitigate damages to the parties, Change Orders may be issued unilaterally by CITY in accordance with §38.47 of the Purchasing Ordinance and the Contract Documents.

7.5 FIELD ORDERS AND SUPPLEMENTAL INSTRUCTIONS:

7.5.1 The CONSULTANT shall have the right to approve and issue changes setting forth written interpretations of the intent of the Contract Documents and ordering minor changes in work execution, providing the Field Order involves no change in the Contract Price or Contract Time.

7.5.2 CONSULTANT shall have the right to approve and issue Supplemental Instructions setting forth written orders, instruction, or interpretations concerning the Contract Documents, provided such supplemental instructions involve no change in the contract price or Contract Time.

7.6 CONTRACT PRICE ELEMENT ADJUSTMENT MEMORANDA:

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

| | |
|---|---------------------|
| a. Direct Construction Cost (Exhibit A) | \$ _____ |
| b. General Conditions Cost (Exhibit B) | \$ _____ |
| c. Construction Phase Fee | \$ _____ |
| d. Overhead / Profit | \$ _____ |
| e. Contingency | \$ _____ |
| f. Design Phase Fee | \$ _____ |
| TOTAL GMP (ALL INCLUSIVE) | \$ _____ |

The Project MANAGER shall have the right to issue certain Contract Price Element Adjustment Memoranda (Memoranda), which Memoranda shall address the reallocation of sums between the Contract Price Elements within the Contract Price. In no event shall the Contract Price be modified except by following an appropriate Change Order. The following specific Memoranda are contemplated, but additional or different Memoranda may be required and issued, provided they do not result in a change to the Contract Price, and provided that amounts shall only be transferred from Elements a through e above by prior mutual agreement of the CONTRACTOR and the City.

- a. At the Completion of the Work, a Memorandum will be issued in conjunction with a final Change Order to remove any remaining sums within the Direct Construction Cost and General Conditions and reduce the GMP in accordance with Articles 7.4 and 8.2 hereof,
- b. When major subcontracts of the Project are bid and have been executed, if the sum of the subcontractors are below such Work, a Memorandum may be issued by mutual agreement of the CONTRACTOR and the PROJECT MANAGER.
- c. During the progress of construction, the construction contingency within the GMP may be decreased and the surplus transferred to the City Allowance Account by issuance of a Memorandum by mutual written consent of the CONTRACTOR and the PROJECT MANAGER.
- d. At the Final Completion of the Project, after calculation of any savings in accordance with Article 8.2 below, a Memorandum will be issued in conjunction with a Final Change Order to remove any remaining sums within the General Conditions, City Allowance Account and construction

contingency and reduce the GMP in accordance with Articles 7.4 and 8.2 hereof.

7.7 NO DAMAGES FOR DELAY:

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

7.8 EXCUSABLE DELAY: COMPENSABLE & NON-COMPENSABLE

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

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

7.8.2 Excusable Delay may be compensable or non-compensable.

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

CONTRACTOR shall be entitled to direct and indirect costs for Compensable Excusable Delay. Direct costs recoverable by CONTRACTOR shall be limited to the actual additional costs allowed pursuant to Article 8.3 hereof.

CITY and CONTRACTOR recognize and agree that the amount of CONTRACTOR's precise actual indirect costs for delay in the performance and completion of the work is impossible to determine as of the date of execution of the Contract Documents, and that proof of the precise amount will be difficult. Therefore, indirect costs recoverable by the CONTRACTOR shall be determined on a daily basis for each day the Contract Time is delayed due to a Compensable Excusable Delay. These indirect costs shall be paid to compensate CONTRACTOR or for all indirect costs caused by a Compensable Excusable Delay and shall include, but not be limited to, all profit on indirect costs, home office overhead, acceleration, loss of earnings, loss of productivity, loss of bonding capacity, loss of opportunity and all other indirect costs recoverable shall be for each day the Contract is delayed due to a Compensable Excusable Delay.

- (b) Non-Compensable Excusable Delay. When Excusable Delay is not due solely to fraud, bad faith or active interference on the part of CITY or its agents, then CONTRACTOR shall be entitled only to a time extension and no further compensation for the delay.

ARTICLE 8

PAYMENTS AND COST OF THE WORK

- 8.1 In full consideration of the full and complete performance of the Work and all other obligations of the CONTRACTOR hereunder, the CITY shall pay to the CONTRACTOR a sum of money not to exceed the contract price which is defined to be the total of: (i) the CONTRACTOR's Direct Construction Cost, (ii) so much of the CONTRACTOR's General Conditions as may have been expended, (iii) so much of the approved amount of the Construction Contingency as may have been expended, and (iv) the CONTRACTOR's construction management fee. The contract price shall not exceed the sum shown in Article 1.0 as the Guaranteed Maximum Price, adjusted to take into account any approved Change Orders, and shall mean those costs necessarily incurred and paid by the CONTRACTOR in connection with the performance of all the work.
- 8.2 After completion and acceptance of the work, in the event that the Cost of the Work plus the CONTRACTOR's fee are less than the Guaranteed Maximum Price after giving effect to adjustments to the GMP made in accordance with this

Contract then the difference between the Cost of the Work plus the CONTRACTOR's Fee on the one hand and the GMP on the other hand is the "savings". Prior to making this calculation and for the purpose of this calculation only, the remaining balance of the CITY's money shall be deducted from the GMP. In the event that the CONTRACTOR's total approved expenditures for the project shall exceed the Guaranteed Maximum Price, the CONTRACTOR shall pay such excess from its own funds, and the CITY shall not be required to pay any amount that exceeds the GMP; and the CONTRACTOR shall have no claim against the CITY on account thereof.

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

8.3.1 SUBCONTRACTOR COSTS:

- (1) The CONTRACTOR's Direct Construction Cost, as generally described on Exhibit A, attached hereto, to be 100% performed by subcontractors selected in accordance with Article 11, below. Where the work is covered by unit prices contained in the Contract Documents or an applicable subcontract, the Cost of the Work shall be determined by application of unit prices to the quantities of items involved.
- (2) By mutual acceptance of a lump sum which subcontractor, CONTRACTOR and CITY acknowledge contains a component for overhead and profit, which shall be subject to the limitation of subcontractor fees set forth in Article 7.4.3. Whenever a change in subcontractor work is to be based on mutual acceptance of a lump sum, whether the amount is an addition, credit or no change-in-cost, CONTRACTOR shall submit an initial cost estimate obtained from the subcontractor and acceptable to CONSULTANT. The breakdown shall list the quantities and unit prices for materials, labor, equipment and other items of cost. Whenever a change involves more than one subcontractor and the change is an increase in the GMP, overhead and profit percentage of each subcontractor and CONTRACTOR, if applicable, shall be itemized separately.
- (3) If the subcontract provides that the subcontractor is to be paid on the basis of Cost of the Work plus a fee, the subcontractor's Cost of the Work shall be determined in the same manner as

CONTRACTOR's Cost of the Work, subject to the limitation on subcontractor's fees set forth in Article 7.4.3.

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

8.3.2 CONTRACTOR'S LABOR COSTS:

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

8.3.3 MATERIALS AND EQUIPMENT:

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

8.3.4 MISCELLANEOUS COSTS:

- (1) The cost, as documented by the CONTRACTOR's detailed receipts, of telephone, telegrams, postage, photographs, blueprints, office supplies, first aid supplies and related

miscellaneous costs reasonably incurred in direct support of the work at the project location.

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

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

- (3) The cost of obtaining and using any utility services required for the Work that are not paid directly by CITY, including fuel and sanitary services at the project site.
- (4) The cost of removal of debris from the site. The Project site, lay-down locations, and staging sites will be kept clear of all debris on a daily basis. All subcontracts shall require subcontractors to remove all debris daily created by their activities, and the CONTRACTOR shall exercise its best efforts to enforce such requirements or effect the removal of the debris of the subcontractors who fail in this regard. Provided, however, the CONTRACTOR shall not be required to remove debris created by the CITY's separate contractors except pursuant to Change Order procedures set forth herein.
- (5) The cost and expenses, actually sustained by the CONTRACTOR in connection with the work, of protecting and repairing adjoining property, if required, except to the extent that any such cost or expense is:
 - (a) the responsibility of the CONTRACTOR under Article 13, reimbursable by insurance or otherwise;
 - (b) Due to the failure of the CONTRACTOR to comply with the requirements of the Contract Documents with respect to insurance; or

- (c) Due to the failure of any officer of the CONTRACTOR or any of its representatives having supervision or direction of the Work to exercise good faith or the standard of care normally exercised in the conduct of the business of a general contractor experienced in the performance of work of the magnitude, complexity and type encompassed by the Contract Documents, in any of which events any such expenses shall not be included in CONTRACTOR's costs.
- (6) Federal, state, municipal, sales, use and other taxes required by law, as applicable to the Project, all with respect to service performed or materials furnished for the work, it being understood that none of the foregoing includes, federal, state or local income or franchise taxes.
- (7) All reasonable costs and expenditures necessary for the operation of the project job site office(s), including cost of field computer equipment and software.
- (8) The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR's employees, excluding travel time, incurred in discharge of duties connected with the work except for local travel to and from the site of the Work.
- (9) Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.
- (10) Deposits lost for causes other than CONTRACTOR's negligence, royalty payments and fees for permits and licenses.
- (11) Cost of premiums for additional bonds and insurance required because of changes in the Work.
- (12) Cost of special consultants, including, but not limited to, engineers, architects, testing laboratories, surveyors employed for services specifically related to the Work.
- (13) Any other expenses or changes incurred, with the prior written approval of the CONSULTANT, in the performance of the Work.

8.4 EXCLUSIONS TO COST OF THE WORK:

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

- 8.4.1 Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorship), general managers, estimators, purchasing and contracting agents, clerks and other personnel employed by CONTRACTOR as approved by the CONSULTANT whether at the site or in its principal or a branch office for general administration that are not specifically included in the General Conditions are to be considered administrative costs covered by CONTRACTOR's fee.
- 8.4.2 Other than those expenses authorized on Exhibit B expenses of CONTRACTOR's principal and branch offices.
- 8.4.3 Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.
- 8.4.4 Other overhead, general expense costs or charges of any kind and the cost of any item not specifically and expressly included in Article 8.3.
- 8.4.5 Costs in excess of the Guaranteed Maximum Price.
- 8.4.6 Entertainment and meal expenses, car allowances and charges of a personal nature.
- 8.4.7 Bonuses, pensions, profit sharing or other special labor charges not included in Article 8.3.2, above.
- 8.4.8 Any outside legal or City accounting fees incurred without prior written approval from the City Attorney, which approval is at the sole discretion of the City Attorney.

8.5 PROGRESS PAYMENTS:

- 8.5.1 CONTRACTOR may make Application for Payment for Work completed during the Project at intervals of not more than once a month. CONTRACTOR's application shall show a complete breakdown of the Project components, the percentages completed and the amount due in proportion to the percentages of the Work completed or, as to General Conditions, at cost. Each application shall be accompanied by such supporting evidence as may be reasonably required by CONSULTANT,

as more particularly described in Article 8.5.4 below. CONTRACTOR shall submit with each Application for Payment, an updated progress schedule acceptable to CONSULTANT either release of liens relative to the Work which is the subject of the Application or consent of the surety as to such payment.

When applicable, an Application for Payment shall be accompanied by a completed Statement Compliance in the form attached hereto as Form 3 M/WBE Participation Performance Report and Form 2 Statement of Compliance Prevailing Wage Rate. Each Application for Payment shall be submitted in triplicate to CONSULTANT for approval. CITY shall make payment to CONTRACTOR within thirty (30) days after approval by CONSULTANT of CONTRACTOR's Application for Payment and submission of an acceptable updated progress schedule.

- 8.5.2 Ten percent (10%) of all monies earned by CONTRACTOR shall be retained by CITY until Final Completion and acceptance by CITY in accordance with Article 8.9 hereof , except for the following items: General Conditions and self-performed Work performed on a cost reimbursement basis, if any.
- 8.5.3 After fifty percent (50%) of the Work has been completed, the PROJECT MANAGER may reduce the retainage to five percent (5%) of all monies previously earned and all monies earned thereafter. After ninety percent (90%) of the Work has been completed, the PROJECT MANAGER may reduce the retainage to two and one-half percent (2-1/2%) of all monies previously earned and all monies earned thereafter. Any reduction in retainage shall be in the sole discretion of the PROJECT MANAGER, shall be recommended by CONSULTANT, and CONTRACTOR shall have no entitlement to a reduction. Any interest earned on retainage shall accrue solely to the benefit of CITY.
- 8.5.4 CITY may withhold, in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:
 - 8.5.4.1 Defective CONTRACTOR or subcontractor Work not remedied.
 - 8.5.4.2 Claims filed or reasonable evidence indicating probable filing of claims by other parties against CONTRACTOR.
 - 8.5.4.3. Failure of CONTRACTOR to make payments properly to subcontractors or for material or labor.
 - 8.5.4.4. Damage to another contractor not remedied.
 - 8.5.4.5 Liquidated damages

8.5.5 The Schedule of Values, prepared in accordance with Exhibit A, shall list the cost of materials, the cost of labor, the cost of equipment and the cost of subcontractor Work separately for all the portions of the Work delineated. Each monthly Application for Payment shall be for a sum equal to (i) that portion of the CONTRACTOR's Direct Construction Cost equal to the percentage of the Work completed; plus (ii) an appropriate amount of the CONTRACTOR 's Fee as related to the percentage of the Work completed. The calculation of the percentage of the Work completed shall be in accordance with the approved Progress Schedule; provided, however, prior to the date of the Final Request, and unless subject to reduction under Article 8.5.3, the aggregate of the CONTRACTOR's Fee payments shall not exceed Ninety (90%) percent of the Contractor's Fee as stated in Article 8.3.

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

If the CONSULTANT, in its good faith judgement, determines that the portion of the GMP then remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents, no additional payments will be due to the CONTRACTOR hereunder unless and until the CONTRACTOR, at its sole cost, performs a sufficient portion of the Work so that such portion of the Guaranteed Maximum Price then remaining unpaid is determined by the CONSULTANT to be sufficient to so complete the Work.

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

8.7 CONTRACTOR shall remain solely liable for subcontractor's Work and for any unpaid laborers, material suppliers or subcontractors or subcontractor in the event it is later discovered that said Work is deficient or that any of said laborers, material suppliers or subcontractors did not receive payments due them on the Project.

- 8.8 Within thirty (30) days after Final Completion of the Work and acceptance thereof by the CITY, the CONTRACTOR shall submit a Final Request For Payment (Final Request) which shall set forth all amounts due and remaining unpaid to the CONTRACTOR (including the unpaid portion of the Contractor's Fee).
- 8.9 Except for the Contractor's Fee, the CONTRACTOR shall use the sums paid to it pursuant to this Article 8 solely for the purpose of performance of the Work and the construction, furnishing and equipping of the Work in accordance with the Contract Documents and payments of bills incurred by the CONTRACTOR in performance of the Work.
- 8.10 The CONTRACTOR shall promptly pay all bills for labor and material performed and furnished by its subcontractors, suppliers and materials providers, in connection with the construction, furnishing and equipping of the Work and the performance of the Work.
- 8.11 PROJECT CLOSEOUT:

At Final Completion of the Project, any remaining monies in the Direct Construction Cost and/or General Conditions shall vest in the CITY and shall reduce the Guaranteed Maximum Price.

ARTICLE 9

CONTINGENCIES AND ALLOWANCES:

9.0 THE CONSTRUCTION CONTINGENCY:

An agreed upon sum included in the GMP for the purpose of defraying the CONTRACTOR's actual approved expenditures due to unforeseen circumstances relating to the CONTRACTOR's Direct Construction Costs, or to cover other costs arising during construction, such as: anticipated costs that exceed a particular line item within the Estimated Contractor's Direct Construction Cost; increases in subcontractor costs due to insolvency, preferred subcontractor cost differentials generated by CONTRACT selection of subcontractors (PROJECT MANAGER's designation of preferred subcontractors shall be subject to the provisions of Article 11.2); correction of defective Work; payment of deductible amounts for loss covered by Builder's Risk; and any other cost agreed to mutually in writing between the PROJECT MANAGER and CONTRACTOR.

Any costs to be applied against the contingency must first be approved by the CONSULTANT and the CITY in writing. The CONTRACTOR will be required to furnish documentation evidencing the expenditures charged to this Contingency

prior to release of funds by the CITY. At Final Completion of the Project, any remaining monies in the Construction Contingency shall vest in the CITY. The Guaranteed Maximum Price shall be reduced in the amount of the Construction Contingency remaining monies, if any.

ARTICLE 10

DISCOUNTS, REBATES AND REFUNDS

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

ARTICLE 11

SUBCONTRACTS AND PURCHASE ORDERS

- 11.1 Unless waived in writing for good cause, by the CONSULTANT or PROJECT MANAGER, the CONTRACTOR must obtain competitive pricing and subcontract, in compliance with the requirements of this Article 11, for One Hundred Percent (100%) of the Contractor's Direct Construction Cost required under this Contract. Subcontracts and purchase orders, involving amounts not in excess of Twenty Five Thousand Dollars (\$25,000) may be awarded without the prior approval of the CONSULTANT. All other subcontracts and purchase orders shall be awarded according to the following procedure:

The CONTRACTOR shall prepare for CONSULTANT'S and PROJECT MANAGER'S review and approval a list of subcontractors and suppliers for each bid who meet the CONTRACTOR'S schedule of minimum requirements. The CONTRACTOR shall obtain bids from a minimum of three (3) such subcontractors for each subcontract, when available. After receiving such bids, the CONTRACTOR 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, the CONTRACTOR shall

contract solely in its own name and behalf, and not in the name or behalf of the CITY, with the specified subcontractor or supplier. The subcontract shall provide that the subcontractor shall perform its portion of the Work in accordance with all applicable provisions of this Contract and the other Contract Documents; that the subcontractor shall be bound to the CONTRACTOR, to the same extent as the CONTRACTOR is bound to the CITY, to name the CITY as an additional insured on its comprehensive general liability insurance; that the subcontractor shall provide an insurance certificate evidencing the same; that the CONTRACTOR 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. The CONTRACTOR 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 CONTRACTOR, 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 CONTRACTOR 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 amount of the preferred subcontractor cost differential or the Contingency Allowance. All subcontracts shall, so far as applicable, contain unit prices and any other feasible formula for use in determination of the cost of changes in the Work.

- 11.2 If the CITY shall designate as the selected subcontractor or supplier a bidder whose bid exceeds that of the bidder recommended by the CONTRACTOR, 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 CONTRACTOR 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 amount of the preferred subcontractor cost differential.

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

ARTICLE 12

INSURANCE

12.1 Without limiting any of the other obligations or liability of the Contractor, Contractor shall provide, pay for, and maintain in force throughout the contract term and any extension term(s), the insurance coverages set forth in this section. The Contractor shall furnish original certificates to the City's Procurement Director and receive approval by the City's Risk Manager, prior to the commencement of any work. Any sub-contractor used by the contractor shall supply such similar insurance required of the contractor. Such certificates shall name the City as an Additional Insured.

Notice of cancellation and /or restriction; should the policy be cancelled before the expiration date, notice will be delivered to the City of Hollywood.

Coverage shall be provided by a company of companies authorized to transact business in the State of Florida and the company must maintain a minimum rating of A-, V11 as assigned by the A.M. Best Company.

12.2 COMPREHENSIVE GENERAL LIABILITY:

Commercial General Liability Insurance naming the City as an Additional Insured with not less than the following limits:

| | |
|---------------------------------|-------------|
| General Aggregate | \$1,000,000 |
| Products-Comp/Op Aggregate | \$1,000,000 |
| Personal and Advertising injury | \$1,000,000 |
| Each Occurrence | \$1,000,000 |
| Damages to rented premises | \$50,000 |

12.3 COMMERCIAL AUTOMOBILE LIABILITY

Commercial Automobile Liability Insurance with not less than the following limits and naming the City as an Additional Insured

| | |
|-----------------------|-----------|
| Combined Single Limit | \$500,000 |
|-----------------------|-----------|

Coverage shall include contractual liability assumed under this agreement, owned, hired and non-owned vehicles

12.4 WORKER'S COMPENSATION INSURANCE

Worker's Compensation Insurance covering the contractor and the contractor's employees not less than the following limits:

| | |
|-----------------------|-----------|
| Each Accident | \$100,000 |
| Disease Policy Limit | \$500,000 |
| Disease Each Employee | \$100,000 |

12.5 PROFESSIONAL LIABILITY

Recognizing that the work governed by this contract involves the furnishing of advice or services of a professional nature, the Contractor shall purchase and maintain, throughout the life of the contract, Professional Liability Insurance which will respond to damages resulting from any claim arising out of the performance of professional services or any error or omission of the Contractor arising out of the work governed by this contract.

The minimum limits of liability shall be:

\$1,000,000 Each Claim / \$2,000,000

12.6 BUILDER'S RISK INSURANCE REQUIREMENTS

The Contractor 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 13

INDEMNIFICATION

- 13.1 The CONTRACTOR shall indemnify and hold harmless the CITY, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of this Contract. These provisions shall survive the expiration or earlier termination of this Contract. 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 Florida Statutes 768.28, as amended from time to time.

ARTICLE 14

PERFORMANCE AND PAYMENT BOND AND QUALIFICATIONS OF SURETY

- 14.1 Within ten (10) calendar days of being notified of the award, CONTRACTOR shall furnish a Performance Bond and a Payment Bond containing all the provisions of the Performance Bond and Payment Bond attached hereto as Forms 4 and 5.
- 14.1.1 Each Bond shall be in the amount of one hundred percent (100%) of the GMP guaranteeing to CITY the completion and performance of the Work covered in such Contract as well as full payment if all suppliers, material providers, laborers, or subcontractors employed pursuant to this project. Each Bond shall be with a surety company which is qualified pursuant to Article 14.2.
- 14.1.2 Each Bond shall continue in effect for one year after final completion and acceptance of the Work with liability equal to one hundred percent (100%) of the Contract sum, or an additional bond shall be conditioned that CONTRACTOR will, upon notification by CITY, correct any defective or faulty Work or materials which appear within one year after final completion of the Contract.
- 14.1.3 Pursuant to the requirements of Section 255.05(1)(a), Florida Statutes, as may be deemed amended from time to time, CONTRACTOR shall ensure that the bond(s) referenced above shall be recorded in the public records of Broward County and provide the CITY Project Manager with evidence of such recording.

14.2 QUALIFICATIONS OF SURETY:

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

14.2.2 The Surety Company shall hold a current certificate of authority as acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, revised September 1, 1973 (31 DFR Section 223.10, Section 223.111). Further, the Surety Company shall provide CITY with evidence satisfactory to CITY, that such excess risk has been protected in an acceptable manner. 14.2.3

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

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

ARTICLE 15

INDEPENDENT CONTRACTOR

- 15.1 In performing, the CONTRACTOR shall be deemed an independent contractor and not an agent or employee of the CITY. The CONTRACTOR shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Contract, unless the Contract Documents give other specific instructions concerning these matters.

ARTICLE 16

PROJECT RECORDS

- 16.1 CITY or its designee shall have the right to inspect and copy the books and records and accounts of CONTRACTOR and all major subcontractors including but not limited to books, records, correspondence, instructions, drawings, receipts, payment records, vouchers, and memoranda which relate in any way to the Project, and to any claim for additional compensation made by CONTRACTOR which relate to the Project and to any claim for additional compensation made by CONTRACTOR. CONTRACTOR shall preserve and make available to CITY all financial records, supporting documents, statistical records and any other documents which relate to the Project and to any claim for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Statute), if applicable, and, if the Public Records Act is not applicable, for a period of three (3) years following final completion of the Project. During the Project and for the appropriate record retention period, CONTRACTOR shall provide CITY access to its books and records at CONTRACTOR's usual place of business upon seventy-two (72) hours written notice. If any audit has been initiated and audit findings have not been resolved at the end of the end of the retention period of three (3) years, whichever is longer, the books, records and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act (Chapter 119, FL Statute) is determined by CITY to be applicable to CONTRACTOR's records, CONTRACTOR shall comply with all requirements thereof. 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.

- 16.1.1 CONTRACTOR's records shall include, but not be limited to accounting records (hard copy, as well as computer readable data), written policies and procedures; subcontractor files (including proposals of successful and unsuccessful bidders and bid recaps), surety files and bond company files, original estimates, estimating work sheets, correspondence, change order files (including, but not limited to, documentation covering

negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends and any other supporting evidence deemed necessary by the CITY to substantiate charges related to this Contract (all of the foregoing hereinafter referred to as records).

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

16.2 If an audit inspection or other examination by the City or the CITY's representatives in accordance with this Article, disclose overcharges (of any nature) by the CONTRACTOR to the CITY in excess of one (1%) percent of the total billings, the cost of the CITY's audit (whether performed by the CITY or outside auditors) shall be reimbursed or paid to the CITY by the CONTRACTOR. Any adjustments and/or records shall be made within a reasonable amount of time (not to exceed thirty (30) days) from presentation of the CITY findings to the CONTRACTOR.

ARTICLE 17

SURVEY

17.1 As required by the technical specifications (or, in absence of technical specification requirements concurrent with the Final Request for Payment), the CONTRACTOR shall furnish final surveys in electronic media utilizing CAD Standards as designated by the PROJECT MANAGER, in addition to three (3) sets of hard copy, showing the exact locations of all structures and underground site Services installed by CONTRACTOR, including all water, sewer, gas, fuel, telephone, security and electric lines and main, and locations of all easements for such Services. Such surveys shall be prepared by a licensed Florida surveyor who shall certify that the Work is installed and erected entirely upon the Project Site and within the building restriction lines, if any, and does not overcharge or encroach upon any easement or right-of-way of others.

ARTICLE 18

CONTRACTOR'S RESPONSIBILITY FOR THE WORK

- 18.1 CONTRACTOR shall accept full responsibility for the Work against all loss or damage of whatsoever nature sustained until final acceptance by CITY, and shall promptly repair any damage done from any cause whatsoever.
- 18.2 CONTRACTOR shall be responsible for all materials, equipment and supplies pertaining to the Project. In the event any such materials, equipment and supplies are lost, stolen, damaged or destroyed prior to final acceptance by CITY; CONTRACTOR shall replace it without cost to CITY. CONTRACTOR shall be responsible to protect all materials, equipment and supplies, keeping them free from deterioration, weathering, rusting or other action detrimental to the materials.
- 18.3 CITY reserves the right to award other contracts in connection with this Project. CONTRACTOR shall afford other persons or contractors reasonable opportunity for the introduction and storage of materials and the execution of Work under such separate contracts. CONTRACTOR shall properly connect and coordinate this Work with the Work of any other persons or contractors that might contract separately with CITY.
- 18.4 If any part of CONTRACTOR's Work depends on proper execution or results upon the Work of any other persons, CONTRACTOR shall inspect and promptly report to CONSULTANT any defects in such Work that render it unsuitable for such proper execution and results. CONTRACTOR's failure to so inspect and report shall constitute an acceptance of the other person's Work as fit and proper for the reception of CONTRACTOR's Work, except as to defects which may develop in other CONTRACTOR'S Work after the execution of CONTRACTOR's Work.
- 18.5 CONTRACTOR shall conduct its operations and take all reasonable steps to coordinate the prosecution of the Work so as to create no interference or impact on any other contractor on the site. Should such interference or impact occur, and the CONTRACTOR did not take reasonable steps, the CONTRACTOR shall be liable to the affected contractor for the cost of such interference or impact.
- 18.6 To ensure the proper execution of subsequent Work, CONTRACTOR shall inspect the Work already in place and shall at once report to CONSULTANT any discrepancy between the executed Work and the requirements of the Contract Documents.

ARTICLE 19

OCCUPATIONAL HEALTH AND SAFETY

- 19.1 In compliance with Chapter 442, Florida Statutes, any toxic substance listed in Section 38F-41.03, Florida Administrative Code, delivered as a result of this Project must be accompanied by a Material Safety Data Sheet (MSDS) which may be obtained from the manufacturer. The MSDS must include the following information:
- 19.1.1 The chemical name and the common name of the toxic substance.
- 19.1.2 The hazards or other risks in the use of the toxic substance, including:
- (1) The potential for fire, explosion, corrosion, and reaction;
 - (2) The known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the toxic substance; and
 - (3) The primary routes of entry and symptoms of overexposure.
- 19.1.3 The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the toxic substances, including appropriate emergency treatment in case of overexposure.
- 19.1.4 The emergency procedure for spills, fire, disposal, and first aid.
- 19.1.5 A description in lay terms of the known specific potential health risks posed by the toxic substance intended to alert any person reading this information.
- 19.1.6 The year and month, if available, that the information was compiled and the name, address, and emergency telephone number of the manufacturer responsible for preparing the information.
- 19.2 The CONTRACTOR agrees that it shall not knowingly transport to, use, generate, dispose of, or install at the project site any Hazardous Substance, (as defined in Section 20.5), except in accordance with applicable Environmental Laws. Further, in performing the Work, the CONTRACTOR shall not knowingly cause any release of hazardous substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws.

- 19.2.1 In the event the CONTRACTOR encounters on the project site any Hazardous Substance, or what the CONTRACTOR reasonably believes to be a Hazardous Substance, and which is being introduced to the Work, or exists on the Project Location, in violation of any applicable Environmental Laws, the CONTRACTOR shall immediately stop Work in the area affected and report the condition to the CONSULTANT and PROJECT MANAGER if in fact a Hazardous Substance has been encountered and has not been rendered harmless.
- 19.2.2 The PROJECT MANAGER through the CONSULTANT may direct the CONTRACTOR by utilization of CITY'S Allowance Account funds to remediate and/or render harmless the Hazardous Substance in accordance with an applicable permits then in existence, but the CONTRACTOR shall not be required to remediate and/or render harmless the Hazardous Substance absent such direction. If the CONTRACTOR is not so directed, CONTRACTOR shall not be required to resume Work in any area affected by the Hazardous Substance until such time as the Hazardous Substance has been remediated and/or rendered harmless.
- 19.2.3 For purposes of this Contract, the term "Hazardous Substance" shall mean and include, but shall not be limited to, any element, constituent, chemical, substance, compound or mixture, which are defined in or included under or regulated by any local, state, or federal law, rule, ordinance, by-law, or regulation pertaining to environmental Response, Compensation and Liability Act of 1980 (CERCLA), The Resource Conversation and Recovery Act (RCRA), The Toxic Substances Control Act (TSCA), The Clean Water Act (CWA), the Clean Air Act (CAA), and The Marine Protection Research and Sanctuaries Act (MPRSA), The Occupational Safety and Health Act (OSHA), The Superfund Amendments and Reauthorization Act of 1986(SARA), or other state superlien or environmental clean-up or disclosure statues including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as Environmental Laws). It is the CONTRACTOR's responsibility to comply with Article 20 based on the law in effect at the time its services are rendered and to comply with any amendments to those laws for all services rendered after the effective date of any such amendments.

ARTICLE 20

PERMITS, LICENSES AND IMPACT FEES

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

Payment of all such permits and licenses, and impact fees shall be made by the CONTRACTOR as part of the General Conditions within the GMP and shall include all Federal, State, and Municipal application, permit, and surcharge fees. The CONTRACTOR shall be responsible for paying any and all fees, penalties, and fines imposed as a result of the CONTRACTOR's failure to obtain such permits and licenses prior to the commencement of the work and shall pay such costs by deducting them from their fee.

- 20.2 Occupational Licenses must be in effect as required by Florida Statutes 205.065, and must be submitted within ten (10) days of execution of this Contract.
- 20.3 It is CONTRACTOR's responsibility to have and maintain appropriate Certificate(s) of Competency, valid for the Work to be performed and valid for the jurisdiction in which the Work is to be performed for all persons working on the Project for whom a Certificate of Competency is required.
- 20.4 Impact fees levied by any municipality shall be paid by CONTRACTOR. CONTRACTOR shall be reimbursed only for the actual amount of the impact fee levied by the municipality as evidenced by an invoice or other acceptable documentation issued by the municipality. Reimbursement to CONTRACTOR in no event shall include profit or overhead of CONTRACTOR.

ARTICLE 21

PERSONNEL

- 21.1 All personnel used or employed by the CONTRACTOR in the performance of the Work shall be qualified by training and experience to perform their assigned tasks. At the request of the CITY or the CONSULTANT, the CONTRACTOR shall not use in the performance of the Work any personnel deemed by the CITY or the CONSULTANT to be incompetent, careless, or unqualified to perform the work assigned to that person him, or otherwise unsatisfactory to the CITY.
- 21.2 The CONTRACTOR agrees that in the performance of the Work called for by this Contract, it will employ only such labor, and engage subcontractors that employ only such labor, as will not delay or interfere with the speedy and lawful progress of the Project, and as will be acceptable to and work in harmony with all other workers employed on the Project site or on any other building, structure, or other improvement which the CONTRACTOR or any other contractor may then be erecting or altering on behalf of the CITY.
- 21.3 The CONTRACTOR agrees that it shall not employ any labor that will interfere with labor harmony at the Project site or with the introduction and storage of materials and the execution of Work by other contractors or by subcontractors.
- 21.4 CONTRACTOR shall furnish the CONSULTANT on request, resumes of CONTRACTOR's key personnel involved in the day-to-day Work on the Project.
- 21.5 PREVAILING WAGE REQUIREMENT:
- 21.5.1 The CONTRACTOR 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 payment 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 invitation for bids 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.

- 21.5.2 Upon commencement of work, the CONTRACTOR and all of his/her SUB-CONTRACTORS shall post a notice in a prominent place at the Work site stating the requirements of this section.
- 21.5.3 If any questions should arise concerning the applications of this Section, which are not specifically addressed, the CITY may, but is not required to, rely on rules, regulations, practices, administrative rulings and court decisions governing applications of the Davis-Bacon Act.
- 21.5.4 CONTRACTOR and SUBCONTRACTORS shall submit to the CITY on a monthly basis. Payroll sheets, which have been certified under oath using Form 2, by CONTRACTOR and/or SUBCONTRACTORS as to their accuracy and compliance with the provisions of this Section. The certified payroll sheets shall contain the following: name and address of each employee; his/her current classification; rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid. Such records shall be maintained by the CONTRACTOR and his/her SUBCONTRACTORS for a period of at least (3) years following completion of the Work.
- 21.5.5 The CITY may withhold, or cause to be withheld from the CONTRACTOR, 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 the CONTRACTOR'S workers and his/her subcontractor's workers to determine whether this section is being complied with. If the CONTRACTOR or his/her 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 the CONTRACTOR, 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 the CONTRACTOR'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 the CONTRACTOR and its sureties shall be liable to the CITY for all excess costs incurred by the CITY.
- 21.5.6 The CONTRACTOR shall insert in any subcontracts such language as is necessary to require all of his/her SUBCONTRACTORS to comply with the requirements of this section. The CONTRACTOR shall be responsible for noncompliance by any of his/her SUBCONTRACTORS. This section shall be deemed part of any

contract entered into between the CONTRACTOR and any of his/her SUBCONTRACTORS.

ARTICLE 22

CONTRACTOR'S WARRANTIES

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

22.2 The CONTRACTOR further represents and warrants:

That it is financially solvent, able to pay its debts as they mature, and is possessed of sufficient working capital to perform this Contract; that is able to furnish the Materials, and Services; that is experienced in and competent to perform the Work contemplated by this Contract; and it is qualified to do the Work herein and is authorized to do business in the State of Florida.

That the CONTRACTOR holds a license, permit or other special license to perform the services included in this Contract, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license.

The CONTRACTOR agrees that the Work shall be performed in a good and professional manner, free from defects in materials and execution, and that all Materials shall be new and approved by or acceptable to the CONSULTANT, except as otherwise expressly provided for in the Contract Documents.

ARTICLE 23

DEFECTIVE WORK

- 23.1 CONSULTANT shall have the authority to reject or disapprove work which CONSULTANT finds to be defective. If required by CONSULTANT, CONTRACTOR shall promptly either correct all defective work or remove such defective work and replace it with nondefective work. CONTRACTOR shall pay all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel. Such costs shall be included in the GMP.
- 23.2 Should CONTRACTOR fail or refuse to remove or correct any defective work or to make any necessary repairs in accordance with the requirements of the Contract Documents within the time indicated in writing by CONSULTANT, CITY shall have the authority to cause the defective work to be removed or corrected, or make such repairs as may be necessary at CONTRACTOR's expense. Any expense incurred by CITY in making such removals, corrections or repairs shall be paid for out of any monies due or which may become due to CONTRACTOR and deducted from the GMP, or may be charged against the Performance Bond. In the event of failure of CONTRACTOR to make all necessary repairs promptly and fully, CITY may declare a default.
- 23.3 If, within one (1) year after the date of final completion or such longer period of time as may be prescribed by the terms of any applicable special warranty required by the Contract Documents, any of the work is found to be defective or not in accordance with the Contract Documents, CONTRACTOR, after receipt of written notice from CITY, shall promptly correct such defective or nonconforming work within the specified by CITY without cost to CITY, to do so. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation, which CONTRACTOR might have under the Contract Documents.
- 23.4 Failure to reject any defective work or material shall not in any way prevent later rejection when such defect is discovered, or obligate CITY to final acceptance.
- 23.5 The CONTRACTOR shall (I) replace any part of the work that fails to conform with the requirements of this Contract that appear during progress of the work on the Project; (II) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from the time of Final Completion of the Work or portions thereof hereunder or within such longer period of time as may be set forth in the Contract Documents or as may be required by law; and (III) replace, repair or restore any parts of the Project or furniture, fixtures, equipment or other items placed therein (whether by the CITY or any other part) that are injured or damaged by any such parts of the Work that

do not conform to the requirements of this Contract or are due to defects in the Work. The provisions of this Article 23 shall not apply to corrective work attributable solely to the acts or omissions of any separate contractor or subcontractor of the CITY unless the CONTRACTOR is acting in such capacity or capacities. The cost of the CONTRACTOR of performing any of its obligations under this Article 23 shall be within the Guaranteed Maximum Price. The CONTRACTOR's responsibility to make repairs and redo work under this Article 23 is in addition to the CONTRACTOR's responsibility to the CITY for any other damages of any kind for which the CONTRACTOR would be legally responsible.

- 23.6 If the CITY and the CONTRACTOR deem it inexpedient to require the correction of work damaged or not performed in accordance with the Contract Documents, an equitable deduction from the Contract Price and the Guaranteed Maximum Price shall be made by agreement between the CONTRACTOR and the CITY. Until such settlement, the CITY may withhold such sums as the CITY deems just and reasonable from monies, if any, due the CONTRACTOR. If no monies are held by the CITY, reimbursement shall be made to the CITY within thirty (30) days by the CONTRACTOR.
- 23.7 The CONTRACTOR's express warranty herein shall be in addition to, and not in lieu of, any other warranties or remedies the CITY may have under this Contract, at law, or in equity for defective Work.

ARTICLE 24

SIGNAGE

- 24.1 Any requirements for a project sign shall be as set forth within the Technical Specifications section.
- 24.2 All construction signage located at the project location shall be subject to the prior written approval of the CONSULTANT and PROJECT MANAGER. The CONTRACTOR recognizes that all signage may be disallowed, in the CONSULTANT's and PROJECT MANAGER's sole discretion, and that existing signage or advertising on construction field offices, trailers, construction fences, and other construction elements or aids, may be required to be masked or deleted at no cost or expense to the CITY. Such signage will be considered an overhead expense pursuant to Article 8.4 and if allowed shall not be included within the Cost of the Work.

ARTICLE 25

PUBLIC ENTITY CRIMES ACT

- 25.1 CONTRACTOR represents that the execution of this Contract will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with CITY, and may not transact any business with CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted 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.
- 25.2 In addition, to the foregoing, CONTRACTOR 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 CONTRACTOR has been placed on the convicted vendor list.

ARTICLE 26

OWNERSHIP OF CONTRACT DOCUMENTS

- 26.1 Drawing, specifications, designs, models, photographs, reports, surveys, and other data submitted by the CONTRACTOR provided in connection with this Agreement are and shall remain the property of the CITY whether the Project for which they are made is completed or not. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by CONTRACTOR shall become the property of CITY and shall be delivered by CONTRACTOR to CITY within seven (7) days of termination of the Contract Documents by either party. Any compensation due to Contractor shall be withheld until all documents are received as provided herein.

ARTICLE 27

CONTRACTOR'S REPRESENTATIVE

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

ARTICLE 28

CITY RIGHT TO TERMINATE CONTRACT

- 28.1 If CONTRACTOR fails to begin the Work within the (10) calendar days after the Project initiation Date, or fails to perform the Work with sufficient workers and equipment or with sufficient materials to insure the prompt completion of the Work, or shall perform the Work unsuitably, or cause it to be rejected as defective and unsuitable, or shall discontinue the prosecution of the Work pursuant to the accepted schedule or it's CONTRACTOR shall fail to perform any material term set forth in the Contract Documents or if CONTRACTOR shall become insolvent or be declared bankrupt, or commit any act of bankruptcy or insolvency, or shall make an assignment for the benefit of creditors, or from any other cause whatsoever shall not carry on the Work in an acceptable manner, PROJECT MANAGER may give notice in writing to CONTRACTOR and its Surety of such delay, neglect or default, specifying the same.

If CONTRACTOR, within a period of ten (10) calendar days after such notice, shall not proceed in accordance therewith, then CITY may upon written certificate from CONSULTANT of the fact of such delay, neglect or default and CONTRACTOR's failure to comply with such notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Project site and take the prosecution of the Work out of the hands of CONTRACTOR, and appropriate or use any or all materials and equipment that are an integral part of the Work on the Project site as may be suitable and acceptable. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Project is completed.

In addition CITY, may enter into an agreement for the completion of the Project according to the terms and provisions of the Contract Documents, or use such other methods as in CITY'S sole opinion shall be required for the completion of the Project according to the terms and provisions of the Contract Documents, or use such other methods as in CITY'S sole opinion shall be required for the completion of the Project in an acceptable manner. All damages, costs and charges incurred by CITY, together with the costs of completing the Project, shall

be deducted from any monies due or which may become due to CONTRACTOR. In case the damages and expenses so incurred by CITY shall exceed the unpaid balance, then CONTRACTOR shall be liable and shall pay to CITY the amount of said excess.

- 28.2 If after notice of termination of CONTRACTOR's right to proceed, it is determined for any reason that CONTRACTOR was not in default, the rights and obligations of CITY and CONTRACTOR shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause as set forth in Section 28.3 below.
- 28.3 This Contract may be terminated for convenience in writing by CITY upon ten- (10) days written notice to CONTRACTOR (delivered by certified mail, return receipt requested) of intent to terminate and the date on which such termination becomes effective. In such case, CONTRACTOR shall be paid for all work executed and expenses incurred prior to termination in addition to termination settlement costs reasonably incurred by CONTRACTOR relating to commitments which had become firm prior to the termination. Payment shall include reasonable profit for work and/or services performed. No payment shall be made for profit for work and/or services that have not been performed.
- 28.4 Upon receipt of Notice of Termination pursuant to Section 28 or 28.3 above, CONTRACTOR shall promptly discontinue all affected work unless the Notice of Termination directs otherwise and deliver or otherwise make available the CITY all data, drawings, specifications, reports, estimates, summaries and such other information as may have been required by the Contract Documents whether completed or in process.

ARTICLE 29

CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT

- 29.1 If CONSULTANT fails to review and approve or state in writing reasons for rejection of any Application for Payment within twenty (20) days after it is properly presented, or if CITY fails either to pay CONTRACTOR within thirty (30) days after presentation by CONSULTANT of any sum certified by CONSULTANT, or to notify CONTRACTOR and CONSULTANT in writing of any objection to the Application for Payment, then CONTRACTOR may give written notice to CITY and CONSULTANT of such delay, neglect or default, specifying the same. If CITY or CONSULTANT (where applicable), within a period of ten (10) calendar days after such notice shall not remedy the delay, neglect, or default upon which the notice is based, then CONTRACTOR may stop work or terminate this Contract and recover from CITY payment for all work executed and reasonable expenses sustained therein plus reasonable termination expenses. Any objection made by CITY to an Application for Payment shall be

submitted to CONSULTANT in accordance with the provisions of Article 30 hereof.

ARTICLE 30

RESOLUTION OF DISPUTES

- 30.1 To prevent all disputes and litigation, it is agreed by the parties hereto that CONSULTANT shall decide all questions, claims, difficulties and disputes of whatever nature which may arise relative to the technical interpretation of the Contract Documents and fulfillment of this Contract as to the character, quality amount value of any work done and materials furnished, or proposed to be done or furnished under or by reason of, the Contract Documents and CONSULTANT's estimates and decisions upon all claims, questions, difficulties and disputes shall be final and binding to the extent provided in Article 30. Any claim, question, difficulty or dispute which cannot be resolved by mutual agreement of PROJECT MANAGER and CONTRACTOR shall be submitted to CONSULTANT in writing within twenty-one (21) calendar days. CONSULTANT shall notify PROJECT MANAGER and CONTRACTOR in writing of CONSULTANT's decision within twenty-one (21) calendar days from the date of the submission of the claim, question, difficulty or dispute, unless CONSULTANT requires additional time to gather information or allow the parties to provide additional information. All nontechnical administrative disputes shall be determined by the PROJECT MANAGER pursuant to the time periods provided herein. During the pendency of any dispute and after a determination thereof, CONTRACTOR, CONSULTANT, and PROJECT MANAGER shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction.
- 30.2 In the event the determination of a dispute under this Article is unacceptable to any of the parties hereto, the party objecting to the determination must notify the other party in writing within ten (10) days of receipt of the written determination. The notice must state the basis of the objection and must be accompanied by a statement that any Contract Price adjustment claimed is the entire adjustment to which the objecting party has reason to believe it is entitled to as a result of the determination. Within sixty (60) days after Final Completion of the Work, the parties shall participate in mediation to address all objections to any mediator mutually agreed upon by the parties. Should any objection not be resolved in mediation, the parties retain all their legal rights and remedies provided under State law. If a party objecting to a determination, fails to comply in strict accordance with the requirements of this Article, said party specifically waives all of its rights provided hereunder, including its rights and remedies under State law.

30.3 This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue sites, and shall be governed by the laws of the State of Florida. By entering into this Contract, CONTRACTOR and CITY hereby expressly waive any rights either party may have to trial by jury of any civil litigation related to, or arising out of the Project. CONTRACTOR, pursuant to Article 11 of this Agreement, shall specifically bind all subcontractors to the provisions of this Contract.

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

ARTICLE 31

NOTICES

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

For Contractor:

For City:

Shiv Newaldass, Director
Department of Development Services
2600 Hollywood Boulevard
Hollywood, FL 33020

And to Consultant:

<Consultant Name>

<Consultant Address>

ARTICLE 32

HURRICANE PRECAUTIONS

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

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

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

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

ARTICLE 33

OTHER TERMS & CONDITIONS

- 33.1 Third Party Beneficiaries: Neither CONTRACTOR nor CITY intend to directly or substantially benefit a third party by this Contract. Therefore, the parties agree that there are no third party beneficiaries to this Contract and that no third party shall be entitled to assert a claim against either of them based upon this Contract.
- 33.2 Conflicts: Neither CONTRACTOR nor its employees shall have to hold any continuing or frequently recurring employment or contractual relationship that is

substantially antagonistic or incompatible with CONTRACTOR's loyal and conscientious exercise of judgement related to its performance under this Contract. CONTRACTOR agrees that none of its employees shall, during the term of this Contract, serve as an adverse or hostile witness against CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her opinion, which is adverse or prejudicial to the interests of CITY in any such pending or threatened legal or administrative proceeding. The limitations of this Article shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding regarding this Contract. CONTRACTOR agrees to prohibit its subcontractors, by written contract, from having any conflicts as within the meaning of this Article.

- 33.3 **Joint Preparation:** Preparation of this Contract has been a joint effort of CITY and CONTRACTOR and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.
- 33.4 **Drug Free Workplace:** It is a requirement of CITY that it enter into contracts only with firms that certify the establishment of a drug-free workplace. Execution of this Contract by CONTRACTOR shall also serve, as CONTRACTOR's required certification that it either has or that it will establish a drug-free workplace.
- 33.5 **Assignment:** The CONTRACTOR shall not assign this Contract or subcontract it as a whole without the written consent of the CITY; nor shall the CONTRACTOR assign any monies due or to become due to it hereunder, without the previous written consent of the CITY.
- 33.6 **Waiver:** No consent or waiver, express or implied, by either party to this Contract to or of any breach or default by the other in the performance of any obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other of future breach or default by such party hereunder, nor deemed to be a modification of this Contract. Failure on the part of any party hereto to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder, provided however this section shall not alter or amend the notice provisions set forth in the Construction Documents including but not limited to, in Article 6. Inspection by, payment by or tentative approval or acceptance by the CITY, or the failure of the CITY to perform any inspection hereunder shall not constitute a final acceptance of the Work or any part thereof and shall not release the CONTRACTOR from any of its obligations hereunder.
- 33.7 **Construction of Terms:** Unless the context clearly intends to the contrary, words singular or plural in number shall be deemed to include the other and pronouns

having masculine or feminine gender shall be deemed to include the other. The term "person" shall be deemed to include an individual, corporation, unincorporated organization, partnership, trust, government and governmental agency or subdivision, as the context shall require.

- 33.8 Captions: The captions used for the Articles of this Contract are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of the intent of this Contract or any Article hereof.
- 33.9 Entire Agreement; Severability; Amendments: These Contract Documents incorporate and include all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understanding concerning the subject matter of this Contract that are not contained in the Contract Documents. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document in accordance with Article 7. In the event any provision of the Contract Documents shall be found by a court of competent jurisdiction to be invalid or otherwise unenforceable, the remainder of this Contract shall not be affected thereby and each remaining provision, term, covenant or condition of the Contract Documents shall continue to be effective.
- 33.10 Counterparts: This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

THE CITY OF HOLLYWOOD, FLORIDA
Party of the First Part

By: _____
Josh Levy, Mayor

(SEAL)
ATTEST:

Patricia A. Cerny, MMC
CITY CLERK

CONTRACTOR
Party of the Second Part

WHEN THE CONTRACTOR IS AN INDIVIDUAL:

Signed, sealed and delivered in the presence of:

(SEAL)

(Witness)
(Signature of individual)

(SEAL)

(Witness)
(Signature of individual)

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

Signed, sealed and delivered in the presence of:

Witness

(Name of Firm)

(SEAL)

(Witness)
(Signature of individual)

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

(Witness)

(Name of Firm)

(Witness)

BY: _____
(Partner)

-

WHEN THE CONTRACTOR IS A CORPORATION:
ATTEST:

Secretary

(Correct Name of Corporation)

(SEAL)

BY: _____
(President)

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

Douglas R. Gonzales, City Attorney

BY: _____
Cintya Ramos, Director of
Financial Services

LIST OF EXHIBITS AND FORMS

Exhibits:

- A. Direct Construction Costs
- B. General Condition Costs
- C. Prevailing Wage Rates
- D. List of Contract Documents
- E. City Purchasing Ordinance 38.47

Forms:

- 1. Certificate of Substantial Completion
- 2. Statement of Compliance - Prevailing Wage Rate
- 3. Performance Bond
- 4. Payment Bond

EXHIBIT E

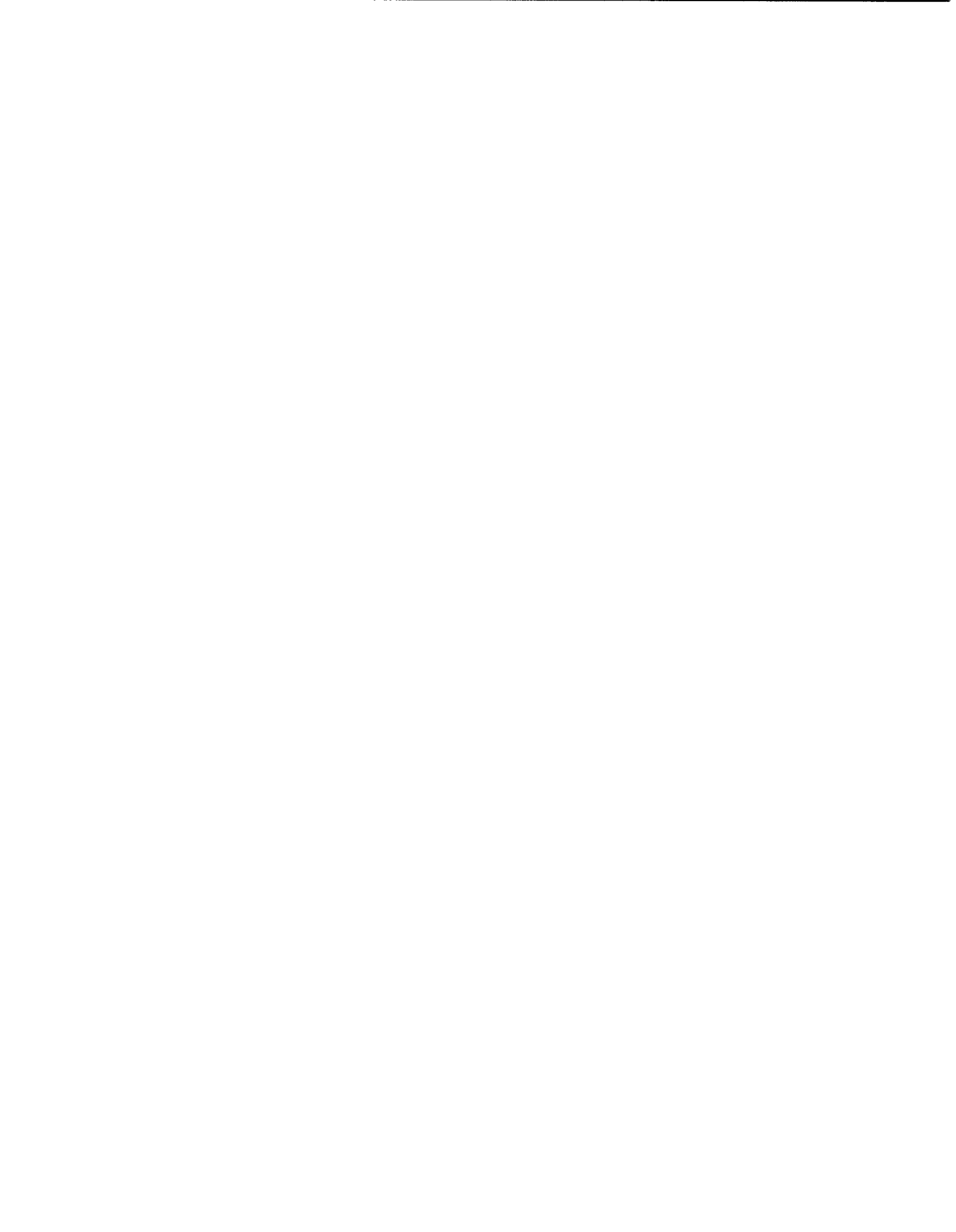


EXHIBIT E

(A) **CHANGE ORDER** means changes, due to unanticipated conditions or developments, made to an executory contract which do not substantially alter the character of the work contracted for, and which do not vary so substantially from the original specifications as to constitute a new undertaking. Such changes must reasonably and conscientiously be viewed as being in fulfillment of the original scope of the contract rather than as departing therefrom. Further, such changes, when viewed against the background of the work described in the contract and the language used in the specifications, must clearly be directed either to the achievement of a more satisfactory result or the elimination of work not necessary to the satisfactory completion of the contract.

(B) (1) *City Manager's authority.* Subject to the restrictions contained in division (2) below, the City Manager is hereby authorized to approve and initiate work on the following types of change orders determined in his judgment, to be in the public interest, as follows:

(a) All change orders decreasing the cost of the contract to the city which do not materially alter the character of the work contemplated by the contract.

(b) A change order, consisting of one or more changes permitted by subsection (A) above, where the net change, taking into account both increases and decreases in cost, increases the cost of the contract to the city, by an amount not in excess of \$50,000.

(c) On a unit price contract, all change orders consisting of unit quantity increases at the unit price bid, which do not exceed 15% of the original unit quantity for each line item.

(2) Notwithstanding the provisions of division (1) above, the City Manager is not authorized to approve a change unit order under either of the following conditions:

(a) Where the sum of all change orders issued under the contract exceeds \$100,000 or 10% of the original contract amount, whichever is greater.

(b) Where the cumulative effect of all approved change orders will result in the extension of a contract completion date by more than 60 calendar days.

(C) All change orders that the City Manager is not authorized to approve must be formally approved by the City Commission before work may be authorized to begin; and no claim against the city for extra work in furtherance of such change order shall be allowed unless said prior approval has been obtained, notwithstanding any other provision, contractual or otherwise.

(D) Change orders shall not artificially be distributed or divided so as to bring the amount within the approval level of the City Manager and any such proposed change order shall include within it all logically connected work required to be done at the time of the proposal.

(E) Notwithstanding the foregoing provisions, the following change orders relating to utility construction projects or design and construction management projects are authorized to be processed in the following manner:

(1) Construction changes which require timely and expedited action in the field and which do not exceed the total monetary value of \$5,000 may be authorized by the Manager of Engineering Support Services for utility construction projects and by the Senior Project Manager

or Assistant Director for the Department of Public Services for design and construction management projects. For construction projects which include services provided by a construction manager engaged by the city, the Manager of Engineering Support Services or the Senior Project Manager or Assistant Director for the Department of Public Services must obtain the construction manager's written concurrence that a construction change is necessary and that such change is consistent with the project's original scope of services. A construction change as previously described, may only occur when, prior to the commencement of any work, a written change order is executed by the individuals authorized herein and the construction contractor.

(2) Construction changes which require timely and expedited action in the field and which exceed \$5,000 but do not exceed \$10,000 may be authorized by the Director of Public Services. For construction projects which include services provided by a construction manager engaged by the city, the Director of Public Services must obtain the construction manager's written concurrence that a construction change is necessary and that such change is consistent with the project's original scope of services prior to the execution of a change order. A construction change, as previously described, may only occur when, prior to the commencement of any work, a written change order is executed by the individuals authorized herein and the construction contractor.

(3) Construction changes which require timely and expedited action in the field and which exceed \$10,000 but do not exceed \$50,000, and upon the recommendation of the Director of Public Services, may be authorized by the City Manager or his designated representative. For construction projects which include services provided by a construction manager engaged by the city, the Director of Public Services must obtain the construction manager's written concurrence that a construction change is necessary and such change is consistent with the project's original scope of services prior to the execution of a change order. A construction change, as previously described, may only occur when,

(4) All change orders authorized in accordance with this division (E) are subject to the written confirmation or approval as to the availability of sufficient funding for each change order by the official authorizing such change orders.

(F) On a monthly basis, all change orders authorized in accordance with subdivision (B)(1) which exceed 10% of the original contract amount and all change orders authorized in accordance with division (E) shall be presented to the City Commission, for informational purposes.

('72 Code, § 11½-42) (Ord. O-75-18, passed 2-19-75; Am. Ord. O-89-11, passed 3-1-89; Am. Ord. O-93-33, passed 7-21-93; Am. Ord. O-95-19, passed 4-4-95; Am. Ord. 0-98-09, passed 5-20-98; Am. Ord. 0-99-33, passed 10-20-99)