

**CITY OF HOLLYWOOD, FLORIDA
COMMUNITY REDEVELOPMENT AGENCY (CRA)
CONSTRUCTION MANAGEMENT AT RISK SERVICES**



PHASE II

CONSTRUCTION SERVICES

**UNDERGROUNDING OF OVERHEAD UTILITIES AND
STREETSCAPE BEAUTIFICATION AT SR A1A FROM
HOLLYWOOD BLVD. TO SHERIDAN STREET**

BCRA-12-029

**HOLLYWOOD FLORIDA COMMUNITY REDEVELOPMENT
AGENCY
1948 HARRISON STREET
HOLLYWOOD, FLORIDA 33020**



**CONSTRUCTION MANAGEMENT AT RISK
SERVICES CONTRACT**

PHASE II

CONSTRUCTION SERVICES

This Contract made this 21 day of October in the year 21, by and between the Hollywood Florida Community Redevelopment Agency (CRA), a municipal corporation of the State of Florida ("OWNER") and Burkhardt Construction Inc., a corporation authorized to do business in the State of Florida("CMAR").

RECITALS:

Whereas, OWNER desires to construct **new paver sidewalks, landscaping, street lighting, irrigation, hardscape, conversion of overhead lines to underground, traffic signals, and site furniture; and**

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

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

Whereas, CMAR will provide professional construction management services for the **Undergrounding of Overhead Utilities and Streetscape Beautification at SR A1A from Hollywood Blvd. to Sheridan Street** project as directed by the DIRECTOR.

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

Construction Agreement
Construction Management at Risk for the
**Undergrounding of Overhead Utilities and Streetscape Beautification at SR A1A
from Hollywood Blvd. to Sheridan Street**
Hollywood, Florida

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ARTICLE 1
SCOPE OF WORK/SERVICES

1.0 It is the intent of CRA to describe in the CONTRACT DOCUMENTS a functionally complete PROJECT (or part thereof as applicable) to be constructed in accordance with the CONTRACT DOCUMENTS. Any WORK, materials or equipment that may reasonably be inferred from the CONTRACT DOCUMENTS as being required to produce the intended result shall be supplied by CMAR, whether or not specifically called for by the CONTRACT DOCUMENTS. When words that 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. CRA shall have no duties other than those duties and obligations expressly set forth within the CONTRACT DOCUMENTS.

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

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

- a. The CMAR is professionally qualified to act as a construction manager for the PROJECT and has, and shall maintain, any and all licenses, permits and other authorizations necessary to act as a construction manager for the PROJECT;
- b. The CMAR is financially solvent and has sufficient working capital to perform its obligations under the CONTRACT DOCUMENTS;
- c. The CMAR has become familiar with the PROJECT site and the local conditions under which the PROJECT is to be designed, constructed and operated, and it will review the Consultant's Design and Construction documents and provide comments in accordance with the CONTRACT DOCUMENT requirements. If the PROJECT involves modifications to any existing structure(s) or other man-made feature(s) on the PROJECT site, the

CMAR has reviewed all as-built and record drawings, plans and specifications of which CMAR has been informed by OWNER and thoroughly inspected the existing structure(s) and man-made feature(s) to identify existing deficiencies and ascertain the specific locations of pertinent structural components. Claims by CMAR resulting from CMAR's failure to familiarize itself with the site or pertinent documents shall be deemed waived;

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

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

1.3 PRICE GUARANTEES.

- a. Upon execution of Exhibit "D", the CMAR guarantees that the sum of the actual cost of the WORK, the CMAR's CONSTRUCTION CONTINGENCY and the GENERAL CONDITIONS COSTS shall not exceed the amount set forth in the agreed upon GMP. All costs and expenses that would cause this sum to exceed the GMP shall be borne by the CMAR unless adjusted by the OWNER/PROJECT MANAGER through a CHANGE ORDER.
- b. Upon execution of Exhibit "D", the CMAR guarantees that the actual cost of the WORK/services, and the GENERAL CONDITIONS COSTS shall not exceed the GMP for each such category and that all costs and expenses that would cause any of these individual categories to exceed the GMP for each such category in the agreed upon GMP shall be borne by the CMAR unless adjusted by the OWNER/PROJECT MANAGER through a CHANGE ORDER.
- c. Upon execution of Exhibit "D", the CMAR certifies that all factual unit costs supporting the GMP proposal are accurate, complete and current at the time of negotiations, and that any other factual unit costs that may be furnished to the OWNER in the future to support any additional amounts that may be authorized will also be accurate and complete. Payments to the CMAR shall be reduced if the OWNER determines such amounts were originally included due to the materially inaccurate, incomplete, or non-current factual unit costs.

ARTICLE 2 DEFINITIONS

- 2.0 CITY: City of Hollywood.
- 2.1 CHANGE ORDER: A written document that complies with Section 38.48 of the City of Hollywood Procurement Code.
- 2.2 CRA COMMISSION: The CRA Commission Board of the CITY of Hollywood, its successors and assigns.
- 2.3 CRA OR OWNER: The Hollywood, Florida Community Redevelop Agency, a Florida Municipal Corporation. In all respects, CRA'S performance is pursuant to the CRA'S position as the owner of a construction project. In the event the CRA exercises its regulatory authority as a governmental body, the exercise of such authority and the enforcement of any rules, regulations, laws and ordinances shall be deemed to have occurred pursuant to CRA's authority as a governmental body, and shall not be attributable in any manner to the CRA as a party to this CONTRACT.
- 2.4 CONSTRUCTION MANAGER AT RISK ("CMAR"): The prime contractor that provides construction management at risk services under this CONTRACT, including but not limited to preparation of cost estimates, constructability reviews, value engineering and assistance in systems life cost cycle analysis, scheduling, bidding and submission of a GMP, as defined below, for construction and construction management. Upon execution of this CONTRACT, the CMAR shall serve, from that point forward, as the General Contractor.
- 2.5 CONSULTANT: The individual, partnership, corporation, association, joint venture, or any combination thereof, consisting of properly registered professional architects and/or engineers, that has entered into an agreement to provide professional services to the OWNER for the PROJECT.
- 2.6 CONSTRUCTION CONTINGENCY: An established sum included in the GMP , which shall be in amount that the parties believe, in their best judgment, is reasonable to cover construction related costs that were not specifically foreseeable or quantifiable as of the date the GMP was established, including but not limited to: correction of minor defects or omissions in the WORK not caused by the CMAR's negligence; cost overruns due to the default of any SUBCONTRACTOR or Supplier; minor changes caused by unforeseen or concealed site conditions; minor changes in the WORK not involving adjustment in the GMP or extension of the completion date and not inconsistent with the approved final CONTRACT DOCUMENTS, including Plans and Specifications; and written FIELD ORDERS_ agreed upon by the CRA for requested changes to the WORK . The use of the CONSTRUCTION CONTINGENCY by CMAR requires prior written approval of the PROJECT MANAGER.
- 2.7 CONSTRUCTION FEE: The fee negotiated by CRA and CMAR that includes profit and off-site general and administrative costs (overhead).

- 2.8 **CONTRACT:** The part or section of the CONTRACT DOCUMENTS addressing the rights and duties of the parties, including but not limited to CONTRACT TIME and liquidated damages. This document is the CONTRACT.
- 2.9 **CONTRACT DOCUMENTS:** The PROJECT MANUAL (including this CONTRACT and its Exhibits, Attachments and Forms), drawings and specifications, the Request For Qualifications and/or Proposals, as applicable, and CMAR's response as negotiated and accepted by the CRA, any Addenda to the PROJECT MANUAL, the record of the contract award by the CRA, 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 that are collectively referred to as the CONTRACT DOCUMENTS as referenced in the attached Exhibit "D".
- 2.10 **CONTRACT PRICE:** CONTRACT PRICE is the total of the following: (i) CMAR's direct construction costs; (ii) so much of the CMAR's GENERAL CONDITIONS COSTS as may have been expended; (iii) so much of the approved amount of the CONSTRUCTION CONTINGENCY as may have been expended with the concurrence of the CRA; and (iv) CMAR'S CONSTRUCTION FEE.
- 2.11 **CONTRACT TIME:** The time between the PROJECT initiation date specified in the Notice to Proceed and final completion, including any milestone dates thereof established in the CONTRACT DOCUMENTS, as may be amended by any CHANGE ORDER.
- 2.12 **CRITICAL PATH METHOD SCHEDULE ("CPM"):** The CMAR prepared schedule setting forth the plan and control of the PROJECT, which includes but is not limited to detailing the sequence and duration of operations and construction services to be provided depicting the interrelationship of the WORK elements required to complete the PROJECT. The critical path should include the longest sequence of activities/items for the PROJECT, and the schedule shall establish the minimum length of time for accomplishment of the end event of the PROJECT (the "Progress Schedule").
- 2.13 **DIRECTOR:** The Executive Director of the CRA having the authority and responsibility for management of the PROJECT authorized under the CONTRACT DOCUMENTS.
- 2.14 **FIELD ORDER:** A written order consistent with the CRA's Procurement Code.
- 2.15 **FINAL COMPLETION:** The date certified by the CONSULTANT and PROJECT MANAGER in the Final Certificate of Payment on which all conditions and requirements of any permits and regulatory agencies have been satisfied, the documents (if any) required to be provided by CMAR have been received by the PROJECT MANAGER, and to the best of CONSULTANT'S and PROJECT

MANAGER's information and belief, has been fully completed in accordance with the terms and conditions of the CONTRACT DOCUMENTS.

- 2.16 GENERAL CONDITIONS COSTS: The job site overhead and indirect PROJECT costs that are not attributable to specific WORK activities but occur during completion of the PROJECT.
- 2.17 GUARANTEED MAXIMUM PRICE: The term "Guaranteed Maximum Price" or "GMP" shall mean the sum certain agreed to between the CRA and the CMAR and set forth in the Phase II Construction Services Contract as the maximum total PROJECT price that the CMAR guarantees not to exceed for the construction of the PROJECT for all services within the Pre-Construction and Construction Services Agreements.
- 2.18 INSPECTOR: An employee of the CRA/City of Hollywood assigned by the DIRECTOR to make observations of WORK performed by CMAR.
- 2.19 MATERIALS: Materials incorporated in the PROJECT, or used or consumed in the performance of the Scope of Services.
- 2.20 NOTICE TO PROCEED: One or more written notices to CMAR authorizing the commencement of the Scope of Services.
- 2.21 OWNER'S CONTINGENCY: A sum established by the OWNER, to be included in the GMP, subject to adjustment to include any buyout or sales tax PROJECT savings, which may be utilized by the OWNER for OWNER requested changes, additive bid alternates and deductive credits, differing/unforeseen existing conditions.
- 2.22 PLANS AND/OR DRAWINGS: The official graphic representations of the PROJECT which are a part of the CONTRACT DOCUMENTS.
- 2.23 PROJECT: The construction, alteration or repair, and all services and incidents thereto of a CRA facility as contemplated and budgeted by the CRA as described in the CONTRACT DOCUMENTS, including the WORK described herein.
- 2.24 PROJECT MANAGER: An employee of the CRA, expressly designated as PROJECT MANAGER in writing by the DIRECTOR, who is the representative of the CRA concerning the CONTRACT DOCUMENTS.
- 2.25 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.
- 2.26 SCHEDULE OF VALUES ("SOV"): The list of line items that details the agreed upon costs (e.g., labor, materials, etc.) for the PROJECT. The SOV shall itemize the CONTRACT PRICE into individual items to show how the entire CONTRACT PRICE is allocated to all of the PROJECT'S WORK. The

SOV shall be based upon the PROJECT'S negotiated GMP and will be used to determine payments to the CMAR.

- 2.27. SUBCONTRACTOR: A person, firm or corporation having a direct contract with the CMAR, including one who furnishes material worked to a special design according to the PROJECT MANUAL for this work, but not including a person, firm or corporation merely furnishing material not so worked.
- 2.28. SUBSTANTIAL COMPLETION: That date on which, as certified in writing by CONSULTANT, the WORK/Scope of Services, or a portion thereof designated by the PROJECT MANAGER in his/her sole discretion, is at a level of completion in substantial compliance with the CONTRACT DOCUMENTS such that all conditions of permits and regulatory agencies have been satisfied and the OWNER or its designee can enjoy beneficial use or occupancy and can use or operate the WORK in all respects for its intended purpose(s).
- 2.29. SURETY: The surety company which is bound by the performance bond and payment bond with and for CMAR who is primarily liable, and which surety company is responsible for CMAR's acceptable and timely performance of the WORK under the CONTRACT DOCUMENTS and for the payment of all debts pertaining thereto in accordance with Section 255.05, Florida Statutes, as amended from time to time. All surety companies shall be authorized to conduct suretyship business under Florida law and have a Florida Resident Agent.
- 2.20. TRADE CONTRACTORS: Construction contractors who are retained by CMAR and who specialize in providing and/or installing specific elements of the overall construction requirements of the PROJECT.
- 2.31. WORK: The totality of the obligations, including construction and other services required by the CONTRACT DOCUMENTS, including all labor, materials, equipment and service provided or to be provided by CMAR to fulfill CMAR's obligations. The WORK may constitute the whole or a part of the PROJECT.
- 2.32. WRITTEN NOTICE: Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent to the last known business address by registered mail, other traceable delivery service, email, facsimile, or text message.

ARTICLE 3 CMAR's RESPONSIBILITIES

- 3.1 The CMAR shall provide WORK, including but not limited to the construction services described in Exhibits "A" through "G", this CONTRACT and the CONTRACT DOCUMENTS.
- 3.2 CMAR shall cause all materials and other parts of the WORK to be readily available as and when required or needed for or in connection with the construction, furnishing and equipping of the improvements.

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

3.4 SUPERINTENDENCE AND SUPERVISION:

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

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

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

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

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

3.6 DIFFERING SITE CONDITIONS:

In the event that during the course of the WORK, CMAR encounters an underground utility that was not shown on the CONTRACT DOCUMENTS; or subsurface or concealed conditions at the PROJECT site which differ materially from those shown on the CONTRACT DOCUMENTS and from those ordinarily encountered and generally recognized as inherent in work of the character called for in the CONTRACT DOCUMENTS; or unknown physical conditions of the PROJECT site, of an unusual nature, which differ materially from that ordinarily encountered and generally recognized as inherent in work of the character called for in the CONTRACT DOCUMENTS, CMAR, without disturbing the conditions and before performing any work affected by such conditions, shall, no later than 9:00 a.m. the next day after their discovery, notify CONSULTANT and PROJECT MANAGER in writing of the existence of the aforesaid conditions. CONSULTANT shall, within one business day after receipt of CMAR's written notice, investigate the site conditions identified by the CMAR. If, in the sole opinion of CONSULTANT, the conditions do materially so differ and cause an increase or decrease in CMAR's cost of or the time required for the performance of any part of the WORK, whether or not charged as a result of the conditions, CONSULTANT shall recommend an equitable adjustment to the CONTRACT PRICE, or the CONTRACT TIME, or both, which is subject to written approval by the PROJECT MANAGER. If CONSULTANT and CMAR cannot agree on an adjustment in the CONTRACT PRICE or CONTRACT TIME, the adjustment shall be determined by the CONSULTANT in accordance with Article 30. No request by CMAR for an equitable adjustment or change to the CONTRACT PRICE or CONTRACT TIME under this provision shall be allowed unless the CMAR has given written notice within 30 days from when the CMAR knew or should have known of such conditions, and the written notice shall detail the facts relating to such request.

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

3.7 SUBMITTALS:

- 3.7.1 CMAR shall provide submittals (including but not limited to shop drawings, product samples, product data, warranties, closeout submittals, reports and photographs) as required by the CONTRACT DOCUMENTS. The submittals serve as CMAR's coordination documents and demonstrate the suitability, efficiency, technique of manufacture, installation requirements,

detailing and coordination of specified products, components, assemblies and systems, and evidence compliance or noncompliance with the CONTRACT DOCUMENTS. CMAR's submittals are not part of the CONTRACT DOCUMENTS but are documents prepared and utilized by the CMAR to coordinate the WORK.

- 3.7.2 Within ten calendar days after the date of the first NOTICE TO PROCEED, CMAR shall provide to CONSULTANT a list of all submittals required for permitting. Within 20 calendar days after the date of the first NOTICE TO PROCEED, CMAR shall submit to CONSULTANT (with a copy to the PROJECT MANAGER) a comprehensive list of required items and shall identify the critical items. Approval of this list (the Submittal Schedule) by CONSULTANT shall in no way relieve CMAR from providing complete submittals as required by the CONTRACT DOCUMENTS and providing services, products, materials, equipment, systems and assemblies fully in accordance with the CONTRACT DOCUMENTS.
- 3.7.3 After the approval of the submittal schedule, CMAR shall promptly request submittals from the various manufacturers, fabricators, and suppliers.
- 3.7.4 CMAR shall thoroughly review and check the submittals and provide them to the CONSULTANT in accordance with the requirements for such submittals specified in Division 1 of the specifications. Each submittal and required copy shall indicate CMAR's review of that submittal in the form required by the CONTRACT DOCUMENTS.
- 3.7.5 CMAR shall maintain a Submittal Log which shall include, at a minimum, the date of each submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection.
- 3.7.6 If the submittals indicate deviations or departures from the requirements of the CONTRACT DOCUMENTS, CMAR shall make specific mention of such in its letter of transmittal. Whether CMAR does so or not shall not relieve CMAR from its responsibility to comply with the CONTRACT DOCUMENTS.
- 3.7.7 CONSULTANT shall have no duty to review partial or incomplete submittals except as may be provided otherwise within the CONTRACT DOCUMENTS.
- 3.7.8 Provided such submittals conform to the approved submittal schedule, CONSULTANT shall review and approve submittals as expeditiously as possible, within ten calendar days from the date received, unless said submittals are rejected by CONSULTANT for material reasons or the submittals are of substantial building systems that require more time for thorough review. CONSULTANT's approval of submittals will be general and shall not relieve CMAR of responsibility for the accuracy of such drawings, nor for the proper fitting and construction of the WORK, nor for the furnishing of materials or WORK required by the CONTRACT

DOCUMENTS. No WORK for which submittals are required shall be performed until said submittals have been approved by CONSULTANT. Approval shall not relieve CMAR from responsibility for errors or omissions on the submittals or for compliance with the requirements of the CONTRACT DOCUMENTS.

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

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

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

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

3.8 FIELD LAYOUT OF THE WORK AND RECORD DRAWINGS:

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

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

Project Record Documents required elsewhere in the PROJECT MANUAL and specifications, shall be delivered to the PROJECT MANAGER.

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

3.8.4 CMAR shall deliver to CONSULTANT for delivery to the CRA 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 CRA's employees and agents to maintain and operate any equipment provided as part of the WORK.

3.9 INSPECTION AND TESTING:

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

3.9.1.1 Should the CONTRACT DOCUMENTS, CONSULTANT's instructions, any laws, ordinances, or public authority require any of the WORK to be specially tested or approved, CMAR shall update the CONSULTANT on a weekly basis by providing a two week look-ahead schedule denoting all activity to be performed and highlighting those activities that need testing and approval. If the testing or approval is to be made by an authority other than CRA, timely notice shall be given of the date fixed for such testing or approval. Testing shall be made promptly, and where practicable, at the source of supply. If any of the WORK that requires approval is covered up without approval or consent of CONSULTANT, it must, if required by CONSULTANT, be uncovered for examination and properly restored to the satisfaction of the CONSULTANT at CMAR's expense and deducted from the CONSTRUCTION FEE at no cost to the CRA.

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 CMAR. If such WORK is found to be in accordance with the CONTRACT DOCUMENTS, CRA shall pay the cost of reexamination and replacement by means of a CHANGE ORDER. If such WORK is not in accordance with the CONTRACT DOCUMENTS, CMAR shall correct same at its own expense and such cost shall be deducted from the CMAR's fee at no additional cost to CRA.

3.9.2 No inspector, employee or agent of the CRA/CITY shall have the authority to permit deviations from nor to modify any of the provisions of the

CONTRACT DOCUMENTS, nor to delay the CONTRACT by failure to inspect the materials and WORK with reasonable promptness without the written permissions or instructions of CONSULTANT and PROJECT MANAGER.

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

3.10 TAXES/OWNER DIRECT PURCHASE OPTION:

- 3.10.1 CMAR shall pay all applicable sales, consumer, use and other taxes required by law. CMAR is responsible for reviewing the pertinent state statutes and regulations involving state taxes and complying with all requirements.
- 3.10.2 Taxes shall be a reimbursable cost under Section 8.3.4(6), except income and franchise taxes. All such taxes that are required as of the time of CONTRACT execution shall be included in the GMP.
- 3.10.3 CRA may exercise its right to implement an OWNER Direct Purchase Option / Sales Tax Savings Program ("ODP") with respect to this CONTRACT. This Article describes the procedures by which this program will be implemented and administered if the CRA subsequently determines to do so. Pursuant to these procedures, CRA may order and pay for all such purchases, as well as take title to all such purchases, directly from the supplier or manufacturer.
- 3.10.4 At the time the GMP is established, but not later than concurrently with submission of the required SCHEDULE OF VALUES, CRA, CONSULTANT, and CMAR shall endeavor to identify the specific items and the estimated costs of the potential "ODP". The GMP must include the total cost of the WORK, including the cost of the ODP items and the associated sales tax for the items.
- 3.10.5 Based upon review of the CONTRACT DOCUMENTS, CMAR shall recommend potential ODP items to the PROJECT MANAGER and CONSULTANT. After reviewing CMAR's recommendations and the applicable CONTRACT DOCUMENTS, and after consultation with CONSULTANT, PROJECT MANAGER shall make the final determination as to which items, if any, will be purchased as ODP items.
- 3.10.6 After PROJECT MANAGER identifies the ODP items, CMAR shall prepare a standard purchase order requisition on a purchase order form provided by CRA, to specifically identify the materials that

CRA has elected to purchase directly. The purchase order requisition form shall include the following information:

Project Name;
CONTRACTOR Name;
Manufacturer/Supplier Name;
Name, address, telephone number and contact person for Manufacturer/ Supplier;
Manufacturer or brand model or specification number of the item;
The quantity and unit of measure needed as estimated by CONTRACTOR;
The price quoted by the Manufacturer/Supplier for the materials or equipment identified,
All sales tax associated with the price quote;
Delivery address;
Delivery dates;
Delivery instructions;
Vendor identification number; and
Mailing address for invoices.

- 3.10.7 All purchase order requisitions prepared by CMAR must be sent to CRA's, with a copy to the CONSULTANT, and they must be expressly approved by PROJECT MANAGER before a purchase order is issued to the applicable manufacturer/supplier. In preparing the standard purchase order requisition, CMAR shall include all terms and conditions which may have been negotiated by the CMAR with the manufacturer/supplier (e.g., payment terms, warranties, delivery schedules, etc.). To the extent any such terms or conditions differ from the standard terms and conditions included in CRA's standard purchase order requisition form, such differences must be specifically identified to CRA by the CMAR prior to submitting the requisition for review by the City Attorney's Office and Chief Procurement Officer. Upon the additional terms or conditions being reviewed and accepted, CMAR shall submit the required purchase order requisition. All shipping expenses associated with any ODP item (including all freight insurance) must be included in the cost of that item and not charged as a separate item.
- 3.10.8 All purchase order requisitions prepared by CMAR must be submitted to the PROJECT MANAGER and CONSULTANT no less than 21 calendar days prior to the need for the ordering of the subject ODP item in order to provide sufficient time for its review.
- 3.10.9 CMAR is responsible for ensuring that all necessary attachments to the purchase order requisition (e.g., shop drawings, details, specification sheets, etc.) required to properly place the order with the Manufacturer/Supplier, have been attached to the purchase order requisition at the time it is sent to PROJECT MANAGER for review. Once approved by the DIRECTOR or PROJECT

MANAGER, PROJECT MANAGER shall forward the completed purchase order requisition, with all attachments, to the Manufacturer/Supplier, with a copy to CMAR.

- 3.10.10 The CRA shall take title to ODP items from the manufacturer/supplier at the time of purchase or delivery, as applicable, according to the terms of purchase and delivery. The CRA assumes the risk of loss with respect to ODP items in that it bears the economic burden of insurance for loss or damage, and directly enjoys the economic benefit of proceeds of such insurance as an additional named insured.
- 3.10.11 As ODP items are delivered to the job site, CMAR shall visually inspect all shipments from manufacturer/suppliers, and approve the vendor's shipping record for material delivered. CMAR shall assure that each delivery of an ODP item is accompanied by the appropriate documentation to adequately identify the purchase order number against which the purchase is made and to confirm that the correct type and quantity of the ODP item has been delivered in the appropriate condition. CMAR's approval will include a legible signature (printed) of the person who inspected the delivered items, dated as of the date of delivery.
- 3.10.12 All invoices from the manufacturer/supplier must be directed and sent to PROJECT MANAGER at the Department of Design and Construction Management by CMAR. It is the responsibility of CMAR to review all such invoices and confirm in writing their accuracy in relation to the delivery ticket and the ODP items actually delivered before forwarding them to PROJECT MANAGER for processing and payment. CMAR shall obtain from the manufacturer/supplier all releases, warranties and other necessary supporting documentation that may be required by CRA, and shall insure that all such releases, warranties and supporting documentation have been attached to the invoice before forwarding the invoice to PROJECT MANAGER for processing and payment. CMAR is responsible for obtaining from the Manufacturer/Supplier all operating information and manuals, spare parts and all other items required to be provided by the manufacturer/supplier. CMAR shall work with OWNER to insure risk of loss during delivery of the items.
- 3.10.13 CMAR shall review all such items for compliance with the requirements of the CONTRACT DOCUMENTS and shall organize and deliver all such items to PROJECT MANAGER as part of its requirements for achieving SUBSTANTIAL COMPLETION of the WORK.
- 3.10.14 CMAR, PROJECT MANAGER and CONSULTANT shall review, on a quarterly basis, the ODPs that have been delivered and paid for the previous quarter. CMAR shall prepare a log of ODPs showing

the amount equal to the value of any ODPs, including sales taxes paid for by CRA. At a time of its choosing, but prior to completion of the WORK, CRA shall prepare an appropriate CHANGE ORDER for CMAR's execution, which reduces the GMP by the total cost paid by CRA for the ODPs, together with the amount of sales tax savings that have been realized as a result of CRA's ODPs. Further, the CHANGE ORDER shall allocate to the OWNER's CONTINGENCY any sales tax savings.

- 3.10.15 Nothing in this Article relieves CMAR from its responsibility for the requisitioning of the order, scheduling, coordinating, insuring, delivery, unloading, storage, installation, repair, delays during delivery, operation and warranty of all ODP items. All such obligations remain the responsibility of CMAR and have been paid for by CRA as a part of the CONTRACT PRICE (which always included these responsibilities and obligations) as fully as if there had been no CRA ODP purchase whatsoever.

ARTICLE 4 PRIORITY OF PROVISIONS

- 4.1 The CONTRACT DOCUMENTS shall be interpreted so as to eliminate inconsistencies or conflicts, but in the event of any conflict, requirements for greater quantity and/or more expensive WORK shall govern such interpretation.
- 4.2 In case of conflicts between the provisions of this CONTRACT, any ancillary documents executed contemporaneously herewith or prior hereto, the priority of the documents shall be as follows:
1. Approved CHANGE ORDERS, Addenda or Amendments
 2. CONTRACT
 3. Specifications (quality) and Drawings (location and quantity)
 4. Supplemental Conditions
 4. General Terms and Conditions
 5. Request for Qualifications and/or Proposals
 6. GMP proposal
- 4.3 The organization of the specifications into divisions and sections and the arrangement of drawings shall not control CMAR in dividing the WORK among subcontractors or in establishing the extent of the WORK to be performed by any trade. The organization of the specifications and the arrangement of the drawings is for the convenience of CMAR and is not intended to relieve CMAR from its obligation to conduct a complete study of the drawings, specifications and addenda for the purpose of directing and coordinating the various subcontractors and suppliers as to their respective responsibilities.

ARTICLE 5
CONSULTANT'S AUTHORITY

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

ARTICLE 6
TIME FOR PERFORMANCE

- 6.1 CONTRACT TIME:
 - 6.1.1 CMAR shall be instructed to commence the WORK by written NOTICES TO PROCEED issued by the PROJECT MANAGER, although only one NOTICE TO PROCEED may be required for any given project. The first NOTICE TO PROCEED will not be issued until CMAR's submission to PROJECT MANAGER of all required documents and after execution of the CONTRACT by both parties. Preliminary WORK, including submission of a PROJECT schedule, SOV, submittals, submittal schedule, and other documents required for permitting, and performance of WORK that does not require permits, shall be submitted within ten calendar days after the date of the NOTICE TO PROCEED. Receipt of all

permits by CMAR is a condition precedent to the issuance of a second NOTICE TO PROCEED for all other WORK. The WORK to be performed pursuant to the second NOTICE TO PROCEED shall be commenced within ten calendar days of the PROJECT Initiation Date specified in the second NOTICE TO PROCEED.

6.1.2 Time is of the essence throughout this CONTRACT. The PROJECT shall be SUBSTANTIALLY COMPLETED within 913 calendar days from the date of the second NOTICE TO PROCEED. The total PROJECT shall be completed and ready for final payment within 60 calendar days from the date certified by CONSULTANT as the date of SUBSTANTIAL COMPLETION in accordance with Article 8. – Add portion pertaining for the FPL portion

6.1.3 LIQUIDATED DAMAGES AND ADDITIONAL CONDITIONS FOR FINAL COMPLETION.

A. LIQUIDATED DAMAGES FOR SUBSTANTIAL COMPLETION.

1. The CMAR shall pay the OWNER the sum of Two Thousand (\$2,000.00) Dollars per day for each and every calendar day of unexcused delay in achieving SUBSTANTIAL COMPLETION beyond the date set forth in the CONTRACT DOCUMENTS for SUBSTANTIAL COMPLETION of each phase, if phased, or the PROJECT, if not phased.
2. OWNER and CMAR acknowledge that any sums due and payable by the CMAR shall be payable, not as a penalty, but as liquidated damages representing a reasonable estimate of delay damages, inconvenience, additional overhead and costs likely to be sustained by the OWNER as estimated at the time of executing the CONTRACT DOCUMENTS. If the OWNER reasonably believes in its discretion that SUBSTANTIAL COMPLETION will be delayed, the OWNER shall be entitled, but not required, to withhold from any amounts otherwise due the CMAR an amount then believed by the OWNER to be adequate to recover liquidated damages applicable to such delays. If and when in the OWNER's discretion the CMAR overcomes the delay in achieving the SUBSTANTIAL COMPLETION or any part thereof for which the OWNER has withheld payment, the OWNER shall promptly release to the CMAR those funds withheld, but no longer applicable, as liquidated damages.
3. Partial use or occupancy of the PROJECT may not result in the Scope of Services/WORK being deemed substantially completed, and such partial use or occupancy may not be evidence of SUBSTANTIAL COMPLETION.

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

B. LIQUIDATED DAMAGES FOR FINAL COMPLETION.

1. If the CMAR fails to achieve FINAL COMPLETION within 60 days of the date of SUBSTANTIAL COMPLETION, the CMAR shall pay the OWNER the sum of Two Thousand (\$2,000.00) Dollars per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth for completion of the WORK or PROJECT.
 2. Any sums due and payable hereunder by the CMAR shall be payable, not as a penalty, but as liquidated damages representing a reasonable estimate of delay damages, inconvenience, additional overhead and costs likely to be sustained by the OWNER, as estimated at or before the time of executing this contract. When the OWNER reasonably believes that FINAL COMPLETION will be inexcusably delayed, the OWNER shall be entitled but not required to withhold from any amounts otherwise due the CMAR an amount then believed by the OWNER to be adequate to recover liquidated damages applicable to such delays.
 3. Prior to being entitled to receive final payment, and as a condition precedent thereto, the CMAR shall provide the OWNER, in the form and manner required by the OWNER, the following:
 - a. An affidavit that the CMAR's obligations to all subcontractors, TRADE CONTRACTORS, laborers, equipment or suppliers, or other third parties in connection with the PROJECT, have been paid or otherwise satisfied;
 - b. Such other documents as required by the PROJECT MANUAL from each subcontractor, TRADE CONTRACTOR, lower tier subcontractor, laborer, supplier or other person or entity who may have a claim against the person or entity that retained it, including but not limited to final releases of bond; and
 - c. All product warranties, operating manuals, instruction manuals and other documents customarily required of the CMAR or reasonably required by the OWNER, including but not limited to those required elsewhere in the CONTRACT DOCUMENTS, as part of its PROJECT Closing procedure.
- 6.1.4 CMAR shall be responsible for reimbursing CRA, in addition to liquidated damages, for all costs incurred by CONSULTANT in administering the construction of the PROJECT beyond the completion dates specified above or beyond an approved extension of time granted to CMAR,

whichever date is later. Such costs shall be deducted from the monies due CMAR for performance of WORK under this CONTRACT by means of unilateral credit change orders issued periodically to CRA as costs are incurred by CONSULTANT and agreed to by CRA.

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

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

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

In order to demonstrate that a delay is the result of exceptionally adverse weather conditions, the CMAR must demonstrate that Critical Path activities have been delayed by more Days than those cumulatively expected during the CONTRACT TIME, based upon the average number of Days of adverse weather conditions experienced in the place where the PROJECT is located during the five years prior to the date of this CONTRACT, which average shall be based on the historical data of the U.S. National Oceanic and Atmospheric Administration, and that any float time in the Construction schedule has been exceeded.

6.2 SUBSTANTIAL COMPLETION DATE:

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

When CONSULTANT, on the basis of such an inspection, determines that the WORK or designated portion thereof is substantially complete, CONSULTANT will then prepare a Certificate of Substantial Completion in the

form attached hereto as Form 1, which shall establish the Date of SUBSTANTIAL COMPLETION; shall state the responsibilities of CRA and CMAR for security, operation, safety, maintenance, services, damage to the WORK, insurance, and warranties; and shall list all WORK yet to be completed (Punch List) to satisfy the requirements of the CONTRACT DOCUMENTS for FINAL COMPLETION. The failure to include any items of corrective WORK on such list does not alter the responsibility of CMAR to complete all of the WORK in accordance with the CONTRACT DOCUMENTS. The Certificate of Substantial Completion shall be submitted to the PROJECT MANAGER, after execution by CMAR, and CONSULTANT, indicating their written acceptance of such certificate.

6.3 NOTIFICATION OF CHANGE OF CONTRACT TIME OR CONTRACT PRICE:

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

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

6.4 USE OF COMPLETED PORTIONS:

6.4.1 CRA 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