

RESOLUTION NO. R-CRA-2023-12

A RESOLUTION OF THE HOLLYWOOD, FLORIDA
COMMUNITY REDEVELOPMENT AGENCY ("CRA"),
RANKING CONSTRUCTION MANAGEMENT AT RISK
FIRMS TO PROVIDE SERVICES (TIERED) FOR CAPITAL
PROJECTS; AUTHORIZING THE APPROPRIATE CRA
OFFICIALS TO EXECUTE PHASE 1 PRECONSTRUCTION
AGREEMENTS WITH EACH OF THE HIGHEST RANKED
FIRMS BASED ON EACH TIER.

WHEREAS, the City's Community Redevelopment Agency ("CRA") desires to enter into continuing contracts with multiple firms to provide Construction Management at Risk ("CMAR") services that may be required to implement future projects as identified in the Beach District and Downtown District five year capital improvement plans; and

WHEREAS, services to be accomplished under these contracts will include various future unidentified projects in which the estimated individual construction cost does not exceed \$4,000,000.00; and

WHEREAS, on October 24, 2022, Request for Qualification ("RFQ") Number RFQ-005-23-GJ was electronically advertised on OpenGov to solicit the desired firms to provide tiered CMAR services; and

WHEREAS, the following tiers based on construction cost were solicited in the RFQ:

1. Tier 1 – Construction Cost – Up to \$500,000
2. Tier 2 – Construction Cost – \$500,001 - \$2,000,000
3. Tier 3 – Construction Cost – \$2,000,001 - \$4,000,000 ; and

WHEREAS, the RFQ resulted in Statement of Qualifications ("SOQ") from the following nine firms by the response due date:

1. Burkhardt Construction, Inc.
2. Kalex Construction & Development, Inc.
3. Lebolo Construction Management, Inc.
4. LEGO Construction
5. Llorens Contracting, Inc
6. MBR Construction
7. Persons Services Corp.
8. State Contracting & Engineering Corp.
9. T&G Corporation dba T&G Constructors ; and

WHEREAS, on January 12, 2023, the Selection Committee met to evaluate and rank the SOQs based upon the following Evaluation Criteria established in the RFQ: Firm Qualifications and Experience; Organizational Profile and Project Team Qualifications; Approach to Scope of Work; Knowledge of Site and Local Conditions; References; Location of Firm's Office and Financial Resources, and determined that interviews and/or oral presentations were not necessary; and

WHEREAS, based on the Evaluation Criteria, the Selection Committee ranked, and qualified firms as described below, with the highest average score dictating the highest ranked for each of the three tiers:

A. Tier 1 (two firms qualified out of four submissions for this tier):

1. State Contracting & Engineering Corp.	94
2. Llorens Contracting, Inc	78

B. Tier 2 (five firms qualified out of seven submissions for this tier):

1. Burkhardt Construction, Inc.	96
2. State Contracting & Engineering Corporation	95
3. MBR Construction	88
4. LEGO Construction	87
5. Lebolo Construction Management, Inc.	86

C. Tier 3 (six firms qualified out of seven submissions for this tier):

1. Burkhardt Construction, Inc.	98
2. State Contracting & Engineering Corporation	95
3. LEGO Construction	86
4. MBR Construction	86
5. Lebolo Construction Management, Inc.	84
6. T&G Corporation dba T&G Constructors	83

; and

WHEREAS, consulting services for specific projects will be requested on an "as needed – when needed" basis; and

WHEREAS, the initial term for the agreements will be for three years with the option to renew the contract for two subsequent one-year terms based on satisfactory performance and mutual agreement; and

WHEREAS, the selected firms will be required to execute Phase I Preconstruction Agreements and the parties will negotiate Phase II Construction Agreements when retained for the specific project, which will be considered by the Board at a later date; and

WHEREAS, the Executive Director of the CRA recommends that the CRA Board authorize the appropriate CRA officials to execute Phase 1 Preconstruction Agreements with each of the recommended highest-ranked firms to provide CMAR services as stated above.

NOW, THEREFORE, BE IT RESOLVED BY THE HOLLYWOOD, FLORIDA COMMUNITY REDEVELOPEMENT AGENCY:

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 CRA Board ranks the firms as follows per tier:

A. Tier 1 (two firms qualified out of four submissions for this tier):

1. State Contracting & Engineering Corp.
2. Llorens Contracting, Inc

B. Tier 2 (five firms qualified out of seven submissions for this tier):

1. Burkhardt Construction, Inc.
2. State Contracting & Engineering Corporation
3. MBR Construction
4. LEGO Construction
5. Lebolo Construction Management, Inc.

C. Tier 3 (six firms qualified out of seven submissions for this tier):

1. Burkhardt Construction, Inc.
2. State Contracting & Engineering Corporation
3. MBR Construction
4. LEGO Construction
5. Lebolo Construction Management, Inc.
6. T&G Corporation dba T&G Constructors

Section 3: That it authorizes the appropriate CRA officials to execute Phase 1 Preconstruction Agreements with each of the highest ranked firms, together with such non-material changes as may be subsequently agreed to by the Executive Director and approved as to form by the CRA's General Counsel.

Section 4: That this Resolution shall be in full force and effect immediately upon its passage and adoption.

RESOLUTION OF THE HOLLYWOOD, FLORIDA COMMUNITY REDEVELOPMENT AGENCY ("CRA") RANKING CONSTRUCTION MANAGEMENT AT RISK FIRMS TO PROVIDE SERVICES (TIERED) FOR CAPITAL PROJECTS; AUTHORIZING THE APPROPRIATE CRA OFFICIALS TO EXECUTE PHASE 1 PRECONSTRUCTION AGREEMENTS WITH EACH OF THE HIGHEST RANKED FIRMS BASED ON EACH TIER.

PASSED AND ADOPTED this 1ST day of March., 2023.

ATTEST:

HOLLYWOOD, FLORIDA COMMUNITY
REDEVELOPMENT AGENCY

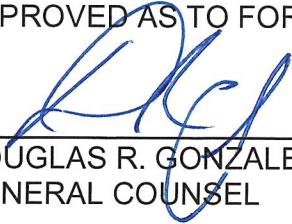


PHYLLIS LEWIS, BOARD SECRETARY



JOSH LEVY, CHAIR

APPROVED AS TO FORM:



DOUGLAS R. GONZALES
GENERAL COUNSEL

DW

**CITY OF HOLLYWOOD, FLORIDA
COMMUNITY REDEVELOPMENT AGENCY**

CONSTRUCTION MANAGEMENT AT RISK SERVICES



PHASE I

PRE-CONSTRUCTION SERVICES

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

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

THIS AGREEMENT is made this _____ day of _____, 20____ by and between the Hollywood, Florida Community Redevelopment Agency (CRA) a municipal corporation of the State of Florida ("OWNER") and _____, a _____ corporation authorized to do business in the State of Florida ("CMAR").

WITNESSETH:

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

Whereas, it is the best interests of the 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 ("CMAR"); and

Whereas, the OWNER issued a Request for Qualifications ("RFQ") in accordance with _____, and has competitively selected the CMAR; and

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

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

[THIS SPACE LEFT INTENTIONALLY BLANK]

TABLE OF CONTENTS

Article 1.	General Description of Scope of Services
Article 2.	Definitions
Article 3.	Term and Time of Performance
Article 4.	Compensation
Article 5.	Changes in Scope of Service
Article 6.	Indemnification
Article 7.	Insurance
Article 8.	Termination
Article 9	Miscellaneous
9.1	Ownership of Documents
9.2	Audit Right and Retention of Records
9.3	Non-Discrimination
9.4	Public Crime Entity Act
9.5	Independent Contractor
9.6	Prevailing Wage Requirement
9.7	Third Party Beneficiaries
9.8	Notices
9.9	Assignment and Performance
9.10	Conflicts
9.11	Prohibition Against Contingency Fees
9.12	Truth In Negotiation
9.13	Materiality and Waiver of Breach
9.14	Liquidated Damages
9.15	Compliance With Laws
9.16	Severance
9.17	Joint Preparation
9.18	Priority of Provisions
9.19	Applicable Law and Venue
9.20	Amendments
9.21	Prior Agreements
9.22	Drug-Free Workplace
9.23	Incorporation By Reference
9.24	Counterparts
Article 10.	Subcontractors and Purchase Orders

ARTICLE 1
GENERAL DESCRIPTION OF SCOPE OF SERVICES

1.1 The CMAR shall furnish professional construction management at risk services related to Pre-Construction Services as set forth in the Scope of Services attached as Exhibit "A" for the _____ PROJECT, upon issuance of CRA's NOTICE TO PROCEED by the EXECUTIVE DIRECTOR or his/her designee. The intent of the CONTRACT DOCUMENTS is for the CMAR to provide all of those services set forth in Exhibit "A", furnish any and all required materials, labor and equipment, incidentals and enter into and cause to be performed all trade contracts necessary to achieve correct and timely completion of the construction of the entire Project in accordance with the CONTRACT DOCUMENTS and warrant all work and services as provided in the CONTRACT DOCUMENTS.

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

- a. The CMAR is professionally qualified to act as a construction manager for the PROJECT and has, and shall maintain, any and all licenses, permits and other authorizations necessary to act as a construction manager for the Project.
- b. The CMAR is financially solvent and has sufficient working capital to perform its obligations under the CONTRACT DOCUMENTS; and
- c. The CMAR has become familiar with the project site and the local conditions under which the PROJECT is to be designed, constructed and operated and it will review the Consultant's design and construction documents and provide comments in accordance with the CONTRACT DOCUMENT requirements. If the PROJECT involves modifications to any existing structure(s) or other man-made feature(s) on the Project site, the CMAR has reviewed all as-built and record drawings, plans and specifications of which CMAR has been informed by Owner and thoroughly inspected the existing structure(s) and man-made feature(s) to identify existing deficiencies and ascertain the specific locations of pertinent structural components. Claims by CMAR resulting from CMAR's failure to familiarize itself with the site or pertinent documents shall be deemed waived; and
- d. The CMAR assumes full responsibility to the OWNER for the improper acts and omissions of its consultants, the trade contractors, and others employed or retained by it in connection with the Project.

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

1.3 Project Schedule/Time of Essence. The CMAR has provided the Owner with a preliminary schedule covering the pre-construction and construction of the PROJECT which is set forth in the attached Exhibit "B". This preliminary schedule shall serve as a framework for the subsequent development of all detailed construction schedules described in the CONTRACT DOCUMENTS, including Exhibits. The CMAR shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the Project schedule, subject to delays in the schedule not the fault of the CMAR or its SUBCONTRACTORS. Time is of the essence in the performance of this contract.

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

1.5 GUARANTEED MAXIMUM PRICE.

- a. Prior to the performance of construction services, the CMAR shall prepare and deliver to the PROJECT MANAGER, with a copy to the CONSULTANT, a GMP proposal. The CMAR shall include in the GMP proposal the following:
 - (i) a recital of the specific CONTRACT DOCUMENTS, including construction documents, drawings, specifications, and all addenda, used in the preparation of the GMP proposal;
 - (ii) the five elements of the GMP are as follows:
 - a. Cost of Work
 - b. Construction Fee
 - c. General Conditions Costs
 - d. Construction Contingency
 - e. Owners Contingency
 - (iii) A draft schedule of values;
 - (iv) A description of all other inclusions to, or exclusions from, the GMP;
 - (v) All assumptions and clarifications; and
 - (vi) The final construction schedule.
- b. The CMAR acknowledges that the CONTRACT DOCUMENTS may be incomplete at the time the CMAR delivers the GMP proposal, and that the

CONTRACT DOCUMENTS may not be completed until after commencement of the Work/Services. Nevertheless, the GMP proposal shall include all costs for the WORK/Services required by the completed CONTRACT DOCUMENTS, and if the GMP is accepted by the OWNER, the CMAR shall be entitled to no increase in the GMP if the WORK required by the completed CONTRACT DOCUMENTS: (i) is required by the CONTRACT DOCUMENTS for construction; (ii) is reasonably inferable from the incomplete documents; (iii) is consistent with the OWNER's programmatic goals and objectives; (iv) is consistent with the OWNERS's design and construction standards and the general industry standards for completion of the WORK/services; (v) is not a substantial enlargement of the Scope of Services/WORK; or (vi) substantially conforms to the nature, type, kind or quality of WORK/services depicted in the incomplete documents.

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

1.6 PRICE GUARANTEES.

- a. Upon execution of Exhibit "D", the CMAR guarantees that the sum of the actual cost of the WORK, the CMAR's CONTINGENCY, the CMAR's staffing costs, the general conditions cost, and CMAR's overhead and profit, shall not exceed the amount set forth in the agreed upon GMP. All costs and expenses that would cause this sum to exceed the GMP shall be borne by the CMAR unless adjusted by the OWNER/PROJECT MANAGER through a CHANGE ORDER.
- b. Upon execution of Exhibit "D", the CMAR guarantees that the actual cost of the WORK/services, CMAR'S staffing costs, general conditions costs and CMAR's overhead and profit shall not exceed the guaranteed maximum for each such category and that all costs and expenses that would cause any of these individual categories to exceed the guaranteed maximum for each such category in the agreed upon GMP shall be borne by the CMAR unless adjusted by the OWNER/PROJECT MANAGER through a CHANGE ORDER.
- c. Upon execution of Exhibit "D", the CMAR certifies that all factual unit costs supporting the GMP proposal are accurate, complete and

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

ARTICLE 2 DEFINITIONS

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

- 2.1 CHANGE ORDER: A written document that complies with Section 38.48 of the CRA/City of Hollywood Procurement Code.
- 2.2 COMMUNITY REDEVELOPMENT AGENCY (CRA) BOARD: The Community Redevelopment Agency Board of the CRA of Hollywood, Florida, its successors and assigns.
- 2.3 CRA OR OWNER: The Hollywood, Florida Community Redevelopment Agency, a Florida Municipal Corporation. In all respects CRA performance is pursuant to the CRA's position as the owner of a construction project. In the event 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 the CRA's authority as a governmental body and shall not be attributable in any manner to CRA as a party to this contract.
- 2.4 CONSTRUCTION MANAGER AT RISK ("CMAR"): The prime contractor that shall provide construction management at risk services including but not limited to preparation of cost estimates, constructability reviews, value engineering and assist in systems life cost cycle analysis, scheduling, bidding and submission of a GMP, as defined below, for construction and construction management. If the parties enter into a Phase II Construction Services Agreement, the CMAR shall serve, from that point forward as the General Contractor.
- 2.5 CONSULTANT: The individual, partnership, corporation, association, joint venture, or any combination thereof, consisting of properly registered professional architects and/or engineers, which has entered into an agreement to provide professional services to the OWNER for the PROJECT.
- 2.6 CONSTRUCTION CONTINGENCY: An established sum included in the Guaranteed Maximum Price and shall be in amount which the parties believe, in their best judgement, is reasonable to cover construction related costs which

were not specifically foreseeable or quantifiable as of the date the GMP was established, including but not limited to: correction of minor defects or omissions in the Work not caused by the CMAR's negligence, cost overruns due to the default of any Subcontractor or Supplier, minor changes caused by unforeseen or concealed site conditions, minor changes in the Work not involving adjustment in the GMP or extension of the completion date and not inconsistent with the approved final Plans and Specifications, and written agreed upon CRA requested changes to the Work.

- 2.8 CONTRACT DOCUMENTS: The PROJECT MANUAL (including this contract and its Exhibits, Attachments and Forms), the trade contracts, drawings and specifications, the Request For Qualifications and CMAR's response as negotiated and accepted by the CRA), any Addenda to the Project Manual, the record of the contract award by the CRA Board, the Payment and Performance Bond, the Notice of Award, the Notice(s) to Proceed, the Purchase Order and all agreed upon modifications issued after execution of the contract are the documents which are collectively referred to as the CONTRACT DOCUMENTS .
- 2.9 CONTRACT PRICE: The amount established in the CONTRACT DOCUMENTS as the Guaranteed Maximum Price (GMP), as may be amended if so warranted, by a CHANGE ORDER issued in conformity with the Contract Documents and Section 38.48 of the CRA's Procurement Code.
- 2.10 EXECUTIVE DIRECTOR: The Executive Director of the CRA having the authority and responsibility for management of the project authorized under the CONTRACT DOCUMENTS.
- 2.11 FIELD ORDER: A written order which directs minor changes in the Scope of Services, but does not involve a change in the Contract Price (GMP) or contract time.
- 2.12 FINAL COMPLETION: The date certified by the CONSULTANT and PROJECT MANAGER in the Final Certificate of Payment on which all conditions and requirements of any permits and regulatory agencies have been satisfied; and the documents (if any) required to be provided by CMAR have been received by the PROJECT MANAGER, and to the best of CONSULTANT'S and PROJECT MANAGER's information and belief, has been fully completed in accordance with the terms and conditions of the CONTRACT DOCUMENTS.
- 2.13 GENERAL CONDITION ITEMS: The provision of facilities or performance of work/services by the CMAR for items, which do not lend themselves readily to inclusion in one of the separate trade contracts. Payment for the General Condition items will be at cost and included as part of the GMP.
- 2.14 GUARANTEED MAXIMUM PRICE ("GMP"): The term 'Guaranteed Maximum Price' or "GMP" shall mean the sum certain agreed to between the 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 Contracts.

- 2.15 INSPECTOR: An employee of the CRA/CITY of Hollywood, assigned by the Executive Director to make observations of work performed by CMAR.
- 2.16 MATERIALS: Materials incorporated in the PROJECT, or used or consumed in the performance of the Scope of Services.
- 2.17 NOTICE TO PROCEED: One or more written notices to CMAR authorizing the commencement of the Scope of Services.
- 2.18 OWNER'S CONTINGENCY: A sum established by the OWNER, to be included in the GMP, subject to adjustment to include any buyout or sales tax project savings, which may be utilized by the OWNER for OWNER requested changes, additive bid alternates and deductive credits, differing/unforeseen existing conditions.
- 2.19 PLANS AND/OR DRAWINGS: The official graphic representations of this construction project which are a part of the CONTRACT DOCUMENTS.
- 2.20 PRE-CONSTRUCTION FEE: The lump sum fee payable to the CMAR for the WORK performed during the pre-construction phase related to the PROJECT, accepted by the CRA and the CMAR, which fee includes all direct and indirect costs incurred by the CMAR in the proper performance of WORK during the pre-construction phase.
- 2.21 PROJECT: The construction, alteration or repair, and all services and incidents thereto, of a CRA facility as contemplated and budgeted by the OWNER as described in the CONTRACT DOCUMENTS, including the Scope of Services described in the attached Exhibit "A".
- 2.22 PROJECT MANAGER: An employee of the CRA expressly designated as PROJECT MANAGER in writing by the EXECUTIVE DIRECTOR, who is the representative of the CRA, concerning the CONTRACT DOCUMENTS.
- 2.23 PROJECT MANUAL: The official documents setting forth information and requirements; contract forms, bonds, and certificates; general and supplementary conditions of the CONTRACT DOCUMENTS; the specifications; and the plans and drawings of the PROJECT.
- 2.24 RESIDENT PROJECT REPRESENTATIVE: An authorized representative of CONSULTANT on the PROJECT.

- 2.25 SUBCONTRACTOR: A person, firm or corporation having a direct contract with the CMAR, including one who furnishes material worked to a special design according to the PROJECT MANUAL for this work, but does not include a person, firm or corporation merely furnishing material not so worked.
- 2.26 SUBSTANTIAL COMPLETION: That date on which, as certified in writing by CONSULTANT, the Work, or a portion thereof designated by the PROJECT MANAGER in his/her sole discretion, is at a level of completion in substantial compliance with the CONTRACT DOCUMENTS such that all conditions of permits and regulatory agencies have been satisfied and the OWNER or its designee can enjoy beneficial use or occupancy and can use or operate the Work in all respects for its intended purpose(s).
- 2.27 WORK: The totality of the obligations, including construction and other services required by the Contract Documents, including all labor, materials, equipment and service provided or to be provided by CMAR to fulfill CMAR's obligations. The Work may constitute the whole or a part of the Project and is provided in accordance with the Scope of Services.
- 2.28 WRITTEN NOTICE: Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent to the last known business address by registered mail, other traceable delivery service, email, facsimile, or text message.

ARTICLE 3 TERM AND TIME OF PERFORMANCE

- 3.1 The term of this contract shall begin on the date it is fully executed by both parties and shall end on the date of commencement of the term of the contract between the CRA and a construction manager at risk for construction services for the **<Project Name>** or, not later than, **<specify date>**, unless terminated in accordance with Article 8. When the CONSULTANT determines it is necessary to extend the time for the PROJECT, the CONSULTANT shall notify the PROJECT MANAGER, and the term of this contract may be extended for a period of time not to exceed 60 calendar days in accordance with the CRA/City's Procurement Ordinance and as set forth in Section 9.20 herein.
- 3.2 All duties, obligations, and responsibilities of CMAR required by this contract shall be completed no later than **<specify date>**. Time shall be deemed to be of the essence in performing the duties, obligations and responsibilities required by the CONTRACT DOCUMENTS.
- 3.3 At or before the above referenced completion date for this contract the CMAR following completion of cost estimating, value engineering and other services set forth in Article 4 will tender to the CRA a written GMP for final completion of the PROJECT. The CRA, by and through the EXECUTIVE DIRECTOR, the

PROJECT MANAGER and/or other CRA personnel, will have the opportunity to negotiate the amount of the GMP with the CMAR. In the event a GMP which is satisfactory to CRA personnel in their reasonable discretion is not agreed upon in writing within 30 days of the tender of GMP, the CRA reserves the right to terminate this contract for convenience and the CMAR will immediately tender all documents, in accordance with the applicable provisions of the CONTRACT DOCUMENTS. The CMAR shall have no recourse from this termination and the CRA shall take such documents, as defined, in Section 9.1 of this contract, and commence negotiations with the second and third ranked firm, respectively. Conditions precedent to a Phase II contract for this project are the satisfactory final completion of Phase I and an agreed upon GMP. If a GMP is agreed to with the CMAR, a separate contract will be entered into between the parties.

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

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

<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%

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

4.4 METHOD OF BILLING AND PAYMENT

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

4.4.2 CRA shall pay CMAR pursuant to Section 218.735, Florida Statutes. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by PROJECT MANAGER. Payment may be withheld for failure of CMAR to comply with a term, condition, or requirement of the CONTRACT DOCUMENTS.

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

4.6 Payment shall be made to CMAR at:

<Contractor's Name and Address>

ARTICLE 5
CHANGES IN SCOPE OF SERVICES

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

ARTICLE 6
INDEMNIFICATION

The CMAR shall indemnify and hold harmless the CRA/CITY, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CMAR and persons employed or utilized by the CMAR in the performance of the CONTRACT DOCUMENTS. These provisions shall survive the expiration or earlier termination of the CONTRACT DOCUMENTS. Nothing in this contract shall be construed in any way to affect the sovereign immunity of the CRA/CITY or the rights of the CRA/CITY as set forth in Section 768.28, Florida Statutes.

ARTICLE 7
INSURANCE

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

The CMAR will not be permitted to commence work governed by the CONTRACT DOCUMENTS (including pre-staging of personnel and material) until satisfactory evidence of the required insurance has been furnished to the CRA as specified below. Delays in the commencement of work, resulting from the failure of the CMAR to provide satisfactory evidence of the required insurance, shall not extend deadlines specified in this contract and any penalties and failure to perform assessments shall be imposed as if the work commenced on the specified date and time, except for the CMAR's failure to provide satisfactory evidence.

The CMAR shall maintain the required insurance throughout the entire term of the CONTRACT DOCUMENTS and any extensions specified in any attached schedules. Failure to comply with this provision may result in the immediate suspension of all work until the required insurance has been reinstated or replaced. Delays in the completion of work resulting from the failure of the CMAR to maintain the required insurance shall not extend deadlines specified in the contract and any penalties and failure to perform assessments shall be imposed as if the work had not been suspended, except for the CMAR's failure to maintain the required insurance.

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

1. Certificate of Insurance; or
2. Certified copy of the actual insurance policy

The CRA/CITY, at its sole option, has the right to request a certified copy of any or all insurance policies required by the CONTRACT DOCUMENTS. All insurance policies must specify that they are not subject to cancellation, non-renewal, material change, or reduction in coverage unless a minimum of 30 days prior notification is given to the CRA/CITY by the insurer.

The acceptance and/or approval of the CMAR's insurance shall not be construed as relieving the CMAR from any liability or obligation assumed under the CONTRACT DOCUMENTS or imposed by law. The CRA/CITY, its employees and officials will be included as "Additional Insureds" on all policies, except for Workers' Compensation. In addition, the CRA/CITY will be named as an Additional Insured and Loss Payee on all policies covering CRA/CITY-owned property. Any deviations from these General Insurance Requirements must be requested in writing on the CRA/CITY prepared form entitled "**Request for Waiver of Insurance Requirements**" and approved by the CRA/CITY's Risk Manager.

7.2 INSURANCE LIMITS OF LIABILITY:

All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and satisfactory to the OWNER. All companies shall have a Florida resident agent and be rated a minimum A-X, as per A.M. Best Company's Key Rating Guide, latest edition.

The CMAR shall furnish certificates of insurance to the Risk Manager for review and approval prior to the commencement of work governed by this contract. The Certificates shall clearly indicate that the CMAR has obtained insurance of the type, amount and classification required by these provisions, in excess of any pending claims at the time of contract award to the CMAR. All insurance policies must specify that they are not subject to cancellation, non-renewal, material change, or reduction in coverage unless a minimum of 30 days prior notification is given to the CRA/CITY by the insurer.

Sub Consultant

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

7.2.1 Comprehensive General Liability:

[Amounts should be provided by Risk Management]

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

1. Each Occurrence Products and Completed Operations
 2. General Liability
 3. Personal Adv. & Injury
- General Aggregate

The CRA/City of Hollywood should be listed as additional insured.

The minimum limits acceptable shall be:

The minimum limits acceptable shall be:

<FILL IN AMOUNT> Each Occurrence
<FILL IN AMOUNT> General Aggregate

7.2.2 Comprehensive Automobile Liability:

[Amounts should be provided by Risk Management]

Recognizing that the work governed by this contract requires the use of vehicles, the CMAR, prior to the commencement of work, shall obtain Vehicle Liability Insurance. Coverage shall be maintained throughout the life of the contract and include, as a minimum, liability coverage for:

Owned, Non-Owned, and Hired Vehicles

The minimum limits acceptable shall be:

<FILL IN AMOUNT> Combined Single Limit (CSL)

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

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

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

7.2.3 Workers' Compensation Insurance:

[Amounts should be provided by Risk Management]

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

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

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

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

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

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

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

7.2.4 Professional Liability

[Amounts should be provided by Risk Management]

The minimum limits of liability shall be:

<FILL IN AMOUNT> each claim / **<FILL IN AMOUNT>** Aggregate
Deductible not to exceed 100,000

If coverage is provided on a claims made basis, an extended reporting period of (5) years will be required.

7.2.5 Pollution Liability

Amounts should be provided by Risk Management]

Limits of liability

Each Occurrence <FILL IN AMOUNT>

Including non-owned disposal sites

7.2.6 Cyber Liability

[Amounts should be provided by Risk Management]

Limits of liability

Each Occurrence <FILL IN AMOUNT>

7.2.7 Builder's Risk Insurance Requirements:

The CMAR shall be required to purchase and maintain, throughout the life of the contract, and until the project is accepted by the CRA/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 CRA/City to occupy the building prior to completion without affecting the coverage. The CRA/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.

Deductible not to exceed \$100,000

ARTICLE 8 TERMINATION

- 8.1 This contract may be terminated for cause by CRA or by CMAR if the party in breach has not corrected the breach within 30 days after written notice from the aggrieved party identifying the breach, or for convenience by CRA, without any cause, upon not less than 30 days' written notice by PROJECT MANAGER. This contract may also be terminated by PROJECT MANAGER upon such notice as PROJECT MANAGER deems appropriate under the circumstances in the event PROJECT MANAGER determines that termination is necessary to protect the public health, safety, or welfare.
- 8.2 Termination of this contract for cause shall include, but not be limited to, failure to suitably perform the work and failure to continuously perform the work in a manner calculated to meet or accomplish the objectives of CRA as set forth in the CONTRACT DOCUMENT notwithstanding whether any such breach was previously waived or cured. Upon the occurrence of a breach which is not cured within the cure period, in addition to all remedies available to it by law, the CRA may immediately, upon written notice to the CMAR, terminate this contract whereupon, all payments, advances, or other compensation paid by the CRA to the CMAR while the CMAR was in breach shall be immediately returned to the CRA. The CRA may suspend any payment or part thereof or order a Work stoppage until such time as the issues concerning compliance are resolved. CMAR understands and agrees the termination of this contract under this Article shall not release the CMAR from any obligation accruing prior to the effective date of the termination. In the event of termination due to a default, in addition to the foregoing, the CMAR shall be liable for all costs and expenses incurred by the CRA in the re-procurement of the Work under the CONTRACT DOCUMENTS.
- 8.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this contract, except that notice of termination by PROJECT MANAGER, which PROJECT MANAGER deems necessary, to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Contract.
- 8.4 In the event this contract is terminated for convenience, CMAR shall be paid for any services performed to the date the contract is terminated; however, upon being notified of CRA's election to terminate, CMAR shall refrain from performing further services or incurring additional expenses under the terms of the CONTRACT DOCUMENTS. CMAR acknowledges and agrees that ten dollars (\$10.00) of the compensation to be paid by CRA, the adequacy of which is acknowledged by CMAR, is given as specific consideration to CMAR for CRA's right to terminate this contract for convenience.
- 8.5 In the event this contract is terminated, any compensation payable by CRA shall be withheld until all documents are provided to CRA pursuant to Section 9.1 below.

ARTICLE 9
MISCELLANEOUS

9.1 OWNERSHIP OF DOCUMENTS

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

9.2 AUDIT RIGHT AND RETENTION OF RECORDS

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

CMAR shall preserve and make available, at reasonable times for examination and audit by CRA/CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to the CONTRACT DOCUMENTS for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Statute), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three years after termination of this contract. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CRA/CITY to be applicable to CMAR's records, CMAR shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CMAR. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CRA's disallowance and recovery of any payment upon such entry.

CMAR acknowledges that if Chapter 119, Florida Statutes entitled "Public Records Law" is applicable to this contract the provisions of Section 119.0701, Florida Statute are also applicable and CMAR acknowledges its obligations to comply with said requirements with regard to public records and shall:

(a) keep and maintain public records required by the CRA/City to perform the services required under the contract;

(b) upon request from the CRA/City's custodian of public records or his/her designee, provide the CRA/City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that

does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

© ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of the CONTRACT DOCUMENTS and following the completion of the contract if the CMAR does not transfer the records to the CRA/City; and

(d) upon completion of the contract, CMAR shall transfer, at no cost to the CRA/City, all public records in possession of the CMAR or keep or maintain public records required by the CRA/City to perform the service. If the CMAR transfers all public records to the CRA/City upon completion of the contract, the CMAR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CMAR keeps and maintains public records upon completion of the contract, the CMAR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CRA/City, upon request from the CRA/City's custodian of public records, in a format that is compatible with the information technology systems of the CRA/City.

IF THE CMAR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CMAR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT DOCUMENTS, CONTACT THE CRA/CITY'S CUSTODIAN OF PUBLIC RECORDS AT: CITY CLERK'S OFFICE, 2600 HOLLYWOOD BOULEVARD, HOLLYWOOD, FLORIDA 33020 OR AT (954) 921-3211, PCERNY@HOLLYWOODFL.ORG

9.3 NONDISCRIMINATION

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

9.4 PUBLIC ENTITY CRIME ACT

CMAR represents that the execution of the CONTRACT DOCUMENTS will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or

other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to CRA, may not submit a bid on a contract with CRA for the construction or repair of a public building or public work, may not submit bids on leases of real property to CRA, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with CRA, and may not transact any business with CRA IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Contract and recovery of all monies paid hereto, and may result in debarment from CRA's competitive procurement activities.

In addition, to the foregoing, CMAR further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a public entity crime and that it has not been formally charged with committing an act defined as a public entity crime regardless of the amount of money involved and regardless of whether CMAR has been placed on the convicted vendor list.

9.5 INDEPENDENT CONTRACTOR

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

9.6 PREVAILING WAGE REQUIREMENT (IF REQUIRED BY FUNDING SOURCE)

9.6.1 CMAR shall be responsible for ensuring payment of the rate of wages and fringe benefits, or cash equivalent, for all laborers, mechanics and apprentices employed by him/her or his/her SUBCONTRACTORS on the work covered by this contract which shall be not less than the prevailing rate of wages and fringe benefits or cash equivalent for similar skills or classifications of work as established by the General Wage Decision by the United States Department of Labor for Broward County, Florida that is in effect prior to the date the CRA/CITY issued the Request for Qualifications (RFQ) for this PROJECT.

If the General Wage Decision fails to provide for a fringe benefit rate for any worker classification, then the fringe benefit rate applicable to such worker classification shall be the fringe benefit rate that has a basic wage rate closest in dollar amount to the work classification for which no fringe benefit rate has been provided.

- 9.6.2 Upon commencement of work, CMAR and all of its SUBCONTRACTORS shall post a notice in a prominent place at the work site stating the requirements of this section.
- 9.6.3 If any questions should arise concerning the applications of this Section, which are not specifically addressed, the CRA/CITY may, but is not required to, rely on rules, regulations, practices, administrative rulings and court decisions governing applications of the Davis-Bacon Act.
- 9.6.4 CMAR and its SUBCONTRACTORS shall submit to the CRA on a regular basis, but not less than monthly, payroll sheets, which have been certified under oath by CMAR and/or SUBCONTRACTORS as to their accuracy and compliance with the provisions of this Section. The certified payroll sheets shall contain the following: name and address of each employee; his/her current classification; rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid. Such records shall be maintained by CMAR and its SUBCONTRACTORS for a period of at least three years following completion of the work.
- 9.6.5 The CRA may withhold, or cause to be withheld from CMAR, so much of any requisitioned payment as may be considered necessary to pay laborers, mechanics and apprentices the full amount of wages required by this section. The CRA, or its designee, may enter on the job site and conduct such inquiries of CMAR'S workers and its subcontractor's workers to determine whether this section is being complied with. If CMAR or its SUBCONTRACTOR fails to pay any laborers, mechanics or apprentices employed or working on the job site all or part of the wages required by this section, then the CRA may, after written notice to CMAR, take such action as may be necessary to cause suspension of any further payments or advances until such violations have been corrected. If the violations are not corrected, the CRA may terminate CMAR's right to proceed with the work or such part of the work for which there has been a failure to pay the required wages and take such steps as are necessary to complete the work, whereupon CMAR and its sureties shall be liable to the CRA for all excess costs incurred by the CRA.
- 9.6.6 The CMAR shall insert in any subcontracts such language as is necessary to require all of its SUBCONTRACTORS to comply with the requirements of this section. CMAR shall be responsible for noncompliance by any of its SUBCONTRACTORS. This section shall be deemed part of any contract entered into between CMAR and any of his/her SUBCONTRACTORS.

9.7 THIRD PARTY BENEFICIARIES

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

9.8 NOTICES

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

FOR CRA:

Project Manager
1948 Harrison Street
Hollywood, Florida 33020

FOR CMAR:

9.9 ASSIGNMENT AND PERFORMANCE

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

CMAR represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the