

## **Solicitation RFQ-4682-21-GJ**

### **CMAR - North Beach Utilities Underground Conversion and Hollywood Beach Utility**

**Bid Designation: Public**



**City of Hollywood, Florida**

**Bid RFQ-4682-21-GJ****CMAR - North Beach Utilities Underground Conversion and Hollywood Beach Utility**Bid Number **RFQ-4682-21-GJ**Bid Title **CMAR - North Beach Utilities Underground Conversion and Hollywood Beach Utility**Bid Start Date **Aug 3, 2021 5:11:22 PM EDT**Bid End Date **Sep 9, 2021 3:00:00 PM EDT**

Question &amp;

Answer End **Aug 26, 2021 6:00:00 PM EDT**  
DateBid Contact **Ginah Joseph****Senior Purchasing Agent****Procurement****Gijoseph@hollywoodfl.org****Addendum # 1**Previous End Date **Sep 7, 2021 3:00:00 PM EDT**New End Date **Sep 9, 2021 3:00:00 PM EDT****Changes were made to the following items:**CMAR - North Beach Utilities Underground Conversion and  
Hollywood Beach Utility**Addendum # 2**Previous Q & A End Date **Aug 24, 2021 7:00:00 AM EDT**New Q & A End Date **Aug 26, 2021 6:00:00 PM EDT****Changes were made to the following items:**CMAR - North Beach Utilities Underground Conversion and  
Hollywood Beach Utility**Addendum # 3**New Documents **Addendum No. 1.pdf****Changes were made to the following items:**

CMAR - North Beach Utilities Underground Conversion and Hollywood Beach Utility

**Description**

The Design and Construction Management (DCM) and Public Utilities (PU) Departments are currently in the design phase for two adjacent projects located in the City of Hollywood; east of AIA between Franklin Street and Balboa Street, plus Douglas and Freedom Street, and the portions of Surf Road adjacent to these limits. The work to be accomplished under the contract includes Pre-Construction Services (Phase I) and Construction Services (Phase II) for The North Beach Utilities Underground Conversion for DCM and Hollywood Beach Utility Improvements - Phase 1A Water Main Replacement for PU. Construction Manager at Risk will be responsible for providing preconstruction and construction management services for the scopes of services described below under one contract.

**Scope A - North Beach Utilities Underground Conversion**, a Go Bond project, includes the hardening of utilities for barrier island north beach area outside of the BCRA district to include residential streets east of A1A to the ocean. Includes pavement restoration, road resurfacing and replacement of street lights. The budget for this scope of work is estimated at \$2,500,000.

**Scope B - Hollywood Beach Utility Improvements Phase 1A Water Main Replacement**, a Public Utilities project, consists of water main improvements from Balboa Street to Franklin Street between east of N. Ocean Drive (A1A) and Surf Road including along Douglas Road and Surf Road. In addition, wastewater improvement includes approximately 300 linear feet of force main along Balboa Street between Lift Station E-09 and N. Ocean Drive (A1A). The budget for this scope of work is estimated at \$3,000,000.

**Added on Aug 23, 2021:**

*Due to Public Access to City Hall being suspended as a safety precaution to COVID-19, the City of Hollywood will no longer accept physical hardcopies of Formal Solicitations – specifically Request for Proposals (RFP's) & Request for Qualifications (RFQ's), that are typically dropped off at the City Clerk's office. For now, Vendors are required to mail in their Proposals as follows:*

For FedEx and UPS the address is:

City of Hollywood  
Records & Archives Division  
Annex Building, Room 16W  
2600 Hollywood Blvd

If not using FedEx or UPS the address is

City of Hollywood  
PO Box 229045  
Hollywood, FL 33022-9045

*This process does not affect the submission of Formal Electronic Bids, as Formal Electronic Bids must continue to be submitted through Bidsyn.com*

The opening may be viewed in real time through WebEx by using the following information:

**Join from the meeting link**

<https://cohfl.webex.com/cohfl/j.php?MTID=m58139157b9025fa4212adaf13355f21b>

**Join by meeting number**

Meeting number (access code): 1328 80 7728  
Meeting password: rvZv3dDVA35

**Tap to join from a mobile device (attendees only)**

+1-408-418-9388,,1328807728## United States Toll

**Join by phone**

+1-408-418-9388 United States Toll  
Global call-in numbers | Toll-free calling restrictions

**Join from a video system or application**

Dial 1328807728@cohfl.webex.com  
You can also dial 173.243.2.68 and enter your meeting number.

**Join using Microsoft Lync or Microsoft Skype for Business**

Dial 1328807728.cohfl@lync.webex.com

All other terms and conditions remain unchanged.

**Added on Aug 24, 2021:**

Extended Q&A.

All other terms and conditions remain unchanged.

**Added on Aug 26, 2021:**

This addendum is being issued to make the changes/revisions to the following Sections:

5.3.1 Initial Selection Criteria – Table

All other specifications, terms and conditions remain unchanged.

**Addendum # 1**

**Addendum # 2**

**Addendum # 3**



**REQUEST FOR QUALIFICATIONS (RFQ)**

**RFQ-4682-21-GJ**

**CONSTRUCTION MANAGER AT RISK (CMAR) SERVICES  
FOR  
THE NORTH BEACH UTILITIES UNDERGROUND  
CONVERSION AND PHASE 1A OF HOLLYWOOD BEACH  
WATER MAIN UTILITY IMPROVEMENTS PROJECTS  
FOR**

**THE DEPARTMENT OF DESIGN AND CONSTRUCTION  
MANAGEMENT and PUBLIC UTILITIES DEPARTMENT**

**RFQ Issue Date: 8/3/2021**

**Pre-Proposal Meeting: N/A**

**Last Day for Questions: 8/24/2021**

**Responses Due/Opening Date: 9/7/2021 at 3:00 p.m. Eastern  
Time (ET)**

**RFQ-4682-21-GJ**

Construction Management at Risk Services for The North Beach Utilities Underground Conversion Hollywood Beach Utility Improvements - Phase 1A Projects

## ACKNOWLEDGMENT AND SIGNATURE PAGE

This form must be completed and submitted by the date and the time of proposal/response opening.

Legal Company Name (include d/b/a if applicable): \_\_\_\_\_ Federal Tax Identification Number: \_\_\_\_\_

If Corporation - Date Incorporated/Organized: \_\_\_\_\_

State Incorporated/Organized: \_\_\_\_\_

Company Operating Address: \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Remittance Address (if different from ordering address): \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Company Contact Person: \_\_\_\_\_ Email Address: \_\_\_\_\_

Phone Number (include area code): \_\_\_\_\_ Fax Number (include area code): \_\_\_\_\_

Company's Internet Web Address: \_\_\_\_\_

IT IS HEREBY CERTIFIED AND AFFIRMED THAT THE PROPOSER/RESPONDENT CERTIFIES ACCEPTANCE OF THE TERMS, CONDITIONS, SPECIFICATIONS, ATTACHMENTS AND ANY ADDENDA. THE PROPOSER/RESPONDENT SHALL ACCEPT ANY AWARDS MADE AS A RESULT OF THIS SOLICITATION.

\_\_\_\_\_  
Proposer/Respondent's Authorized Representative's Signature: \_\_\_\_\_ Date

Type or Print Name: \_\_\_\_\_

THE EXECUTION OF THIS FORM CONSTITUTES THE UNEQUIVOCAL OFFER OF PROPOSER/RESPONDENT TO BE BOUND BY THE TERMS OF ITS PROPOSAL/STATEMENT OF QUALIFICATIONS (SOQ). FAILURE TO SIGN THIS SOLICITATION WHERE INDICATED BY AN AUTHORIZED REPRESENTATIVE SHALL RENDER THE PROPOSAL/RESPONSE NON-RESPONSIVE. THE CITY MAY, HOWEVER, IN ITS SOLE DISCRETION, ACCEPT ANY PROPOSAL/RESPONSE THAT INCLUDES AN EXECUTED DOCUMENT WHICH UNEQUIVOCALLY BINDS THE PROPOSER/RESPONDENT TO THE TERMS OF ITS OFFER.

**ANY EXCEPTION, CHANGES OR ALTERATIONS TO THE GENERAL TERMS AND CONDITIONS, HOLDHARMLESS/INDEMNITY DOCUMENT OR OTHER REQUIRED FORMS MAY RESULT IN THE PROPOSAL/RESPONSE BE DEEMED NON-RESPONSIVE AND DISQUALIFIED FORM THE AWARD PROCESS**

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## SUBMISSION

Response to this Request must be submitted to the City of Hollywood Office of City Clerk, 2600 Hollywood Boulevard, Room #221, Hollywood Florida 33020 in a sealed envelope marked with a completed solicitation label below, with the specified number of copies, no later than the time and date specified in this solicitation.

Always use the label the below on all packages when returning your proposal or response to the City



**Solicitation Name: Construction Manager at Risk Services for**  
The North Beach Utilities Underground Conversion Hollywood Beach Utility  
Improvements - Phase 1A Projects

**Solicitation Number: RFQ-4682-21-GJ**  
**Solicitation Due Date: 9/7/2021**

**Firm Name/Address:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Return to:**  
**City of Hollywood, Florida**  
**c/o: Office of City Clerk**  
**2600 Hollywood Blvd., Rm#: 221**  
**Hollywood, Florida 33020**

### RESPONSE MUST INCLUDE:

**One (1) original hard copy**  
**Five (5) hard copies**  
**One (1) complete electronic copy on a USB drive (Flash Drive)**

### Important Notice:

The Procurement Services Division shall distribute all official changes, modifications, responses to questions or notices relating to the requirements of this document. Any other information of any kind from any other source shall not be considered official, and proposers relying on other information do so at their own risk.

The responsibly for submitting a proposal/response on or before the time and date is solely and strictly the responsibility of the proposer/respondent, the City will in no way be responsible for delays caused by technical difficulty or caused by any other occurrence. No part of a proposal/response can be submitted via FAX or via direct Email to the City. No variation in price or conditions shall be permitted based upon a claim of ignorance.

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## CONE OF SILENCE

The City of Hollywood City Commission adopted Ordinance No. O-2007-05, which created Section 30.15(F) imposing a Cone of Silence for certain City purchases of goods and Services.

The Cone of Silence refers to limits on communications held between vendors and vendor's representatives and City elected officials, management and staff during the period in which a Formal Solicitation is open.

The Ordinance does allow potential vendors or vendor's representatives to communicate with designated employees for the limited purpose of seeking clarification or additional information. The names and contact information of those employees that may be contacted for clarification or additional information are included in the solicitation.

The Cone of Silence does not prohibit a vendor or vendor's representative from communicating verbally, or in writing with the City Manager, the City Manager's designee, the City Attorney or the City Attorney's designee on those procurement items to be considered by the City Commission.

The Cone of Silence does not prohibit a vendor or vendor's representative from making public presentations at a duly noticed pre-bid/proposal conference or duly noticed evaluation committee meeting or from communicating with the City Commission during a duly noticed public meeting.

The Cone of Silence shall be imposed when a formal competitive solicitation has been issued and shall remain in effect until an award is made, a contract is approved, or the City Commission takes any other action which ends the solicitation.

To view the Cone of Silence, go to the City of Hollywood Code of Ordinance online, and view [Section 30.15F](#).

All communications regarding this solicitation should be sent in writing to the Procurement Services Division as identified in this solicitation.



Construction Management at Risk Services for The North Beach Utilities Underground Conversion Hollywood Beach Utility Improvements - Phase 1A Projects

## Section I – Introduction and Information

### 1.1 Purpose

The City of Hollywood, Florida (“City”) is actively seeking qualified, experienced, and licensed firm(s) to provide **Construction Management at Risk Services** for The North Beach Utilities Underground Conversion and Phase 1A Hollywood Beach Utility Improvement projects, as further described in Section III – Scope of Services. Those firms who are interested in submitting their Statement of Qualifications (“SOQ”) in response to this Request for Qualifications (“RFQ”) shall comply with Section IV – Submittal Requirements.

### 1.2 Submission Deadline

Sealed responses shall be delivered during the City’s normal business hours in a sealed envelope and addressed to the City of Hollywood Office of Procurement Services. The proposals shall be delivered to City of Hollywood, City Clerk’s Office, 2600 Hollywood Boulevard, Room 221, Hollywood, FL 33020, no later than date and time indicated, at which time and place the responses will be publicly opened and the names of the firms will be read. After the deadline, responses will not be accepted. Firms are responsible for making certain that their proposal is received at the location specified by the due date and time. The City of Hollywood is not responsible for delays caused by any mail, package or courier service, including the U.S. mail, or caused by any other occurrence or condition. The City’s normal business hours are Monday through Thursday, 7:00 a.m. through 6:00 p.m., excluding holidays observed by the City.

### 1.3 Information and Clarification

For information concerning procedures for responding to this RFQ, technical specifications, etc., utilize the question / answer feature provided by BidSync. Such contact shall be for clarification purposes only. Material changes, if any, to the scope of services or bidding procedures will only be transmitted by written addendum (See addendum section of BidSync Site). No variation in Scope or conditions shall be permitted based upon a claim of ignorance. Submission of a SOQ will be considered evidence that the proposer has familiarized themselves with the nature and extent of the work, and the equipment, materials, and labor required.

### 1.4 Pre-Proposal Meeting

A Pre-proposal meeting is not currently scheduled for this solicitation.

### 1.5 BIDSYNC

The City of Hollywood uses BIDSYNC ([www.bidsync.com](http://www.bidsync.com)) to administer the competitive solicitation process, including but not limited to soliciting responses, issuing addenda, posting results and issuing notification of an intended decision. There is no charge to register and download the RFQ from BIDSYNC. Proposers are strongly encouraged to read the various vendor Guides and Tutorials available in BIDSYNC well in advance of their intention of submitting a response to ensure familiarity with the use of BIDSYNC. The City shall not be responsible for an Offeror’s inability to submit a response by the end date and time for any reason, including issues arising from the use of BIDSYNC.

### 1.6 Point of Contact

City of Hollywood,  
Ginah Joseph, Senior Purchasing Agent  
2600 Hollywood Blvd  
Hollywood, FL 33020  
E-mail: [gijoseph@hollywoodfl.org](mailto:gijoseph@hollywoodfl.org)

## **Section II – Special Terms and Conditions**

### **2.1 Addenda, Changes, and Interpretations**

It is the sole responsibility of each firm to notify the City utilizing the question / answer feature provided by BIDSNYC and request modification or clarification of any ambiguity, conflict, discrepancy, omission or other error discovered in this competitive solicitation. Requests for clarification, modification, interpretation, or changes must be received prior to the Question and Answer (Q & A) Deadline. Requests received after this date may not be addressed. Questions and requests for information that would not materially affect the scope of services will be answered within the question / answer feature provided by BIDSNYC and shall be for clarification purposes only. Material changes, if any, to the scope of services or the solicitation process will only be transmitted by official written addendum issued by the City and uploaded to BIDSNYC as a separate addendum to the RFQ. Under no circumstances shall an oral explanation given by any City official, officer, staff, or agent be binding upon the City. All addenda are a part of the competitive solicitation documents and each firm will be bound by such addenda. It is the responsibility of each firm to read and comprehend all addenda issued.

**2.1.1** The proposed contracts, if any, shall be subject to availability of funds and in accordance with Florida Statute 287.055, "Consultant's Competitive Negotiation Act." The award of a contract does not guarantee the Respondent that work will be assigned in any given fiscal year. Work will be assigned based on availability and the corresponding expertise of the Consultant to perform the work.

**2.1.2** Before the award of a contract, each respondent may be required to demonstrate their capacity, ability, and financial resources, to provide the services as specified herein in a quality manner, and may also be required to show past history and references that will enable the City to articulate their qualifications. Failure to qualify according to the requirements in the solicitation overall may result in disqualification of your submittal (Statement of Qualifications).

### **2.2 Changes and Alterations**

Construction Manager at Risk may change or withdraw a Statement of Qualifications (SOQ) at any time prior to the due date of this solicitation; however, no oral modifications will be allowed. Modifications shall not be allowed following the due date of this solicitation.

### **2.3 Construction Manager At Risks' Costs**

The City shall not be liable for any costs incurred by the Construction Managers At Risk in responding to this RFQ, including costs incurred in connection with evaluation and award proceedings.

### **2.4 Mistakes, Discrepancies, Errors and Omissions**

The Construction Manager At Risk shall examine this RFQ carefully. The submission of a SOQ shall be prima facie evidence that the Construction Manager At Risk has full knowledge of the scope, nature, and quality of the work to be performed; the detailed requirements of the specifications; and the conditions under which the work is to be performed. Ignorance of the requirements will not relieve the Construction Manager At Risk from liability and obligations under the Contract. Any discrepancies, errors, or ambiguities in the RFQ or addenda (if any) should be reported in writing to the City's Procurement Services Division. Should it be necessary, a written addendum will be incorporated into the RFQ. The City will not be responsible for any oral instructions, clarifications, or other communications.

**2.4.1** The Construction Manager At Risk shall, at all times, indemnify, hold harmless, and defend the City, its agents, servants, and employees from and against any claim,

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demand, judgment, decree, or cause of action of any kind or nature which may arise out of any error, omission, or activity of the Construction Manager At Risk, its agents, servants, or employees.

**2.4.2** The Construction Manager At Risk shall pay all costs, attorney's fees, expenses, and liabilities incurred in the investigation and defense of any claim, demand, judgment, decree, or cause of action of any kind or nature which may arise out of any error, omission, or activity of the Construction Manager At Risk, its agents, servants, or employees. The provisions of this Section shall survive the expiration or earlier termination of the Contract.

**2.4.3.** Nothing in the solicitation shall be deemed to affect the rights, privileges, or immunities of the City under the doctrine of sovereign immunity or as set forth in Section 768.28 of the Florida Statutes.

**2.5 Acceptance of Responses / Minor Irregularities**

**2.5.1** The City reserves the right to accept or reject any or all responses, part of responses, and to waive minor irregularities or variances to specifications contained in responses which do not make the response conditional in nature, and minor irregularities in the solicitation process. A minor irregularity shall be a variation from the solicitation that does not affect the price of the contract or does not give a respondent an advantage or benefit not enjoyed by other respondents, does not adversely impact the interests of other firms or, does not affect the fundamental fairness of the solicitation process. The City also reserves the right to reissue a Request for Qualifications.

**2.5.2** The City reserves the right to disqualify Construction Manager At Risk during any phase of the competitive solicitation process and terminate for cause any resulting contract upon evidence of collusion with intent to defraud or other illegal practices on the part of the Construction Manager At Risk.

**2.6 Responsiveness**

In order to be considered responsive to the solicitation, the firm's response shall fully conform in all material respects to the solicitation and all of its requirements, including all form and substance.

**2.7 Responsibility**

In order to be considered as a responsible firm, firm shall be fully capable to meet all of the requirements of the solicitation and subsequent contract, must possess the full capability, including financial and technical, to perform as contractually required, and must be able to fully document the ability to provide good faith performance.

**2.8 Minimum Qualifications**

Firms shall be in the business of providing general contracting and construction management at risk services for installation of infrastructure improvements including, but not limited to, water main replacement, sewer force main replacement, overhead to underground utility conversion, and associated neighborhood improvements. Must possess sufficient licenses, certifications, financial support, equipment and organization to insure that it can satisfactorily perform the services if awarded a Contract. Construction Manager at Risk firms must submit proof of experience per the requirements in Section IV–Submittal Requirements 4.2.

Firms submitting for Statement Of Qualifications for this project must be properly registered and in compliance with the Secretary of State in Florida, in addition to being licensed and registered with the Department of Business and Professional Regulation as a general contractor.

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- 2.8.1** Firm or principals shall have no record of judgments, pending lawsuits against the City or criminal activities involving moral turpitude and not have any conflicts of interest that have not been waived by the City Commission.
- 2.8.2** Neither Firm nor any principal, officer, or stockholder shall be in arrears or in default of any debt or contract involving the City, (as a party to a contract, or otherwise); nor have failed to perform faithfully on any previous contract with the City.
- 2.8.3** The Respondent and each qualifying member of its firm who will be working on the project must have a valid General Contractor's License in the State of Florida and be registered with the Florida Department of Business and Professional Regulation as an General Contractor.
- 2.8.4** Following the opening of the Statements of Qualifications packages, firms that do not meet the Minimum Qualification Requirements as set forth in this RFQ will not be considered further. The firm awarded the Contract will be required to maintain the Minimum Qualification Requirements during the term of the Contract and any contract renewals.

Firms meeting the Minimum Qualification Requirements criteria will have their Statements of Qualifications evaluated and scored according to the selection process set forth in this RFQ.

An Evaluation Committee will select no fewer than three of the highest ranked proposers for oral interviews/presentations.

Oral presentations are to support what has been provided in the Statements of Qualifications by each firm, exhibit or otherwise demonstrate the information contained therein for clarification purposes. No new information or material not already provided in the firm's Statements of Qualifications is to be presented during oral presentations.

## **2.9 Contract Term**

The initial contract term shall commence upon final execution of the contract by the City, and shall expire upon the completion of the Project, as defined in the Notice to Proceed and Contract Documents. The City reserves the right to extend the contract for an additional period as outlined below, providing all terms conditions and specifications remain the same, both parties agree to the extension, and such extension is approved by the City. The City reserves the right to award the contract in any combination of years it deems to be in the best interest of the City.

In the event services are scheduled to end because of the expiration of this contract, the Construction Manager At Risk shall continue the service(s) upon the request of the City as authorized by the awarding authority. The extension period shall not extend for more than one hundred and twenty (120) days beyond the expiration date of the existing contract. The Construction Manager At Risk shall be compensated for the service at the rate in effect when this extension clause is invoked by the City.

## **2.10 Lobbyist Ordinance**

Any Construction Manager At Risk submitting a response to this solicitation is responsible for being aware of and complying with [Section 34.02](#) of the City Code of Ordinances. If you have questions concerning whether you may or may not need to comply with the ordinance, please contact the City of Hollywood City Clerk's Office at 954-921-3211.

## **2.11 Conflict of Interests Prohibited**

Any Respondent submitting a response to this solicitation is responsible for being aware of, and complying with [Section 34.02](#) of the City Code of Ordinances. If you have questions concerning whether you may or may not need to comply with the ordinance, please contact the City of Hollywood City Clerk's Office at 954-921-3211.

## **2.12 Protest Procedure**

Any Respondent who is not recommended for award of a contract and who alleges a failure by the City to follow the City's [Procurement Code](#) or any applicable law may protest to the Chief Procurement Officer ("CPO"), by delivering a letter of protest to the CPO in accordance with [Section 38.52](#) of the City's [Procurement Code](#) within five days after a notice of intent to award is posted on the City's web site, BIDSYNC, City Clerk's Office, Open Government, and/or City's Sunshine Board (<https://www.hollywoodfl.org/Archive.aspx?AMID=140>).

## **2.13 Sub-Consultants**

**2.13.1** A Sub-Consultant is an individual or firm contracted by the Construction Manager At Risk or Construction Manager At Risk's firm to assist in the performance of services required under this RFQ. A Sub-Consultant shall be paid through Construction Manager At Risk or Construction Manager At Risk's firm and not paid directly by the City. Sub-Consultant are permitted by the City in the performance of the services pursuant to the Contract. Construction Manager At Risk must clearly reflect in its SOQ the major Sub-Consultants(s) to be utilized in the performance of required services. The City retains the right to accept or reject any Sub-Consultant proposed in the response of Successful Construction Manager At Risk(s) or prior to contract execution. Any and all liabilities regarding the use of a Sub-Consultant shall be borne solely by the successful Construction Manager At Risk and insurance for each Sub-Consultant must be maintained in good standing and approved by the City throughout the duration of the Contract. Neither successful Construction Manager At Risk nor any of its Sub-Consultant are considered to be employees or agents of the City. Failure to list all Sub-Consultant and provide the required information may disqualify any proposed Sub-Consultant from performing work under this RFQ.

**2.13.2** Construction Managers At Risk shall include in their responses the requested Sub-Consultant information and include all relevant information required of the Construction Manager At Risk.

## **2.14 Insurance Requirements**

**2.14.1** Construction Manager At Risk will be required and shall require all of its Sub-Consultants and Sub-Contractors to provide, pay for, and maintain in force at all times during the term of the Contract, such insurance, including Professional Liability Insurance, Workers' Compensation Insurance, Comprehensive General or Commercial Liability Insurance, Business Automobile Liability Insurance, and Employer's Liability Insurance, along with required endorsements, as stated below.

**2.14.2** Companies authorized to do business in the State of Florida and having agents upon whom service of process may be made in the State of Florida shall issue such policy or policies. Construction Manager At Risk shall specifically protect City and the City Commission by naming City and the City Commission as additional insureds under the Comprehensive Liability Insurance policy hereinafter described.

a. Workers' Compensation Insurance to apply for all employees in compliance with the

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"Workers' Compensation Law" of the State of Florida and all applicable federal laws, for the benefit of the Construction Manager At Risk's employees.

- b. Sub-Consultants not eligible for Professional Liability Coverage, by virtue of their trade, shall provide Commercial General Liability coverage acceptable to the Contract Administrator and City's Risk Manager. Sub-Consultants and sub-contractors eligible for professional liability coverage shall be required to provide professional liability coverage acceptable to the contract administrator and City's Risk Manager on a task order by task order basis.
- c. The Construction Manager At Risk shall provide the Risk Manager of the City an original certificate of insurance and required endorsements for policies required by Article 2.13. All certificates shall state that the City shall be given thirty (30) days prior to cancellation or modification of any stipulated coverage. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the Construction Manager At Risk to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Procurement Services Division. Such policies shall: (1) name the insurance company or companies affording coverage acceptable to the City, (2) state the effective and expiration dates of the policies, and (3) include special endorsements where necessary. Such policies provided under Article 2.13.2.d. shall not be affected by any other policy of insurance that the City may carry in its own name.
- d. Construction Manager At Risk shall as a condition precedent of the Contract furnish to the City of Hollywood, c/o Office of Procurement Services, 2600 Hollywood Blvd, Room 303, Hollywood, FL 33020, certificate(s) of insurance and endorsements upon execution of the Contract indicating that insurance coverage has been obtained that meets the requirements as outlined below understanding the City reserves the right to lower limits:

**Commercial General Liability**

**LIMITS AND OTHER INFORMATION TO BE PROVIDED BY RISK MANAGEMENT**

**i. Limits of Liability:**

Bodily Injury and Property Damage Liability	
Combined Single Limit	
Each Occurrence	\$2,000,000
General Aggregate Limit	\$5,000,000
Personal Injury	\$2,000,000
Products/Completed Operations	\$2,000,000

**ii. Endorsements Required:**

City of Hollywood included as an Additional Insured  
 Employees included as insured  
 Broad Form Contractual Liability  
 Waiver of Subrogation  
 Premises/Operations  
 Products/Completed Operations  
 Independent Contractors  
 Sub-Contractor as insured  
 Primary and Non Contributory

**Automobile business**

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**i. Limits of Liability:**

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

**ii. Endorsements Required:**

Waiver of Subrogation  
City Named as Additional Insured on all Contracts and Subcontracts

**Workers' Compensation**

**i Limits of Liability:**

Statutory-State of Florida  
\$1,000,000 Bodily Injury by Accident  
\$1,000,000 Bodily Injury by Disease, policy limits  
\$1,000,000 Bodily Injury by Disease, each employee

**ii. Endorsements Required:**

Waiver of Subrogation

**Professional Liability/Errors and Omissions Coverage**

**i Limits of Liability:**

Each Claim \$2,000,000  
General Aggregate Limit \$3,000,000  
Deductible not to exceed \$100,000  
Must be in effect for at least 10 years after Project completion

**Pollution Liability**

**i Limits of Liability:**

Each Occurrence \$1,000,000  
Including Non Owned Disposal Sites

**2.14.3** The above insurance requirements are only required to be carried by the Construction Manager At Risk during the term of the assigned Project and provided upon award of the task order, except for Professional Liability/Errors and Omissions insurance which must be in effect for at least ten years after Project completion.

**2.14.4** The City is required to be named as additional insured under the Commercial General Liability insurance policy. BINDERS ARE UNACCEPTABLE. The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the Construction Manager At Risk. Any exclusions or provisions in the insurance maintained by the Construction Manager At Risk that precludes coverage for the work contemplated in a contract shall be deemed unacceptable and shall be considered a breach of contract.

**2.14.5** All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida and must maintain a minimum financial strength rating of "A-", and no less than "Class X" as to financial size, by the latest edition of A.M. Best's Key Rating Insurance Guide which holds a valid Florida Certificate of

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Authority issued by the State of Florida, Department of Insurance, and are members of the Florida Guarantee Fund. Compliance with the foregoing requirements shall not relieve the Construction Manager At Risk of its liability and obligation under this section or under any other section of the Contract.

**Note:** The City reserves the right to require any other insurance it deems necessary depending on the exposure. The City contract number must appear on each certificate.

**2.14.6** The Construction Manager At Risk shall be responsible for assuring that the insurance certificates required in conjunction with this section remain in force for the duration of the Project. If insurance certificates are scheduled to expire during the contractual period, the Construction Manager At Risk shall be responsible for submitting new or renewed insurance certificates to the City at a minimum of 30 calendar days in advance of such expiration.

**2.15 Contract**

Any subsequent contract will be subject to the Contract included as an attachment and made a part of this RFQ.

**2.16 Award of Contract**

A Contract will be awarded by the City Commission. The City reserves the right to execute or not execute, as applicable, a contract with the Construction Manager at Risk that is determined to be in the City's best interests. The draft Contract is attached to this RFQ. The City reserves the right to award a contract to more than one Construction Manager At Risk as is in the City's best interest.

**2.17 Scrutinized Companies**

Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), *affirmed*, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," the Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2020), that it is not engaged in a boycott of Israel, and that it does not have business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes (2020), as may be amended or revised. The City may terminate the Contract at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2020), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2020), or is engaged in a boycott of Israel or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2020), as may be amended or revised.

**2.18 Supplier Portal (Oracle) Payment Method**

The City has implemented software that contains a supplier portal allowing suppliers to submit and update their information via the supplier portal. New suppliers will be required to register; and current suppliers will need to confirm and update their information.

Firms are responsible for ensuring all contact, payment, and general information is updated at all times, and will not hold the City liable for any inaccurate information.

**2.19 Debarred Or Suspended Bidders Or Proposers**

The bidder or proposer certifies, by submission of a response to this solicitation, that neither it nor its principals and subcontractors are presently debarred or suspended by any federal, state, county or municipal department or agency.



## 2.20 Public Records

### A. Public Records/Trade Secrets/Copyright:

**All responses will become the property of the City. The Consultant's response to the RFQ is a public record pursuant to Florida law and is subject to disclosure by the City pursuant to Chapter 119.07, Florida Statutes ("Public Records law"). The City shall permit public access to all documents, papers, letters or other material submitted in connection with this RFQ and the Contract to be executed for this RFQ, subject to the provisions of Chapter 119, Florida Statutes.**

Any language contained in the Consultant's response to the RFQ purporting to require confidentiality of any portion of the Consultant's response to the RFQ, except to the extent that certain information is in the City's opinion a Trade Secret pursuant to Florida law, shall be void. If a Consultant submits any documents or other information to the City that the Consultant claims is Trade Secret information and exempt from Florida Statutes Chapter 119.07 ("Public Records Laws"), the Consultant shall clearly designate that it is a Trade Secret and that it is asserting that the document or information is exempt. The Consultant must specifically identify the exemption being claimed under Florida Statutes 119.07. The City shall be the final arbiter of whether any information contained in the Consultant's response to the RFQ constitutes a Trade Secret. The City's determination of whether an exemption applies shall be final, and the Consultant agrees to defend, indemnify, and hold harmless the City and the City's officers, employees, and agent, against any loss or damages incurred by any person or entity as a result of the City's treatment of records as public records. In the event of Contract award, all documentation produced as part of the Contract shall become the exclusive property of the City. Proposals purporting to be subject to copyright protection in full or in part will be rejected.

EXCEPT FOR CLEARLY MARKED PORTIONS THAT ARE BONA FIDE TRADE SECRETS PURSUANT TO FLORIDA LAW, DO NOT MARK YOUR RESPONSE TO THE RFQ AS PROPRIETARY OR CONFIDENTIAL. DO NOT MARK YOUR RESPONSE TO THE RFQ OR ANY PART THEREOF AS COPYRIGHTED.

### B. PUBLIC RECORDS GENERAL

**IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (954-921-3211), pcerny@hollywoodfl.org, CITY CLERK'S OFFICE, 2600 HOLLYWOOD BLVD, HOLLYWOOD, FLORIDA 33020)**

Consultant shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes.

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3. 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 contract term and following completion of this contract if the Consultant does not transfer the records to the City.

4. Upon completion of the Contract, transfer, at no cost, to the City all public records in possession of the Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City upon completion of this Contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of this Contract, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City. It is solely and exclusively the Contractor's responsibility to familiarize itself with Chapter 119, Florida Statutes, and to ensure compliance with its requirements.

## **2.21 Unauthorized Work**

The Successful Construction Manager At Risk(s) shall not begin work until a Contract has been awarded by the City Commission and the contract has been executed. Construction Manager At Risk agrees and understands that the issuance of a Notice to Proceed shall be issued and provided to the Construction Manager At Risk following execution of a contract.

## **2.22 Prohibition Against Contingent Fees**

The Construction Manager At Risk warrants that they have not and will not employ or retain any company or person, other than a bona fide employee working solely for the Construction Manager At Risk to solicit or secure a contract pursuant to this competitive solicitation, and that they have not and will not pay or agree to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Construction Manager at Risk (or registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from an award or making of a contract pursuant to this competitive solicitation.

For breach or violation of this warranty, the City shall have the right to annul the Contract without liability, or at its discretion to deduct the full amount of such fee, commission, percentage, gift or contingent fee from any fees due the Construction Manager At Risk firm. This solicitation and prohibitions against contingent fees are issued in accordance with Florida Statutes 287.055.

## **2.23 Indemnity/Hold Harmless Agreement**

The Construction Manager At Risk agrees to protect, defend, indemnify, and hold harmless the City of Hollywood and its officers, employees and agents from and against any and all losses, penalties, damages, settlements, claims, costs, charges for other expenses, or liabilities of every and any kind including attorney's fees, in connection with or arising directly or indirectly out of the work agreed to or performed by Construction Manager At Risk under the terms of any contract that may arise due from this solicitation and the bidding process.

Without limiting the foregoing, any and all such claims, suits, or other actions relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged violations of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court shall be included in the indemnity hereunder.

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### Section III - Scope of Services

#### 3.1 Purpose

The Design and Construction Management (DCM) and Public Utilities (PU) Departments are currently in the design phase for two adjacent projects located in the City of Hollywood; east of A1A between Franklin Street and Balboa Street, plus Douglas and Freedom Street, and the portions of Surf Road adjacent to these limits. The work to be accomplished under the contract includes Pre-Construction Services (Phase I) and Construction Services (Phase II) for The North Beach Utilities Underground Conversion for DCM and Hollywood Beach Utility Improvements - Phase 1A Water Main Replacement for PU. Construction Manager at Risk will be responsible for providing preconstruction and construction management services for the scopes of services described below under one contract.

**Scope A - North Beach Utilities Underground Conversion**, a Go Bond project, includes the hardening of utilities for barrier island north beach area outside of the BCRA district to include residential streets east of A1A to the ocean. Includes pavement restoration, road resurfacing and replacement of street lights. The budget for this scope of work is estimated at \$2,500,000.

**Scope B - Hollywood Beach Utility Improvements Phase 1A Water Main Replacement**, a Public Utilities project, consists of water main improvements from Balboa Street to Franklin Street between east of N. Ocean Drive (A1A) and Surf Road including along Douglas Road and Surf Road. In addition, wastewater improvement includes approximately 300 linear feet of force main along Balboa Street between Lift Station E-09 and N. Ocean Drive (A1A). The budget for this scope of work is estimated at \$3,000,000.

#### 3.2 Scope of Services

The scope of work defining Pre-Construction Services (Phase I) and Construction Services (Phase II), if awarded, to be provided by the Construction Manager at Risk for this project, are as follows:

The selected Construction Manager at Risk will furnish all work, necessary permits, and construction supervision to fully complete the construction of the scope of work covered under this RFQ.

Project	Scope of work
<b>Scope A North Beach Utilities Underground Conversion</b>	<p>Overhead to underground utility conversion project for approximately 3,500 pole-feet of overhead electric, telephone, and cable TV utilities within the City of Hollywood, Florida. The work will also include site restoration, street lighting installation, roadway improvements, and utility adjustments as may be required.</p> <p>The Construction Manager at Risk will control the schedule of the work performed by his own forces and subcontractors as well as coordinate the schedules and installation activities of the utility owners (FPL, AT&amp;T, and Comcast) and monitor the progress and schedule of the work. The Construction Manager will oversee the work area and provide final restoration of private property areas impacted by the demolition of the existing overhead system upon final completion. Existing local traffic must be maintained. Specific Maintenance of Traffic Plans will be required to be developed by the CMAR to execute the project. Coordination with the FDOT will be required in accordance with the FDOT Utility Permit that will be obtained by the Owner for the project for any work within A1A right of</p>

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	way. Coordination with the FDEP will be required for any improvements seaward of the Coastal Construction Control Line (CCCL). A CCCL Permit will be obtained by the Owner prior to construction.
<b><u>Scope B</u></b> <b>Hollywood Beach</b> <b>Utility Improvements -</b> <b>Phase 1A Water Main</b> <b>Replacement</b>	The Hollywood Beach Utility Infrastructure Improvements Phase 1A project consists of water main improvements from Balboa Street to Franklin Street between east of N. Ocean Drive (A1A) and Surf Road including along Douglas Road and Surf Road. The water main improvements are approximately 5,600 feet of proposed 4-inch through 12-inch diameter water mains along local City streets. These improvements involve upgrading 2-inch, 4-inch and 6-inch diameter water mains one nominal size and replacing 8-inch, and 12-inch diameter water mains with the same nominal size. The existing water mains will be replaced with new polyvinyl chloride (PVC) or ductile iron (DI) water mains, DI fittings, isolation valves, fire hydrants, and water services. Existing water meter and boxes will remain within easements or street rights-of-way. In addition, wastewater improvement which consists of approximately 300 linear feet of PVC force main and DI fittings along Balboa Street between Lift Station E-09 and N. Ocean Drive (A1A).

### 3.2.1 GENERAL (PART OF PRE-CONSTRUCTION SERVICES: PHASE I)

- a. The Construction Manager At Risk shall develop a Detailed Project Schedule, utilizing Critical Path Method (CPM) logic sequencing, reflecting the design (remaining portion thereof) and construction of the overall project.
- b. The Construction Manager At Risk shall utilize the completed Detailed Project Schedule, to develop a Project Control Schedule, which shall be presented in a bar graph format. The purpose of the Project Control Schedule is to summarize the information contained in the CPM schedule in order to provide the project team with a management tool and an overall project visual aid to easily determine the schedule and status of the total project. The information derived from these two schedules are to become part of the Construction Manager At Risk's management plan developed by the Construction Manager At Risk.
- c. Construction Manager At Risk shall periodically update on a monthly basis both the Detailed Project Schedule and the Project Control Schedule throughout the term of the preconstruction and construction phases of the project as part of the Construction Manager At Risk's management activity.
- d. The Construction Manager At Risk shall review project requirements, specifications, on and off-site development, survey requirements, preliminary budget, and make value engineering and constructability recommendations for revisions to the City and Consultant in the form of a written report prior to final payment for this phase
- e. The Construction Manager At Risk shall, subject to City's approval and compliance with existing City completion schedule, establish a preliminary master project schedule identifying all phases, Critical Path elements, responsibilities of the City, Consultant, outside agencies, third parties and any other impacts which would affect project schedule and progress and update them monthly throughout the duration of the contract.

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- f. Where the project includes renovation or expansion of an existing Facility, the Construction Manager At Risk will assist the Construction Team in preparing an analysis package outlining the condition of the existing Facility, existing structure, existing finishes, and existing equipment, code deficiencies, energy use, and life expectancy of other building systems by providing constructability, value engineering and cost estimates recommendations. The package should contain the Construction Manager At Risk's recommendations, cost estimates and preliminary schedules. Such information shall be provided to the City and Consultant in the form of a written report prior to final payment for this phase.
- g. The Construction Manager At Risk shall provide recommendations for the design, bid, and bid packaging of the project for efficient scheduling, cost control and financial resource management. Such information shall be provided to the City and Consultant in the form of a written report prior to final payment for this phase.
- h. The Construction Manager At Risk shall utilize information and reporting systems to provide the City with monthly reports containing accurate and current cost controls, work status, including but not limited to Work narrative, Work completed/anticipated, short term and long term schedules estimated expenditures, and project accounting systems of the project at all times. Such information shall be provided to the City and Consultant in the form of a written report, prior to final payment for this phase.
- i. The Construction Manager At Risk shall prepare a report with the Project Team's participation which shall describe, as a minimum, the Work Plan, job responsibilities, and written procedures for reports, meetings, inspections, changes to the project, building systems and delivery analysis and other relevant matters. Such information shall be provided to the City and Consultant prior to final payment for this phase.
- j. The Construction Manager At Risk shall provide market analysis and motivation for subcontractor interest and recommendations for minority business participation. This shall include analysis of the Construction Manager At Risk's historical data for subcontracting, communication with contractor and trade organizations requesting participation, review of the City's M/WBE data, advertising, outreach programs, mailings to all prospective bidders identified by these actions, and reporting of all of the foregoing to the CITY. Such information shall be provided to the City and Consultant in the form of a written report prior to final payment for this phase.
- k. The Construction Manager At Risk's personnel to be assigned during this phase and their duties and responsibilities to this project and the duration of their assignments are shown in the Project Agreement. All required reports and documentation shall be submitted and approved by the City as pre-requisite to progress payments to the Construction Manager At Risk by the City during this phase.

### 3.2.2 DESIGN PHASE (PART OF PRE-CONSTRUCTION SERVICES: PHASE I)

- a. The Construction Manager At Risk shall review and evaluate all design documents (if applicable) for clarity, consistency, completeness, and ease of construction in order to achieve the overall objective of the project. The Construction Manager At Risk also will periodically review all Contract Documents for constructability, at a minimum at each design phase submittal, and to help ensure compliance with all applicable laws, rules, codes, design standards, and ordinances. Construction Manager At Risk shall immediately notify City of any non-compliant Contract Document. Such information shall be provided to the

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City and Consultant in the form of a written report in format as noted herein prior to final payment for this phase.

The Construction Manager At Risk will be required to attend all project related meetings and include a summary of each meeting in its monthly report to the City.

- b. Construction Manager At Risk's review of the design documents shall include the following activities:
  - i. Preparing a Master Checklist to be used as a guide for reviewing each technical discipline.
  - ii. Conducting reviews by preparing a "mark-up" set of documents and a list of comments corresponding to the "mark-up."
  - iii. Preparing and presenting a written report of constructability problems and concerns, including:
    - (a) Recommendations
    - (b) Checklist and comments
  - iv. Attending workshop meetings with the Consultant and the Project Manager to review proposed changes and recommending the changes, which are to be implemented for the project.
  - v. Verifying and conducting final review of changes to the construction Documents.
- c. The Construction Manager At Risk's services shall be rendered compatibly and in cooperation with the Consultant's services under the City's Agreement with the Consultant. The Construction Manager At Risk will be required to maintain a working relationship with and coordinate their activities with the Consultant and any additional Consultant.
- d. The Construction Manager At Risk shall prepare detailed cost estimates and recommendations to City and Consultant at C.D. (60% & 90% Construction Documents) phases of the project. Such information shall be provided to the CITY and Consultant in the form of a written report prior to final payment for each phase.
- e. The Construction Manager At Risk shall review all Contract Documents and provide value engineering recommendations to minimize the City's capital outlay and maximize the City's operational resources. Such information shall be provided to the City and Consultant in the form of a written report prior to final payment for this phase. All such recommendations shall be acknowledged and reviewed for incorporation into the construction documents by the Consultant once authorized by the City in writing.
- f. The Construction Manager At Risk will review all Contract Documents, site conditions to ensure proper coordination, constructability, clarity and completeness, and to minimize conflict, errors, omissions and unforeseen conditions. The Construction Manager At Risk shall coordinate with the Consultant to eliminate change orders due to errors, omissions and unforeseen conditions. The Construction Manager At Risk agrees specifically that no Change Orders shall be requested by the Construction Manager At Risk or considered by the City for reasons that were or should have reasonably been known by to the Construction Manager At Risk involving unforeseen conditions, conflicts

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or questions of clarity in the Contract Documents, or between the Contract Documents and the existing conditions, utilities, and unforeseen underground conditions.

- g. The Construction Manager At Risk shall periodically update the master project schedule and make recommendations for recovery of lost time. Such information shall be provided to the City and Consultant in the form of a written report prior to final payment for this phase.
- h. The Construction Manager At Risk will coordinate with the Consultant and provide to the Project Construction Team permitting applications and requirements for the projects. The Construction Manager At Risk will periodically update cost estimates and make recommendations to keep the project within the target budget.
- i. At completion of the Construction Manager At Risk's review of the plans and specifications, except only as to specific matters as may be identified by appropriate written comments pursuant to this section, the Construction Manager At Risk, without assuming the Consultant's responsibilities, shall notify City in writing that the plans and specifications are consistent, practical, feasible and constructible and that the work described in the plans and specifications for the various bidding packages is constructible within the scheduled construction time.
  - i. **DISCLAIMER OF WARRANTY: THE CITY DISCLAIMS ANY WARRANTY THAT THE PLANS AND SPECIFICATIONS FOR THE PROJECT ARE ACCURATE, PRACTICAL, CONSISTENT, CONSTRUCTIBLE OR WITHOUT DEFECT.**
- j. The City may select certain projects for expediting using fast-track construction. When this option is exercised, in writing, by the City, it shall be implemented if it is identified as necessary in a plan prepared by the CMAR and agreed to by the City and Consultant.
- k. The Construction Manager At Risk shall be responsible for preparing two (2) Construction Cost Estimates in addition to preparing the Guaranteed Maximum Price (GMP). The Project Manager shall have the option of reducing the number of estimates depending on the percentage of the construction documents that is complete by the time this contract is executed.
- l. The first Construction Cost Estimate shall be done on or before the sixty percent (60%) construction document stage. The purpose of this Cost Estimate is to verify the owner's ability to complete the project within the established construction budget, and to make adjustments to the concept plan if needed to ensure that the project can be constructed within the established budget. The cost information derived from this estimate shall directly relate to the Construction Manager At Risk's recommendations in the Constructability and Value Engineering Report relative to ways to reduce and/or control costs. Based on the results of this estimate the CONSTRUCTION MANAGER AT RISK should be prepared to offer recommendations on whether or not the scope of the project need to be changed to be able to complete the project within the established budget.
- m. The second Construction Cost Estimate shall be based on ninety percent (90%) complete construction documents and shall be "permit ready" with sufficient detail to permit issuance of a building permit and to obtain all required approval of all governmental authorities having jurisdiction over the project.

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- n. The Construction Manager at Risk will prepare the GMP based on 100% complete construction documents.
- o. As a result of the Construction Manager At Risk's Constructability Review or Construction Cost Estimates and in order to reduce or control costs, the Construction Manager At Risk shall analyze the building's structural, architectural, mechanical, electrical and plumbing systems and elements, and make cost/performance recommendations for the Project Manager's and Consultant's consideration. The Construction Manager At Risk shall prepare its recommendation in the form of a written report to be presented to the project team at each phase submittal review.

3.2.3 BIDDING AND AWARD PHASE (PART OF PRECONSTRUCTION SERVICES: PHASE I)

- a. Upon obtaining all necessary approvals of the Construction Documents, including a Building Permit as required by the Florida Building Code and City approval of the latest Statement of Probable Construction Cost, the Construction Manager At Risk shall obtain bids and commence awarding construction contracts.
- b. The Construction Manager At Risk shall review the City's records of pre-qualified contractors, including Minority/Women Business Enterprises (M/WBEs), if applicable, and prepare a list of those recommended for work pursuant to this contract. The City reserves the right to reject any or all subcontractors recommended for approval. The Construction Manager At Risk shall maintain a list of all potential bidders, including M/WBEs and those who are approved as pre-qualified. The Construction Manager At Risk shall conduct a community outreach program to identify potential local subcontractors who may be selected to participate in the project.
- c. The Construction Manager At Risk shall evaluate potential participants to establish their qualifications (based on past work experience, similar projects, the building quality of those past projects, and other similar factors) for presentation to the City. The Construction Manager At Risk shall present its evaluation to the City in the form of a written report utilizing the attached Forms as necessary, the subcontractors being considered, the scope of work recommended for that subcontractor, the subcontractor's qualifications and past work history, and the Construction Manager At Risk's recommendation concerning the use of the listed subcontractors.
- d. The Construction Manager At Risk shall provide the necessary services to reach out to local and MBE/SBE firms.
- e. The Construction Manager At Risk shall prepare and issue the bid packages to cover the scope of the Work for this contract.
- f. The Construction Manager At Risk, in coordination with the City, shall schedule pre-bid conferences as required and issue a written summary of the conference(s).
- g. The Construction Manager At Risk and City shall jointly open, at a mutually agreed location, and evaluate at least three bids, if possible, for each portion of the Work solicited. The Construction Manager At Risk shall also make recommendations to the City for award to the lowest, responsive, and responsible bidder. A recommendation for award to other than the lowest bidder shall be justified in writing. Construction Manager At Risk will disclose any related party relationship in a bidding subcontractor in writing prior to the award of contracts. For the purposes of this agreement, a related party relationship shall constitute any instance of common ownership, common management, or an ownership stake in the bidding



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subcontractor. The Construction Manager At Risk is required to present the bid tabulation summary and all supporting bid day documentation to the City after the bid opening. The referenced documentation as well as the awarding of any subcontracts is subject to the written approval of the City. The Construction Manager At Risk is not authorized to enter into any subcontract agreements without first obtaining written approval for each subcontractor.

- h. **Guaranteed Maximum Price (GMP):** Upon completion of the design phase [construction documents 100% complete] and bidding, the Construction Manager At Risk shall present to the City the GMP for the City's review and approval in accordance with the Project Agreements.
- i. At the time of the submission of the documents referenced in the Project Agreements, the Construction Manager At Risk is required to submit, in writing, a buyout reconciliation of all subcontracts that have been awarded as a product of the initial bid opening date. The result of this reconciliation is to be presented in association with a modified schedule of values reflecting the net buyout adjustment in the City Savings / Buyout line on the schedule of values. Any un-awarded values remaining in the GMP shall continue to be carried at their estimated amounts until a subcontract is awarded and adjusted in accordance with the Project Agreement.
- j. Should the Construction Manager At Risk desire to submit a bid to self-perform any of the portions of the Work, this intention must be clearly conveyed to the City prior to the receipt of any other bids for the same scope of work. Construction Manager at Risk self-perform is limited to 20% of the construction budget. All bids to be received for this portion of the Work must be submitted directly to the City who will then open and evaluate at bid opening. When three (3) or more bids are received for that portion of work, and the Construction Manager At Risk's bid is the lowest and approved by the City, the Construction Manager At Risk's bid shall be incorporated in the GMP as a lump sum. In the event where fewer than three (3) bids are received for that portion of work which the Construction Manager At Risk intends to self-perform, the City shall reimburse the Construction Manager At Risk for the actual cost of work performed, subject to the supporting documentation provisions as outlined in this Agreement.

#### 3.2.4 CONSTRUCTION PHASE (PART OF CONSTRUCTION SERVICES: PHASE II)

- a. The Construction Manager At Risk shall fully comply with the provision of the City's Project Manual, including but not limited to Division 0 and 1, and the attached General Conditions. In the event of a conflict between this Agreement and such documents the agreement shall control.
- b. The Construction Manager At Risk shall provide the minimum staffing level as set forth in the Project Agreement for this project.
- c. The Construction Manager At Risk shall maintain and prepare monthly updates for all project schedules, including Critical Path elements, provide written progress reports, describe problems and corrective action plan(s) and conduct briefings as required by the City. Such information shall be provided to the City and Consultant in the form of a written report with progress payments requests.
- d. Subject to the Project Agreement the Construction Manager At Risk may self-perform certain construction work when it benefits the City, results in cost and time savings, and is pre-approved by the City in writing and limited to no more than 20% of construction cost.

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- e. The Construction Manager at Risk shall coordinate project close-out, operation, and transition to occupancy.
- f. The Construction Manager At Risk shall coordinate with the Consultant to provide complete project records including project manual, and electronic Computer Assisted Design (CAD) drawings corrected to show all construction changes, additions, and deletions. (Construction Manager At Risk shall note all changes on the as-builts for the Consultant to reflect on the drawings and CAD disc.)
- g. The Construction Manager At Risk shall coordinate with the City's staff to prepare the Certificate of Final Inspection.
- h. The Construction Manager At Risk shall obtain and review all warranties, operations and maintenance manuals and other such documents, for completeness, have them corrected if necessary and submit them to the City.
- i. The Construction Manager At Risk shall complete all punch list items generated by the Building Code Inspector (BCI), the City, the Consultant and any others having jurisdiction over the project, during its inspections.
- j. If at any time during the course of the Project, the City determines that the performance of any Subcontractor, member of the Project Team or other member of Construction Manager At Risk's staff working on the Project is unsatisfactory, City can require Construction Manager At Risk to remove such person or entity from the Project immediately and replace such person or entity. Replacements of members of the Project Team or Construction Manager At Risk's staff shall be at no cost or penalty to City for delays or inefficiencies the change may cause. Construction Manager At Risk shall be entitled to request a Change Order for costs and time associated with the replacement of Subcontractors required by City.
- k. Construction Manager At Risk shall exert every reasonable and diligent effort to assure that all labor employed by Construction Manager At Risk and its Subcontractors on the Project shall work in harmony, and be compatible, with all other labor being used on the Project and representatives of City. Construction Manager At Risk shall include this provision in all contracts with its Subcontractors, and all Subcontractors shall include such provision in their contracts with sub- subcontractors; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work guaranteed by Article I, Section 6 of the Florida Constitution.
- l. No Contractual Relationship. Nothing contained in this Agreement shall create a contractual relationship between City and any other person or entity other than Construction Manager At Risk.
- m. Good Order- The Construction Manager At Risk shall enforce strict discipline and good order among the Construction Manager At Risk's employees and other persons carrying out Construction Manager At Risk's obligations under the Contract Documents. The Construction Manager At Risk shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.
- n. Liability- Construction Manager At Risk shall be responsible to City for acts and omissions of Construction Manager At Risk's employees, contractors and their subcontractors,

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agents and employees, and other persons, including, design professionals, performing any portion of Construction Manager At Risk's obligations under the Contract Documents.

### 3.2.5 WARRANTY PHASE (PART OF CONSTRUCTION SERVICES: PHASE II)

- a. The Construction Manager At Risk shall provide a minimum one (1) year warranty and shall coordinate and supervise the completion of warranty Work during the warranty period. Construction Manager At Risk shall participate with the City in conducting of warranty inspections held on the sixth (6th) and eleventh (11th) months after final completion. Construction Manager At Risk shall deliver all as-built drawings, warranties and guaranties to the City.
- b. Where any Work is performed by the Construction Manager At Risk's own forces or by subcontractors under contract with the Construction Manager At Risk, the Construction Manager At Risk shall warrant that all materials and equipment included in such Work will be new except where indicated otherwise in Contract Documents, and that such Work will be free from improper workmanship and defective materials and in conformance with the Drawings and specifications. With respect to the same Work, the Construction Manager At Risk further agrees to correct all work found by the City to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of one year from the Date of City Occupancy of the Project or a designated portion thereof or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications or by Florida Law. The Construction Manager At Risk shall collect and deliver to The City any specific written warranties given by others as required by the Contract Documents.
- c. The Construction Manager At Risk shall provide a Warranty Summary Report at the end of the 6- month warranty period and 11-month warranty period. This report shall provide at a minimum;
  - i. Description of each warranty item during the period.
  - ii. Date item reported to Construction Manager At Risk.
  - iii. Date item corrected. If more than one trip required, document each.
  - iv. Description of action taken to cure warranty item.
  - v. Obtain signature of Project Manager or designee acknowledging warranty items have been completed.
  - vi. Other pertinent information, if applicable.
- d. Refusal of the Construction Manager At Risk to provide any work required in the Warranty Phase of the project shall be basis for non-payment of any and all Warranty Phase Fee unpaid at the time of refusal.

## Section IV – Submittal Requirements

### 4.1 Instructions

**4.1.1** All Statement of Qualifications must be submitted in a sealed package with the RFQ number, due and open date, and the Request for Qualifications (RFQ) title clearly marked on the outside. If more than one package is submitted they should be marked 1 of 2, etc. The Statement of Qualifications must identify the solicitation name **Construction Management at Risk Services** for Scope A -The North Beach Utilities Underground Conversion Hollywood Beach Utility Improvements and Scope B - Phase 1A Projects The North Beach Utilities Underground Conversion Hollywood Beach Utility Improvements.

**4.1.2 THIS IS A PAPER RFQ SUBMITTAL WITH USB.** All Statements of Qualifications (SOQs) must be received by the City of Hollywood, for the Office of Procurement Services, in Room 221, City Hall-City Clerk, 2600 Hollywood Blvd, Hollywood, Florida, 33020 prior to the date specified, by September 7, 2021 at 3:00p.m. Submittal of response by fax or e-mail will NOT be acceptable.

**Proposers must submit an identified original hard copy and five (5) hard copies for a total of six (6) hard copies of their Statement of Qualifications. Proposers must submit an electronic copy of their Statement of Qualifications on a USB drive as well. The USB copy must match the original hard copy. In case of any discrepancy between the original hard copy and the USB, the original hard copy prevails. Failure to provide Statement Of Qualifications as stated above, may be grounds to find proposers non-responsive.**

The proposer understands that the information contained in the Statement of Qualifications is to be relied upon by the City in awarding the proposed Contract, and such information is warranted by the proposer to be true. The proposer agrees to furnish such additional information, prior to acceptance of any Statement of Qualifications, relating to the qualifications of the Proposer as may be required by the City.

**A representative who is authorized to contractually bind the firm shall sign the STATEMENT OF QUALIFICATION CERTIFICATION or ACKNOWLEDGEMENT FORM. Omission of a signature on that page may result in rejection of your Statement of Qualifications.**

Although Statement Of Qualifications are accepted 'hard copy', the City of Hollywood uses BIDS SYNC ([www.bidsync.com](http://www.bidsync.com)) to administer the competitive solicitation process, including but not limited to soliciting responses, issuing addenda, responding to questions / requests for information. There is no charge to register and download the RFQ from BIDS SYNC. Proposers are strongly encouraged to read the various vendor Guides and Tutorials available in BIDS NYC well in advance of their intention of submitting a response to ensure familiarity with the use of BIDS SYNC. The City shall not be responsible for a proposer's inability to submit a response by the end date and time for any reason, including issues arising from the use of BIDS SYNC.

**4.1.3** Careful attention must be given to all requested items contained in this RFQ. Construction Managers at Risk are invited to submit responses in accordance with the requirements of this RFQ. Please read the entire solicitation before submitting an SOQ. Consultant must provide a response to each requirement of the RFQ. Responses should be prepared in a concise manner, with an emphasis on completeness and clarity. Consultant's notes, exceptions, and comments may be rendered on an attachment, provided the same format of

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this RFQ text is followed. All Responses shall be submitted in a sealed envelope or package with the RFQ number and opening date clearly noted on the outside of the envelope.

- 4.1.4** All information submitted by Proposer shall be typewritten or provided as otherwise instructed in the RFQ. Proposers shall use and submit any applicable or required forms provided by the City and attach such to their response. Failure to use the forms may cause the response to be rejected and deemed non-responsive.
- 4.1.5** Responses shall be submitted by an authorized representative of the firm. Responses must be submitted in the business entities name by the President, Partner, Officer or Representative authorized to contractually bind the business entity. Responses shall include an attachment evidencing that the individual submitting the response, does in fact have the required authority stated herein.
- 4.1.6** All responses will become the property of the City. The Proposer's response to the RFQ is a public record pursuant to Florida law, which is subject to disclosure by the City under the State of Florida Public Records Law, Florida Statutes Chapter 119.07 ("Public Records Law"). The City shall permit public access to all documents, papers, letters or other material submitted in connection with this RFQ and the Contract to be executed for this RFQ, subject to the provisions of Chapter 119.07 of the Florida Statutes. Any language contained in the Proposer's response to the RFQ purporting to require confidentiality of any portion of the Proposer's response to the RFQ, except to the extent that certain information is in the City's opinion a Trade Secret pursuant to Florida law, shall be void. If a Proposer submits any documents or other information to the City which the Proposer claims is Trade Secret information and exempt from Florida Statutes Chapter 119.07 ("Public Records Laws"), the Proposer shall clearly designate that it is a Trade Secret and that it is asserting that the document or information is exempt. The Proposer must specifically identify the exemption being claimed under Florida Statutes 119.07. The City shall be the final arbiter of whether any information contained in the Proposer's response to the RFQ constitutes a Trade Secret. The City's determination of whether an exemption applies shall be final, and the proposer agrees to defend, indemnify, and hold harmless the City and the City's officers, employees, and agent, against any loss or damages incurred by any person or entity as a result of the City's treatment of records as public records. In the event of Contract award, all documentation produced as part of the Contract shall become the exclusive property of the City.
- 4.2** The following information and documents are required to be provided with SOQ responses to this RFQ. Failure to do so may deem your SOQ non-responsive.

**Contents of the Statement of Qualification**

The City deems certain documentation and information important in the determination of responsiveness and for the purpose of evaluating responses. Responses should seek to avoid information in excess of that requested, must be concise, and must specifically address the issues of this RFQ.

Statements of Qualifications are limited to a maximum page count of 100; pages must be numbered to verify quantity. Table of contents, Tab dividers and required forms are excluded from the page count. Responses must be consecutively numbered, printed double-sided, be bound preferably in a soft cover binder, and utilize recyclable materials as much as practical. Elaborate binders are neither necessary nor desired. Statements of Qualifications must have a front cover that contains the following information:

Company Name

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Project Number and Title of the Request for Qualifications  
Due Date of Statement of Qualifications

All firms responding to this RFQ, in order to be considered, must demonstrate and submit as part of the RFQ submittal the following requirements stated within this section. The responses shall be organized and divided into the sections indicated herein. These are not inclusive of all the information that may be necessary to properly evaluate the response and meet the requirements of the Scope of Services and/or specifications. Additional documents and information should be provided as deemed appropriate by the Consultant in response to specific requirements stated herein or through the RFQ.

Proposal sections should be organized using the following sections format:

**Tab A: Table of Contents**

**Tab B: Executive Summary**

**Tab C: Firm Qualifications and Experience**

**Tab D: Organizational Profile and Project Team Qualifications**

**Tab E: Approach to Scope of Work**

**Tab F: Knowledge of the Site and Local Conditions**

**Tab G: Sub Consultant Information**

**Tab H: Financial Resources**

**Tab I: Legal Proceedings and Performance**

**Tab J: Required Forms**

**Note:** Do not include pricing - Compensation will be requested and considered only during the competitive negotiation process.

**4.2.1 Tab A: Table of Contents**

The table of contents should outline in sequential order the major areas of the submittal, including enclosures. All pages should be consecutively numbered and correspond to the Table of Contents.

**4.2.2 Tab B: Executive Summary**

Each Offeror must submit an executive summary that identifies the business entity, its background, main office(s), and office location that will service the Contract. Identify the officers, principals, supervisory staff and key individuals who will be directly involved with the work and their office locations. The executive summary should also summarize the key elements of the SOQ. Statement of Qualifications Tab Information should include:

1. Basic company information.
  - a. Company name
  - b. Address with zip code
  - c. Telephone and Fax number
  - d. Email address
  - e. Name of primary contact
2. Years in Business: Provide documentation showing your firm has a minimum of (8) years in business as a General Construction Company.
3. Licenses: Firm is licensed under Florida Statutes 489 and provide proof with submission.

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#### 4. Professional Licenses and Certifications

An affirmative statement and submission of evidence must be included with the firm's response indicating that firm and all assigned key professional staff possess all licenses and certifications required to undertake and complete the project. General Contractor must be licensed by the State of Florida and maintain certification and be in good standing with the Florida Department of Business and Professional Regulation.

5. State whether your organization is national, regional or local.
6. Describe the firm, including the size, range of activities, and other pertinent information.
7. Years your organization has been in business as a provider of the products and services you are proposing to offer under this solicitation.
8. If your organization is a corporation, answer the following:
  - a. Date of incorporation
  - b. State of incorporation
  - c. President's name
9. If your organization is a partnership, answer the following:
  - a. Date of organization
  - b. Type of partnership (if applicable)
  - c. Name(s) of general partner(s)
10. If your organization is individually owned, answer the following:
  - a. Date of organization
  - b. Name of owner
11. If your organization is a limited liability company, answer the following:
  - a. Date of organization
  - b. State of organization
  - c. Name(s) of member(s)

#### 4.2.3 Tab C: Firm Qualifications and Experience

Respondents are to submit a complete information and documentation that demonstrates their ability to satisfy all of the minimum qualifications and scope of service requirements. Indicate the firm's number of years of experience in providing the services as it relates to the work and services contemplated. Provide details of past projects for agencies of similar size and scope, including information on your firm's ability to meet time and budget requirements. Indicate business structure, i.e., Corporation, Partnership, or LLC.

Firm must be registered as a legal entity in the State of Florida, and you shall include the firm's address, phone number, fax number, email address, web site, contact person(s), etc. Relative size of the firm, including management, technical and support staff; licenses and any other pertinent information shall be submitted.

**Statement of Qualifications Tab Information should include:**

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The project location is 33020.between Balboa Street and Franklin Street to the north and south, and between Surf Road and A1A to the east and west. A non-contiguous part of the project is located between Freedom and Douglas Streets, also bounded by Surf Road and A1A. As such a CMAR Firm with extensive documented experience working with and coordinating with adjacent property and business owners and the general public is imperative.

Featured projects shall be similar in size, type, complexity, where CMAR Firm was the **prime** contractor in the execution of Construction of streetscapes, utility undergrounding, water mains, coordination with all franchise utility owners and stake holders to include but now limited to: City of Hollywood, Florida Power and Light, ATT, Comcast, Public Utilities and Broward County. Maintenance of Traffic Plans and keeping residents fully operational and with minimal interruption is imperative. The CMAR Firm shall provide and/or satisfy capability in providing the following services and documentation of their experience:

1. Must provide as part of their references a minimum of six (6) projects similar in scope (or larger) and scale, as described below, performed within the last five (5) years.
  - a. Three (3) projects for Scope A project demonstrating experience with conversion of overhead utilities to underground;
  - b. Three (3) projects for Scope B demonstrating replacement of water and sewer utilities (gravity and force main).

Resumes of individuals (especially Superintendent) performing the work must be provided. The proposer must also state their proposed project manager by name and provide a minimum of two (2) similar projects managed by him/her with references, along with his/her resume. Each project must be under a different contract. Only proposer including their project manager and Superintendent, with the capabilities and experience on similar projects, will be considered qualified for consideration. Judgment of 'similar projects' is at the sole discretion of the City. The successful proposer cannot replace their project manager without providing a suitable replacement, which is determined under the sole discretion of the City performed within the last five (5) years. Resumes of individuals (especially Superintendent) performing the work must be provided.

2. For each project reference you must complete "**Reference Questionnaire**" in the required forms section VI, and each firm responding to this RFQ ensure that the contact information you are providing is up to date.
3. The projects must be similar in nature and size. A similar project is one which included the following successful and operational construction:
  - a. Over 5,000 feet of water mains, varying in size from 4-inch diameter to 12-inch diameter.
  - b. Over 5,000 feet of overhead to underground utility conversion in residential and/or commercial areas.
  - c. Projects that include both Overhead to Underground Utility Conversion in conjunction with water main installation should be emphasized.
  - d. Overhead to Underground Utility Conversion Projects and/or water mains constructed within FDOT rights of way.



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- e. Overhead to Underground Utility Conversion Projects and/or water mains constructed within coastal construction control line in the Tri-County area (Miami Dade, Broward, Palm Beach Counties).
  - f. Must demonstrate extensive experience in public outreach and excellent customer service.
  - g. Experience with development and implementation of Maintenance of Traffic Plans
  - h. Restoration of private property areas impacted by the installation of improvements as well as demolition of the existing overhead system upon final completion
  - i. Experience in the planning and coordination of installation activities of the utility owners (FPL, AT&T, and Comcast) and monitoring of the progress and schedule of the work
2. Right of way construction, familiar with Broward County and Florida Department of Transportation's requirements in order to properly expedite activities where multiple agencies require permits and proven project experience coordinating with Florida Power and Light, Comcast, AT&T and any other utility companies in the execution and management of all required activities to create the basic utility network for the site.
3. The project includes the acquisition of easements by the City; describe your experience in easement acquisition.
4. Describe what unique and extraordinary skills or qualifications your firm brings to this Project, including industry "Best Practices". How would the selection of your firm add value to the Project?
5. Describe your firm's experience and understanding regarding local subcontractors and bidding conditions. Explain how your firm stays current with the construction costs and bidding conditions in Southeast Florida.
6. Provide a list and description of municipal, streetscape, utility undergrounding, street lighting, and water main projects satisfactorily performed within the past five years that have been completed under a Construction Management at Risk Services delivery method. Please provide photo documentation for the referenced projects.
  - a. Name and location of the Project. Provide a description of the scope of work.
  - b. Role on the project:
    - i. For Prime CMAR Contractor, their Role on the reference projects **must** be Construction Management at Risk.
    - ii. For any subcontractors, include the role their company provided on the reference projects: Construction Management At Risk and/or General Contractor and/or other. The project delivery method for subcontractor's reference projects is not required to be CMAR, but CMAR projects are preferred.
  - c. Date project was completed or is anticipated to be completed.
  - d. Size and project cost
  - e. Original Owner Budget vs. Final GMP.
  - f. Saving achieved through Value Engineering or other approaches.

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- g. The percentage of the GMP for General Conditions, Profit and an Overhead.
- h. The total amount of approved Change Orders added to the Original GMP.
  - i. The dollar amount of fees for Pre-Construction Services.
  - j. Present status of the project

#### 4.2.4 Tab D: Organizational Profile and Project Team Qualifications

This section shall include a detailed profile of the organization and identify the project team. Providing this information on an organizational chart is recommended. This section shall also include resumes of the project team. Lastly include details of how each project team member will contribute to the project, in what capacity, and the level of involvement and their expertise. Provide a comprehensive summary of the experience and qualifications of the individual(s) who will be selected to serve as the project manager(s) for the City.

1. Provide organizational chart of personnel proposed key personnel to manage this project.
2. Performance, experience and qualifications in utilities undergrounding and water main projects, exemplary cost containment, minimization of change orders and proven history of project completion within initial budget.
3. Sub Consultants/Sub Contractors

Indicate what portion of the work, if any, will be subcontracted to any third party. No subconsultant or subcontractor shall be replaced unless the replacement subconsultant or subcontractor has been approved by the City.

4. Provide brief resumes of persons to be assigned to the project and their respective responsibilities, including, but not limited to:
  - a. Name and title.
  - b. Job assignment performed for other projects.
  - c. Percentage of time to be assigned full time to this Project.
  - d. How many years with your firm.
  - e. How many years with other firms
  - f. Provide a complete description of the experience and qualifications of the individuals who are proposed to be assigned to the Project, including: Project Manager, Project Engineer(s), Cost Estimator(s), and Superintendent(s). Staff to be assigned to the Project must have a minimum of five years' experience in their designated professional specialization.
  - g. Experience of the project manager and superintendent working together on past projects.
5. Describe the capabilities and Project level responsibilities of the staff to be assigned in each of the following:
  - a. Overall project management and coordination with the City, the

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- and subcontractors
- b. Design review and options analysis of plans and specifications
  - c. Constructability analysis
  - d. Cost estimating
  - e. Value engineering
  - f. Project scheduling
  - g. Quality Control (design and construction)
  - h. Bidding and subcontractor relationships
  - i. Cost controls and change order management
  - j. Preparation/review of shop drawings
  - k. Project mobilization
  - l. Project punch list management and close-out
  - m. Inspections
  - n. Assigned team's experience with projects of similar size and type
  - o. Assigned team's experience with effective budget control
  - p. Assigned team's experience with effective schedule control

Identify the individuals who, from project start to finish, will be the project construction team and the principal point of contact between your firm and the City. Assigned project team shall be committed to the project for the duration of the construction activities, unless authorized by the City.

#### **4.2.5 Tab E: Approach to Scope of Work**

Provide in concise narrative form, your understanding of the City's needs, goals and objectives as they relate to the project as described in the scope of services, and your overall approach to accomplishing the project. Give an overview on your proposed vision, ideas and methodology. Describe your proposed approach to the project. As part of the project approach, the firm shall address the following;

1. Describe your approach to performing the work. This should include the following points: Your plan for this project outlining major tasks and responsibilities, project time schedule and staff assigned.
2. Provide information on your firm's current workload and how this project will fit into your workload.
3. Describe firm's demonstrated ability to solve complex project issues.
4. Describe available facilities, technological capabilities and other available resources you offer for the project
5. Proposed scheduling methodology (timeline) for effectively managing and executing the work in the optimum time
6. Please describe your firms approach to timely construction of the project and way in which the project can be expedited by the use of concurrent crews.
7. Describe your Company's public engagement plan and program. CMAR firm shall

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engage in extensive public outreach during the duration of the project, to maintain the residents and business owners informed of major activities on the site.

8. Describe your CMAR firm's means and methods to minimally impact the residents, City operations and business owners' operations along this site.
9. Describe the CMAR firm's plans to store all of its equipment to minimally impact business' operations, residents and the public at large.
10. Describe your company's resources and capabilities with respect to scheduling (specific computer programs), cost control and reporting quality control, shop drawing management, Request for Information (RFI) control and routing, on site safety, value engineering, and coordination with the A/E and the City. Describe any Software your company uses to facilitate control and management operations.
11. Describe your firm's historical experience in meeting project goals with respect to cost control and time of delivery.
12. Describe firm's cost management plan during design and construction.
13. Describe firm's approach for competitively administering and evaluating bid packages.
14. Described your firm's ability to managing complex projects while minimally impacting the corridor's business, residents and the public at large.
15. Describe firm's experience with management of traffic and operations in a busy corridor and working within an FDOT right of way.
16. Describe firm's quality assurance program and plan.
17. Describe firm's close-out plan.
18. Provide an overview of your understanding of the City's vulnerability to the effects of climate change and sea level rise and your goal to address resiliency through projects assigned to your firm.

#### **4.2.6 Tab F: Knowledge of Site and Local Conditions**

Demonstrate knowledge of the site, State, County, and City requirements, codes, and ordinances.

1. Construction Manager At Risk must demonstrate experience working in local areas affected by low elevation lines, points and as well as areas prone to hurricanes wind forces.
2. Knowledge of local subcontractors and suppliers, capable of supplying quality workmanship and materials.
3. Knowledge of local permitting agencies, procedures, testing protocols.
4. Construction constraints due to non-documented underground utility lines and other existing non documented but commonly occurring constructing elements unforeseen conditions.

#### **4.2.7 Tab G: Sub Consultants Information**

Consultant must clearly identify any sub-Consultants that may be utilized for the Work in accordance with the Contract.

##### **Statement of Qualifications Tab H Information should include:**

1. For all sub-Consultants provide the following:
  - a) Firm Qualifications, Experience and licenses
  - b) Project Team Qualifications, resumes and licenses
  - c) All Required Forms under section 4.2.10

#### **4.2.8 Tab H: Financial Resources**

##### **Statement of Qualifications Tab Information should include:**

1. Each Proposer shall provide a financial summary statement in writing, signed by a duly authorized representative, stating the present financial condition of the Proposer, and disclosing information as to Proposer's involvement in any prior or current bankruptcy proceedings.
2. Bonding Capacity: Provide documentation of your firm's total and single project bonding capacity and the name and current financial rating (A.M. Best) of the surety company utilized by your firm. Proposers shall have a single project bonding capability of at least Ten Millions Dollars (10,000,000.00) with a surety company with an A.M. Best rating of AA or better.

#### **4.2.9 Tab I: Legal Proceedings and Performance**

##### **Statement of Qualifications Tab Information should include:**

Provide a letter on your firm's letterhead indicating if your firm has paid liquidated damages and/or if your firm has been terminated for default. Provide details of these occurrences and the associated projects. If your firm has not paid liquidated damages or been terminated for default include this on a letter with your firm's letterhead.

Provide a list of legal proceedings against your firm in the last five years. This shall include legal proceedings for the entire company.

1. Arbitrations; List all construction arbitration demands filed by or against your firm in the last five years, and identify the nature of the claim, the amount in dispute, the parties, and the ultimate resolution of the proceeding.
2. Lawsuits: List all construction related lawsuits (other than labor or personal injury litigation) filed by or against your firm in the last five years, and identify the nature of the claim, the amount in dispute, the parties, and the ultimate resolution of the lawsuit.
3. Other Proceedings: Identify any lawsuits, administrative proceedings, or hearings initiated by the National Labor Relations Board or similar state agency in the past five years concerning any labor practices by your firm. Identify the nature of any proceeding and its ultimate resolution. Identify any lawsuits, administrative proceedings, or hearings initiated by the Occupational Safety and Health

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Administration concerning the project safety practices of your company in the last five years. Identify the nature of any proceeding and its ultimate resolution.

4. Bankruptcies: Has your firm or its parents or any subsidiaries ever had a Bankruptcy Petition filed in its name, voluntarily or involuntarily? (If yes, specify date, circumstances, and resolution).
5. Has a contract to which you were a party even been terminated by the other party?
6. Have you ever had to use bonding moneys to complete a project or to pay a subconsultant or supplier?

**4.2.10 Tab J: Required Forms (Forms are provided under Section VI-Required Forms)**

**Statement of Qualifications Tab Information should include:**

Include all of the following required forms provided in Section VI.

- a. **Drug-Free Workplace Program**
- b. **Certifications Regarding Debarments, Suspensions and Other Responsibility Matters**
- c. **Non-Collusion Affidavit**
- d. **References Questionnaire**
- e. **Statement of Qualification Certification**
- f. **Sworn Statement Pursuant to Section 287.133(3)(a)**
- g. **Hold Harmless and Indemnity Clause**
- h. **Solicitation, Giving and Acceptance of Gifts Policy**

**4.3** By submitting an SOQ each firm is confirming that the firm has not been placed on the convicted vendors list as described in Section §287.133 (2) (a), Florida Statutes.

**4.4** Before awarding a contract, the City reserves the right to require that a firm submit such evidence of their qualifications as the City may deem necessary. Further, the City may consider any evidence of the financial, technical, and other qualifications and abilities of a firm or principals, including previous experiences of same with the City and performance evaluation for services, in making an award in the best interest of the City.

## **Section V - Evaluation and Award**

### **5.1 Evaluation Procedure**

- 5.1.1** Evaluation of the submittals will be conducted by an Evaluation Committee, consisting of a minimum of three members of City staff, or other persons selected by the City Manager or designee. All committee members must be present at scheduled evaluation meetings. Submittals shall be evaluated based upon the information and references contained in the SOQs as submitted. Any firm(s) involved in a joint venture in its SOQ will be evaluated individually, as each firm of the joint venture would have to stand on its own merits.
- 5.1.2** The committee shall short list no less than three (3) submittals, assuming that three submittals have been received, that it deems best satisfy the criteria set forth herein and attempt to select the best qualified firm(s) for the engineering discipline identified by the respondent. The committee, shall review and evaluate proposals, and will determine if interviews, and/or oral presentations are required for a Recommendation to Award. The committee shall then rank the short-listed firms based upon the information provided in interviews and/or presentations, the materials presented, the firm's responses to the Request for Qualifications (RFQ), and deliberations of the Evaluation Committee at publically advertised Evaluation Meetings. The City may request and the firm shall provide additional information deemed necessary by the evaluation committee to conduct evaluations.
- 5.1.3** The ranking and the Evaluation Committee's recommendation shall be reported to the City Commission through and with the concurrence of the City Manager, who shall request the City Commission approve the final ranking and authorize staff to negotiate and execute a contract with the top ranked firm(s). If the City is unable to reach an agreement with the top ranked firm(s), negotiations will be cancelled at the sole discretion of the City. City staff will then begin negotiations with the next ranked firm(s) and so forth until an agreement is reached and a contract awarded.

### **5.2 Evaluation Criteria**

- 5.2.1** In determining whether a firm is qualified, the agency shall consider such factors as the 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.
- 5.2.2** Each evaluation committee will first evaluate the Statement of Qualifications for each of the category items included in Section 5.3.1. Following their review, each selection committee member will score each firm by providing their score for each of the evaluation criteria items by using the maximum points established for each. Once all the selection committee total score is finalized, a gross total score for each firm will be calculated by adding the total score of all selection committee members. Then, the gross total score per firm will be averaged by the number of selection committee members. The final average score will be used to determine the firm's ranking.

Using the average scores each firm will be ranked as 1, 2, 3, etc. The highest average score will receive the highest ranking. Once the initial selection criteria rankings is completed, the selection committee may determine Oral Presentations are not necessary and provide a final recommendation to award based using the initial selection criteria rankings. This scoring methodology will be used for Initial Evaluation and Oral Presentations. Scores from

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the initial evaluation will not carry towards the oral presentation or final award recommendation.

Sample Calculation Table – the following table has been provided to as an example to demonstrate the scoring calculation method and approach. Each selection criteria will carry a maximum amount of points which will be reflected on the selection committee's blank score card.

### Sample Scoring Calculation

#### Total Scores from Selection Committee Score Card

<b>Committee Score Card</b>	Committee Member 1	Committee Member 2	Committee Member 3	<b>Gross Score</b>
Firm 1	95	85	90	<b>270</b>
Firm 2	90	82	75	<b>247</b>
Firm 3	85	80	70	<b>235</b>

#### Final Ranking Calculation

Firm Name	Gross Score	Firm Average Score	Firm Final Ranking
Firm 1	270	90.00	1
Firm 2	247	82.33	2
Firm 3	235	78.33	3

## 5.3 Weighted Evaluation Criteria

### 5.3.1 Initial Selection Criteria

Each firms SOQ will be evaluated based on the following criteria:

<b>Category Title</b>	<b>Category Description</b>	<b>Reference Tabs</b>	<b>Maximum Points</b>
Firm Qualifications and Experience	Experience with projects of similar size and complexity. Proposes shall highlight Construction Management At Risk projects for municipal, streetscapes, utilities undergrounding, water main, sewer force mains, coordination with public utilities and franchises and understanding of local codes and regulations. (3) Scope A utilities undergrounding and (3) Scope B water main projects.	Tab C	20
Organizational Profile and Project Team Qualifications	Performance, experience and qualifications in related construction experience, exemplary cost containment, minimization of change orders and proven history of project completion within initial budget.	Tab D and Tab H	20



Construction Management at Risk Services for The North Beach Utilities Underground Conversion Hollywood Beach Utility Improvements - Phase 1A Projects

Approach to Scope of Work	Execution and Management of the Project and Approach to performing the work. Outline major tasks and responsibilities, project time schedule and staff assigned. Ability to solve complex problems, oversee work areas, coordination with multiple design firms, timely execution of projects, community outreach and maintenance of traffic plan. Ability to work on a busy corridor while maintaining safety and comfort to existing municipal uses, business, residents and visitors.	Tab E	20
Knowledge of site and local conditions	Knowledge of the site and local conditions, familiarity with the area. Demonstrated experience working in areas affected by hurricanes wind forces, local permitting and construction market, dewatering in A1A or area with similar water table and geotechnical condition.	Tab F	15
References	Past Performance: Provide three (3) verifiable references for projects of similar size, scope and complexity that have been completed by your firm within the last five years.	Tab G	15
Location of Firm's Office*	Points will be assigned as noted below based on the proximity of the office that will perform the work to the City of Hollywood.  <u>Location of Office:</u> Within 35 miles of City Hall.....5 points Within 35 to 60 miles of City Hall.....3 points Within 60 to 90 miles of City Hall.....2 points More than 90 miles from City Hall.....1 point	To be Determined by Staff	5
Financial Resources	An indication of the resources and the necessary working capital available and how it will relate to the Firm's financial stability through the completion of the projects.	Tab I	5

### 5.3.2 Oral Presentation Criteria

Short-listed Firms shall present an oral overview of their approach to perform work on this particular project and their ability to meet the City's required project needs. The oral presentation will be limited to 30 minutes after which a question and answer period not exceeding 30 minutes pertaining to specifics will commence. The oral will be evaluated based upon the following:

Category Title	Category Description	Points
Related Construction Experience	Elaborate on firm's experience and lessons learned with projects of similar size and complexity. Experience shall highlight similar projects for scopes A & B,	15

**RFQ-4682-21-GJ****Construction Management at Risk Services for The North Beach Utilities Underground Conversion Hollywood Beach Utility Improvements - Phase 1A Projects**

and past performance	including streetscapes, utilities undergrounding, water mains, sewer force mains, coordination with public utilities and franchises and understanding of local codes and regulations Reference evaluations shall be an integral component of this score	
Overall Approach and methodology	Explain in detail your approach to the project from construction document review, pre-construction and through the final construction phases. Include methods used during construction to monitor this project and resolve issues including installation of water main with limited clearance from other existing utilities, as well as methods of sequencing and coordination among your trades to minimize conflict and errors. Present a sample project schedule indicating methodology for effectively managing and executing work while optimizing time including coordination with design consultants and utility franchises (AT&T, Comcast, FPL, Public Utilities, FDOT)	15
Proposed project staff functions	Indicate the orientation of the Construction team, identifying the key personnel and describing their responsibilities. Indicate prior experience on similar projects. Commitment to maintaining the project team intact during the duration of the project.	10
Project Schedule	Present a sample schedule indicating methodology for effectively managing and executing work while optimizing time. Explain your ability to utilize multiple crews concurrently and work on simultaneous activities in order to expedite the delivery of the project completion.	15
Cost control and value engineering	Demonstrate knowledge and experience in the evaluation of systems, construction techniques and material evaluation to ensure optimum value in meeting the design requirements.	15
Knowledge of site and local conditions	Knowledge of the site and local conditions, familiarity with the area. Demonstrated experience working in areas affected by hurricanes wind forces and local weather patterns, permitting agencies, subcontractor market and regularly encountered unforeseen conditions.	15
Insurance/ Safety Program/ Financial Capacity/ Direct Owners Purchase	Demonstrate how the safety program will be implemented and controlled during the project. Describe firm's financial capacity, bonding and insurance. Describe firms experience with Owner Direct Purchase programs and anticipated savings.	10
Public outreach and permit coordination	Provide a public outreach plan and describe your experience in assisting the City with the development rights and other permit coordination.	5

Construction Management at Risk Services for The North Beach Utilities Underground Conversion Hollywood Beach Utility Improvements - Phase 1A Projects

## **5.4 Contract Award**

- 5.4.1** The City reserves the right to award a contract(s) to the Construction Manager(s) at Risk who will best serve the interests of the City. The City reserves the right, based upon its deliberations and in its sole discretion, to accept or reject any or all submittals. The City also reserves the right to waive minor irregularities or variations of the submittal requirements and RFQ process.
- 5.4.2** Upon award of a Contract by the City Commission, the City Manager is authorized to execute the Contract on behalf of the City.
- 5.4.3** The City Manager shall appoint a contract administrator or project manager for each Contract to assure compliance with the Contract and applicable law. The contract administrator or project manager shall review all pay requests or deny same as required prior to approval by the City Manager.

Construction Management at Risk Services for The North Beach Utilities Underground Conversion Hollywood Beach Utility Improvements - Phase 1A Projects

**Section VI – Required Forms provided on subsequent pages**

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Construction Management at Risk Services for The North Beach Utilities Underground Conversion Hollywood Beach Utility Improvements - Phase 1A Projects

## DRUG-FREE WORKPLACE PROGRAM

IDENTICAL TIE BIDS - Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quality, and service are received by the state or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employee that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program (if such is available in the employee's community) by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of these requirements.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
NAME OF COMPANY

RFQ/RFP/ITB Number: \_\_\_\_\_ Title: \_\_\_\_\_

Construction Management at Risk Services for The North Beach Utilities Underground Conversion Hollywood Beach Utility Improvements - Phase 1A Projects

## CERTIFICATIONS REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

The applicant certifies that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of federal benefits by a state or federal court, or voluntarily excluded from covered transactions by any federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) Have not within a three-year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default.

Applicant Name and Address:

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Application Number and/or Project Name:

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Applicant IRS/Vendor Number: \_\_\_\_\_

Type/Print Name and Title of Authorized Representative:

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

RFQ/RFP/ITB Number: \_\_\_\_\_ Title: \_\_\_\_\_

Construction Management at Risk Services for The North Beach Utilities Underground Conversion Hollywood Beach Utility Improvements - Phase 1A Projects

## NON-COLLUSION AFFIDAVIT

**STATE OF:** \_\_\_\_\_

**COUNTY OF:** \_\_\_\_\_, being first duly sworn, deposes and says that:

- (1) He/she is \_\_\_\_\_ of \_\_\_\_\_, the Bidder that has submitted the attached Bid.
- (2) He/she has been fully informed regarding the preparation and contents of the attached Bid and of all pertinent circumstances regarding such Bid;
- (3) Such Bid is genuine and is not a collusion or sham Bid;
- (4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the contractor for which the attached Bid has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices, profit or cost element of the Bid price or the Bid price of any other Bidder, or to secure an advantage against the City of Hollywood or any person interested in the proposed Contract; and
- (5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

**(SIGNED)** \_\_\_\_\_

**Title**

Subscribed and sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

My commission expires:

RFQ/RFP/ITB Number: \_\_\_\_\_ Title: \_\_\_\_\_

Construction Management at Risk Services for The North Beach Utilities Underground Conversion Hollywood Beach Utility Improvements - Phase 1A Projects

## REFERENCE QUESTIONNAIRE

It is the responsibility of the contractor/vendor to provide a minimum of three similar type references using this form and to provide this information with your submission. Failure to do so may result in the rejection of your submission.

Giving reference for: \_\_\_\_\_

Firm giving Reference: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

1. Provide a description of the scope of work.

A:

2. Role your company provided: Construction Management At Risk and/or General Consultant and/or other.

A:

3. Date project began and date it was completed or is anticipated to be completed. List whether it was on time.

A:

4. Size of project (line mile for utility conversion and linear feet for water main).

A:

5. Original Owner Budget vs. Final GMP.

A:

6. Saving achieved through Value Engineering or other approaches

A:

7. The percentage of the GMP for General Conditions, Profit and an Overhead.

A:

8. Have there been any change orders, and if so, how many? List total amount of approved Change Orders added to the Original GMP.

A:

9. List any stop work orders and reasons.

A:

10. The dollar amount of fees for Pre-Construction Services.

A:

11. Present status of the project

A:



Construction Management at Risk Services for The North Beach Utilities Underground Conversion Hollywood Beach Utility Improvements - Phase 1A Projects

12. **Q:** What was the dollar value of the contract?

**A:**

13. **Q:** Did they perform on a timely basis as required by the contract?

**A:**

14. **Q:** Was the project manager easy to get in contact with?

**A:**

15. **Q:** Would you use them again?

**A:**

16. **Q:** Overall, what would you rate their performance? (Scale from 1-5)

**A:**      ☐ **5** *Excellent*    ☐ **4** *Good*    ☐ **3** *Fair*    ☐ **2** *Poor*    ☐ **1** *Unacceptable*

17. **Q:** Is there anything else we should know, that we have not asked?

**A:**

The undersigned does certify that the foregoing and subsequent statements are true and correct and are made independently, free from vendor interference/collusion.

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

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

Construction Management at Risk Services for The North Beach Utilities Underground Conversion Hollywood Beach Utility Improvements - Phase 1A Projects

## STATEMENT OF QUALIFICATION CERTIFICATION

**Please Note:** All fields below must be completed. If the field does not apply to you, please note N/A in that field.

If you are a foreign corporation, you may be required to obtain a certificate of authority from the department of state, in accordance with Florida Statute §607.1501 (visit <http://www.dos.state.fl.us/> ).

Company: (Legal Registration) \_\_\_\_\_

Name/Principal/Project Manager: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone No. \_\_\_\_\_ FEIN/Tax ID No. \_\_\_\_\_ Email: \_\_\_\_\_

Does your firm qualify for MBE or WBE status: MBE \_\_\_\_\_ WBE \_\_\_\_\_

**ADDENDUM ACKNOWLEDGEMENT** - Proposer acknowledges that the following addenda have been received and are included in the proposal:

<u>Addendum No.</u>	<u>Date Issued</u>	<u>Addendum No.</u>	<u>Date Issued</u>
_____	_____	_____	_____
_____	_____	_____	_____

**VARIANCES:** State any variations to specifications, terms and conditions in the space provided below or reference in the space provided below all variances contained on other pages of bid, attachments or bid pages. No variations or exceptions by the Proposer will be deemed to be part of the bid submitted unless such variation or exception is listed and contained within the bid documents and referenced in the space provided below. If no statement is contained in the below space, it is hereby implied that your bid/proposal complies with the full scope of this solicitation. If this section does not apply to your bid, simply mark N/A. **If submitting your response electronically through BIDS SYNC you must click the exception link if any variation or exception is taken to the specifications, terms and conditions.**

The below signatory hereby agrees to furnish the following article(s) or services at the price(s) and terms stated subject to all instructions, conditions, specifications addenda, legal advertisement, and conditions contained in the bid/proposal. I have read all attachments including the specifications and fully understand what is required. By submitting this signed proposal I will accept a contract if approved by the City and such acceptance covers all terms, conditions, and specifications of this bid/proposal. The below signatory also hereby agrees, by virtue of submitting or attempting to submit a response, hereby agrees that in no event shall the City's liability for respondent's indirect, incidental, consequential, special or exemplary damages, expenses, or lost profits arising out of this competitive solicitation process, including but not limited to public advertisement, bid conferences, site visits, evaluations, oral presentations, or award proceedings exceed the amount of five hundred dollars (\$500.00). This limitation shall not apply to claims arising under any provision of indemnification or the City's protest ordinance contained in this competitive solicitation.

Submitted by:

\_\_\_\_\_  
Name (printed)

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

Construction Management at Risk Services for The North Beach Utilities Underground Conversion Hollywood Beach Utility Improvements - Phase 1A Projects

## SWORN STATEMENT PURSUANT TO SECTION 287.133 (3) (a) FLORIDA STATUTES ON PUBLIC ENTITY CRIMES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS

1. This form statement is submitted to \_\_\_\_\_  
by \_\_\_\_\_ for \_\_\_\_\_  
(Print individual's name and title) (Print name of entity submitting sworn statement)  
whose business address is \_\_\_\_\_  
and if applicable its Federal Employer Identification Number (FEIN) is \_\_\_\_\_. If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement.

2. I understand that "public entity crime," as defined in paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid, proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misinterpretation.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in an federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that "Affiliate," as defined in paragraph 287.133(1)(a), Florida Statutes, means:

1. A predecessor or successor of a person convicted of a public entity crime, or
2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that "person," as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or any entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

6. Based upon information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement (please indicate which statement applies).

\_\_\_\_\_ Neither the entity submitting sworn statement, nor any of its officers, director, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

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\_\_\_\_\_ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989..

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime, but the Final Order entered by the Hearing Officer in a subsequent proceeding before a Hearing Officer of the State of the State of Florida, Division of Administrative Hearings, determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (attach a copy of the Final Order).

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THAT PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017 FLORIDA STATUTES FOR A CATEGORY TWO PROJECT OF ANY CHANGE IN THE INFORMATION CONTAINED ON THIS FORM.

\_\_\_\_\_  
(Signature)

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Personally known \_\_\_\_\_

Or produced identification \_\_\_\_\_

Notary Public-State of \_\_\_\_\_

\_\_\_\_\_ My commission expires \_\_\_\_\_  
(Type of identification)

\_\_\_\_\_  
(Printed, typed or stamped commissioned  
name of notary public)

RFQ/RFP/ITB Number: \_\_\_\_\_ Title: \_\_\_\_\_

Construction Management at Risk Services for The North Beach Utilities Underground Conversion Hollywood Beach Utility Improvements - Phase 1A Projects

## HOLD HARMLESS AND INDEMNITY CLAUSE

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**(Company Name and Authorized Representative's Name)**

\_\_\_\_\_, the contractor, shall indemnify, defend and hold harmless the City of Hollywood, its elected and appointed officials, employees and agents for any and all suits, actions, legal or administrative proceedings, claims, damage, liabilities, interest, attorney's fees, costs of any kind whether arising prior to the start of activities or following the completion or acceptance and in any manner directly or indirectly caused, occasioned or contributed to in whole or in part by reason of any act, error or omission, fault or negligence whether active or passive by the Contractor, or anyone acting under its direction, control, or on its behalf in connection with or incident to its performance of the Contract.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
COMPANY OF NAME

\_\_\_\_\_  
DATE

**Failure to sign or changes to this page shall render your bid non-responsive.**

Construction Management at Risk Services for The North Beach Utilities Underground Conversion Hollywood Beach Utility Improvements - Phase 1A Projects

### **SOLICITATION, GIVING, AND ACCEPTANCE OF GIFTS POLICY**

Florida Statute 112.313 prohibits the solicitation or acceptance of Gifts. "No Public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby." The term "public officer" includes "any person elected or appointed to hold office in any agency, including any person serving on an advisory body."

City of Hollywood policy prohibits all public officers, elected or appointed, all employees, and their families from accepting any gifts of any value, either directly or indirectly, from any contractor, vendor, Consultant, or business with whom the City does business.

The State of Florida definition of "gifts" includes the following:

- Real property or its use
- Tangible or intangible personal property, or its use
- A preferential rate or terms on a debt, loan, goods, or services
- Forgiveness of indebtedness
- Transportation, lodging, or parking
- Food or beverage
- Membership dues
- Entrance fees, admission fees, or tickets to events, performances, or facilities
- Plants, flowers or floral arrangements
- Services provided by persons pursuant to a professional license or certificate
- Other personal services for which a fee is normally charged by the person providing the services
- Any other similar service or thing having an attributable value not already provided for in this section.

Any contractor, vendor, Consultant, or business found to have given a gift to a public officer or employee, or his/her family, will be subject to dismissal or revocation of the Contract.

As the person authorized to sign the statement, I certify that this firm will comply fully with this policy.

---

SIGNATURE

PRINTED NAME

---

NAME OF COMPANY

TITLE

**Failure to sign this page shall render your bid non-responsive.**

Construction Management at Risk Services for The North Beach Utilities Underground Conversion Hollywood Beach Utility Improvements - Phase 1A Projects

**Section VII – General Terms and Conditions provided on subsequent pages**

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**GENERAL TERMS AND CONDITIONS****1.1 INTENT**

It is the policy of the City to encourage full and open competition among all available qualified vendors. All vendors regularly engaged in the type of Work specified in the Bid Solicitation are encouraged to submit bids. To receive notification and to be eligible to bid, vendor should be registered with BidSync. Vendors may register with BidSync (registration is free) to be included on a mailing list for selected categories of goods and Services. In order to be processed for payment, any awarded vendor must register with the City by completing and returning a Vendor Application and all supporting documents. For information and to apply as a vendor, please visit our website at [hollywoodfl.org](http://hollywoodfl.org) to download an application and submit it to the Procurement Services Division.

It is the intent of the City, through this RFQ and the Contract Conditions contained herein, to establish to the greatest possible complete clarity regarding the requirements of both parties to the Contract resulting from this RFQ.

Before submitting a proposal, the vendor shall be thoroughly familiarized with all Contract Conditions referred to in this document and any addenda issued before the proposal submission date. Such addenda shall form a part of the RFQ and shall be made a part of the Contract. It shall be the vendor's responsibility to ascertain that the SOQ includes all addenda issued prior to the SOQ submission date. Addenda will be posted on the City's internet site along with the RFQ.

The terms of the RFQ and the selected vendor's SOQ and any additional documentation (e.g., questions and answers) provided by the vendor during the solicitation process will be integrated into the final Contract(s) for services entered into between the City and the selected vendor(s). The vendor shall determine, by personal examination and by such other means as may be preferred, the conditions and requirements under which the Contract must be performed.

**1.2 PROPOSER'S RESPONSIBILITIES**

Proposers are required to submit their SOQs upon the following express conditions:

- A. Proposers shall thoroughly examine the drawings, specifications, schedules, instructions and all other Contract Documents.
- B. Proposers shall make all investigations necessary to thoroughly inform themselves regarding delivery of material, equipment or services as required by the RFQ. No plea of ignorance by the proposer of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the proposer to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the Contract Documents, will be accepted as a basis for varying the requirements of the City or the compensation due the proposer.
- C. Proposers are advised that all City contracts are subject to all legal requirements provided for in the City of Hollywood Charter, Code of Ordinances and applicable county ordinances, state statutes and federal statutes, rules and regulations.

**1.3 PREPARATION OF STATEMENTS OF QUALIFICATIONS**

SOQs will be prepared in accordance with the following:

- A. The City's enclosed SOQ Forms, in their entirety, are to be used in submitting your SOQ. NO OTHER FORM WILL BE ACCEPTED.
- B. All information required by the SOQ form shall be furnished. The proposer shall sign each continuation sheet (where indicated) on which an entry is made.

The City is exempt from payment to its vendors of State of Florida sales tax and, therefore, such taxes should not be figured into the RFQ. However, this exemption does not apply to suppliers to the City in their (supplier) purchases of goods or services used or incorporated in work or goods supplied to the City. Proposers are responsible for any taxes, sales or otherwise, levied on their purchases, subcontracts, employment, etc. An exemption certificate will be signed where applicable, upon request. The City will pay no sales tax.

**1.4 DESCRIPTION OF SUPPLIES**

Any manufacturer's names, trade names, brand names, or catalog numbers used in these applications are for the purpose of describing and establishing minimum requirements or level of quality, standards of performance, and design required, and are in no way intended to prohibit the bidding of other manufacturers' items of equal material, unless specifications state "NO SUBSTITUTIONS."



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Proposers must indicate any variances to the specifications, terms, and conditions, no matter how slight. If variations are not stated in the SOQ, it shall be construed that the SOQ fully complies with the Specifications, Terms and Conditions.

Proposers are required to state exactly what they intend to furnish; otherwise, they shall be required to furnish the items as specified.

Proposers will submit, with their SOQ, necessary data (factory information sheets, specifications, brochures, etc.) to evaluate and determine the quality of the item(s) they are proposing.

The City shall be the sole judge of quality and its decision shall be final.

**1.5 ADDENDA**

The Office of Procurement Services may issue an addendum in response to any inquiry received, prior to SOQ opening, which changes, adds to or clarifies the terms, provisions or requirements of the solicitation. The proposer should not rely on any representation, statement or explanation, whether written or verbal, other than those made in this RFQ solicitation document or in any addenda issued. Where there appears to be a conflict between this RFQ solicitation and any addendum, the last addendum issued shall prevail. It is the proposer's responsibility to ensure receipt of all addenda and any accompanying documents. Proposer(s) shall acknowledge receipt of any formal Addenda by signing the addendum and including it with their SOQ. Failure to include signed formal addenda in its SOQ shall cause the City to deem the SOQ non-responsive, provided however that the City may waive this requirement in its best interest.

**1.6 REJECTION OF STATEMENTS OF QUALIFICATIONS**

The City may reject an SOQ if:

- A. The Proposer fails to acknowledge receipt of an addendum, or if
- B. The Proposer misstates or conceals any material fact in the SOQ, or if
- C. The SOQ does not strictly conform to the law or requirements of the RFQ, or if
- D. The City is under a pre- lawsuit claim or current litigation with the proposer.

The City may reject all SOQs whenever it is deemed in the best interest of the City to do so, and may reject any part of a SOQ unless the SOQ has been qualified as provided herein.

**1.7 WITHDRAWAL OF STATEMENTS OF QUALIFICATIONS**

- A. SOQ may not be withdrawn and shall be deemed enforceable for a period of 180 days after the time set for the RFQ opening.
- B. SOQ may be withdrawn prior to the time set for the RFQ opening. Such request must be in writing.
- C. The City will permanently retain as liquidated damages the bid deposit furnished by any proposer who requests to withdraw a SOQ after the RFQ opening.

**1.8 STATEMENTS OF QUALIFICATIONS TO REMAIN OPEN**

All SOQ shall remain open for 180 calendar days after the day of the proposal opening, but the City may, in its sole discretion, release any SOQ prior to that date. Extensions of time when SOQ shall remain open beyond the 180 day period may be made only by mutual written agreement between the City, the successful proposer and the surety, if any, for the successful proposer.

**1.9 LATE STATEMENTS OF QUALIFICATIONS OR MODIFICATIONS**

Only SOQ received as of the opening date and time will be considered timely. SOQs and modifications received after the time set for the opening will be returned, un-opened, to the sender and rejected as late.

**1.10 CONFLICTS WITHIN THE SOLICITATION**

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Where there appears to be a conflict between the General Terms and Conditions, Special Conditions, the Technical Specifications, the RFQ Submittal Section, or any addendum issued, the order of precedence shall be the last addendum issued, the RFQ Submittal Section, the Technical Specifications, the Special Conditions, and then the General Terms and Conditions.

**1.11 CLARIFICATION OR OBJECTION TO STATEMENTS OF QUALIFICATIONS SPECIFICATIONS**

If any person contemplating submitting an SOQ for this Contract is in doubt as to the true meaning of the specifications or other RFQ documents or any part thereof, they may submit requests for clarification to the Procurement Services Division on or before the date specified for a request for clarification. All such requests for clarification shall be made in writing, and the person submitting the request will be responsible for its prompt delivery. Any interpretation of the RFQ, if made, will be made only by Addendum duly issued. A copy of such Addendum will be made available to each person receiving a Request for Qualifications. The City will not be responsible for any other explanation or interpretation of the RFQ given prior to the award of the Contract. Any objection to the specifications and requirements as set forth in this RFQ must be filed in writing with the Director of Procurement Services on or before the date specified for a request for clarification.

**1.12 COMPETENCY OF PROPOSERS**

Pre-award inspection of the proposer's facility may be made prior to the award of a contract. SOQs will be considered only from firms that are regularly engaged in the business of providing the goods and/or services as described in this RFQ(s); have a record of performance for a reasonable period of time; and have sufficient financial support, equipment and organization to ensure that they can satisfactorily deliver the material and/or services if awarded a Contract under the terms and conditions herein stated. The terms "equipment and organization" as used herein shall be construed to mean a fully equipped and well-established company in line with the best business practices in the industry and as determined by the proper City authorities.

The City may consider any evidence available to it of the financial, technical and other qualifications and abilities of a proposer, including past performance (experience) in making the award in the best interest of the City. In all cases, the City shall have no liability to any proposer for any costs or expenses incurred in connection with this RFQ or otherwise.

**1.13 QUALIFICATIONS OF RESPONDENTS**

No SOQ will be accepted from, nor will any contract be awarded to any person who is in arrears to the City upon any debt or contract, or who is a defaulter, as surety or otherwise, upon any obligation to the City, who is on the City's debarment list, or who is deemed irresponsible or unreliable by the City.

As part of the SOQ evaluation process, the City may conduct a background investigation including a record check by the Hollywood Police Department. Proposer's submission of a SOQ constitutes acknowledgment of the process and consent to such investigation. City shall be the sole judge in determining a proposer's qualifications.

**1.14 CONSIDERATION OF SOQS**

In cases where an item requested is identified by a manufacturer's name, trade name, catalog number, or reference, it is understood that the vendor proposes to furnish the item so identified and does not propose to furnish an "equal" unless the proposed "equal" is pre-approved by the City.

References to any of the above are intended to be descriptive but not restrictive and only indicate articles that will be satisfactory. A SOQ of an "equal" will be considered, provided that the vendor states in the SOQ exactly what is proposed to be furnished, including sample, illustration, or other descriptive matter that clearly indicates the character of the article covered by such SOQ. The designated City representative reserves the right to approve as an "equal", or to reject as not being an "equal", any article proposed which contains major or minor variations from specification requirements.

**1.15 AWARD OF CONTRACT**

If the Contract is to be awarded, it will be awarded after evaluation by the City to the responsible and responsive proposer whom the City determines will be in the best interest of the City and not necessarily to the lowest cost proposer. Proposers may be invited to an oral interview before the committee. A short list of finalists will be determined and presented to either the City Manager or designee or to the City Commission, in accordance with the applicable City Code of Ordinances, and will make the final ranking for the purposes of negotiating a contract with the top ranked firm. The successful proposer shall be required to sign a negotiated contract; the refusal or failure of a successful proposer to execute a contract which contains the mandatory material terms and conditions contained in the RFQ shall be grounds for deeming the proposer and/or the proposer's SOQ non-responsive.

If applicable, the proposer to whom award is made shall execute a written contract prior to award by the City Commission. If the proposer to whom the first award is made fails to enter into a contract, the contract may be let to the next highest ranked proposer who is responsible and responsive in the opinion of the City.

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### 1.16 BASIS FOR AWARD, EVALUATION CRITERIA AND QUESTIONS

The qualification of proposal responders on this project will be considered in making the award. The City is not obligated to accept any SOQ if deemed not in the best interest of the City to do so. The City shall make award to a qualified proposer based on fees submitted and responses to this RFQ.

Failure to include in the SOQ all requested information may be cause for rejection of the SOQ.

The City reserves the right to accept or reject any and all SOQs, in whole or in part, as determined to be in the best interest of the City **in its sole discretion**.

The City reserves the right to waive any informalities or irregularities in SOQs.

The City reserves the right to negotiate separately the terms and conditions or all or any part of the SOQs as deemed to be in the City's best interest **in its sole discretion**.

Information and/or factors gathered during interviews, negotiations and any reference checks, and any other information or factors deemed relevant by the City, shall be utilized in the final award. The final award of a contract is subject to approval by the City Commission.

### 1.17 CONTRACT

A Contract shall be sent to the awarded proposer to be signed, witnessed, and returned to the City for execution. The City will provide a copy of the fully executed Contract to the awarded proposer.

### 1.18 NOTICE TO PROCEED

A signed purchase order, blanket purchase order or fully executed Contract will be the proposer's authorization to proceed and may substitute for a "Notice to Proceed" form.

### 1.19 BID PROTESTS

The City shall provide notice of its intent to award or reject to all proposers by posting such notice on the City's website.

After a notice of intent to award a contract is posted, any actual or prospective proposer who is aggrieved in connection with the pending award of the contract or any element of the process leading to the award of the contract may protest to the Director of Procurement Services. A protest must be filed within five business days after posting or any right to protest is forfeited. The protest must be in writing, must identify the name and address of the protester, and must include a factual summary of, and the basis for, the protest. Filing shall be considered complete when the protest, including a deposit, is received by the Procurement Services Division. Failure to timely file a protest shall constitute a full waiver of all rights to protest the City's decision regarding the award.

The written protest shall state in detail the specific facts and law or ordinance upon which the protest of the proposed award is based and shall include all pertinent documents.

A written protest may not challenge the relative weight of evaluation criteria or a formula for assigning points.

Upon receipt of a formal written protest, the City shall stop award proceedings until resolution of the protest, unless it has been determined that the award of the contract without delay is necessary to protect substantial interests of the City.

Any and all costs incurred by a protesting party in connection with a bid protest shall be the sole responsibility of the protesting party.

Upon receipt of a protest of the pending award of a contract, a copy of the protest shall promptly be forwarded to the City Attorney. The City Attorney shall review the charge to determine its sufficiency, including whether the protest was timely filed. If upon review the City Attorney determines that the charge is insufficient, the City Attorney may issue a summary dismissal of the protest. If upon review the City Attorney determines that the charge is sufficient, a hearing of the protest committee shall be scheduled.

A protest committee shall have the authority to review, settle and resolve the protest. The committee shall consist of three members appointed by the City Manager, and the City Attorney or designee shall advise the City. The committee's review shall be informal.

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If the protest committee determines that the pending award of a contract or any element of the process leading to the award involved a significant violation of law or applicable rule or regulation, all steps necessary and proper to correct the violation shall be taken. If the committee determines that the protest is without merit, the Director shall promptly issue a decision in writing stating the reason for the decision and furnish a copy to the protester and any other interested party, and the process leading to the award shall proceed.

## 1.20 PREPARATION OF Statements of Qualifications

SOQs shall be prepared in accordance with the SOQ response format. SOQs not complying with this format may be considered non-responsive and may be removed from consideration on this basis.

Requirements for Signing SOQ:

- A. Each proposer, by making a SOQ, represents that this document has been read and is fully understood.
- B. The SOQ must be signed in ink by an individual authorized to legally bind the person, partnership, company, or corporation submitting the SOQ.
- C. All manual signatures must have the name typed directly under the line of the signature.
- D. The above requirements apply to all RFQ addenda.

## 1.21 EXAMINATION OF Statements of Qualifications DOCUMENTS

Before submitting a SOQ, each proposer must: examine the SOQ Documents thoroughly; consider federal, state and local laws, ordinances, rules and regulations that may in any manner affect cost, progress, performance, or provision of the commodities and/or services; study and carefully correlate proposer's observations with the SOQ Documents, and notify the City's agent of all conflicts, errors and discrepancies in the SOQ Documents.

The submission of a SOQ will constitute an incontrovertible representation by the proposer that the proposer has complied with every requirement of this RFQ, that without exception the SOQ is premised upon performing the services and/or furnishing the commodities and materials in accordance with such means, methods, techniques, sequences or procedures as may be indicated in or required by the SOQ Documents, and that the SOQ Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions of performance and furnishing of the goods and/or services.

## 1.22 PUBLIC RECORDS LAW

If applicable, for each public agency contract for services, the Proposer is required to comply with F.S. 119.0701, which includes the following:

- A. Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.
- B. Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in F.S. Chapter 119 or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- D. Meet all requirements for retaining public records and transfer, at no cost to the public agency, all public records in possession of the proposer upon termination of the contract, and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

Public records may be inspected and examined by anyone desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Sealed SOQs become subject to the public records disclosure requirements of F.S. Chapter 119, notwithstanding a proposer's request to the contrary, at the time the City provides notice of a decision or intended decision, or 30 days after the SOQ opening, whichever is earlier.

Financial statements submitted in response to a request by the City may be confidential and exempt from disclosure. Data processing software obtained under a licensing agreement which prohibits its disclosure may also be exempt.

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Proposers are notified and agree that all information submitted as part of or in support of RFQ submittals will be available for public inspection after opening of RFQ in compliance with Chapter 119 of the Florida Statutes. The proposer shall not, unless required as part of this RFQ, submit any information in response to this invitation which the proposer considers to be a trade secret, proprietary or confidential. The submission, not required as part of this RFQ, of any information to the City in connection with this solicitation shall be deemed conclusively to be a waiver of any trade secret or other protection that would otherwise be available to the proposer.

**1.23 INFORMATION**

Further information, if desired, may be obtained from the Procurement Services Division, 2600 Hollywood Boulevard, Room 303, Hollywood, Florida 33020, telephone (954) 921-3299.

Questions or requests for clarification of the specifications shall be in writing and received by the Procurement Services Division by the date specified for a request for clarification. They may be mailed or faxed to (954) 921-3086 or emailed to ...@hollywoodfl.org.

**1.24 SOQS**

The SOQ must be signed by one duly authorized to do so and in cases where the SOQ is signed by a deputy or subordinate, the principal's proper written grant of authority to such deputy or subordinate must accompany the SOQ.

SOQs by corporations must be executed in the corporate name by the President or other corporate officers accompanied by evidence of authority to sign and bind the corporation. The corporate address and state of incorporation must be shown below the signature.

SOQs by partnerships must be executed in the partnership name and signed by a general partner whose title must appear under the signature and the official address of the partnership must be shown below the signature.

**1.25 MODIFICATION AND WITHDRAWAL OF SOQS**

SOQs must be modified or withdrawn by an appropriate document duly executed in the manner that a SOQ must be executed and delivered to the place where SOQs are to be submitted at any time prior to the deadline for submitting SOQs. A request for withdrawal or a modification must be in writing and signed by a person duly authorized to do so and, in a case where signed by a deputy or subordinate, the principal's proper written grant of authority to such deputy or subordinate must accompany the request for withdrawal or modification. Withdrawal of a SOQ will not prejudice the rights of a proposer to submit a new SOQ prior to the SOQ date and time. Except where provided in the following paragraph, no SOQ may be withdrawn or modified after expiration of the period for receiving SOQs.

If, within 24 hours after SOQs are opened, any proposer files a duly signed written notice with the City and within five calendar days thereafter demonstrates to the reasonable satisfaction of the City by clear and convincing evidence that there was a material and substantial mistake in the preparation of its SOQ, or that the mistake is clearly evident on the face of the SOQ but the intended correct SOQ is not similarly evident, then the proposer may withdraw its SOQ and the SOQ Security will be returned.

**1.26 REJECTION OF SOQS**

To the extent permitted by applicable state and federal laws and regulations, the City reserves the right to reject any and all SOQs, to waive any and all informalities, irregularities and technicalities not involving price, time or changes in the commodities and/or services, and the right to disregard all nonconforming, non-responsive, unbalanced or conditional SOQs. SOQs will be considered irregular and may be rejected if they show serious omissions, alterations in form, additions not called for, conditions or unauthorized alterations or irregularities of any kind.

The City also reserves the right to waive minor technical defects in a SOQ. The City reserves the right to determine, in its sole discretion, whether any aspect of a SOQ satisfies the criteria established in this Request for Qualifications.

The City reserves the right to reject the SOQ of any proposer if the City believes that it would not be in the best interest of the City to make an award to that proposer, whether because the SOQ is not responsive or the proposer is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criterion established by the City.

The foregoing reasons for rejection of SOQs are illustrative only and are not intended to be exhaustive.

**1.27 OPEN END CONTRACT**

No guarantee is expressed or implied as to the total quantity of commodities/services to be purchased under any open-end contract. Estimated quantities will be used for SOQ comparison purposes only. The City reserves the right to issue purchase

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orders as and when required, or a blanket purchase order and release partial quantities as and when required, or any combination of both.

**ORDERING:** The CITY reserves the right to purchase commodities/services specified herein through contracts established by other governmental agencies or through separate procurement actions due to unique or special needs. If an urgent delivery is required within a period shorter than the delivery time specified in the Contract, and if the seller is unable to comply therewith, the City reserves the right to obtain such delivery from others without penalty or prejudice to the City or to the proposer.

**1.28 AUDIT RIGHTS**

The City reserves the right to audit the records of the successful proposer for the commodities and/or services provided under the Contract at any time during the performance and term of the Contract and for a period of three years after completion and acceptance by the City. If required by the City, the successful proposer agrees to submit to an audit by an independent certified public accountant selected by the City, at the sole cost of the Proposer. The successful proposer shall allow the City to inspect, examine and review the records of the successful proposer in relation to the Contract at any and all times during normal business hours during the term of the Contract.

**1.29 LOCAL, STATE AND FEDERAL COMPLIANCE REQUIREMENTS**

The Proposer shall comply with all local, state and federal directives, orders and laws as applicable to this RFQ and subsequent contract(s), including but not limited to:

- A. Equal Employment Opportunity, in compliance with Executive Order 11246 as amended and applicable to the Contract.
- B. All manufactured items and fabricated assemblies shall comply with applicable requirements of the Occupation Safety and Health Act of 1970 as amended, and be in compliance with Chapter 442, Florida Statutes. Any toxic substance listed in Section 38F-41.03 of the Florida Administrative Code delivered as a result of this solicitation must be accompanied by a completed Material Safety Data Sheet.
- C. The Immigration and Nationality Act prohibits (i) the employment of an unauthorized alien when the employer knows the individual is an unauthorized alien and (ii) the employment of an individual without complying with the requirements of the federal employment verification system. If a proposer commits either of these violations, such violation shall be cause for unilateral cancellation of the Contract.
- D. This Section applies only to any contract for goods or services of \$1 million or more: The proposer certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria as provided in Section 287.135, Florida Statutes (2019), as may be amended or revised. The City may terminate the Contract at the City's option if the proposer is found to have submitted a false certification as provided under subsection (5) of Section 287.135, Florida Statutes (2019), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2019), as may be amended or revised.

**1.30 FRAUD AND MISREPRESENTATION**

Any individual, corporation or other entity that attempts to meet its contractual obligations with the City through fraud, misrepresentation or material misstatement may be debarred from doing business with the City. As an additional sanction, the City may terminate or cancel any other contracts with such individual, corporation or entity. Such individual or entity shall be responsible for all direct or indirect costs associated with termination or cancellation, including attorney's fees.

**1.31 DEBARRED OR SUSPENDED BIDDERS OR PROPOSERS**

The proposer certifies, by submission of a response to this solicitation, that neither it nor its principals and subproposers are presently debarred or suspended by any federal department or agency.

**1.32 COLLUSION**

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More than one SOQ received for the same work from an individual, firm, partnership, corporation or association under the same or different names will not be considered. Reasonable grounds for believing that any proposer is interested in more than one SOQ for the same work will cause the rejection of such SOQs in which the proposer is interested. If there are reasonable grounds for believing that collusion exists among the proposers, the SOQs of participants in such collusion will not be considered.

**1.33 COPELAND "ANTI-KICKBACK"**

The proposer and all subproposers will comply with the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

**1.34 FORCE MAJEURE**

The Contract that is awarded to the successful proposer may provide that the performance of any act by the City or proposer may be delayed or suspended at any time while, but only so long as, either party is hindered in or prevented from performance by acts of God, the elements, war, rebellion, strikes, lockouts or any cause beyond the reasonable control of such party, provided however that the City shall have the right to provide substitute service from third parties or City forces and in such event the City shall withhold payment due the proposer for such period of time. If the condition of force majeure exceeds a period of 14 days, the City may, at its option and discretion, cancel or renegotiate the Contract.

**1.35 PUBLIC ENTITY CRIMES**

A person or affiliate 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 a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a proposer, supplier, subproposer, or Consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Florida Statutes Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

**1.36 DRUG-FREE WORKPLACE PROGRAM**

Preference shall be given to businesses with drug-free workplace programs. Whenever two or more SOQs which are equal with respect to price, quality, and service are received by the state or by any political subdivision for the procurement of commodities or contractual services, a SOQ received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing ties in SOQs will be followed if none of the tied vendors have a drug-free workplace program.

**1.37 SOLICITATION, GIVING, AND ACCEPTANCE OF GIFTS POLICY**

Proposers by signing and submitting a SOQ, understand and agree to compliance with the City's and state's policies prohibiting solicitation and acceptance of gifts by public officers, employees and candidates. Failure to agree by reference or inference will result in your SOQ being declared non-responsive; provided, however, that a responsible proposer whose SOQ would be responsive but for the failure to submit the signed form in its SOQ may be given the opportunity to submit the form to the City within five calendar days after notification by the City, if this is determined to be in the best interest of the City.

**1.38 CONFLICT OF INTEREST**

The proposer represents that:

No officer, director, employee, agent, or other Consultant of the City or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of the Contract.

There are no undisclosed persons or entities interested with the proposer in the Contract. The Contract is entered into by the proposer without any connection with any other entity or person making a SOQ for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other Consultant of the City, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or member of the immediate family or household of any of the aforesaid:

1. Is interested on behalf of or through the proposer directly or indirectly in any manner whatsoever in the execution or the performance of the Contract, or in the services, supplies or work to which the Contract relates or in any portion of the revenues; or

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2. Is an employee, agent, advisor, or Consultant to the proposer or to the best of the proposer's knowledge, any subproposer or supplier to the proposer.

Neither the proposer nor any officer, director, employee, agent, parent, subsidiary, or affiliate of the proposer shall have an interest that is in conflict with the proposer's faithful performance of its obligations under the Contract, provided that the City, in its sole discretion, may consent in writing to such a relationship, and provided the proposer provides the City with a written notice, in advance, that identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the City's best interest to consent to such relationship.

The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under the Contract and those provided by statute, the stricter standard shall apply.

In the event the proposer has no prior knowledge of a conflict of interest as set forth above and acquires information that may indicate that there may be an actual or apparent violation of any of the above, the proposer shall promptly bring such information to the attention of the City's Project Manager. The proposer shall thereafter cooperate with the City's review and investigation of such information and comply with the instructions the proposer receives from the Project Manager in regard to remedying the situation.

**1.39 DISCRIMINATION**

Any entity or affiliate who has been placed on the discriminatory vendor list may not submit a SOQ on a contract to provide goods or services to a public entity, may not submit a SOQ on a contract with a public entity for construction or repair of a public building or public work, may not submit SOQs on leases of real property to a public entity, may not award or perform work as a proposer, supplier, subproposer, or Consultant under contract with any public entity, and may not transact business with any public entity.

**1.40 ADVICE OF OMISSION OR MISSTATEMENT**

In the event it is evident to a proposer responding to this RFQ that the City has omitted or misstated a material requirement to this RFQ and/or the services required by this RFQ, the responding proposer shall advise the contact identified in the RFQ Clarifications and Questions section of such omission or misstatement.

**1.41 CONFIDENTIAL INFORMATION**

Information contained in the proposers' SOQ that is company confidential must be clearly identified in the SOQ itself. The City will be free to use all information in the proposer's SOQ for the City's purposes, in accordance with state law. SOQs shall remain confidential for 30 days or until a notice of intent to award is posted, which is sooner. The proposer understands that any material supplied to the City may be subject to public disclosure under Chapter 119, Florida Statutes, and known as the Public Records Law.

**1.42 GOVERNING LAW**

This Contract, including appendices, and all matters relating to the Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by and construed in accordance with the laws of the State of Florida. This shall apply notwithstanding such factors that include but are not limited to the place where the Contract is entered into, the place where the accident occurs and not withstanding application of conflicts of law principles.

**1.43 LITIGATION VENUE**

The parties waive the privilege of venue and agree that all litigation between them in the state courts shall take place in Broward County, Florida, and that all litigation between them in the federal courts shall take place in the Southern District of Florida.

**1.44 SOVEREIGN IMMUNITY**

Nothing in this Contract shall be interpreted or construed to mean that the City waives its common law sovereign immunity, or the limits of liability set forth in Section 768.28, Florida Statutes.

**1.45 SURVIVAL**

The parties acknowledge that any of the obligations in this Contract will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the proposer and the City under this Contract, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.



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**1.46 INDEMNIFICATION AND HOLD HARMLESS AGREEMENT**

The proposer shall indemnify and hold harmless the City and its officers, employees, agents and instrumentalities from any and all liability, losses or damages. In addition, the City shall be entitled to attorney's fees and costs of defense that the City or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this project by the awarded proposer or its employees, agents, servants, partners, principals, subproposers or subcontractors. Furthermore, the awarded proposer shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind of nature in the name of the City of Hollywood, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The awarded proposer expressly understands and agrees that any insurance protection and endorsements required by the resulting Contract or otherwise provided by the awarded proposer shall cover the City of Hollywood, its officers, employees, agents and instrumentalities, and shall include claims for damages resulting from and/or caused by the negligence, recklessness or intentional wrongful misconduct of the proposer and persons employed by or utilized by the proposer in the performance of the Contract.

**1.47 PATENT AND COPYRIGHT INDEMNIFICATION**

The proposer warrants that all deliverables furnished hereunder, including but not limited to: services, equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.

The proposer shall be liable and responsible for any and all claims made against the City for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the work or the City's continued use of the deliverables furnished hereunder. Accordingly, the proposer, at its own expense, including the payment of attorney's fees, shall indemnify and hold harmless the City and defend any action brought against the City with respect to any claim, demand, and cause of action, debt, or liability.

In the event any deliverable or anything provided to the City hereunder, or a portion thereof, is held to constitute an infringement and its use is or may be enjoined, the proposer shall have the obligation, at the City's option, to (i) modify, or require that the applicable subproposer or supplier modify the alleged infringing item(s) at the proposer's expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the City, at the proposer's expense, the rights provided under this Contract to use the item(s).

The proposer shall be solely responsible for determining and informing the City whether a prospective supplier or subproposer is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any deliverable hereunder. The proposer shall enter into agreements with all suppliers and subproposers at the proposer's own risk. The City may reject any deliverable that it believes to be the subject of any such litigation or injunction, or if, in the City's judgment, use thereof would delay the work or be unlawful.

The proposer shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the work.

**1.48 ADVERTISING**

Proposer shall not advertise or publish the fact that the City has placed this order without prior written consent from the City, except as may be necessary to comply with a proper request for information from an authorized representative of a governmental unit or agency.

**1.49 DISCLAIMER**

The City may, in its sole discretion, accept or reject, in whole or in part, for any reason whatsoever any or all SOQs; re-advertise the RFQ, postpone or cancel at any time the RFQ process; or waive any formalities of or irregularities in the SOQ process. SOQs that are not submitted on time and/or do not conform to the City's requirements will not be considered. After all SOQs are analyzed, organization(s) submitting SOQ(s) that appear, solely in the opinion of the City to be the most competitive, shall be submitted to the City of Hollywood's City Commission, and the final selection will be made shortly thereafter with a timetable set solely by the City. The selection by the City shall be based on the SOQ, which is, in the sole opinion of the City Commission of the City of Hollywood, in the best interest of the City. The issuance of the RFQ constitutes only an invitation to make a SOQ to the City. The City reserves the right to determine, in its sole discretion, whether any aspect of the SOQ satisfies the criteria established by the City. In all cases, the City shall have no liability to any proposer for any costs or expense incurred in connection with this solicitation, its SOQ or otherwise.

**1.50 TRADEMARKS**

Construction Management at Risk Services for The North Beach Utilities Underground Conversion Hollywood Beach Utility Improvements - Phase 1A Projects

The City warrants that all trademarks the City requests the proposer to affix to articles purchased are those owned by the City and it is understood that the proposer shall not acquire or claim any rights, title, or interest therein, or use any of such trademarks on any articles produced for itself or anyone other than the City.

#### **1.51 RIGHT TO REQUEST ADDITIONAL INFORMATION**

The City reserves the right to request any additional information that might be deemed necessary during the evaluation process.

#### **1.52 SOQ PREPARATION COSTS**

The proposer is responsible for any and all costs incurred by the proposer or his/her subproposers in responding to this RFQ.

#### **1.53 DESIGN**

The successful proposer shall be responsible for all design, information gathering, and required programming to achieve a successful implementation.

#### **1.54 RIGHTS TO PERTINENT MATERIALS**

All responses, inquires, and correspondence relating to this RFQ and all reports, charts, displays, schedules, exhibits and other documentation produced by the proposer that are submitted as part of the SOQ shall become the property of the City upon receipt, a part of a public record upon opening, and will not be returned.

#### **1.55 INSURANCE REQUIREMENTS**

Upon the City's notification, the proposer shall furnish to the Procurement Services Division Certificates of Insurance and required endorsements that indicate that insurance coverage has been obtained that satisfies the requirements outlined in section 2.14 of this RFQ.

#### **1.56 NATURE OF THE CONTRACT**

The Contract incorporates and includes all negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained in the Contract. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of the Contract that are not contained in the Contract, and that the Contract contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Contract shall be of no force or effect, and that the Contract may be modified, altered or amended only by a written amendment duly executed by both parties or their authorized representatives.

The proposer shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the City in all aspects of the services performed hereunder.

The proposer acknowledges that the Contract requires the performance of all things necessary for or incidental to the effective and complete performance of all work and services under this Contract. All things not expressly mentioned in the Contract but necessary to carrying out its intent are required by the Contract, and the proposer shall perform the same as though they were specifically mentioned, described and delineated.

The proposer shall furnish all labor, materials, tools, supplies, and other items required to perform the work and services that are necessary for the completion of this Contract. All work and services shall be accomplished at the direction of and to the satisfaction of the City's Project Manager.

The proposer acknowledges that the City shall be responsible for making all policy decisions regarding the Scope of Services. The proposer agrees to provide input on policy issues in the form of recommendations.

The proposer agrees to implement any and all changes in providing services as a result of a policy change implemented by the City. The Proposer agrees to act in an expeditious and fiscally sound manner in providing the City with input regarding the time and cost to implement such changes and in executing the activities required to implement such changes

#### **1.57 AUTHORITY OF THE CITY'S PROJECT MANAGER**

The proposer acknowledges that the City's Project Manager will determine in the first instance all questions of any nature

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whatsoever arising out of, under, or in connection with, or in any way related to or on account of this Contract, including without limitation: questions as to the value, acceptability and fitness of the services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the SOQ; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.

The proposer shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the proposer agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.

The proposer must, in the final instance, seek to resolve every difference concerning the Contract with the Project Manager. In the event that the Project Manager and the proposer are unable to resolve their differences, the proposer may initiate a dispute in accordance with the procedures set forth in the section below. Exhaustion of these procedures shall be a condition precedent to any lawsuit by proposer.

In the event of such dispute, the parties to this Contract authorize the City Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Contract (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution of a contract) and the decision of each with respect to matters within the City Manager's purview shall be conclusive, final and binding on the parties. Any such dispute shall be brought, if at all, before the City Manager within 10 days of the occurrence, event or act out of which the dispute arises.

The City Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether the proposer's performance or any deliverable meets the requirements of this Contract and any specifications. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the City Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Contract. All such disputes shall be submitted in writing by the proposer to the City Manager for a decision, together with all pertinent information in regard to such questions, in order that a fair and impartial decision may be made. The parties agree that whenever the City Manager is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be deemed fair and impartial when exercised or taken. The City Manager shall render a decision in writing and deliver a copy of the same to the proposer. Except as such remedies may be limited or waived elsewhere in the Contract, the proposer reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

**1.58 MUTUAL OBLIGATIONS**

This Contract, including attachments and appendices to the Contract, shall constitute the entire agreement between the parties and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereof unless acknowledged in writing by the duly authorized representatives of both parties.

Nothing in this Contract shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

In those situations where this Contract imposes an indemnity or defense obligation on the proposer, the City may, at its expense, elect to participate in the defense if the City should so choose. Furthermore, the City may at its own expense defend or settle any such claims if the proposer fails to diligently defend such claims, and thereafter seek indemnity for costs and attorney's fees from the proposer.

**1.59 SUBCONTRACTUAL RELATIONS**

If the proposer will cause any part of this Contract to be performed by a subproposer, the provisions of this Contract will apply to such subproposer and its officers, agents and employees in all respects as if it and they were employees of the proposer, and the proposer will not be in any manner discharged from its obligations and liabilities hereunder, but will be liable for all acts and negligence of the subproposer, its officers, agents, and employees, as if they were employees of the proposer. The services performed by the subproposer will be subject to the provisions of this Contract as if performed directly by the proposer.

The proposer, before making any subcontract for any portion of the services, will state in writing to the City the name of the proposed subproposer, the portion of the services that the subproposer is to perform, the place of business of such subproposer, and such other information as the City may require. The City will have the right to require the proposer not to award any subcontract to a person, firm or corporation disapproved by the City in the City's sole and absolute discretion.

Before entering into any subcontract, the proposer will inform the subproposer fully and completely of all provisions and requirements of this Contract relating either directly or indirectly to the services to be performed. Such services performed by

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such subproposer will strictly comply with the requirements of this Contract.

In order to qualify as a subproposer satisfactory to the City, in addition to the other requirements established herein, the subproposer must be prepared to prove to the satisfaction of the City that it has the necessary facilities, skill and experience, and ample financial resources to perform the services in a satisfactory manner. To be considered skilled and experienced, the subproposer must show to the satisfaction of the City that it has satisfactorily performed services of the same general type that are required to be performed under this Contract.

The City shall have the right to withdraw its consent to a subcontract if it appears to the City that the subcontract will delay, prevent, or otherwise impair the performance of the proposer's obligations under this Contract. All subproposers are required to protect the confidentiality of the City and City's proprietary and confidential information. The proposer shall furnish to the City copies of all subcontracts between the proposer and subproposers and suppliers. Within each subcontract, there shall be a clause for the benefit of the City permitting the City to request completion of performance by the subproposer of its obligations under the subcontract in the event the City finds the proposer in breach of its obligations, and the option to pay the subproposer directly for the performance by such subproposer. The foregoing shall neither convey nor imply any obligation or liability on the part of the City to any subproposer as set forth herein.

**1.60 PROMPT PAYMENT: LATE PAYMENTS BY PROPOSER TO SUBPROPOSER AND MATERIAL SUPPLIERS;  
PENALTY:**

When a proposer receives from the City any payment for contractual services, commodities, materials, supplies, or construction contracts, the proposer shall pay such moneys received to each subproposer and material supplier in proportion to the percentage of work completed by each subproposer and material supplier at the time of receipt. If the proposer receives less than full payment, then the proposer shall be required to disburse only the funds received on a pro rata basis to the subproposers and materials suppliers, each receiving a prorated portion based on the amount due on the payment. If the proposer without reasonable cause fails to make payments required by this section to subproposers and material suppliers within 15 working days after the receipt by the proposer of full or partial payment, the proposer shall pay to the subproposers and material suppliers a late charge in the amount of one percent (1%) of the amount due, per month, from the expiration of the period allowed herein for payment. Such charge shall be in addition to actual payments owed. Retainage is also subject to the prompt payment requirement and must be returned to the subproposer or material supplier whose work has been completed, even if the prime contract has not been completed. The proposer shall include the above obligation in each subcontract it signs with a subproposer or material supplier.

**1.61 TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK**

The City may terminate this Contract if an individual or corporation or other entity attempts to meet its contractual obligation with the City through fraud, misrepresentation or material misstatement.

The City may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the City. Such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.

The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the City through fraud, misrepresentation or material misstatement may be debarred from City contracting in accordance with the City debarment procedures. The proposer may be subject to debarment for failure to perform and any other reasons related to the proposer's breach or failure of satisfactory performance.

In addition to cancellation or termination as otherwise provided in this Contract, the City may at any time, in its sole discretion, with or without cause, terminate this Contract by written notice to the proposer and in such event:

The proposer shall, upon receipt of such notice, unless otherwise directed by the City:

1. Stop work on the date specified in the notice (the "Effective Termination Date");
2. Take such action as may be necessary for the protection and preservation of the City's materials and property;
3. Cancel orders;
4. Assign to the City and deliver to any location designated by the City any non-cancelable orders for deliverables that are not capable of use except in the performance of this Contract and which have been specifically developed for the sole purpose of this Contract and not incorporated in the services; and

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5. Take no action that will increase the amounts payable by the City under this Contract.

In the event that the City exercises its right to terminate this Contract pursuant to this Article, the proposer will be compensated as stated in the payment articles for the:

1. Portion of the services completed in accordance with the Contract up to the Effective Termination Date; and
2. Non-cancelable deliverables that are not capable of use except in the performance of this Contract and which have been specifically developed for the sole purpose of this Contract but not incorporated in the services.

All compensation pursuant to this Article is subject to audit.

#### 1.62 EVENT OF DEFAULT

An Event of Default shall mean a breach of this Contract by the proposer. Without limiting the generality of the foregoing and in addition to those instances referred to as a breach, an Event of Default shall include the following:

1. The proposer has not delivered deliverables on a timely basis;
2. The proposer has refused or failed, except in any case for which an extension of time is provided, to supply enough properly skilled staff personnel;
3. The proposer has failed to make prompt payment to subproposers or suppliers for any supplies or services;
4. The proposer has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the proposer's creditors, or the proposer has taken advantage of any insolvency statute or debtor/creditor law or if the proposer's affairs have been put in the hands of a receiver;
5. The proposer has failed to obtain the approval of the City where required by this Contract;
6. The proposer has failed to provide "adequate assurances" as required; and
7. The proposer has failed in the representation of any warranties stated herein.

When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the proposer's ability to perform the services or any portion thereof, the City may request that the proposer, within the time frame set forth in the City's request, provide adequate assurances to the City, in writing, of the proposer's ability to perform in accordance with the terms of this Contract. Until the City receives such assurances, the City may request an adjustment to the compensation received by the proposer for portions of the services which the proposer has not performed. In the event that the proposer fails to provide to the City the requested assurances within the prescribed time frame, the City may:

1. Treat such failure as a repudiation of this Contract;
2. Resort to any remedy for breach provided herein or at law, including but not limited to taking over the performance of the services or any part thereof either by itself or through others.

In the event the City shall terminate this Agreement for default, the City or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

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### 1.63 REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the proposer shall be liable for all damages resulting from the default, including but not limited to:

- A. Lost revenues;
- B. The difference between the cost associated with procuring services hereunder and the amount actually expended by the City for procurement of services, including procurement and administrative costs; and
- C. Such other damages that the City may suffer.

The proposer shall also remain liable for any liabilities and claims related to the proposer's default. The City may also bring any suit or proceeding for specific performance or for an injunction.

### 1.64 BANKRUPTCY

The City reserves the right to terminate this contract if, during the term of any contract the proposer has with the City, the proposer becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the proposer under federal bankruptcy law or any state insolvency law.

### 1.65 CANCELLATION FOR UNAPPROPRIATED FUNDS

The obligation of the City for payment to a proposer is limited to the availability of funds appropriated in a current fiscal period, and continuation of the Contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.

### 1.66 VERBAL INSTRUCTIONS PROCEDURE

No negotiations, decisions, or actions shall be initiated or executed by the proposer as a result of any discussions with any City employee. Only those communications which are in writing from an authorized City representative may be considered. Only written communications from proposers, which are signed by a person designated as authorized to bind the proposer, will be recognized by the City as duly authorized expressions on behalf of the proposer.

### 1.67 E-VERIFY

Proposer acknowledges that the City may be utilizing the proposer's services for a project that is funded in whole or in part by state funds pursuant to a contract between the City and a state agency. The proposer shall be responsible for complying with the E-Verify requirements in the Contract and using the U.S. Department of Homeland Security's E-Verify system to verify the employment of all new employees hired by the proposer during the Contract term who will be working on this Project. The proposer is also responsible for e-verifying its subproposers, if any, pursuant to any agreement between the City and a state agency and reporting to the City any required information. The proposer acknowledges that the terms of this paragraph are material terms, the breach of any of which shall constitute a default under this Contract.

### 1.68 BUDGETARY CONSTRAINTS

In the event the City is required to reduce contract costs due to budgetary constraints, all services specified in this document may be subject to a permanent or temporary reduction in budget. In such an event, the total cost for the affected service shall be reduced as required. The proposer shall also be provided with a minimum 30-day notice prior to any such reduction in budget.

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### **List of Exhibits**

Exhibit 1 - Pre-Construction Services: Phase I CMAR Agreement

Exhibit 2 - Construction Services: Phase II CMAR Agreement

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



**PHASE I**

**PRE-CONSTRUCTION SERVICES**

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

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



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

**WITNESSETH:**

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

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

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

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

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

[THIS SPACE LEFT INTENTIONALLY BLANK]

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ARTICLE 1  
GENERAL DESCRIPTION OF SCOPE OF SERVICES

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

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

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

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

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

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

#### 1.5 GUARANTEED MAXIMUM PRICE.

- a. Prior to the performance of construction services, the CMAR shall prepare and deliver to the PROJECT MANAGER, with a copy to the CONSULTANT, a GMP proposal. The CMAR shall include in the GMP proposal the following:
  - (i) a recital of the specific CONTRACT DOCUMENTS, including construction documents, drawings, specifications, and all addenda, used in the preparation of the GMP proposal;
  - (ii) the 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 OWNER's design and construction standards and the general industry standards for completion of the WORK/services; (v) is not a substantial enlargement of the Scope of Services/WORK; or (vi) substantially conforms to the nature, type, kind or quality of WORK/services depicted in the incomplete documents.

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

## 1.6 PRICE GUARANTEES.

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

- c. Upon execution of Exhibit "D", the CMAR certifies that all factual unit costs supporting the GMP proposal are accurate, complete and current at the time of negotiations, and that any other factual unit costs that may be furnished to the OWNER in the future to support any additional amounts that may be authorized will also be accurate and complete. Payments to the CMAR shall be reduced if the OWNER determines such amounts were originally included due to the materially inaccurate, incomplete, or non-current factual unit costs.

## ARTICLE 2 DEFINITIONS

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

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

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

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

- 2.14 GUARANTEED MAXIMUM PRICE ("GMP"): The term 'Guaranteed Maximum Price' or "GMP" shall mean the sum certain agreed to between the City and the CMAR and set forth in the Phase II Construction Services Contract as the maximum total Project price that the CMAR guarantees not to exceed for the construction of the Project for all services within the Pre-Construction and Construction Services Contracts.
- 2.15 INSPECTOR: An employee of the CITY assigned by the Director to make observations of work performed by CMAR.
- 2.16 MATERIALS: Materials incorporated in the PROJECT, or used or consumed in the performance of the Scope of Services.
- 2.17 NOTICE TO PROCEED: One or more written notices to CMAR authorizing the commencement of the Scope of Services.
- 2.18 OWNER'S CONTINGENCY: A sum established by the OWNER, to be included in the GMP, subject to adjustment to include any buyout or sales tax project savings, which may be utilized by the OWNER for OWNER requested changes, additive bid alternates and deductive credits, differing/unforeseen existing conditions.
- 2.19 PLANS AND/OR DRAWINGS: The official graphic representations of this construction project which are a part of the CONTRACT DOCUMENTS.
- 2.20 PRE-CONSTRUCTION FEE: The lump sum fee payable to the CMAR for the WORK performed during the pre-construction phase related to the PROJECT, accepted by the CITY and the CMAR, which fee includes all direct and indirect costs incurred by the CMAR in the proper performance of WORK during the pre-construction phase.
- 2.21 PROJECT: The construction, alteration or repair, and all services and incidents thereto, of a CITY facility as contemplated and budgeted by the OWNER as described in the CONTRACT DOCUMENTS, including the Scope of Services described in the attached Exhibit "A".
- 2.22 PROJECT MANAGER: An employee of the CITY expressly designated as PROJECT MANAGER in writing by the DIRECTOR, who is the representative of the CITY, concerning the CONTRACT DOCUMENTS.
- 2.23 PROJECT MANUAL: The official documents setting forth information and requirements; contract forms, bonds, and certificates; general and supplementary conditions of the CONTRACT DOCUMENTS; the specifications; and the plans and drawings of the PROJECT.



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

### ARTICLE 3 TERM AND TIME OF PERFORMANCE

- 3.1 The term of this contract shall begin on the date it is fully executed by both parties and shall end on the date of commencement of the term of the contract between the CITY and a construction manager at risk for construction services for the **<Project Name>** or, not later than, **<specify date>**, unless terminated in accordance with Article 8. When the CONSULTANT determines it is necessary to extend the time for the PROJECT, the CONSULTANT shall notify the PROJECT MANAGER, and the term of this contract may be extended for a period of time not to exceed 60 calendar days in accordance with the CITY's Procurement Ordinance and as set forth in Section 9.20 herein.
- 3.2 All duties, obligations, and responsibilities of CMAR required by this contract shall be completed no later than **<specify date>**. Time shall be deemed to be of the essence in performing the duties, obligations and responsibilities required by the CONTRACT DOCUMENTS.

- 3.3 At or before the above referenced completion date for this contract the CMAR following completion of cost estimating, value engineering and other services set forth in Article 4 will tender to the CITY a written GMP for final completion of the PROJECT . The City, by and through the DIRECTOR, the PROJECT MANAGER and/or other City personnel, will have the opportunity to negotiate the amount of the GMP with the CMAR. In the event a GMP which is satisfactory to City personnel in their reasonable discretion is not agreed upon in writing within 30 days of the tender of GMP, the CITY reserves the right to terminate this contract for convenience and the CMAR will immediately tender all documents, in accordance with the applicable provisions of the CONTRACT DOCUMENTS. The CMAR shall have no recourse from this termination and the CITY shall take such documents, as defined, in Section 9.1 of this contract, and commence negotiations with the second and third ranked firm, respectively. Conditions precedent to a Phase II contract for this project are the satisfactory final completion of Phase I and an agreed upon GMP. If a GMP is agreed to with the CMAR, a separate contract will be entered into between the parties.

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

- 4.1 CITY agrees to pay CMAR, in the manner specified in subsection 4.2, the total lump sum compensation in an amount not to exceed **<INSERT AMOUNT>**

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

- 4.2 The lump sum compensation in an amount not to exceed **<INSERT AMOUNT** shall be paid out in accordance with the percentage amount set forth as follows:

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

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

- 4.6 Payment shall be made to CMAR at:

**<Contractor's Name and Address>**

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ARTICLE 5  
CHANGES IN SCOPE OF SERVICES

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

ARTICLE 6  
INDEMNIFICATION

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

ARTICLE 7  
INSURANCE

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

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

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

imposed as if the work had not been suspended, except for the CMAR's failure to maintain the required insurance.

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

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

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

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

## 7.2 INSURANCE LIMITS OF LIABILITY:

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

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

### **Sub Consultant**

Prior to the commencement of work governed by this contract CMAR will ensure that the insurance obtained will extend protection to all SUB CONSULTANTS

engaged by CMAR. As an alternative, CMAR may require all SUB CONSULTANTS to obtain insurance consistent with the schedules shown below.

#### 7.2.1 Comprehensive General Liability:

[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 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 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 CITY shall recognize and honor the CMAR's status. The CMAR may be required to submit a Letter of Authorization issued by the Department of Labor and a Certificate of Insurance, providing details on the CMAR's Excess Insurance Program.

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

**7.2.4 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 City, Builder's Risk Insurance on an All Risk of Loss form. Coverage shall include:

Theft	Aircraft
Windstorm	Vehicles
Hail	Smoke
Explosion	Fire
Riot	Collapse
Civil Commotion	Flood

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

Deductible not to exceed \$100,000



ARTICLE 8  
TERMINATION

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

- 8.5 In the event this contract is terminated, any compensation payable by CITY shall be withheld until all documents are provided to CITY pursuant to Section 9.1 below.

## ARTICLE 9 MISCELLANEOUS

### 9.1 OWNERSHIP OF DOCUMENTS

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

### 9.2 AUDIT RIGHT AND RETENTION OF RECORDS

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

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

CMAR acknowledges that if Chapter 119, Florida Statutes entitled "Public Records Law" is applicable to this contract the provisions of Section 119.0701,

Florida Statute are also applicable and CMAR acknowledges its obligations to comply with said requirements with regard to public records and shall:

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

(b) upon request from the City's custodian of public records or his/her designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

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

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

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

### 9.3 NONDISCRIMINATION

CMAR agrees that it will not discriminate against any employee or applicant for employment for work under this contract because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, gender, sexual orientation, age, national origin, political affiliation or disability. This provision shall include, but not be limited to, the following: employment upgrading,

demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships.

#### 9.4 PUBLIC ENTITY CRIME ACT

CMAR represents that the execution of the CONTRACT DOCUMENTS will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with CITY, and may not transact any business with CITY IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Contract and recovery of all monies paid hereto, and may result in debarment from CITY's competitive procurement activities.

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

#### 9.5 INDEPENDENT CONTRACTOR

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

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

9.6.1 CMAR shall be responsible for ensuring payment of the rate of wages and fringe benefits, or cash equivalent, for all laborers, mechanics and apprentices employed by him/her or his/her SUBCONTRACTORS on the work covered by this contract which shall be not less than the prevailing rate of wages and fringe benefits or cash equivalent for similar skills or classifications of work as established by the General Wage Decision by

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

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

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

9.6.6 The CMAR shall insert in any subcontracts such language as is necessary to require all of its SUBCONTRACTORS to comply with the requirements of this section. CMAR shall be responsible for noncompliance by any of its SUBCONTRACTORS. This section shall be deemed part of any contract entered into between CMAR and any of his/her SUBCONTRACTORS.

## 9.7 THIRD PARTY BENEFICIARIES

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

## 9.8 NOTICES

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

### CITY OF HOLLYWOOD:

Armando Linares, Director  
Department of Design and Construction Management  
2207 Raleigh Street  
Hollywood, Florida 33020

### FOR CMAR :

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## 9.9 ASSIGNMENT AND PERFORMANCE

Neither this contract nor any interest herein shall be assigned, transferred, or encumbered by either party. In addition, CMAR shall not subcontract any portion

of the work required of it by the CONTRACT DOCUMENTS without written consent of the PROJECT MANAGER.

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

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

#### 9.10 CONFLICTS

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

CMAR agrees that none of its officers or employees shall, during the term of this contract, serve as an expert witness against CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, CMAR agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of CITY in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude CMAR or any other persons from representing themselves in any action or in any administrative or legal proceeding.

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

#### 9.11 PROHIBITION AGAINST CONTINGENT FEES.

CMAR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CMAR, to solicit or secure this contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CMAR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this contract.. For a breach or violation of this provision, CITY shall have the right to terminate this contract without liability at its discretion, or to deduct from the contract price or otherwise

recover the full amount of such fee, commission, percentage, gift or consideration.

#### 9.12 TRUTH IN NEGOTIATION

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

#### 9.13 MATERIALITY AND WAIVER OF BREACH

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

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

#### 9.14 LIQUIDATED DAMAGES.

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

1. The CMAR shall pay the Owner the sum of \_\_\_\_\_ Dollars per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth in the CONTRACT DOCUMENTS for Substantial Completion of each phase, if phased, or the project, if not phased.
2. Owner and CMAR acknowledge that any sums due and payable by the CMAR shall be payable, not as a penalty, but as liquidated damages representing a reasonable estimate of delay damages, inconvenience, additional overhead and costs likely to be sustained by the Owner as estimated at the time of executing the CONTRACT DOCUMENTS. If the Owner reasonably believes in its discretion that Substantial Completion will be delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the CMAR an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when in the Owner's discretion the CMAR overcomes the delay in achieving the Substantial Completion, or



any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the CMAR those funds withheld, but no longer applicable, as liquidated damages.

3. Partial use or occupancy of the PROJECT may not result in the Scope of Services/Work being deemed substantially completed, and such partial use or occupancy may not be evidence of Substantial Completion.

Substantial Completion, in the context of this contract, does not refer to any prior dates on which the Owner employs other contractors to work on the same site.

**B. LIQUIDATED DAMAGES FOR FINAL COMPLETION.**

1. If the CMAR fails to achieve final completion within 60 days of the date of Substantial Completion, the CMAR shall pay the Owner the sum of \_\_\_\_\_ Dollars per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth for completion of the Work or Project.
2. Any sums due and payable hereunder by the CMAR shall be payable, not as a penalty, but as liquidated damages representing a reasonable estimate of delay damages, inconvenience, additional overhead and costs likely to be sustained by the Owner, as estimated at or before the time of executing this Contract. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the CMAR an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays.
3. Prior to being entitled to receive final payment, and as a condition precedent thereto, the CMAR shall provide the Owner, in the form and manner required by the Owner, the following:
  - a. An affidavit that the CMAR's obligations to all subcontractors, laborers, equipment or suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied;
  - b. Such other documents as required by the Project Manual from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who may have a claim against the person or entity or retained it, including but not limited to final releases of bond;

- c. All product warranties, operating manuals, instruction manuals and other documents customarily required of the CMAR or reasonably required by the Owner, including but not limited to those required elsewhere in the CONTRACT DOCUMENTS, as part of its Project Closing procedures.

#### 9.15 COMPLIANCE WITH LAWS

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

#### 9.16 SEVERANCE

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

#### 9.17 JOINT PREPARATION

The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of CONTRACT DOCUMENTS has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

#### 9.18 PRIORITY OF PROVISIONS

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

#### 9.19 APPLICABLE LAW AND VENUE

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

#### 9.20 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this contract and executed by the CITY and CMAR.

#### 9.21 PRIOR AGREEMENTS

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of the CONTRACT DOCUMENTS that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with Section 9.20 above.

#### 9.22 DRUG-FREE WORKPLACE

It is a requirement of CITY that it enter into contracts only with firms that certify the establishment of a drug free work place. Execution of this contract by CMAR shall serve, as CMAR's required certification that it either has or that it will establish a drug free work place.

#### 9.23 INCORPORATION BY REFERENCE

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

#### 9.24 COUNTERPARTS

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

### ARTICLE 10 SUBCONTRACTORS AND PURCHASE ORDERS

Unless waived in writing, for good cause, by the CONSULTANT or PROJECT MANAGER, CMAR must obtain competitive pricing and subcontract, in compliance with the requirements of this Article 10, for 100% of CMAR direct

construction cost required under this contract. Subcontracts and purchase orders, involving amounts not in excess of (\$25,000.00) may be awarded without the prior approval of the CONSULTANT. All other subcontracts and purchase orders shall be awarded according to the following procedure:

CMAR shall prepare for CONSULTANT'S and PROJECT MANAGER'S review and approval a list of subcontractors and suppliers for each bid who meet the CMAR's schedule of minimum requirements. CMAR shall obtain bids from a minimum of three such subcontractors for each subcontract, when available. After receiving such bids, CMAR shall analyze them and make recommendations to the CONSULTANT for awards. When the CONSULTANT and the PROJECT MANAGER have approved the award of any such subcontract or purchase order, CMAR shall contract solely in its own name and behalf, and not in the name or behalf of the CITY, with the specified subcontractor or supplier. The subcontract shall provide that the subcontractor shall perform its portion of the Work in accordance with all applicable provisions of CONTRACT DOCUMENTS; that the subcontractor shall be bound to the CMAR, to the same extent as CMAR is bound to the CITY, to name the CITY, its employees and officers as an additional insureds on its comprehensive general liability insurance; that the subcontractor shall provide an insurance certificate evidencing the same; that CMAR shall have the right to terminate the subcontract in the same manner and by the same method as provided for termination of this contract by the CITY, or as otherwise provided in the subcontract, whichever is more protective of the CITY'S interest; and that, in the event this contract is terminated for any reason, the subcontractor shall, at the CITY'S option, perform its subcontract for the CITY, or for a CONTRACTOR designated by the CITY, without additional or increased cost, provided the subcontractor is paid in accordance with its subcontract. CMAR shall sign and cause each subcontractor to sign an Assignment of Rights under Construction Subcontract. Nothing contained herein shall impose on the CITY an obligation to assume any subcontract or make any payments to any subcontractor to perform, and nothing contained herein shall create any contractual relationship between the CITY and any subcontractor. If the CONSULTANT and the PROJECT MANAGER shall approve as the selected subcontractor or supplier a bidder whose bid exceeds that of the bidder recommended by the CMAR, whose bid complies with the CONTRACT DOCUMENTS (the amount by which the bid of the selected subcontractor exceeds the bid of the bidder recommended by the CMAR is referred to herein as the "preferred subcontractor cost differential"), then the PROJECT MANAGER may designate that the Guaranteed Maximum Price shall be increased by the lesser of the preferred subcontractor cost differential or the Contingency Allowance. All subcontracts shall, so far as applicable, contain unit prices and any other feasible formula for use in determination of the cost of changes in the WORK.

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

THE CITY OF HOLLYWOOD, a municipal  
corporation of the State of Florida

By: \_\_\_\_\_  
JOSH LEVY, MAYOR

ATTEST:

\_\_\_\_\_  
PATRICIA A. CERNY, MMC  
CITY CLERK

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

\_\_\_\_\_  
DOUGLAS R. GONZALES  
CITY ATTORNEY

APPROVED AS TO FINANCE:

BY: \_\_\_\_\_, DIRECTOR  
OF FINANCIAL SERVICES

**CONSTRUCTION MANAGEMENT AT RISK SERVICES CONTRACT FOR PRE-CONSTRUCTION SERVICES**

CONTRACTOR

WHEN THE CMAR IS AN INDIVIDUAL:

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
(SEAL)\_\_\_\_\_  
(Witness)  
(Signature of individual)\_\_\_\_\_  
(SEAL)\_\_\_\_\_  
(Witness)  
(Signature of individual)WHEN THE CMAR IS A SOLE PROPRIETORSHIP OR OPERATES UNDER A TRADE NAME:

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
Witness (Name of Firm)\_\_\_\_\_  
(SEAL)\_\_\_\_\_  
(Witness)  
(Signature of individual)WHEN THE CMAR IS A PARTNERSHIP:

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
(Witness) (Name of Firm)\_\_\_\_\_  
(Witness)BY: \_\_\_\_\_  
(Partner)

**CONSTRUCTION MANAGEMENT AT RISK SERVICES CONTRACT FOR PRE-  
CONSTRUCTION SERVICES**

WHEN THE CMAR IS A CORPORATION:

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
(Correct Name of Corporation)

(SEAL)

BY: \_\_\_\_\_  
(President)

**LIST OF EXHIBITS**

- EXHIBITS:
- A. Scope of Services
  - A-1 Proposal matching Section 4.2 of Phase I Pre Construction Services agreement
  - B. Project Schedule
  - C. Project Team and Roles
  - D. Phase II Construction Services Agreement
  - E. Subcontractor and Material Supplier Payment Certification
  - F. Tabulation of subcontractors and material suppliers



**EXHIBIT “A”****SCOPE OF SERVICES**

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

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

**I. GENERAL PRECONSTRUCTION PHASE**

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

**EXHIBIT "A"**

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

**EXHIBIT "A"****II. DESIGN PHASE AS PART OF PRE-CONSTRUCTION PHASE**

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

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

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

**EXHIBIT "A"**

- D. CMAR shall prepare detailed cost estimates and recommendations to CITY and Consultant at S.D., (Schematic Design), D.D (Design Development) C.D. (50% and 100% Construction Documents) phases of the PROJECT. Such information shall be provided to the CITY and CONSULTANT in the form of a written report prior to final payment for each phase.
- E. CMAR shall review all CONTRACT DOCUMENTS for the new and existing buildings and/or building sites and provide value engineering recommendations to minimize the CITY's capital outlay and maximize the CITY's operational resources. Such information shall be provided to the CITY and CONSULTANT in the form of a written report prior to final payment for this phase. All such recommendations shall be acknowledged and reviewed for incorporation into the CONSTRUCTION DOCUMENTS by the CONSULTANT once authorized by the CITY in writing.
- F. CMAR will review all CONTRACT DOCUMENTS, all new and existing buildings' conditions and the building site to ensure proper coordination, constructability, clarity and completeness, and to minimize conflict, errors, omissions and unforeseen conditions. CMAR shall coordinate with the CONSULTANT to eliminate change orders due to errors, omissions and unforeseen conditions. CMAR agrees specifically that no change orders shall be requested by the CMAR or considered by the CITY for reasons that were or should have reasonably been known by CMAR involving unforeseen conditions, conflicts or questions of clarity in the CONTRACT DOCUMENTS, or between the CONTRACT DOCUMENTS and the existing conditions, utilities, and unforeseen underground conditions.
- G.
1. CMAR shall periodically update the master project schedule and make recommendations for recovery of lost time. Such information shall be provided to the CITY and CONSULTANT in the form of a written report prior to final payment for this phase.
  2. CMAR will coordinate with the CONSULTANT and provide to the project construction team permitting applications and requirements for the projects. CMAR will periodically update cost estimates and make recommendations to keep the project within the target budget.

**EXHIBIT "A"**

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

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

**EXHIBIT "A"**

- I. CMAR shall be responsible for preparing three construction cost estimates. The PROJECT MANAGER shall have the option of reducing the number of estimates depending on the percentage of the construction documents that is complete by the time this contract is executed.
- J. CMAR shall prepare the first construction cost estimate based on design development documents and shall estimate the cost of the major elements and subcomponents of the project. The purpose of the first construction cost estimate is to verify the owner's ability to complete the project within the established construction budget. The cost information derived from this estimate shall directly relate to CMAR's recommendations in the constructability and value engineers report relative to ways to reduce and/or control costs.
- K. The second construction cost estimate shall be done on or before the fifty percent (50%) construction document stage. Based on the results of this estimate, CMAR should be prepared to offer recommendations on whether or not the scope of the PROJECT needs to be changed in order to complete the PROJECT within the established budget.
- L. The third construction cost estimate shall be based on one hundred percent (100%) complete construction documents and shall be "permit ready" with sufficient detail to permit issuance of a building permit and to obtain all required approval of all governmental authorities having jurisdiction over the project. The third construction cost estimate shall be used as the basis for negotiating the GMP for the PROJECT and the basis for monitoring status of the PROJECT throughout the construction phase.
- M. As a result of CMAR's constructability review or construction cost estimate and in order to reduce or control costs, CMAR shall analyze the building's structural, architectural, mechanical, electrical and plumbing systems and elements, and make cost/performance recommendations for the PROJECT MANAGER's and CONSULTANT's consideration. CMAR shall prepare its recommendation in the form of a written report to be presented to the project team.

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

- A. Upon obtaining all necessary approvals of the construction documents, including a building permit as required by the FBC and CITY approval of the latest statement of probable construction cost, CMAR shall obtain bids and commence awarding construction contracts.

**EXHIBIT "A"**

- B. CMAR shall review the CITY's records of pre-qualified contractors, and prepare a list of those recommended for work pursuant to this contract. The CITY reserves the right to reject any or all subcontractors recommended for approval. CMAR shall maintain a list of all potential bidders, including M/WBEs and those who are approved as pre-qualified. In the event that this PROJECT is funded wholly or in part by grant funds or other governmental entity funding, CMAR shall comply with any and all requirements of the funding source or requirements of the governmental entity.
- C. CMAR shall evaluate potential participants to establish their qualifications (based on past work experience, similar projects, the building quality of those past projects, and other similar factors) presentation to the CITY. CMAR shall present its evaluation to the CITY in the form of a written report utilizing the attached forms as necessary, the subcontractors being considered, the scope of work recommended for that subcontractor, the subcontractor's qualifications and past work history, and CMAR's recommendation concerning the use of the listed subcontractors.
- D. CMAR shall prepare and issue the bid packages to cover the scope of the Work for this contract.
- E. CMAR, in coordination with the CITY, shall schedule pre-bid conferences as required and issue a written summary of the conference(s).
- F. CMAR and CITY shall jointly open and evaluate, at a mutually agreed upon location, at least three bids, if possible, for each portion of the WORK solicited. CMAR shall also make recommendations to the CITY for award to the lowest, responsive, and responsible bidder. A recommendation for award to other than the lowest bidder shall be justified in writing. CMAR will disclose any related party relationship in a bidding subcontractor in writing prior to the award of contracts. For the purposes of this agreement, a related party relationship shall constitute any instance of common ownership, common management, or an ownership stake in the bidding subcontractor. CMAR is required to present the bid tabulation summary and all supporting bid day documentation to the CITY after the bid opening. The referenced documentation as well as the awarding of any subcontracts is subject to the written approval of the CITY. The CMAR is not authorized to enter into any subcontract agreements without first obtaining written approval for each subcontractor.

**EXHIBIT "A"**

- G. GMP: Upon completion of the design phase [construction documents 100% complete] and bidding, the CMAR shall present to the CITY the GMP for the CITYs review and approval in accordance with the provisions of the CONTRACT DOCUMENTS and the requirements set forth in this Exhibit.
- H. Should CMAR desire to submit a bid to self-perform any of the portions of the Work, this intention must be clearly conveyed to the CITY prior to the receipt of any other bids for the same scope of work. All bids to be received for this portion of the Work must be submitted directly to the CITY who will then open and evaluate at bid opening. When three or more bids are received for that portion of work, and the CONTRACTOR's CMAR's bid is the lowest and approved by the CITY, CMAR's bid shall be incorporated in the GMP as a lump sum. In the event where fewer than three bids are received for that portion of work which the CMAR intends to self-perform, the CITY shall reimburse CMAR for the actual cost of work performed, subject to the supporting documentation provisions as outlined in the CONTRACT DOCUMENTS.



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

[Insert CMAR Pre-construction Services Fee Proposal, matching Section 4.2 of Pre-construction Phase Agreement]

**EXHIBIT “B”  
PROJECT SCHEDULE**

[Insert CMAR Pre-construction Services and preliminary Construction Services Schedule]

**EXHIBIT “C”  
PROJECT TEAM**

[Insert project team qualifications, project organization chart, responsibilities]

**EXHIBIT “D”**  
**PHASE II CONSTRUCTION SERVICES AGREEMENT**  
[Insert contract template of Construction Services Agreement]

**EXHIBIT "E"**

**City of Hollywood, FL**  
**Subcontractor and Material Supplier Payment Certification**

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

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

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

Amount of Contract with Subcontractor ☐ or Material Supplier ☐ \$ \_\_\_\_\_.

Amount Paid to Date \$ \_\_\_\_\_ Percentage Paid to Date \_\_\_\_\_

This is to certify that \_\_\_\_\_  
 (Subcontractor of Material Supplier)

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

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

\_\_\_\_\_  
 (Contract/Project Name) (Contract/Project Number)

Printed \_\_\_\_\_ Signed \_\_\_\_\_  
 (Prime Contractor Official)

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

\_\_\_\_\_  
 (Notary Public) Commission Expires Notary Seal

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

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

\_\_\_\_\_  
 (Notary Public) Commission Expires Notary Seal

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

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

# CONSTRUCTION MANAGEMENT AT RISK MANAGEMENT

## EXHIBIT F

### Tabulation of Subcontractors and Material Suppliers

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

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

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

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

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





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



**PHASE II**

**CONSTRUCTION SERVICES**

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

**DEPARTMENT OF DESIGN & CONSTRUCTION**  
**MANAGEMENT**  
**2600 HOLLYWOOD BOULEVARD**  
**HOLLYWOOD, FLORIDA 33022**

CONSTRUCTION MANAGEMENT AT RISK  
SERVICES AGREEMENT

PHASE II

CONSTRUCTION SERVICES

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, by and between the City of Hollywood, a municipal corporation of the State of Florida ("Owner") and \_\_\_\_\_ ("CMAR").

RECITALS:

Whereas, Owner desires to construct **<brief description of project>** at **<location of project>**; 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 **<Project Name>** project as directed by the Director.

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

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## List of Exhibits and Forms

## **ARTICLE 1**

### **SCOPE OF WORK/SERVICES**

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

1.1 Upon the issuance of a Notice to Proceed by the Director or his/her designee, CMAR shall furnish professional construction management at risk services for the construction phase of the PROJECT described in the attached Exhibits "A, through F" 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; 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.
- 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 CONTINGENCY, the CMAR's staffing costs, the general conditions cost, and CMAR's overhead and profit, shall not exceed the amount set forth in the agreed upon GMP. All costs and expenses that would cause this sum to exceed the GMP shall be borne by the CMAR unless adjusted by the OWNER/PROJECT MANGER through a CHANGE ORDER.
- b. Upon execution of Exhibit "D", the CMAR guarantees that the actual cost of the WORK/services, CMAR'S staffing costs, general conditions costs and CMAR's overhead and profit shall not exceed the guaranteed maximum or 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**

- 2.1 **CHANGE ORDER**: A written document that complies with Section 38.48 of the City's Procurement Code.
- 2.2 **CITY COMMISSION**: The CITY Commission of the CITY of Hollywood, its successors and assigns.
- 2.3 **CITY OR OWNER**: The CITY of Hollywood, Florida, a Florida Municipal Corporation. In all respects hereunder, CITY'S performance is pursuant to the CITY'S position as the owner of a construction project. In the event the CITY exercises its regulatory authority as a governmental body, the exercise of such authority and the enforcement of any rules, regulations, laws and ordinances shall be deemed to have occurred as to City's authority as a governmental body and shall not be attributable in any manner to the CITY as a party to this contract.
- 2.4 **CONSTRUCTION MANAGER AT RISK ("CMAR")**. The prime contractor that provide construction management at risk services under this contract, 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. 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, which has entered into an agreement to provide professional services to the OWNER for the PROJECT.
- 2.6 **CONSTRUCTION CONTINGENCY**: An established sum included in the Guaranteed Maximum Price and shall be in amount which the parties believe, in their best judgement, is reasonable to cover construction related costs which were not specifically foreseeable or quantifiable as of the date the GMP was established, including but not limited to : correction of minor defects or omissions in the Work not caused by the CMAR's negligence, cost overruns due to the default of any Subcontractor or Supplier, minor changes caused by unforeseen or concealed site conditions, minor changes in the Work not involving adjustment in the GMP or extension of the completion date and not inconsistent with the approved final Plans and Specifications, and written agreed upon City requested changes to the Work.
- 2.7 **CONSTRUCTION MANAGEMENT AT RISK CONTRACT**: The method of construction contracting whereby CMAR provides construction services for the PROJECT. The fee is a dollar amount negotiated for profit, overhead and on and off-site general and administrative costs. All subcontracts are generally awarded by the CMAR based on competitive bids received in response to invitations to

bid issued by the CMAR. The total price paid to the CMAR is either the fee plus the costs, or the GMP, whichever is less.

- 2.8 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 CITY, any Addenda to the PROJECT MANUAL Project Manual, the record of the contract award by the CITY the Performance Bond and Payment Bond, the Notice of Award, the Notice(s) to Proceed, the Purchase Order and all agreed upon modifications issued after execution of the Contract are the documents which are collectively referred to as the CONTRACT DOCUMENTS as referenced in the attached Exhibit "D".
- 2.9 CONTRACT PRICE: The amount established in the CONTRACT DOCUMENTS as the Guaranteed Maximum Price (GMP), as may be amended if so warranted, by a CHANGE ORDER issued in conformity with the Contract Documents and Section 38.48 of the City's Purchasing Ordinance.
- 2.10 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.
- 2.11 DIRECTOR: The Director of the Department of Design and Construction Management of the CITY having the authority and responsibility for management of the PROJECT authorized under the CONTRACT DOCUMENTS.
- 2.12 FIELD ORDER: A written order consistent with the City's Procurement Ordinance.
- 2.13 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.
- 2.14 GENERAL CONDITION ITEMS: The provision of facilities or performance services by 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 a cost and included as part of the GMP.
- 2.15 GUARANTEED MAXIMUM PRICE. The term 'Guaranteed Maximum Price' or "GMP" shall mean the sum certain agreed to between the City and the CMAR and set forth in the Phase II Construction Services Contract as the maximum total Project price that the CMAR guarantees not to exceed for the construction of the Project for all services within the Pre-Construction and Construction Services Agreements



- 2.16 INSPECTOR: An employee of the CITY assigned by the DIRECTOR to make observations of work performed by CMAR.
- 2.17 MATERIALS: Materials incorporated in the PROJECT, or used or consumed in the performance of the Scope of Services.
- 2.18 NOTICE TO PROCEED: One or more written notices to CMAR authorizing the commencement of the Scope of Services.
- 2.19 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.
- 2.20 PLANS AND/OR DRAWINGS: The official graphic representations of the PROJECT which are a part of the CONTRACT DOCUMENTS.
- 2.21 PROJECT: The construction, alteration or repair, and all services and incidents thereto, of a CITY facility as contemplated and budgeted by the CITY as described in the CONTRACT DOCUMENTS, including the work described herein.
- 2.22 PROJECT MANAGER: An employee of the CITY, expressly designated as PROJECT MANAGER in writing by the DIRECTOR, who is the representative of the CITY, concerning the CONTRACT DOCUMENTS.
- 2.23 PROJECT MANUAL: The official documents setting forth information and requirements; contract forms, bonds, and certificates; general and supplementary conditions of the CONTRACT DOCUMENTS; the specifications; and the plans and drawings of the PROJECT.
- 2.24 RESIDENT PROJECT REPRESENTATIVE: An authorized representative of the 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 not including 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/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).

- 2.27 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.
- 2.28 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.
- 2.29 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 the construction services described in Exhibits "A through F", 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 Progress Schedule shall encompass all of the work of all trades necessary for the construction of the Project and shall be sufficiently complete and comprehensive to enable progress to be monitored on a weekly basis.
- 3.4 SUPERINTENDENCE AND SUPERVISION:
- 3.4.1 The instructions of CITY 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 and ceases to be in its 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 CITY, CONSULTANT, regulatory authorities; any special or unusual conditions or occurrences encountered; and the time of termination of work for the day. All information shall be recorded in the daily log in ink. The daily log shall be kept on the PROJECT site and shall be available at all times for inspection and copying by the PROJECT MANAGER and CONSULTANT.
- 3.4.3 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 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 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 specifications. 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 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. Failure to point out such deviations or departures 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 which 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 mylar and as an electronic media submittal prepared in accordance with requirements for electronic media submittals as specified elsewhere in the PROJECT MANUAL. The cost of all such field layout and recording work is included in the prices bid for the appropriate items.
- 3.8.2 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 "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, these Project Record Documents, including submittals and other Project Record Documents required elsewhere in the PROJECT MANUAL and specifications shall be delivered to the PROJECT MANAGER.
- 3.8.3 Prior to, and as a condition precedent to Final Payment, CMAR shall submit to CITY, CMAR's record drawings or as-built drawings acceptable to CONSULTANT.
- 3.8.4 CMAR shall deliver to CONSULTANT for delivery to the CITY all equipment data, along with its recommended spare parts list, maintenance manuals, manufacturer's warranties and operations manuals as may be required within the PROJECT MANUAL for the CITY's employees and agents to maintain and operate any equipment provided as part of the WORK.

### 3.9 INSPECTION AND TESTING:

- 3.9.1 CONSULTANT and PROJECT MANAGER shall at all times have access to the WORK, and 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 CITY, 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.

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

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

3.9.3 The payment of any compensation, whatever may be its character or form, or the giving of any gratuity or the granting of any favor by 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/DIRECT OWNER 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 The CITY, in its sole discretion, may choose to exercise the Owner direct purchase option CMAR has included in its GMP and shall pay all sales, consumer, use and other similar taxes for the

WORK or portions thereof provided by CMAR which are legally enacted at the time the GMP is established, whether or not yet effective. OWNER reserves the right to delete portions of the WORK and to direct purchase materials to realize a true savings pursuant to an owner direct purchase Option ("ODP"). CMAR hereby agrees to permit OWNER to direct purchase from its suppliers at prices quoted to CMAR and for OWNER to retain any true savings generated thereby.

- 3.10.4 In accordance with the provisions of subsection 3.10.3 of this contract, CITY may exercise its right to implement an OPD/ Sales Tax Savings Program, with respect to this contract. This Article describes the procedures by which this program will be implemented and administered if the CITY subsequently determines to do so. Pursuant to these procedures, CITY may order and pay for all such purchases, as well as take title to all such purchases, directly from the supplier or manufacturer.
- 3.10.5 At the time the GMP is established, but not later than concurrently with submission of the required Schedule of Values, CITY, CONSULTANT, and CMAR shall endeavor to identify the specific items and the estimated costs of the potential "ODP". CMAR shall identify a separate line item cost for each potential ODP item. CMAR CONTRACTOR must clearly and separately identify any CONTINGENCY or allowance amount associated with any ODP line items. The GMP must include the total cost of the WORK, including the cost of the ODP items and their associated sales taxes.
- 3.10.6 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.
- 3.10.7 After PROJECT MANAGER identifies the ODP items, CMAR shall prepare a standard purchase order requisition on a purchase order form provided by CITY, to specifically identify the materials which CITY 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;  
Mailing address for invoices.

- 3.10.8 All purchase order requisitions prepared by CMAR must be sent to CITY's Department of Design and Construction Management, 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, etc.}. To the extent any such terms or conditions differ from the standard terms and conditions included in CITY's standard purchase order requisition form, such differences must be specifically identified to CITY by the CMAR prior to submitting the requisition for review by the City Attorney's Office and Procurement Director. 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.
- 3.10.9 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.
- 3.10.10 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.
- 3.10.11 The CITY 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 CITY 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.

- 3.10.12 As ODP items are delivered to the job site, CMAR shall visually inspect all shipments from Manufacture/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.
- 3.10.13 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 OPD 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 which may be required by CITY 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.
- 3.10.14 CMAR shall review all such items for compliance with the requirements of the DOCUMENTS and shall organize and deliver all such items to PROJECT MANAGER as part of its requirements for achieving SUBSTANTIAL COMPLETION of the WORK.
- 3.10.15 CMAR, PROJECT MANAGER and CONSULATANT shall review on a quarterly basis, the ODPs that have been delivered and paid for the previous quarter. CMAR's shall prepare a log of ODPs, showing the amount equal to the value of any ODPs, including sales taxes, paid for by CITY. At a time of its choosing, but prior to completion of the WORK, CITY shall prepare an appropriate CHANGE ORDER, for CMAR's execution, which reduces the CONTRACT PRICE by the total cost paid by CITY for the ODPs, together with the amount of sales tax savings that have been realized as a result of CITY's ODPs. Further, the CHANGE ORDER shall allocate to the OWNER's CONTINGENCY any sales tax savings .
- 3.10.16 Nothing in this Article relieves CMAR from its responsibility for the requisitioning of the order, scheduling, coordinating, insuring,

delivery, unloading, storage, installation, repair, operation and warranty of all ODP items. All such obligations remain the responsibility of CMAR and have been paid for by CITY as a part of the CONTRACT PRICE (which always included these responsibilities and obligations) as fully as if there had been no CITY 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, or any other of the CONTRACT DOCUMENTS, the provisions of this Contract (including all Exhibits) shall prevail.
- 4.3 Anything shown on the drawings and not mentioned in the specifications or mentioned in the specifications and not shown on the drawings shall have the same effect as if shown or mentioned respectively in both. In the event of a conflict among the CONTRACT DOCUMENTS, the most stringent requirements applicable to the CMAR shall control.
- 4.4 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 CITY in maintaining schedules, establishing budgets, controlling costs, and achieving quality.
- 5.2 If at any time the CONSULTANT observes or becomes aware of any fault or defect in the WORK or of any nonconformance with the CONTRACT DOCUMENTS, CONSULTANT will promptly notify the PROJECT MANAGER and 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 CITY based on the fact that the requirements of the CONTRACT DOCUMENTS are not being met by CMAR.
- 5.5 The CITY will be assisted by CONSULTANT in the areas of on-site review of WORK in progress, review of pay requests submitted by 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 CITY may request.
- 5.6 The CONSULTANT shall have no authority to order or approve any deviation from the CONTRACT DOCUMENTS, whether or not such deviation affects the cost of the WORK, or the date of SUBSTANTIAL COMPLETION. In the event any such deviation is sought by CONSULTANT or 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. 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, schedule of values, 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 completed 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 <Number> calendar days from the date of the second NOTICE TO PROCEED. The total PROJECT shall be completed and ready for final payment within 30 calendar days from the date certified by CONSULTANT as the date of SUBSTANTIAL COMPLETION in accordance with Article 8.
- 6.1.3 LIQUIDATED DAMAGES.

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

1. The CMAR shall pay the OWNER the sum of \_\_\_\_\_ Dollars per day for each and every calendar day of unexcused

delay in achieving SUBSTANTIAL COMPLETION beyond the date set forth in the CONTRACT DOCUMENTS for SUBSTANTIAL COMPLETION of each phase, if phased, or the PROJECT, if not phased.

2. OWNER and CMAR acknowledge that any sums due and payable by the CMAR shall be payable, not as a penalty, but as liquidated damages representing a reasonable estimate of delay damages, inconvenience, additional overhead and costs likely to be sustained by the OWNER as estimated at the time of executing the CONTRACT DOCUMENTS. If the OWNER reasonably believes in its discretion that SUBSTANTIAL COMPLETION will be delayed, the OWNER shall be entitled, but not required, to withhold from any amounts otherwise due the CMAR an amount then believed by the OWNER to be adequate to recover liquidated damages applicable to such delays. If and when in the OWNER's discretion the CMAR overcomes the delay in achieving the SUBSTANTIAL COMPLETION, or any part thereof, for which the OWNER has withheld payment, the OWNER shall promptly release to the CMAR those funds withheld, but no longer applicable, as liquidated damages.
3. Partial use or occupancy of the PROJECT may not result in the Scope of Services/Work being deemed substantially completed, and such partial use or occupancy may not be evidence of SUBSTANTIAL COMPLETION.

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

**B. LIQUIDATED DAMAGES FOR FINAL COMPLETION.**

1. If the CMAR fails to achieve FINAL COMPLETION within 60 days of the date of SUBSTANTIAL COMPLETION, the CMAR shall pay the OWNER the sum of \_\_\_\_\_ Dollars per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth for completion of the WORK or PROJECT.
2. Any sums due and payable hereunder by the CMAR shall be payable, not as a penalty, but as liquidated damages representing a reasonable estimate of delay damages, inconvenience, additional overhead and costs likely to be sustained by the OWNER, as estimated at or before the time of executing this contract. When the OWNER reasonably believes that FINAL COMPLETION will be inexcusably delayed, the OWNER shall be entitled, but not required, to withhold from any amounts otherwise due the CMAR an amount then believed by the OWNER to be adequate to recover liquidated damages applicable to such delays.

3. Prior to being entitled to receive final payment, and as a condition precedent thereto, the CMAR shall provide the OWNER, in the form and manner required by the OWNER, the following:
  - a. An affidavit that the CMAR's obligations to all subcontractors, laborers, equipment or suppliers, or other third parties in connection with the PROJECT, have been paid or otherwise satisfied;
  - b. Such other documents as required by the PROJECT MANUAL from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who may have a claim against the person or entity that retained it, including but not limited to final releases of bond;
  - c. All product warranties, operating manuals, instruction manuals and other documents customarily required of the CMAR or reasonably required by the OWNER, including but not limited to those required elsewhere in the CONTRACT DOCUMENTS, as part of its Project Closing procedure.
- 6.1.4 CMAR shall be responsible for reimbursing CITY, in addition to liquidated damages, for all costs incurred by CONSULTANT in administering the construction of the PROJECT beyond the completion dates specified above or beyond an approved extension of time granted to 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 CITY as costs are incurred by CONSULTANT and agreed to by CITY.
- 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.
- 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 CITY 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 said event. All claims for adjustment in the CONTRACT TIME or CONTRACT PRICE shall be determined by CONSULTANT in accordance with Article 30 hereof, if CONSULTANT and 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 CITY, fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

## 6.4 USE OF COMPLETED PORTIONS:

- 6.4.1 CITY shall have the right, at its sole option, to take possession of and use of any completed or partially completed portions of the PROJECT. Such possession and use shall not be deemed an acceptance of any of the WORK not completed in accordance with the CONTRACT DOCUMENTS. If such possession and use increases the cost of or delays of the work, CMAR shall be entitled to reasonable extra compensation, or reasonable extension of time or both, by appropriate adjustment pursuant to Article 7.4 or 7.6 hereof.
- 6.4.2 In the event CITY takes possession of any completed or partially completed portions of the PROJECT , the following shall occur:
- 6.4.3 CITY shall give notice to CMAR in writing at least 15 calendar days prior to CITY's intended occupancy of a designated area.
- 6.4.4 CMAR shall complete to the point of SUBSTANTIAL COMPLETION the designated area and request inspection and issuance of a Certificate of SUBSTANTIAL COMPLETION on the form attached hereto as Form 1 from CITY.
  - 6.4.4.1 Upon CONSULTANT's issuance of a Certificate of SUBSTANTIAL COMPLETION, CITY will assume full responsibility for maintenance, services, subsequent damages of or by the CITY and the public, adjustment of insurance coverage and start of warranty for the occupied area.
  - 6.4.4.2 CMAR shall complete all items noted on the Certificate of SUBSTANTIAL COMPLETION within the time specified in Section 6.1 and request final acceptance of the portion of the WORK occupied. Upon completion of final inspection and receipt of an application for final payment, CONSULTANT shall issue a Final Certificate of Payment relative to the occupied area.
  - 6.4.4.3 If the CITY finds it necessary to occupy or use a portion or portions of the WORK to SUBSTANTIALCOMPLETION thereof, such occupancy or use shall not commence prior to a time mutually agreed upon by CITY and CMAR and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. Insurance on the unoccupied or unused portion or portions shall not be canceled or lapsed on account of such partial occupancy or use. Consent of CMAR and of the insurance company or companies to



such occupancy or use shall not be unreasonably withheld.

ARTICLE 7  
CHANGES IN THE WORK OR TERMS OF CONTRACT DOCUMENTS

- 7.1 Without invalidating the contract and without notice to the surety, CITY reserves and shall have the right, from time to time, to make such increases, decreases or other changes in the character or quantity of the work as may be considered necessary or desirable to complete fully and acceptably the proposed construction in a satisfactory manner. Any extra or additional work within the scope of this PROJECT must be accomplished by means of an appropriate CHANGE ORDER in accordance with the requirements of the CONTRACT DOCUMENTS and Section 38.48 of the Purchasing Ordinance.
- 7.2 Any changes to the terms of the CONTRACT DOCUMENTS must be contained in a written document, executed by the parties hereto, with the same formality and of equal dignity prior to the initiation of any work reflecting such change. This section shall not prohibit the issuance of CHANGE ORDERS executed only by CITY as hereinafter provided.
- 7.3 The PROJECT MANAGER through the CONSULTANT may direct CMAR to expedite the WORK by whatever means CMAR may use, including, without limitation, increasing staffing or working overtime to bring the work back within the progress schedule. If the expediting of WORK is required due to reasons outside the control or responsibility of CMAR, then the additional costs incurred shall be the subject of an appropriate adjustment issued pursuant to Article 7.4 or Article 7.6, below as applicable.
- 7.4 CHANGE ORDERS:
- 7.4.1 Changes in the quantity or character of the WORK within the scope of the PROJECT which are not properly executed, or the subject of field orders or supplemental instructions, including all changes resulting in changes in the CONTRACT PRICE , or the CONTRACT TIME , shall be authorized only by written CHANGE ORDERS approved and issued in accordance with the provisions of the CONTRACT DOCUMENTS and the requirements set forth in §38.48 of the CITY's Purchasing Ordinance which is deemed to be incorporated by reference herein as though set forth in full.
- 7.4.2 CMAR's fee on such changes which exceeds GMP shall be determined as follows:
- (a) A mutually acceptable fixed fee, or
  - (b) If none can be agreed upon, a fee based upon a percentage of the net change to the Cost of the Work resulting from the CHANGE ORDER , in accordance with Article 8.3, hereof, not to exceed five percent .

A Subcontractor's percentage markup on CHANGE ORDERS for overhead and profit shall be reasonable, but in no event shall the aggregate of the Subcontractor's overhead and profit markups exceed 15%. In the event Subcontractor is affiliated with the CMAR by common ownership or management, or is effectively controlled by CMAR, no fee will be allowed on the Subcontractor costs. In the event there is more than one level of Subcontractor such as second and third tier Subcontractors, the sum of all of the Subcontractors' percentage markups for overhead and profit shall not in the aggregate exceed 20%.

7.4.3 CMAR shall not start WORK on any changes requiring an increase in the CONTRACT PRICE or the CONTRACT TIME until a CHANGE ORDER setting forth adjustments is prior to receiving written authorization through the PROJECT MANAGER, it does so at its own risk and assume all associated responsibility and costs. Upon receipt of an approved CHANGE ORDER, CMAR shall promptly proceed with the WORK set forth within the document.

7.4.4 In the event satisfactory adjustment cannot be reached for any item requiring a change in the CONTRACT PRICE or CONTRACT TIME, and a CHANGE ORDER has not been issued, CITY reserves the right at its sole option to either terminate this contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the disputed work; or submit the matter in dispute to CONSULTANT as set forth in Article 30 hereof. Upon receipt of a CHANGE ORDER, CMAR shall promptly proceed with the change in the work involved and advise the CONSULTANT and PROJECT MANAGER in writing within seven calendar days of CMAR's agreement or disagreement with the method, if any, provided in the CHANGE ORDER for determining the proposed adjustment in the CONTRACT PRICE or CONTRACT.

7.4.5 On approval of any contract change increasing the CONTRACT PRICE, CMAR shall ensure that the Performance Bond and Payment Bond are increased so that each reflects the total CONTRACT PRICE contract price as increased and shall provide a copy of the revised bonds to the PROJECT MANAGER.

## 7.5 FIELD ORDERS AND SUPPLEMENTAL INSTRUCTIONS:

7.5.1 In accordance with Section 38.48 of the Procurement Code, the CONSULTANT shall have the right to approve and issue changes setting forth written interpretations of the intent of the CONTRACT DOCUMENTS and ordering minor changes in work execution, providing the Field Order involves no change in the CONTRACT PRICE or CONTRACT TIME.

7.5.2 CONSULTANT shall have the right to approve and issue Supplemental Instructions setting forth written orders, instruction, or interpretations concerning the CONTRACT DOCUMENTS, provided such supplemental

instructions involve no change in the CONTRACT PRICE or CONTRACT TIME.

## 7.6 CONTRACT PRICE ELEMENT ADJUSTMENT MEMORANDA:

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

a. Direct Construction Cost	\$ _____
b. CMAR-staff	\$ _____
c. Construction Phase Fee	\$ _____
d. General Conditions	\$ _____
e. Construction Contingency	\$ _____
f. Owner's Contingency	\$ _____
<b>TOTAL GMP (ALL INCLUSIVE)</b>	<b>\$ _____</b>

The PROJECT MANAGER shall have the right to issue certain Contract Price Element Adjustment Memoranda which shall address the reallocation of sums between the Contract Price Elements within the CONTRACT PRICE. In no event shall the Contract Price be modified except by following an appropriate CHANGE ORDER. The following specific Memoranda are contemplated, but additional or different Memoranda may be required and issued, provided, they do not result in a change to the CONTRACT PRICE, and provided that amounts shall only be transferred from Elements a. through e. above with prior approval of the CMAR and the CITY.

At the completion of the WORK, a Memorandum will be issued in conjunction with a final CHANGE ORDER to remove any remaining sums within the Direct Construction Cost and General Conditions and reduce the GMP in accordance with subsection 7.4 and subsection 8.2 of this Agreement.

When major subcontracts of the PROJECT are bid and have been executed, if the sum of the subcontracts are below such WORK, a Memorandum may be issued by mutual agreement of the CMAR and the PROJECT MANAGER.

During the progress of construction, the construction contingency within the GMP may be decreased and the surplus transferred to the City Allowance Account by issuance of a Memoranda by mutual written consent of the CMAR and the PROJECT MANAGER.

At the FINAL COMPLETION OF THE PROJECT, after calculation of any savings in accordance with subsection 8.2 below, a Memorandum will be issued in conjunction with a Final CHANGE ORDER to remove any remaining sums within the OWNER's CONTINGENCY AND the CONSTRUCTION CONTINGENCY the GMP shall be reduced in accordance with subsections 7.4 and 8.2 of this Agreement.

## 7.7 NO DAMAGES FOR DELAY:

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

## 7.8 EXCUSABLE DELAY: COMPENSABLE & NON-COMPENSABLE

7.8.1 Excusable Delay: Delay which extends the completion of the WORK which is caused by circumstances beyond the control of CMAR or its subcontractors, materials persons, suppliers, or vendors is Excusable Delay. CMAR is entitled to a time extension of the CONTRACT TIME for each day the WORK is delayed due to excusable delay. CMAR shall document its claim for any time extensions as provided in Article 6, subsection 6.3 hereof.

Failure of CMAR to comply with Article 6, subsection 6.3 hereof as to any particular event of delay shall be deemed conclusively to constitute a waiver, abandonment or relinquishment of any and all claims resulting from that particular event of delay.

7.8.2 Excusable Delay may be compensable or non-compensable.

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

If CMAR is entitled to an increase in the CONTRACT PRICE as a result of a Compensable Excusable Delay pursuant to this subsection and the General Conditions set forth in this Agreement, the CONTRACT PRICE will be increased by the sum of \$\_\_\_\_\_ per day for which such compensation is payable. Such increase will be reflected in an approved CHANGE ORDER.

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

## ARTICLE 8

### PAYMENTS AND COST OF THE WORK

- 8.1 In full consideration of the full and complete performance of the WORK and all other obligations of CMAR hereunder, the CITY shall pay to CMAR a sum of money not to exceed the CONTRACT PRICE which is defined to be the total of: (i) CMAR's direct construction cost; (ii) so much of the CMAR's general conditions as may have been expended; (iii) so much of the approved amount of the construction contingency as may have been expended; and (iv) CMAR'S construction management fee. The CONTRACT PRICE shall not exceed the sum shown in Exhibit "D" and in accordance with Article 1 as the GMP, adjusted to take into account any approved CHANGE ORDERS, and shall mean those costs necessarily incurred and paid by CMAR in connection with the performance of all the work.
- 8.2 After completion and acceptance of the work, in the event that the cost of the WORK plus the CMAR's fee are less than the GMP after giving effect to adjustments to the GMP made in accordance with this contract then the difference between the cost of the WORK plus the CMAR's fee on the one hand and the GMP on the other hand is the "savings". Prior to making this calculation and for the purpose of this calculation only, the remaining balance of the CITY's money shall be deducted from the GMP. In the event that CMAR's total approved expenditures for this PROJECT shall exceed the GMP, CMAR shall pay such excess from its own funds, and the CITY shall not be required to pay any amount that exceeds the GMP; and CMAR shall have no claim against the CITY on account thereof.
- 8.3 The term 'Cost of the Work' shall mean the sum of all direct costs necessarily and reasonably incurred and paid by CMAR in the performance of the WORK. Such costs shall be at rates not higher than those customarily paid in the locality of the project except with the prior written consent of CITY. The Cost of the Work shall include only those items set forth in this Article 8.3 and shall not include any items listed in Article 8.4. Cost of the Work shall be determined as follows:

#### 8.3.1 SUBCONTRACTOR COSTS:

- (a) CMAR's Direct Construction Cost, as generally described on Exhibit "A", attached hereto, to be 100% performed by subcontractors selected in accordance with Article 11, below. Where the WORK is covered by unit prices contained in the CONTRACT DOCUMENTS or an applicable subcontract, the Cost of the Work shall be determined by application of unit prices to the quantities of items involved.
- (b) By mutual acceptance of a lump sum which SUBCONTRACTOR, CONTRACTOR and CITY acknowledge contains a component for

overhead and profit, which shall be subject to the limitation of subcontractor fees set forth in Article 7, subsection 7.4.3. Whenever a change in subcontractor work is to be based on mutual acceptance of a lump sum, whether the amount is an addition, credit or no change-in-cost, CMAR shall submit an initial cost estimate obtained from the subcontractor and acceptable to CONSULTANT. The breakdown shall list the quantities and unit prices for materials, labor, equipment and other items of cost. Whenever a change involves more than one SUBCONTRACTOR and the change is an increase in the GMP, overhead and profit percentage of each SUBCONTRACTOR and CMAR, if applicable, shall be itemized separately.

(c) If the subcontract provides that the SUBCONTRACTOR is to be paid on the basis of Cost of the Work plus a fee, the subcontractor's Cost of the Work shall be determined in the same manner as CMAR's Cost of the Work, subject to the limitation on subcontractor's fees set forth in Article 7, subsection 7.4.3.

(d) If changes to subcontracted work affect the GMP, such changes shall be accomplished in accordance with Article 7, subsection 7.4, Change Orders. The amount of decrease in the GMP for any change that results in a net decrease in cost, will be the amount of the actual net decrease. When both additions and decreases are involved in any one change, the combined effect shall be figured on the basis of the net change in the GMP, if any.

#### 8.3.2 CONTRACTOR'S LABOR COSTS:

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

#### 8.3.3 MATERIALS AND EQUIPMENT:

Cost of all materials and equipment furnished and incorporated in the WORK, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith, adjusted in accordance with Article 10, pertaining to Discounts, Rebates and Refunds; rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements and the costs of transportation, loading, unloading,

installation, dismantling and removal thereof, all in accordance with the terms of said agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the WORK.

#### 8.3.4 MISCELLANEOUS COSTS:

(a) The cost, as documented by CMAR's detailed receipts, of telephone, telegrams, postage, photographs, blueprints, office supplies, first aid supplies and related miscellaneous costs reasonably incurred in direct support of the WORK at the PROJECT location.

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

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

(c) The cost of obtaining and using any utility services required for the WORK that are not paid directly by CITY, including fuel and sanitary services at the project site.

(d) The cost of removal of debris from the site. The PROJECT site, lay-down locations, and staging sites will be kept clear of all debris on a daily basis. All subcontracts shall require SUBCONTRACTORS to remove all debris daily created by their activities, and CMAR shall exercise its best efforts to enforce such requirements or effect the removal of the debris of the subcontractors who fail in this regard. Provided, however, CMAR shall not be required to remove debris created by the CITY's separate contractors except pursuant to Change Order procedures set forth herein and in accordance with Section 38.48 of the Purchasing Ordinance.

(e) The cost and expenses, actually sustained by CMAR in connection with the WORK, of protecting and repairing adjoining property, if required, except to the extent that any such cost or expense is:

(1) The responsibility of CMAR under Article 13, reimbursable by insurance or otherwise;

(2) Due to the failure of CMAR to comply with the requirements of the CONTRACT DOCUMENTS with respect to insurance; or

(3) Due to the failure of any officer of CMAR or any of its representatives having supervision or direction of the WORK to exercise good faith or the standard of care normally exercised in the conduct of the business of a general contractor experienced in the performance of work of the magnitude, complexity and type encompassed by the CONTRACT DOCUMENTS, in any of which events any such expenses shall not be included in CMAR's costs.

(f) Federal, state, municipal, sales, use and other taxes required by law, as applicable to the PROJECT , all with respect to service performed or materials furnished for the WORK , it being understood that none of the foregoing includes, federal, state or local income or franchise taxes.

(g) All reasonable costs and expenditures necessary for the operation of the project job site office(s), including cost of field computer equipment and software.

(h) The proportion of necessary transportation, travel and subsistence expenses of CMAR's employees, excluding travel time, incurred in discharge of duties connected with the WORK except for local travel to and from the site of the WORK.

(i) Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the WORK , and cost less market value of such items used but not consumed which remain the property of CMAR .

(j) Deposits lost for causes other than CMAR's negligence, royalty payments and fees for permits and licenses.

(k) Cost of premiums for additional bonds and insurance required because of changes in the WORK.

(l) Cost of special consultants, including, but not limited to, engineers, architects, testing laboratories, surveyors employed for services specifically related to the WORK.

(m) Any other expenses or changes incurred, with the prior written approval of the CONSULTANT, in the performance of the WORK.

#### 8.4 Overhead EXCLUSIONS TO COST OF THE WORK:

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



- 8.4.1 Payroll costs and other compensation of CMAR's officers, executives, principals (of partnership and sole proprietorship), general managers, estimators, purchasing and contracting agents, clerks and other personnel employed by CMAR as approved by CONSULTANT, whether at the site or in its principal or a branch office, for general administration that are not specifically included in the General Conditions are to be considered administrative costs covered by CMAR's fee.
  - 8.4.2 Other than those expenses authorized on Exhibit "B, expenses of CMAR's principal and branch offices.
  - 8.4.3 Any part of CMAR's capital expenses, including interest on CMAR's capital spent for the WORK and charges against CMAR for delinquent payments.
  - 8.4.4 Other overhead, general expense costs or charges of any kind and the cost of any item not specifically and expressly included in subsection 8.3.
  - 8.4.5 Costs in excess of the Guaranteed Maximum Price.
  - 8.4.6 Entertainment and meal expenses, car allowances and charges of a personal nature.
  - 8.4.7 Bonuses, pensions, profit sharing or other special labor charges not set forth in subsection 8.3.2, above.
  - 8.4.8 Any outside legal or accounting fees incurred without prior written approval from the City Attorney, which approval is at the sole discretion of the City Attorney.
- 8.5 PROGRESS PAYMENTS:
- 8.5.1 CMAR may make a Request for Payment for WORK completed during the PROJECT at intervals of not more than once a month. CMAR's request shall show a complete breakdown of the PROJECT components, the percentages completed and the amount due in proportion to the percentages of the WORK completed or, as to General Conditions, at cost. Each request shall be accompanied by such supporting evidence as may be reasonably required by CONSULTANT, as more particularly described in subsection 8.5.4 below. CMAR shall submit with each Request for Payment, an updated progress schedule acceptable to CONSULTANT and either release of liens relative to the WORK which is the subject of the Request or consent of the surety as to such payment.
  - 8.5.2 Ten percent of all monies earned by CMAR shall be retained by CITY until FINAL COMPLETION and acceptance by CITY in accordance with Article 8.9 hereof, except for the following items: General Conditions and self-performed Work performed on a cost reimbursement basis, if any.

- 8.5.3 After 50% of the WORK has been completed, the PROJECT MANAGER may reduce the retainage to five percent of all monies previously earned and all monies earned thereafter. After 90% of the WORK has been completed, the PROJECT MANAGER may reduce the retainage to two and one-half percent of all monies previously earned and all monies earned thereafter. Any reduction in retainage shall be in the sole discretion of the PROJECT MANAGER, shall be recommended by CONSULTANT, and CMAR shall have no entitlement to a reduction. Any interest earned on retainage shall accrue solely to the benefit of CITY.
- 8.5.4 CITY may withhold, in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:
- 8.5.4.1 Defective Work not remedied by CMAR and/or its SUBCONTRACTORS.
  - 8.5.4.2 Claims filed or reasonable evidence indicating probable filing of claims by other parties against CMAR
  - 8.5.4.3. Failure of CMAR to make payments properly to SUBCONTRACTORS or for material or labor.
  - 8.5.4.4. Damage to another contractor not remedied.
  - 8.5.4.5 Liquidated damages.
- 8.5.5 The Schedule of Values, prepared in accordance with Exhibit "A", shall list the cost of materials, the cost of labor, the cost of equipment and the cost of subcontractor work separately for all the portions of the WORK delineated. Each monthly Application for Payment shall be for a sum equal to: (i) that portion of CMAR's direct construction cost equal to the percentage of the WORK completed; plus (ii) an appropriate amount of the CMAR's fee as related to the percentage of the WORK completed. The calculation of the percentage of the WORK completed shall be in accordance with the approved Progress Schedule; provided, however, prior to the date of the Final Request, and unless subject to reduction pursuant to subsection 8.5.3, the aggregate of CMAR's fee payments shall not exceed 90% of CMAR's fee as stated in subsection 8.3.

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

If the CONSULTANT, in its good faith judgement, determines that the portion of the GMP then remaining unpaid will not be sufficient to complete the WORK in accordance with the CONTRACT DOCUMENTS, no

additional payments will be due to CMAR unless and until CMAR, at its sole cost, performs a sufficient portion of the WORK so that such portion of the GMP then remaining unpaid is determined by the CONSULTANT to be sufficient to so complete the WORK.

- 8.6 The CONSULTANT and PROJECT MANAGER shall review each such Request for Payment and may make such exceptions, as the CONSULTANT and the PROJECT MANAGER reasonably deem necessary or appropriate under the state of circumstances then existing. In no event shall the CITY be required to make payment for items of CMAR's cost to which the CONSULTANT or the PROJECT MANAGER reasonably take exception.
- 8.7 CMAR shall remain solely liable for SUBCONTRACTORS' work and for any unpaid laborers, material suppliers SUBCONTRACTORS in the event it is later discovered that said WORK is deficient or that any of said laborers, material suppliers or subcontractors did not receive payments due them on the PROJECT.
- 8.8 Within 30 days after FINAL COMPLETION of the WORK and acceptance thereof by the CITY, CMAR shall submit a Final Request for Payment (Final Request) which shall set forth all amounts due and remaining unpaid to CMAR (including the unpaid portion of the CMAR's fee).
- 8.9 Except for the CMAR's fee, CMAR shall use the sums paid to it pursuant to this Article solely for the purpose of performance of the WORK and the construction, furnishing and equipping of the WORK in accordance with the CONTRACT DOCUMENTS and payments of bills incurred by CMAR in performance of the WORK.
- 8.10 CMAR shall promptly pay all bills for labor and material performed and furnished by its subcontractors, suppliers and materials providers, in connection with the construction, furnishing and equipping of the WORK and the performance of the WORK.
- 8.11 PROJECT COST SAVINGS:

At FINAL COMPLETION of the PROJECT, the CITY and CMAR shall share in any cost savings as follows: 75% City and 25% CMAR. Cost savings are defined as the difference between the GMP (including authorized amendments) and the approved final invoice amounts. CMAR's 25% share in the cost savings shall be capped at a maximum of 1.5% of the total GMP (including authorized amendments).

Any remaining monies in the Direct Construction Cost and/or General Conditions shall vest in the CITY and shall reduce the GMP.

To the extent any portion of the CONTINGENCY remains unallocated on the date of FINAL COMPLETION and after the issuance of the final payment for the PROJECT, the remaining portion shall be returned to the City in full (to be excluded from any cost savings allocation and returned to the CITY in whole).

## ARTICLE 9 CONTINGENCIES

### 9.0 THE CONSTRUCTION CONTINGENCY:

An agreed upon sum included in the GMP for the purpose of defraying CMAR's actual approved expenditures due to unforeseen circumstances relating to CMAR's direct construction costs, or to cover other costs arising during construction, such as: anticipated costs that exceed a particular line item within the estimated CMAR's direct construction cost; increases in SUBCONTRACTOR costs due to insolvency, preferred SUBCONTRACTOR cost differentials generated by contract selection of SUBCONTRACTORS (PROJECT MANAGER's designation of preferred SUBCONTRACTORS shall be subject to the provisions of subsection 11.2); correction of defective WORK ; payment of deductible amounts for loss covered by Builder's Risk; and any other cost agreed to mutually in writing between the PROJECT MANAGER and CMAR .

Any costs to be applied against the CONTINGENCY must first be approved by the CONSULTANT and the CITY in writing. CMAR will be required to furnish documentation evidencing the expenditures charged to the CONTINGENCY prior to release of funds by the CITY. At FINAL COMPLETION of the PROJECT, any remaining monies in the Construction Contingency shall vest in the CITY and will be excluded from any cost savings sharing pursuant to subsection 8.11. The GMP shall be reduced in the amount of the Construction Contingency remaining monies, if any.

- 9.1 Direct Costs Buy Out Savings. In the event that CMAR awards contracts for portions of the WORK which are less than the amounts budgeted in the GMP approved by the OWNER for such portions of the WORK, such buyout savings shall be first utilized to offset shortfalls on other bid packages. If, after offsetting any shortfalls, buyout savings remain, at the time provided on Exhibit "D" for the award of subcontracts, all buyout savings shall be transferred to the OWNER's CONTINGENCY.
- 9.2 Within 90 days of the execution of this Contract and monthly thereafter, CMAR is required to submit, in writing, a buyout reconciliation of all subcontracts that have been awarded since and as a product of the initial bid opening date. The result of this reconciliation is to be presented in association with a modified schedule of values reflecting the Direct Cost Buyout Savings as set forth in subsection 9.1. above.

## ARTICLE 10 DISCOUNTS, REBATES AND REFUNDS

- 10.1 All cash discounts obtained on payments made by CMAR shall accrue to the CITY unless CMAR actually advanced its own funds, prior to receipt of funds from CITY, to make the payment giving rise to the discount. When CMAR becomes aware that a cash discount may be available to CITY, CMAR shall, prior to advancing its own funds, notify CONSULTANT of such opportunity so

CITY can make the required payment to achieve the discount for the CITY. CMAR shall only advance its own funds if PROJECT MANAGER declines to make the early payment. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to CITY, and CMAR shall make provisions so that they may be obtained.

ARTICLE 11  
SUBCONTRACTS AND PURCHASE ORDERS

- 11.1 Unless waived in writing for good cause by CONSULTANT or PROJECT MANAGER, CMAR must obtain competitive pricing and subcontracts, in compliance with the requirements of this Article for 100% of CMAR's direct construction cost required under this contract. Subcontracts and purchase orders, involving amounts not in excess of \$25,000.00 may be awarded without the prior approval of the CONSULTANT. All other subcontracts and purchase orders shall be awarded according to the following procedure:

CMAR shall prepare for CONSULTANT'S and PROJECT MANAGER'S review and approval a list of SUBCONTRACTORS and suppliers for each bid who meet CMAR's schedule of minimum requirements. CMAR shall obtain bids from a minimum of three such SUBCONTRACTORS for each subcontract, when available. After receiving such bids, CMAR shall analyze them and make recommendations to the CONSULTANT for awards. When the CONSULTANT and the PROJECT MANAGER have approved the award of any such subcontract or purchase order, CMAR shall contract solely in its own name and behalf, and not in the name or behalf of the CITY, with the specified SUBCONTRACTOR or supplier. The subcontract shall provide that the SUBCONTRACTOR shall perform its portion of the WORK in accordance with all applicable provisions of this contract and the other CONTRACT DOCUMENTS ; that the SUBCONTRACTOR shall be bound to CMAR , to the same extent as CMAR is bound to the CITY, to name the CITY as an additional insured on its comprehensive general liability insurance; that the subcontractor shall provide an insurance certificate evidencing the same; that CMAR shall have the right to terminate the subcontract in the same manner and by the same method as provided for termination of this contract by the CITY, or as otherwise provided in the subcontract, whichever is more protective of the CITY'S interest; and that, in the event this contract is terminated for any reason, the SUBCONTRACTOR shall, at the CITY'S option, perform its subcontract for the CITY, or for a contractor designated by the CITY, without additional or increased cost, provided the SUBCONTRACTOR is paid in accordance with its subcontract. CMAR shall sign and cause each SUBCONTRACTOR to sign an Assignment of Rights under Construction Subcontract. Nothing contained herein shall impose on the CITY an obligation to assume any subcontract or make any payments to any SUBCONTRACTOR to perform, and nothing contained herein shall create any contractual relationship between the CITY and any SUBCONTRACTOR. If the CONSULTANT and the PROJECT MANAGER approve as the selected SUBCONTRACTOR or supplier, a bidder whose

bid exceeds that of the bidder recommended by CMAR, whose bid complies with the CONTRACT DOCUMENTS (the amount by which the bid of the selected SUBCONTRACTOR exceeds the bid of the bidder recommended by CMAR is referred to herein as the "preferred subcontractor cost differential"), then the PROJECT MANAGER may designate that the GMP shall be increased by the amount of the preferred subcontractor cost differential or the Contingency Allowance. All subcontracts shall, so far as applicable, contain unit prices and any other feasible formula for use in determination of the cost of changes in the WORK.

- 11.2 If the CITY designates a bidder as the selected SUBCONTRACTOR or supplier, and the s bid exceeds that of the recommended bidder selected by the CMAR , whose bid complies with the CONTRACT DOCUMENTS (the amount by which the bid of the CITY's selected subcontractor exceeds the amount of the bid of the CMAR's selected bidder is referred to herein as the preferred subcontractor cost differential), then the PROJECT MANAGER may designate that the GMP shall be increased by the amount of the preferred subcontractor cost differential.
- 11.3 All subcontracts shall, so far as practicable, contain unit prices and any other feasible formula for use in determination of the cost of changes in the WORK.

## ARTICLE 12 INSURANCE

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

CMAR will not be permitted to commence WORK governed by this contract (including pre-staging of personnel and material) until satisfactory evidence of the required insurance has been furnished to the CITY as specified below. Delays in the commencement of WORK, resulting from the failure of 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 CMAR's failure to provide satisfactory evidence.

CMAR shall maintain the required insurance throughout the entire term of this contract 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 CMAR to maintain 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 had not been suspended, except for CMAR's failure to maintain the required insurance.

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

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

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

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

## 12.2 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 CITY. 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.

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

### 12.2.1 Comprehensive General Liability:

[Amounts should be provided by Risk Management]

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

1. Each Occurrence
2. Products and Completed Operations

3. General Liability
4. Personal Adv. & Injury
5. General Aggregate

The City of Hollywood shall be listed as additional insured.

The minimum limits acceptable shall be:

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

#### 12.2.2 Comprehensive Automobile Liability:

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

Owned, Non-Owned, and Hired Vehicles

The minimum limits acceptable shall be:

**<FILL IN AMOUNT>** Combined Single Limit (CSL)

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

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

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

#### 12.2.3 Workers' Compensation Insurance:

[Amounts should be provided by Risk Management]

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



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

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

#### 12.2.4 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.

#### 12.2.5 Pollution Liability

[Amounts should be provided by Risk Management]

Limits of liability

Each Occurrence <FILL IN AMOUNT>

Including non-owned disposal sites

#### 12.2.6 Cyber Liability

[Amounts should be provided by Risk Management]

Limits of liability

Each Occurrence <FILL IN AMOUNT>

### 12.2.7 Builder's Risk Insurance Requirements:

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

Theft	Aircraft
Windstorm	Vehicles
Hail	Smoke
Explosion	Fire
Riot	Collapse
Civil Commotion	Flood

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

Deductible not to exceed \$100,000

### ARTICLE 13

### INDEMNIFICATION

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

### ARTICLE 14

### PERFORMANCE AND PAYMENT BOND AND QUALIFICATIONS OF SURETY

- 14.1 Within ten calendar days of being notified of the award, CMAR shall furnish a Performance Bond and a Payment Bond containing all the provisions of the Performance Bond and Payment Bond attached as Forms 4 and 5.
- 14.1.1 Each Bond shall be in the amount of 100% of the GMP guaranteeing to CITY the completion and performance of the WORK covered in this contract as well as full payment if all suppliers, material providers, laborers, or SUBCONTRACTORS employed pursuant to the PROJECT. Each Bond shall be with a surety company which is qualified pursuant to subsection 14.2.
- 14.1.2 Each Bond shall continue in effect for one year after FINAL COMPLETION and acceptance of the WORK with liability equal to 100% of the CONTRACT PRICE, or an additional bond shall be conditioned that CMAR will, upon notification by CITY, correct any defective or faulty WORK or materials which appear within one year after FINAL COMPLETION of the contract.
- 14.1.3 Pursuant to the requirements of Section 255.05(1)(a), Florida Statutes, as may be deemed amended from time to time, CMAR shall ensure that the bond(s) referenced above shall be recorded in the public records of Broward County and provide the PROJECT MANAGER with evidence of such recording.
- 14.2 QUALIFICATIONS OF SURETY:
- 14.2.1 Each bond must be executed by a surety company in recognized standing, authorized to do business in the State of Florida as surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five years.
- 14.2.2 The Surety Company shall hold a current certificate of authority as acceptable surety on federal bonds in accordance with United States

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

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

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

#### ARTICLE 15 INDEPENDENT CONTRACTOR

In performing the WORK, CMAR shall be deemed an independent contractor and not an agent or employee of the CITY. CMAR shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the WORK under this contract, unless the CONTRACT DOCUMENTS give other specific instructions concerning these matters.

#### ARTICLE 16 PROJECT RECORDS

- 16.1 CITY or its designee shall have the right to inspect and copy the books and records and accounts of CMAR and all major SUBCONTRACTORS including but not limited to books, records, correspondence, instructions, drawings, receipts, payment records, vouchers, and memoranda which relate in any way to the PROJECT, and to any claim for additional compensation made by CMAR which

relate to the PROJECT. CMAR shall preserve and make available to CITY all financial records, supporting documents, statistical records and any other documents which relate to the PROJECT and to any claim for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Statute), if applicable, and, if the Public Records Act is not applicable, for a period of three years following FINAL COMPLETION of the PROJECT. During the PROJECT and for the appropriate record retention period, CMAR shall provide CITY access to its books and records at CMAR's usual place of business upon (72 hours written notice. 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. Any incomplete or incorrect entry in such books, records and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.

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

- (a) keep and maintain public records required by the City to perform the services required under the contract;
- (b) upon request from the City's custodian of public records or his/her designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of the CONTRACT DOCUMENTS and following the completion of the contract if the CMAR does not transfer the records to the City; and
- (d) upon completion of the contract, CMAR shall transfer, at no cost to the City, all public records in possession of the CMAR or keep or maintain public records required by the City to perform the service. If the CMAR transfers all public records to the City upon completion of the contract, the CMAR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CMAR keeps and maintains public records upon completion of the contract, the CMAR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

**IF THE CMAR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CMAR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT DOCUMENTS,**

**CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS AT: CITY CLERK'S OFFICE, 2600 HOLLYWOOD BOULEVARD, HOLLYWOOD, FLORIDA 33020 OR AT (954) 921-3211, [PCERNY@HOLLYWOODFL.ORG](mailto:PCERNY@HOLLYWOODFL.ORG)**

16.1.1 CMAR's records shall include, but not be limited to accounting records (hard copy, as well as computer readable data), written policies and procedures; subcontractor files (including proposals of successful and unsuccessful bidders and bid recaps), surety files and bond company files, original estimates, estimating work sheets, correspondence, change order files (including, but not limited to, documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends and any other supporting evidence deemed necessary by the CITY to substantiate charges related to this contract (all of the foregoing hereinafter referred to as records).

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

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

## ARTICLE 17

### SURVEY

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

ARTICLE 18  
CMAR'S RESPONSIBILITY FOR THE WORK

- 18.1 CMAR shall accept full responsibility for the WORK against all loss or damage of whatsoever nature sustained until final acceptance by CITY, and shall promptly repair any damage done from any cause whatsoever.
- 18.2 CMAR shall be responsible for all materials, equipment and supplies pertaining to the PROJECT. In the event any such materials, equipment and supplies are lost, stolen, damaged or destroyed prior to final acceptance by CITY; CMAR shall replace it without cost to CITY. CMAR shall be responsible to protect all materials, equipment and supplies, keeping them free from deterioration, weathering, rusting or other action detrimental to the materials.
- 18.3 CITY reserves the right to award other contracts in connection with the PROJECT. CMAR shall afford other persons or contractors reasonable opportunity for the introduction and storage of materials and the execution of work under such separate contracts. CMAR shall properly connect and coordinate the WORK with the work of any other persons or contractors that might contract separately with CITY.
- 18.4 If any part of CMAR's WORK depends on proper execution of the WORK of any other persons, CMAR shall inspect and promptly report to CONSULTANT any defects in such work that render it unsuitable for such proper execution and results. CMAR's failure to so inspect and report shall constitute an acceptance of the other person's work as fit and proper for the reception of CMAR's WORK, except as to defects which may develop in other contractor's work after the execution of CMAR's WORK.
- 18.5 CMAR shall conduct its operations and take all reasonable steps to coordinate the prosecution of the WORK so as to create no interference or impact on any other contractor on the Project site. Should such interference or impact occur, and CMAR failed to take reasonable steps, CMAR shall be liable to the affected contractor for the cost of such interference or impact.

To ensure the proper execution of subsequent WORK, CMAR shall inspect the WORK already in place and shall at once report to CONSULTANT any discrepancy between the executed WORK and the requirements of the CONTRACT DOCUMENTS

ARTICLE 19  
OCCUPATIONAL HEALTH AND SAFETY

- 19.1 In compliance with applicable federal and state laws, any toxic substance listed in such laws delivered as a result of the Project must be accompanied by a Material Safety Data Sheet (MSDS) which may be obtained from the manufacturer. The MSDS must include the following information:
- 19.1.1 The chemical name and the common name of the toxic substance.

19.1.2 The hazards or other risks posed by the use of the toxic substance, including:

- (1) The potential for fire, explosion, corrosion, and reaction;
- (2) The known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the toxic substance; and
- (3) The primary routes of entry and symptoms of overexposure.

19.1.3 The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the toxic substance, including appropriate emergency treatment in case of overexposure.

19.1.4 The emergency procedure for spills, fire, disposal, and first aid.

19.1.5 A description in lay terms of the known specific potential health risks posed by the toxic substance intended to alert any person reading this information.

19.1.6 The year and month, if available, that the information was compiled and the name, address, and emergency telephone number of the manufacturer responsible for preparing the information.

19.2 CMAR agrees that it shall not knowingly transport to, use, generate, dispose of, or install at the project site any Hazardous Substance, (as defined in Section 20.5), except in accordance with applicable environmental laws. Further, in performing the WORK, CMAR TRACTOR shall not knowingly cause any release of hazardous substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable environmental laws.

19.2.1 In the event CMAR encounters on the PROJECT any Hazardous Substance, or what CMAR reasonably believes to be a Hazardous Substance, which is being introduced to the WORK, or exists on the Project location, in violation of any applicable environmental laws, CMAR shall immediately stop WORK in the area affected and report the condition to the CONSULTANT and PROJECT MANAGER. .

19.2.2 The PROJECT MANAGER through the CONSULTANT may direct CMAR, by utilization of CITY'S allowance ]account funds, to remediate and/or render harmless the Hazardous Substance in accordance with applicable permits then in existence, but CMAR not be required to remediate and/or render harmless the Hazardous Substance absent such direction. If CMAR is not so directed, CMAR shall not be required to resume WORK in any area affected by the Hazardous Substance until such time as the Hazardous Substance has been remediated and/or rendered harmless.



19.2.3 For purposes of this contract, the term "Hazardous Substance" shall mean and include, but shall not be limited to, any element, constituent, chemical, substance, compound or mixture, which is defined in or included under or regulated by any local, state, or federal law, rule, ordinance, by-law, or regulation pertaining to Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), The Resource Conservation and Recovery Act (RCRA), The Toxic Substances Control Act (TSCA), The Clean Water Act (CWA), the Clean Air Act (CAA), and The Marine Protection Research and Sanctuaries Act (MPRSA), The Occupational Safety and Health Act (OSHA), The Superfund Amendments and Reauthorization Act of 1986(SARA), or other state superior lien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as Environmental Laws). It is CMAR's responsibility to comply with Article 20 of this contract based on the law in effect at the time its services are rendered and to comply with any amendments to those laws for all services rendered after the effective date of any such amendments.

## ARTICLE 20

### PERMITS, LICENSES AND IMPACT FEES

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

Payment of all such permits and licenses, and impact fees shall be made by CMAR as part of the General Conditions within the GMP and shall include all federal, state, and local application, permit, and surcharge fees. CMAR shall be responsible for paying any and all fees, penalties, and fines imposed as a result of CMAR's failure to obtain such permits and licenses prior to the commencement of the WORK and shall pay such costs by deducting them from its r fee.

- 20.2 If applicable, Local Business Taxes must be paid as required by Section 205.065, Florida Statutes, and evidence of such payment must be submitted within ten days of execution of this contract.
- 20.3 It is CMAR's responsibility to have and maintain appropriate Certificate(s) of Competency, valid for the WORK to be performed and valid for the jurisdiction in which the WORK is to be performed for all persons working on the PROJECT for whom a Certificate of Competency is required.

ARTICLE 21  
PERSONNEL

- 21.1 All personnel used or employed by CMAR in the performance of the WORK shall be qualified by training and experience to perform their assigned tasks. At the request of the CITY or the CONSULTANT, CMAR shall not use in the performance of the WORK any personnel deemed by the CITY or the CONSULTANT to be incompetent, careless, or unqualified to perform the WORK assigned to that person, or otherwise unsatisfactory to the CITY.
- 21.2 CMAR agrees that in the performance of the WORK called for by this contract, it will employ only such labor, and engage SUBCONTRACTORS that employ only such labor, as will not delay or interfere with the speedy and lawful progress of the PROJECT and as will be acceptable to and work in harmony with all other workers employed on the Project site or on any other building, structure, or other improvement which CMAR or any other contractor may then be erecting or altering on behalf of the CITY.
- 21.3 CMAR agrees that it shall not employ any labor that will interfere with labor harmony at the project site or with the introduction and storage of materials and the execution of WORK by other contractors or by SUBCONTRACTORS.
- 21.4 CMAR shall furnish the CONSULTANT on request, resumes of CMAR's key personnel involved in the day-to-day WORK on the PROJECT.
- 21.5 PREVAILING WAGE REQUIREMENT:
- 21.5.1 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 it or its 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 of the United States Department of Labor for Broward County, Florida that is in effect prior to the date the CITY issued the invitation for bids for this project (Exhibit "C"). If the General Wage Decision fails to provide for a fringe benefit rate for any worker classification, then the fringe benefit rate applicable to such worker classification shall be the fringe benefit rate that has a basic wage rate closest in dollar amount to the WORK classification for which no fringe benefit rate has been provided.
- 21.5.2 Upon commencement of WORK, CMAR and all of its SUBCONTRACTORS shall post a notice in a prominent place at the project site stating the requirements of this section.
- 21.5.3 If any questions should arise concerning the applications of this section, which are not specifically addressed, the CITY may, but is not

required to, rely on rules, regulations, practices, administrative rulings and court decisions governing applications of the Davis-Bacon Act.

- 21.5.4 CMAR and SUBCONTRACTORS shall submit to the CITY on a monthly basis, the attached Form 2, for 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 the CMAR and its SUBCONTRACTORS for a period of at least three years following completion of the WORK.
- 21.5.5 The CITY may withhold, or cause to be withheld from CMAR, a portion of any requisitioned payment as may be considered necessary to pay laborers, mechanics and apprentices the full amount of wages required by this Section. The CITY, or its designee, may enter onto the job site and conduct such inquiries of CMAR's workers and its SUBCONTRACTOR's workers to determine whether this Section is being complied with.

If CMAR or its SUBCONTRACTOR fails to pay any laborers, mechanics or apprentices employed or working on the job site all or part of the wages required by this Section, then the CITY may, after written notice to CMAR, take such action as may be necessary to cause suspension of any further payments or advances until such violations have been corrected. If the violations are not corrected, the CITY may terminate CMAR's right to proceed with the WORK or such part of the WORK for which there has been a failure to pay the required wages and take such steps as are necessary to complete the WORK, whereupon CMAR and its sureties shall be liable to the CITY for all excess costs incurred by the CITY.

- 21.5.6 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 its SUBCONTRACTORS.

## ARTICLE 22 CMAR's WARRANTIES

- 22.1 CMAR warrants to CITY that all materials and equipment under this contract will be new unless otherwise specified and that all of the WORK will be of good quality free from faults and defects and in conformance with the CONTRACT DOCUMENTS. All WORK not conforming to these requirements, including substitutions not properly approved and authorized by the PROJECT MANAGER

and CONSULTANT may be considered defective. If required by CONSULTANT, CMAR shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Article 23 herein.

- 22.2 CMAR shall provide a one year warranty and shall coordinate and supervise the completion of warranty work during the warranty period. CMAR shall participate with the OWNER in conducting warranty inspections held during the sixth month and 11<sup>th</sup> month after occupancy. CMAR shall deliver all as-built drawings, warranties and guarantees to the PROJECT MANAGER.

CMAR shall provide a warranty summary report at the end of each warranty inspection. This report shall provide at a minimum:

- (a) description of each warranty item during the period;
- (b) date item reported to CMAR;
- (c) date item corrected. If more than one trip required, document each.
- (d) description of action taken to cure warranty items;
- (e) signature of PROJECT MANAGER acknowledging warranty items have been completed; and
- (f) other pertinent information, if applicable.

Refusal of CMAR to provide any work required in the warranty phase of the PROJECT shall be a basis for non-payment of any and all warranty phase fees otherwise due and payable at the time of refusal.

The CMAR has carefully examined the site of the PROJECT, to the extent available, and adjacent areas, has suitably investigated the nature and location of the WORK and satisfied itself as to the general and local conditions which are applicable, including but not limited to : (a) conditions related to site access and to the transportation, disposal, handling and storage of materials, (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the site and existing site conditions including: location, size, utility capacities and connection options of external utilities ; (e) the surface conditions of the ground and the subsurface conditions of the land as identified by the site geotechnical report and soil borings provided by the CONSULTANTS and/or CITY and (f) the character and availability of the equipment and facilities which will be needed prior to and during the performance of the WORK.

All PROJECT Construction Cost estimates provided by CMAR for the WORK, based on 50%( or greater percentage of completion), Plans and Drawings and Specification Submittals, produced by the CONSULTANT, will be complete and accurate; will incorporate the cost for the means and methods required to complete the WORK; and will incorporate the cost for all schedule constraints shown on the Contract Schedule necessary to complete the WORK within the CONTRACT TIME.

ARTICLE 23  
DEFECTIVE WORK

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

within the GMP. CMAR 's responsibility to make repairs and redo work under this Article is in addition to CMAR' s responsibility to the CITY for any other damages of any kind for which CMAR would be legally responsible.

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

#### ARTICLE 24 SIGNAGE

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

#### ARTICLE 25 PUBLIC ENTITY CRIMES ACT

- 25.1 CMAR represents that the execution of this contract will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with CITY, and may not transact any business with CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vender list. Violation of this section shall result in termination of this contract and recovery of all monies paid pursuant to this contract, and may result in debarment from CITY's competitive procurement activities.

- 25.2 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.

#### ARTICLE 26 OWNERSHIP OF CONTRACT DOCUMENTS

Any and all drawings, specifications, designs, models, photographs, reports, surveys, and other data submitted by CMAR and provided in connection with the CONTRACT DOCUMENTS are and shall remain the property of the CITY whether the PROJECT for which they are made is completed or not. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by CMAR become the property of CITY and shall be delivered by CMAR to CITY within seven days of termination of the CONTRACT DOCUMENTS by either party. Any compensation due to CMAR shall be withheld until all documents are received as provided herein. CMAR shall adhere to Chapter 119, Florida Statutes, entitled "Public Records Act" and the requirements set forth in Article 16 of this Agreement.

#### ARTICLE 27 CMAR's REPRESENTATIVE

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

#### ARTICLE 28 CITY's RIGHT TO TERMINATE CONTRACT

- 28.1 In the event that CMAR fails to begin the WORK within ten calendar days after the project initiation date, fails to perform the WORK with sufficient workers and equipment or with sufficient materials to insure the prompt completion of the WORK, or shall perform the WORK unsuitably, or cause it to be rejected as defective and unsuitable, or shall discontinue the prosecution of the WORK pursuant to the accepted schedule or its SUBCONTRACTOR fails to perform any material term set forth in the CONTRACT DOCUMENTS or if CMAR shall become insolvent or be declared bankrupt, or commits any act of bankruptcy or insolvency, or shall make an assignment for the benefit of creditors, or for any other cause whatsoever shall not carry on the WORK in an acceptable manner, PROJECT MANAGER may give notice in writing to CMAR and its Surety of such delay, neglect or default, specifying the same.

If CMAR, within a period of ten calendar days after such notice, shall not proceed in accordance therewith, then CITY may upon written certificate from CONSULTANT of the fact of such delay, neglect or default and CMAR'S failure

to comply with such notice, terminate the services of CMAR , exclude CMAR from the project site and take the prosecution of the WORK out of the hands of CMAR , and appropriate or use any or all materials and equipment that are an integral part of the WORK on the project site as may be suitable and acceptable. In such case, CMAR shall not be entitled to receive any further payment until the PROJECT is completed.

In addition, CITY may enter into an agreement for the completion of the PROJECT according to the terms and provisions of the CONTRACT DOCUMENTS, or use such other methods as in CITY'S sole opinion shall be required for the completion of the PROJECT according to the terms and provisions of the CONTRACT DOCUMENTS, or use such other methods as in CITY'S sole opinion shall be required for the completion of the PROJECT in an acceptable manner. All damages, costs and charges incurred by CITY, together with the costs of completing the PROJECT, shall be deducted from any monies due or which may become due to CMAR. In case the damages and expenses so incurred by CITY shall exceed the unpaid balance, then CMAR shall be liable and shall pay to CITY the amount of said excess.

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

#### ARTICLE 29

#### CMAR's RIGHT TO STOP WORK OR TERMINATE CONTRACT

If CONSULTANT fails to review and approve or state in writing reasons for rejection of any Request for Payment within 20 days after it is properly presented, or if CITY fails either to pay CMAR within 30 days after presentation by CONSULTANT of any sum certified by CONSULTANT, or to notify CMAR and CONSULTANT in writing of any objection to the Request for Payment, then CMAR may give written notice to CITY and CONSULTANT of such delay,



neglect or default, specifying the same. If CITY or CONSULTANT (where applicable), within a period of ten calendar days after such notice shall not remedy the delay, neglect, or default upon which the notice is based, then CMAR may stop work or terminate this contract and recover from CITY payment for all work executed and reasonable expenses sustained therein plus reasonable termination expenses. Any objection made by CITY to a Request for Payment shall be submitted to CONSULTANT in accordance with the provisions of Article 30 hereof.

### ARTICLE 30 RESOLUTION OF DISPUTES

- 30.1 To prevent all disputes and litigation, it is agreed by the parties hereto that CONSULTANT shall decide all questions, claims, difficulties and disputes of whatever nature which may arise relative to the technical interpretation of the CONTRACT DOCUMENTS and fulfillment of this contract as to the character, quality, amount, value of any work done and materials furnished, or proposed to be done or furnished under or by reason of, the CONTRACT DOCUMENTS, and CONSULTANT's estimates and decisions upon all claims, questions, difficulties and disputes shall be final and binding to the extent provided in this Article. Any claim, question, difficulty or dispute which cannot be resolved by mutual agreement of PROJECT MANAGER and CMAR shall be submitted to CONSULTANT in writing within 2) calendar days. CONSULTANT shall notify PROJECT MANAGER and CMAR in writing of CONSULTANT's decision within 21 calendar days from the date of the submission of the claim, question, difficulty or dispute, unless CONSULTANT requires additional time to gather information or allow the parties to provide additional information. All nontechnical administrative disputes shall be determined by the PROJECT MANAGER pursuant to the time periods provided herein. During the pendency of any dispute and after a determination thereof, CMAR, CONSULTANT, and PROJECT MANAGER shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction.
- 30.2 In the event the determination of a dispute under this Article is unacceptable to any of the parties hereto, the party objecting to the determination must notify the other party in writing within ten days of receipt of the written determination. The notice must state the basis of the objection and must be accompanied by a statement that any CONTRACT PRICE adjustment claimed is the entire adjustment to which the objecting party has reason to believe it is entitled as a result of the determination. Within 60 days after FINAL COMPLETION of the WORK, the parties shall participate in mediation to address all objections to any mediator mutually agreed upon by the parties. Should any objection not be resolved in mediation, the parties retain all their legal rights and remedies provided under State law. If a party objecting to a determination, fails to comply in strict accordance with the requirements of this Article, said party specifically waives all of its rights provided hereunder, including its rights and remedies under State law.

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

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

### ARTICLE 31 NOTICES

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

For CMAR :

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For City:

Director  
Department of Design and Construction Management  
2207 Raleigh Street  
Hollywood, FL 33020

And to Consultant:

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## ARTICLE 32 HURRICANE PRECAUTIONS

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

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

Additional work (which is over and beyond removal of debris and securing of loose items) relating to hurricane warning or alert at the project site will be addressed by a change order in accordance with Article7, subsection 7.4.

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

## ARTICLE 33 OTHER TERMS & CONDITIONS

- 33.1 Third Party Beneficiaries: Neither CMAR nor CITY intend to directly or substantially benefit a third party by this contract. Therefore, the parties agree that there are no third party beneficiaries to this contract and that no third party shall be entitled to assert a claim against either of them based upon 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.
- 33.2 Conflicts: Neither CMAR nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic to, or incompatible with, CMAR's loyal and conscientious exercise of judgment related to its performance under this contract. CMAR agrees that none of its employees shall, during the term of this contract, serve as an adverse, hostile or expert witness against CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, CMAR agrees that I such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her opinion, which is adverse or prejudicial to the interests of CITY in any such pending or threatened legal or administrative proceeding. The limitations of this Article shall not preclude CMAR and any other persons from representing themselves in any action or in any administrative or legal proceeding. In the event CMAR is permitted to utilize SUBCONTRACTORS to perform any services required by the CONTRACT DOCUMENTS, CMAR agrees to prohibit its SUBCONTRACTORS, by written contract, from having any conflicts as within the meaning of this Article.

- 33.3 Joint Preparation: The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of the CONTRACT DOCUMENTS has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 33.4 Drug Free Workplace: It is a requirement of CITY that it enter into contracts only with firms that certify the establishment of a drug-free workplace. Execution of this contract by CMAR shall also serve as CMAR's required certification that it either has or that it will establish a drug-free workplace.
- 33.5 Assignment: Neither the CONTRACT DOCUMENTS nor any interest herein shall be assigned or transferred by CMAR.
- 33.6 Waiver: No consent or waiver, express or implied, by either party to this contract to or of any breach or default by the other in the performance of any obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other or future breach or default by such party hereunder, nor deemed to be a modification of this contract. Failure on the part of any party hereto to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder, provided however this section shall not alter or amend the notice provisions set forth in the Construction Documents including but not limited to, in Article 6. Inspection by, payment by or tentative approval or acceptance by the CITY, or the failure of the CITY to perform any inspection hereunder shall not constitute a final acceptance of the WORK or any part thereof and shall not release CMAR from any of its obligations hereunder.
- 33.7 Construction of Terms: Unless the context clearly intends the contrary, words singular or plural in number shall be deemed to include the other and pronouns having masculine or feminine gender shall be deemed to include the other. The term "person" shall be deemed to include an individual, corporation, unincorporated organization, partnership, trust, government and governmental agency or subdivision, as the context shall require.
- 33.8 Prohibition Against Contingent Fees.

CMAR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CMAR, to solicit or secure this contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CMAR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this contract. For a breach or violation of this provision, CITY shall have the right to terminate this contract without liability at its discretion, or to deduct from the CONTRACT PRICE or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

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

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

THE CITY OF HOLLYWOOD, a municipal  
corporation of the State of Florida

By: \_\_\_\_\_  
Josh Levy, Mayor

ATTEST:

Approved by:

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

\_\_\_\_\_  
Cintya Ramos, Director of Financial Services

Approved As To Form & Legal Sufficiency  
for the use and reliance of the City of  
Hollywood, Florida, only.

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

**Construction Management at Risk Agreement Phase II Construction Services**

CONTRACTOR

Party of the Second Part

WHEN THE CONTRACTOR IS AN INDIVIDUAL:

Signed, sealed and delivered in the presence of:

---

(SEAL)

---

(Witness)  
(Signature of individual)

---

(SEAL)

---

(Witness)  
(Signature of individual)WHEN THE CONTRACTOR IS A SOLE PROPRIETORSHIP OR OPERATES UNDER A  
TRADE NAME:

Signed, sealed and delivered in the presence of:

---

Witness

---

(Name of Firm)

---

(SEAL)

---

(Witness)  
(Signature of individual)

**CONSTRUCTION MANAGEMENT AT RISK AGREEMENT FOR PHASE II CONSTRUCTION SERVICES**WHEN THE CONTRACTOR IS A PARTNERSHIP:

Signed, sealed and delivered in the presence of:

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

BY:

\_\_\_\_\_  
(Partner)WHEN THE CONTRACTOR IS A CORPORATION:

ATTEST:

\_\_\_\_\_  
Secretary\_\_\_\_\_  
(Correct Name of Corporation)

(SEAL)

BY:

\_\_\_\_\_  
(President)

## **LIST OF EXHIBITS AND FORMS**

### **Exhibits:**

- A. CMAR's Direct Construction Costs
- B. CMAR's Staff General Condition Costs, Construction Contingency and Fee
- C. Project Schedule and List of Contract Documents Drawings and Specifications.
- D. Authorization for Construction-Project Terms and Requirements
- E. CMAR Project Team
- F. CMAR's GMP Qualifications & Clarifications
- G. Pre-Construction Services Agreement

- 1. **Forms:**Performance Bond
- 2. Payment Bond



EXHIBIT A  
CONSTRUCTION MANAGER AT RISK DIRECT CONSTRUCTION COST

[Insert bid schedule with direct construction cost by subcontractor, trade]

## EXHIBIT B

### CONSTRUCTION MANAGER AT RISK GENERAL CONDITIONS, CONSTRUCTION CONDITIONS, COTINGENCY AND FEE

[Insert bid schedule itemizing CMAR's, staff costs, general conditions, construction contingency, and fee]

## EXHIBIT C

### PROJECT SCHEDULE AND LIST OF CONTRACT DOCUMENTS AND SPECIFICATIONS

[Insert project schedule, list of contract drawings, listing of specifications, table of contents; with date for each

## EXHIBIT D

### AUTHORIZATION FOR CONSTRUCTION

Pursuant to the Agreement between the City of Hollywood and Name of CM Firm ("Construction Manager"), for the construction of [Name of Project], the City of Hollywood and the Construction Manager hereby execute the Authorization and further agree as set forth below.

[Optional: Whereas, the Project is being performed in phases as permitted by the Contract for Construction; and Whereas, the City of Hollywood desires to authorize Construction Manager to commence the [ ] phase of the project.]

1. Construction Manager shall commence [Optional: the \_\_\_\_ phase] of the Work within ten (10) calendar days after the date indicated on the Notice to Proceed. The date of the Substantial Completion for the Project shall be: Month Date, Year.
2. The date of the Final Completion for the Project shall be forty-five (45) days after the date of Substantial Completion.
3. The construction Manager's Guaranteed Maximum Price ("GMP") proposal dated Month date, Year [Optional: for \_\_\_\_ phase] attached hereto and incorporated herein, is accepted by the Owner.
4. The Construction Manager shall award Trade Contracts representing ninety percent (90%) or more of the Cost of the Work within ninety (90) days of issuance of the Notice to Proceed for Construction Services.

Item	Amount
Direct Construction Cost of the Work	\$
	\$
Construction Contingency	\$
General Conditions Cost	\$
Construction Phase Fee	\$
Owners Contingency	\$
<b>Guaranteed Maximum Price</b>	\$

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

Submitted:

Assistant Director, Department of Design &  
Construction Management

Approved:

Recommended:

Douglas R. Gonzales  
City Attorney

Director, Department of Design &  
Construction Management

Approved:

Approved:

Melisa Cruz  
Director, Department of Financial Services

Josh Levy  
Mayor

Attest:

Accepted:

Patricia A. Cerny, MMC  
City Clerk

[Insert: Name , Title]  
[Insert: Name of Construction Firm]

Distribution:  
1 Original to Construction Manager  
1 Original to DCM Project File  
Cc: Senior Accountant

**Note to Construction Manager:** Please Sign All Originals and Return to the Department of  
Design & Construction Management

**Account No.:**

## EXHIBIT ECONSTRUCTION MANGER AT RISK PROJECT TEAM

[Insert CMAR's project team, name, responsibilities, project organization chart, and individual qualifications]

## EXHIBIT F

### CONSTRUCTION MANAGED AT RISK – GMP PROPOSAL, QUALIFICATIONS AND CLARIFICATIONS

[Insert GMP proposal, qualifications, and clarifications]

**EXHIBIT G**  
**PROJECT PRECONSTRUCTION SERVICES AGREEMENT**  
[Insert executed project Pre-construction Services Agreement]

**DEPARTMENT OF DESIGN & CONSTRUCTION  
MANAGEMENT**

PO Box 229045  
Hollywood, FL 33022-9045  
Phone (954) 921-3900 Fax (954) 921-3416

**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS:

That we \_\_\_\_\_, as Principal,  
and \_\_\_\_\_, as Surety, are held  
and firmly bound unto the City of Hollywood in the sum of \_\_\_\_\_  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for the payment of  
said sum we bind ourselves, our heirs, executors, administrators and assigns, jointly and  
severally, for the faithful performance of a certain written contract, dated the \_\_\_\_\_ day of  
\_\_\_\_\_ 20 \_\_\_\_\_, entered into between the Principal and the City of Hollywood,  
Florida, for:

\_\_\_\_\_  
\_\_\_\_\_

Contract Number \_\_\_\_\_ located at \_\_\_\_\_  
(Address location of the job)

A copy of said Contract is incorporated herein by reference and is made a part hereof as if fully  
copied herein.

\* Note: The principal business address, phone number of the Contractor and Surety are listed on the signature  
pages of this form.



NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that if the Principal shall in all respects comply with the terms and conditions of said Contract and his obligations thereunder, including all of the Contract Documents (that include the Advertisement for Bids, Instructions to Bidders, Proposal, Bid Bond, Contract, Performance Bond, Specifications, Addenda and Drawings), therein referred to and made a part thereof, and such alterations as may be made in said Drawings and Specifications as therein provided for, and shall indemnify and save harmless the City of Hollywood its officials and employees against and from all expenses, damages, injury or conduct, want of care of skill, negligence or default, including patent infringement on the part of said Principal, his agents or employees, in the execution or performance of said Contract, including errors in the Drawings furnished by said Principal, and further, if the Principal shall promptly make payments to all who supply him, with labor and/or materials, used directly or indirectly by the Principal in the prosecution of the work provided for in said Contract, then this obligation shall be null and void; otherwise, the Principal and Surety, jointly and severally, agree to pay the City of Hollywood its officials and employees any difference between the sum that the City of Hollywood its officials and employees may be obliged to pay for the completion of said work, by Contract or otherwise, and any damages, whether direct, indirect, or consequential, which the City of Hollywood its officials and employees may incur as a result of the failure of the said Principal to properly execute all of the provisions of said Contract.

AND, the said Principal and Surety hereby further bind themselves, their successors, executors, administrators and assigns, jointly and severally, that they will amply and fully protect the City of Hollywood its officials and employees against, and will pay any and all amounts, damages, costs and judgments which may be recovered against or which the Owner may be called upon to pay to any person or corporation by reason of any damage arising from the performance of the said work, repair or maintenance thereof, or the manner of doing the same, or his agents or his servants, or the infringements of any patent rights by reason of the use of any material furnished or work done, as aforesaid or otherwise.

AND, the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications and Drawings accompanying the same, shall in any way affect its obligations on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications and Drawings.

AND, any action under this bond must be instituted in accordance with the Notice and Time Limitations provisions prescribed in section 255.05, Florida Statutes.

The Surety hereby waives notice and agrees that any changes in or under the Contract documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect the Surety's obligation under this bond.

WHEN THE PRINCIPAL IS AN INDIVIDUAL:

\_\_\_\_\_  
Signature of Individual

Performance Bond \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Individual

\_\_\_\_\_  
Address of Individual

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

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name of Witness

\_\_\_\_\_  
Printed Name of Witness

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

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

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

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

\_\_\_\_\_  
Name of Firm

Performance Bond \_\_\_\_\_

\_\_\_\_\_  
Signature of Individual

\_\_\_\_\_  
Printed Name of Individual

\_\_\_\_\_  
Address of Individual

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

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name of Witness

\_\_\_\_\_  
Printed Name of Witness

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

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

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

WHEN THE PRINCIPAL IS A PARTNERSHIP:

---

Name of PartnershipPerformance Bond 

---

BY: 

---

  
Partner (SEAL)

---

Printed Name of Partner

---

Address of Partner

---

Phone Number

Signed, sealed and delivered in the presence of:

---

Witness

---

Witness

---

Printed Name of Witness

---

Printed Name of Witness

---

Address

---

Address

---

Phone Number

---

Phone Number

WHEN THE PRINCIPAL IS A CORPORATION:

attest:

Performance Bond \_\_\_\_\_

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

BY:

\_\_\_\_\_  
(Affix Corporate Seal)\_\_\_\_\_  
Printed Name\_\_\_\_\_  
Official TitleCERTIFICATE AS TO CORPORATE PRINCIPAL

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

\_\_\_\_\_  
Secretary (SEAL)\_\_\_\_\_  
Printed Name of SecretaryTO BE EXECUTED BY CORPORATE SURETY:

attest:

\_\_\_\_\_  
Secretary\_\_\_\_\_  
Corporate Surety\_\_\_\_\_  
Business Address\_\_\_\_\_  
Business Phone Number

BY:

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

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

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

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

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



**DEPARTMENT OF DESIGN & CONSTRUCTION  
MANAGEMENT**

PO Box 229045  
Hollywood, FL 33022-9045  
Phone (954) 921-3900 Fax (954) 921-3416

STATE OF FLORIDA  
COUNTY OF BROWARD  
CITY OF HOLLYWOOD

Before me, a Notary Public, duly commissioned, qualified and acting, personally appeared, \_\_\_\_\_  
\_\_\_\_\_ to me well known, who  
being by me first duly sworn upon oath, says that he is the attorney-in-fact for the \_\_\_\_\_  
\_\_\_\_\_ and that he has been authorized by \_\_\_\_\_  
\_\_\_\_\_ to execute the foregoing bond on behalf of the  
CONTRACTOR named therein in favor of the City of Hollywood, Florida. CONTRACTOR  
named therein in favor of the City of Hollywood, Florida.

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Printed Name of Notary

Commission Number: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

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

BY: \_\_\_\_\_  
CITY ATTORNEY

APPROVED AS TO FINANCE DIRECTOR

BY: \_\_\_\_\_  
DIRECTOR OF FINANCE



**DEPARTMENT OF DESIGN & CONSTRUCTION  
MANAGEMENT**

PO Box 229045  
Hollywood, FL 33022-9045  
Phone (954) 921-3900 Fax (954) 921-3416

**PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS:

That we \_\_\_\_\_, as Principal,  
and \_\_\_\_\_, as Surety, are held and firmly bound unto  
the City of Hollywood, its officials and employees, in the sum of \_\_\_\_\_  
\_\_\_\_\_ Dollars (\$\_\_\_\_\_), for the payment of  
said sum we bind ourselves, our heirs, executors, administrators and assigns, jointly and  
severally, for the faithful performance of a certain written contract, dated the \_\_\_\_\_ day of  
\_\_\_\_\_20\_\_\_\_\_, entered into between the Principal and the City of Hollywood,  
Florida, for:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Copy of said Contract is incorporated herein by reference and is made a part hereof as if fully  
copied herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that, if the  
Principal shall promptly make payments to all claimants, as herein below defined, then this  
obligation shall be void; otherwise, this Bond shall remain in full force and effect, subject to the  
following terms and conditions:

- A. A claimant is defined as any person supplying the Principal with labor, material  
and supplies, used directly or indirectly by the said Principal or any  
subcontractor in the prosecution of the work provided for in said Contract, and is  
further defined in Section 713.01 of the Florida Statutes.



- B. The above named Principal and Surety hereby jointly and severally agree with the City of Hollywood, its officials, and employees, that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after performance of the labor or after complete delivery of materials and supplies by such claimant, may sue on this Bond for the use of such claimant, prosecute the suit to final judgment for such sums or sums as may be justly due claimant, and have execution thereon. The City shall not be liable for the payment of any costs or expenses of any such suit.
- C. No suit or action shall be commenced hereunder by any claimant:
1. Unless claimant, other than one having a direct contract with the Principal, shall within forty-five (45) days after beginning to furnish labor, materials or supplies for the prosecution of the work, furnish the Principal and Surety with a notice that he intends to look to this bond for protection.
  2. Unless claimant, other than one having a direct contract with the Principal, shall within ninety (90) days after such claimant's performance of the labor or complete delivery of materials and supplies, deliver to the Principal and Surety written notice of the performance of such labor or delivery of such material and supplies and the nonpayment therefore.
  3. After the expiration of one (1) year from the performance of the labor or completion of delivery of the materials and supplies; it being understood, however, that if any limitation embodied in this Bond is prohibited by any law controlling the construction hereof such limitations shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
  4. Other than in a state court of competent jurisdiction in and for Broward County, Florida, or in the United States District Court for the Southern District of Florida, and not elsewhere.
- D. The Principal and the Surety jointly and severally, shall repay the City of Hollywood any sum which it may be compelled to pay because of any lien for labor or materials furnished for any work included in or provided by said Contract.
- E. The Surety, for value received, hereby stipulates and agrees that no charge, extension of time, alteration of or addition to the terms of the Contract or to the work to be performed thereunder or to the Specifications applicable thereto shall in any way affect its obligations on this Bond, and the Surety hereby waives notice of any such change, extension of time, alterations of or addition to the terms of the Contract, or to the work or to the Specifications.

- F. The Surety represents and warrants to the City of Hollywood, its officials, and employees, that they have a Best's Key Rating Guide, General Policyholder's rating of "A" and Financial Size Category of Class "X".
- G. Any action under this bond must be instituted in accordance with the Notice and Time Limitations provisions prescribed in Section 255.05, Florida Statutes.
- H. The Surety hereby waives notice and agrees that any changes in or under the Contract documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect the Surety's obligation under this bond.

IN WITNESS WHEREOF, the above bounded parties executed this instrument under their several seals, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ A.D., the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

This bond is executed pursuant to Section 255.05, Florida Statutes, and is subject to the notice and time limitation provisions thereof.

WHEN THE PRINCIPAL IS AN INDIVIDUAL:

---

Signature of Individual

---

Printed Name of Individual

---

Address of Individual

---

Phone Number of Individual

Signed, sealed and delivered in the presence of:

---

Witness

---

Witness

---

Printed Name of Witness

---

Printed Name of Witness

---

Address of Witness

---

Address of Witness

---

Phone Number of Witness

---

Phone Number of Witness

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

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Signature of Individual

\_\_\_\_\_  
Printed Name of Individual

\_\_\_\_\_  
Address of Individual

\_\_\_\_\_  
Phone Number of Individual

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name of Witness

\_\_\_\_\_  
Printed Name of Witness

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Phone Number of Witness

\_\_\_\_\_  
Phone Number of Witness

WHEN THE PRINCIPAL IS A PARTNERSHIP:

---

Name of PartnershipBY: 

---

  
Partner (SEAL)

---

Printed Name of Partner

---

Address of Partner

---

Phone Number of Partner

Signed, sealed and delivered in the presence of:

---

Witness

---

Witness

---

Printed Name of Witness

---

Printed Name of Witness

---

Address of Witness

---

Address of Witness

---

Phone Number of Witness

---

Phone Number of Witness

WHEN THE PRINCIPAL IS A CORPORATION:

attest:

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

BY:

\_\_\_\_\_  
(Affix Corporate Seal)\_\_\_\_\_  
Printed Name\_\_\_\_\_  
Official TitleCERTIFICATE AS TO CORPORATE PRINCIPAL

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

\_\_\_\_\_  
Secretary (SEAL)\_\_\_\_\_  
Printed Name of SecretaryTO BE EXECUTED BY CORPORATE SURETY:

attest:

\_\_\_\_\_  
Secretary\_\_\_\_\_  
Corporate Surety\_\_\_\_\_  
Business Address\_\_\_\_\_  
Business Phone Number

BY:

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

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Attorney-In-Fact

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Name of Local Agency

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Business Address

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**DEPARTMENT OF DESIGN & CONSTRUCTION  
MANAGEMENT**

PO Box 229045  
Hollywood, FL 33022-9045  
Phone (954) 921-3900 Fax (954) 921-3416

STATE OF FLORIDA  
COUNTY OF BROWARD  
CITY OF HOLLYWOOD

Before me, a Notary Public, duly commissioned, qualified and acting, personally appeared, \_\_\_\_\_ to me well known, who being by me first duly sworn upon oath, says that he is the attorney-in-fact for the \_\_\_\_\_ and that he has been authorized by \_\_\_\_\_ to execute the foregoing bond on behalf of the CONTRACTOR named therein in favor of the City of Hollywood, Florida. CONTRACTOR named therein in favor of the City of Hollywood, Florida.

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Printed Name of Notary

Commission Number: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

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

BY: \_\_\_\_\_  
CITY ATTORNEY

APPROVED AS TO FINANCE DIRECTOR

BY: \_\_\_\_\_  
DIRECTOR OF FINANCE



**CITY OF HOLLYWOOD, FLORIDA****PROCUREMENT SERVICES DIVISION****ADDENDUM No. 1**

RFQ-4682-21-GJ

**TITLE:** Construction Management at Risk Services for the North Beach Utilities  
Underground Conversion Hollywood Beach Utility Improvements - Phase 1A Projects

**ISSUED:** August 3, 2021

This addendum is being issued to make the changes/revisions to the following Sections:

5.3.1 Initial Selection Criteria – Table

**DELETE:**

5.3.1 Initial Selection Criteria – Table

**REVISED/REPLACED WITH:****5.3 Weighted Evaluation Criteria****5.3.1 Initial Selection Criteria**

Each firms SOQ will be evaluated based on the following criteria:

<b><i>Category Title</i></b>	<b><i>Category Description</i></b>	<b><i>Reference Tabs</i></b>	<b><i>Maximum Points</i></b>
Firm Qualifications and Experience	Experience with projects of similar size and complexity. Proposes shall highlight Construction Management At Risk projects for municipal, streetscapes, utilities undergrounding, water main, sewer force mains, coordination with public utilities and franchises and understanding or local codes and regulations. (3) Scope A utilities undergrounding and (3) Scope B water main projects.	Tab C	20
Organizational Profile and Project Team Qualifications	Performance, experience and qualifications in related construction experience, exemplary cost containment, minimization of change orders and proven history of project completion within initial budget.	Tab D	20
Approach to Scope of Work	Execution and Management of the Project and Approach to performing the work. Outline major tasks and responsibilities, project time schedule and staff assigned. Ability to solve complex problems, oversee work areas, coordination with multiple design firms, timely execution of projects, community outreach and maintenance of traffic	Tab E	20

	plan. Ability to work on a busy corridor while maintaining safety and comfort to existing municipal uses, business, residents and visitors.		
Knowledge of site and local conditions	Knowledge of the site and local conditions, familiarity with the area. Demonstrated experience working in areas affected by hurricanes wind forces, local permitting and construction market, dewatering in A1A or area with similar water table and geotechnical condition.	Tab F	15
References	Past Performance: Provide six (6) verifiable references for projects of similar size, scope and complexity that have been completed within the last five (5) years. Reference Questionnaire requirements per section 4.2.3.	Tab C	15
Location of Firm's Office*	Points will be assigned as noted below based on the proximity of the office that will perform the work to the City of Hollywood.  <u>Location of Office:</u> Within 35 miles of City Hall.....5 points Within 35 to 60 miles of City Hall.....3 points Within 60 to 90 miles of City Hall.....2 points More than 90 miles from City Hall.....1 point	To be Determined by Staff	5
Financial Resources	An indication of the resources and the necessary working capital available and how it will relate to the Firm's financial stability through the completion of the projects.	Tab H	5

All other specifications, terms and conditions remain unchanged.

## Question and Answers for Bid #RFQ-4682-21-GJ - CMAR - North Beach Utilities Underground Conversion and Hollywood Beach Utility

### Overall Bid Questions

#### Question 1

Is there a pre-bid meeting for this bid? (Submitted: Aug 4, 2021 3:09:24 PM EDT)

#### Answer

- No. (Answered: Aug 9, 2021 8:36:21 AM EDT)

#### Question 2

Please confirm that submittals for this RFQ are to be submitted through bidsync in accordance with 4.1.2 paragraph 5, and NOT through a paper submission to the city. (Submitted: Aug 23, 2021 8:50:30 AM EDT)

#### Answer

- Due to Public Access to City Hall being suspended as a safety precaution to COVID-19, the City of Hollywood will no longer accept physical hardcopies of Formal Solicitations â€” specifically Request for Proposals (RFPâ€™s) & Request for Qualifications (RFQâ€™s), that are typically dropped off at the City Clerkâ€™s office. For now, Vendors are required to mail in their Proposals as follows:

For FedEx and UPS the address is:

City of Hollywood

Records & Archives Division

Annex Building, Room 16W

2600 Hollywood Blvd

If not using FedEx or UPS the address is

City of Hollywood

PO Box 229045

Hollywood, FL 33022-9045

This process does not affect the submission of Formal Electronic Bids, as Formal Electronic Bids must continue to

be submitted through Bidsyn.com (Answered: Aug 23, 2021 8:52:52 AM EDT)

**Question 3**

As this is a CMAR solicitation and not a design build, will the CMAR be required to carry professional liability insurance for this solicitation as indicated in the RFQ documents for the duration of the contract plus an additional 10 years? (Submitted: Aug 23, 2021 9:04:31 AM EDT)

**Answer**

- Since this is a CMAR solicitation and not a design-build, the CMAR will not be required to carry professional liability insurance. (Answered: Aug 23, 2021 5:12:33 PM EDT)

**Question 4**

Will builders risk covering wind and flood insurance be required for this project as called for in the RFQ documents. (Submitted: Aug 23, 2021 9:10:52 AM EDT)

**Answer**

- Builder's Risk insurance is not required for this project; neither is wind nor flood insurance. (Answered: Aug 23, 2021 5:12:33 PM EDT)

**Question 5**

As the turn in is the day after labor day and considering that the submissions need to be sent in Via USPS, FedEx, etc. we would like ask that the submission be moved to Thursday the 9th to allow for carrier delivery to take place the week of turn in without sacrificing the ability to finish qualification statements over the holiday. (Submitted: Aug 23, 2021 9:14:24 AM EDT)

**Answer**

- Submission date extended to Thursday September 9th, 2021 (Answered: Aug 23, 2021 5:12:33 PM EDT)

**Question 6**

Can you provide the estimate/budget for this job? (Submitted: Aug 24, 2021 1:39:13 PM EDT)

**Answer**

- Please see RFQ Section III for Scopes A and B estimated budget (Answered: Aug 25, 2021 4:29:49 PM EDT)

**Question 7**

When do you anticipate award? (Submitted: Aug 24, 2021 1:39:36 PM EDT)

**Answer**

- To be determine. The city will award as soon as selection process and negotiations are completed. (Answered: Aug 25, 2021 4:29:49 PM EDT)

**Question 8**

When do you anticipate NTP? (Submitted: Aug 24, 2021 1:39:46 PM EDT)

**Answer**

- Construction Notice to Proceed will be determined during Phase I Preconstruction Services (Answered: Aug 25, 2021 4:29:49 PM EDT)

4:29:49 PM EDT)

**Question 9**

page 33 of 67 section 4.27 refers to Subconsultant information and it request we clearly identify who we will use as subconsultants. then on page 37 of 67 under section 5.3.1 for selection criteria the table states that Tab G is where we would provide 3 verifiable refereneces for past projects of similar scope and size worth 15 points. please clarify what information the city is looking for in tab G (Submitted: Aug 25, 2021 2:13:20 PM EDT)

**Answer**

- Please see Addendum No. 1 for revised Section 5.3.1 - Initial Selection Criteria â€” Table

The City is looking for Past Performance: Provide six (6) verifiable references for projects of similar size, scope and complexity that have been completed within the last five (5) years. Reference Questionnaire requirements per Section 4.2.3. (Answered: Aug 26, 2021 12:34:42 PM EDT)

**Question 10**

For clarification from question #2 and #5 previously asked, do we have the option to submit an electronic upload OR hard copy response, or are we required to submit the hard copy as well. (Submitted: Aug 25, 2021 9:04:33 PM EDT)

**Answer**

- Hard copy response.

For FedEx and UPS the address is:

City of Hollywood  
Records & Archives Division  
Annex Building, Room 16W  
2600 Hollywood Blvd

If not using FedEx or UPS the address is:

City of Hollywood  
PO Box 229045  
Hollywood, FL 33022-9045 (Answered: Aug 26, 2021 12:34:42 PM EDT)

**Question 11**

in regards to the "reference questionnaire" is the city going to be the contacting the firms for which we provide a referenced project to get it signed by the individual we provide the contact information for or do we submit our proposal with a reference questionnaire that has already been filled in out and signed by said reference individual? (Submitted: Aug 26, 2021 11:06:32 AM EDT)

**Answer**

- Submit proposals with Reference Questionnaire that has already been filled in out and signed by said reference individual. (Answered: Aug 26, 2021 12:34:42 PM EDT)