

CITY OF HOLLYWOOD, FLORIDA
CONSTRUCTION MANAGEMENT AT RISK SERVICES
AGREEMENT



PHASE I
PRE-CONSTRUCTION SERVICES

<INSERT PROJECT NAME>
<INSERT PROJECT NUMBER>

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



CONSTRUCTION MANAGEMENT AT RISK SERVICES AGREEMENT

PHASE I

PRE-CONSTRUCTION SERVICES

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

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

Whereas, it is the best interests of the CITY to obtain professional construction management services in order to insure quality timely and valued construction from a pre-approved professional Construction Manager (CM), and

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

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

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

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

Construction Management at Risk Firm
Phase I Pre-Construction Services

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

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

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(A) ARTICLE 1

SCOPE OF WORK

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

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

ARTICLE 2

(B) DEFINITIONS

- 2.01 CHANGE ORDER: A written document ordering a change in the Contract Price or Contract Time or a material change in the Work as determined by the PROJECT MANAGER.
- 2.02 CITY COMMISSION: The CITY Commission of the CITY of Hollywood, its successors and assigns.
- 2.03 CITY OR OWNER: The CITY of Hollywood, Florida, a Florida Municipal Corporation, which is the party hereto for which this Contract is to be performed. In all respects hereunder, CITY performance is pursuant to the CITY's position as the owner of a construction project. In the event CITY exercises its regulatory authority as a governmental body, the exercises of such authority and the enforcement of any rules, regulations, laws and ordinances shall be deemed to have occurred pursuant to the City's authority as a governmental body and shall not be attributable in any manner to CITY as a party to this contract.
- 2.04 CONSULTANT: The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects and/or engineers, which has entered into an agreement to provide professional services to the Owner for this project.
- 2.05 CONTINGENCY: An established sum included in the Guaranteed Maximum Price (GMP) for the purpose of defraying actual expenses that may arise due to

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

- 2.06 CONTRACT: This Construction Agreement.
- 2.07 CONTRACT DOCUMENTS: The Project Manual (including this Agreement and its Exhibits, Attachments and Forms), drawings and specifications, the Request For Qualifications and CONTRACTOR's response thereto (as negotiated and accepted by the CITY), any Addenda to the Project Manual, the record of the contract award by the CITY Commissioners, the Contract, the Performance Bond and Payment Bond, the Notice of Award, the Notice(s) to Proceed, the Purchase Order and all agreed upon modifications issued after execution of the Contract are the documents which are collectively referred to as the Contractor Documents.
- 2.08 CONTRACT PRICE: The amount established in the Contract as the Guaranteed Maximum Price (GMP), as may be amended if so warranted, by a Change Order issued in conformity with the Contract Documents.
- 2.09 CONTRACTOR: An individual, partnership, corporation, association, joint venture, or any combination thereof, which has entered into the contract with the Owner for construction of CITY of Hollywood, Florida, facilities and incidents thereto. The construction manager at risk for this project is <Contractor Name>. CONTRACTOR, for purposes of this agreement shall have the same meaning as Construction Manager at Risk.
- 2.10 DIRECTOR: The Director of the Department of Development Services of the CITY of Hollywood, Florida, having the authority and responsibility for management of the specific projects authorized under this Agreement.
- 2.11 FINAL COMPLETION: The date certified by the CONSULTANT and PROJECT MANAGER in the Final Certificate of Payment in which all conditions and requirements of any permits and regulatory agencies have been satisfied; and the documents (if any) required to be provided by CONTRACTOR have been received by the PROJECT MANAGER; and to the best of CONSULTANT'S and PROJECT MANAGER's information and belief has been fully completed in accordance with the terms and conditions of the Contract Documents.
- 2.12 GENERAL CONDITION ITEMS: The provision of facilities or performance of work by the CONTRACTOR for items, which do not lend themselves readily to inclusion in one of the separate trade contracts. Payment for the General Condition items will be at cost and included as part of the Guaranteed Maximum Price.

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

- 2.22 RESIDENT PROJECT REPRESENTATIVE: An authorized representative of CONSULTANT on the Project.
- 2.23 SUBCONTRACTOR: A person, firm or corporation having a direct contract with the CONTRACTOR, including one who furnishes material worked to a special design according to the Project Manual for this work, but does not include a person, firm or corporation merely furnishing material not so worked.
- 2.24 SUBSTANTIAL COMPLETION: That date on which, as certified in writing by CONSULTANT, the Work, or a portion thereof designated by the PROJECT MANAGER in his/her sole discretion, is at a level of completion in substantial compliance with the Contract Documents such that all conditions of permits and regulatory agencies have been satisfied and the Owner or its designee can enjoy beneficial use or occupancy and can use or operate it in all respects for its intended purpose(s).
- 2.25 SURETY: The surety company or individual which is bound by the performance bond and payment bond with and for CONTRACTOR who is primarily liable, and which surety company or individual is responsible for CONTRACTOR's acceptable and timely performance of the work under the contract and for the payment of all debts pertaining thereto in accordance with Section 255.05, Florida Statutes, as amended from time to time. All surety companies or individuals shall be authorized to conduct suretyship business under Florida Law and have a Florida Resident Agent.
- 2.26 WORK: The totality of the obligations, including construction and other services required by the Contract Documents, whether completed or partially completed, including all labor, materials, equipment and service provided or to be provided by CONTRACTOR to fulfill CONTRACTOR's obligations. The work may constitute the whole or a part of the project.
- 2.27 WRITTEN NOTICE: Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last known business address. Electronic, facsimile (FAX) or other telephonic transmission shall not be considered as written notice.

ARTICLE 3

TERM AND TIME OF PERFORMANCE

- 3.1 The term of this Agreement shall begin on the date it is fully executed by both parties and shall end on the date of commencement of the term of the agreement between the CITY and the CONTRACTOR for construction services for the **<Project Name>** or, no later than, **<specify date>**, unless terminated in accordance with Article 8. The CITY's PROJECT MANAGER shall have the authority to extend the term of this Agreement for a period of time not-to-exceed sixty (60) calendar days only when such extension of time is necessitated by the CITY's Consultant/Architect for the Project. Any such extension shall be accomplished by an amendment to this Agreement in accordance with the "AMENDMENTS" provisions stated in Section 9.18 herein.
- 3.2 All duties, obligations, and responsibilities of CONTRACTOR required by this Agreement shall be completed no later than **<specify date>**. Time shall be deemed to be of the essence in performing the duties, obligations and responsibilities required by this Agreement.
- 3.3 At or before the above referenced completion date for this contract the CONTRACTOR, following completion of cost estimating, value engineering and other services set forth in Article 4 will tender to the CITY a written Guaranteed Maximum Price (GMP) for final completion of this project. The City, by and through the Director, the PROJECT MANAGER and/or other CITY personnel, will have the opportunity to negotiate the amount of the GMP with the CONTRACTOR. In the event a GMP which is satisfactory to CITY personnel in their reasonable discretion is not agreed upon in writing within 30 days of the tender of GMP, the CITY reserves the right to terminate this Contract for convenience and the CONTRACTOR will immediately tender all documents, in accordance with the applicable provisions of this agreement. The CONTRACTOR shall have no recourse from this termination and the CITY shall take such documents, as defined, in 9.1 herein, and commence negotiations with the second and third ranked firm, respectively. Conditions precedent to a Phase II contract for this project are the satisfactory final completion of Phase I and an agreed upon GMP. If a GMP is agreed to with the CONTRACTOR, a separate agreement will be entered into between the parties.

ARTICLE 4

COMPENSATION

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

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

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

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

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

4.2 METHOD OF BILLING AND PAYMENT

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

4.2.2. CITY shall pay CONTRACTOR within thirty (30) calendar days of receipt of CONTRACTOR's proper statement. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by PROJECT MANAGER. Payment may be withheld for failure of CONTRACTOR to comply with a term, condition, or requirement of this Agreement.

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

4.4 Payment shall be made to CONTRACTOR at:

<Contractor's Name and Address>

ARTICLE 5

CHANGES IN SCOPE OF SERVICES

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

ARTICLE 6

INDEMNIFICATION

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

ARTICLE 7

INSURANCE

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

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

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

7.2 COMPREHENSIVE GENERAL LIABILITY:

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

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

7.3 COMMERCIAL AUTOMOBILE LIABILITY

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

Combined Single Limit	\$500,000
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Coverage shall include contractual liability assumed under this agreement, owned, hired and non-owned vehicles

7.4 WORKER'S COMPENSATION INSURANCE

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

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

7.5 PROFESSIONAL LIABILITY

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

The minimum limits of liability shall be:

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

7.6 BUILDER'S RISK INSURANCE REQUIREMENTS

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

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

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

7.7 SUBCONTRACTORS

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

ARTICLE 8

TERMINATION

- 8.1 This Agreement may be terminated for cause by action of the CITY or by CONTRACTOR if the party in breach has not corrected the breach within thirty (30) days after written notice from the aggrieved party identifying the breach, or for convenience by action of CITY, without any cause, upon not less than thirty (30) days' written notice by PROJECT MANAGER. This Agreement may also be terminated by PROJECT MANAGER upon such notice as PROJECT MANAGER deems appropriate under the circumstances in the event PROJECT MANAGER determines that termination is necessary to protect the public health, safety, or welfare.

- 8.2 Termination of this Agreement for cause shall include, but not be limited to, failure to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives of CITY as set forth in this Agreement notwithstanding whether any such breach was previously waived or cured.
- 8.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement, except that notice of termination by PROJECT MANAGER, which PROJECT MANAGER deems necessary, to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 8.4 In the event this Agreement is terminated for convenience, CONTRACTOR shall be paid for any services performed to the date the Agreement is terminated; however, upon being notified of CITY's election to terminate, CONTRACTOR shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. CONTRACTOR acknowledges and agrees that ten dollars (\$10.00) of the compensation to be paid by CITY, the adequacy of which is hereby acknowledged by CONTRACTOR, is given as specific consideration to CONTRACTOR for CITY's right to terminate this Agreement for convenience.
- 8.5 In the event this Agreement is terminated, any compensation payable by CITY shall be withheld until all documents are provided to CITY pursuant to Section 9.1 herein.

ARTICLE 9

MISCELLANEOUS

9.1 OWNERSHIP OF DOCUMENTS

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

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

9.2 AUDIT RIGHT AND RETENTION OF RECORDS

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

CONTRACTOR shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Statue.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to CONTRACTOR's records, CONTRACTOR shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONTRACTOR. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.

9.3 NONDISCRIMINATION

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

9.4 PUBLIC ENTITY CRIME ACT

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

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

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

9.5 INDEPENDENT CONTRACTOR

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

9.6 PREVAILING WAGE REQUIREMENT

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

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

- 9.6.2 Upon commencement of work, the CONTRACTOR and all of its SUB-CONTRACTORS shall post a notice in a prominent place at the work site stating the requirements of this section.
- 9.6.3 If any questions should arise concerning the applications of this Section, which are not specifically addressed, the CITY may, but is not required to, rely on rules, regulations, practices, administrative rulings and court decisions governing applications of the Davis-Bacon Act.
- 9.6.4 CONTRACTOR and SUBCONTRACTORS shall submit to the CITY on a regular basis, but not less than monthly, payroll sheets, which has been certified under oath by CONTRACTOR and/or SUBCONTRACTORS as to their accuracy and compliance with the provisions of this Section. The certified payroll sheets shall contain the following: name and address of each employee; his/her current classification; rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid. Such records shall be maintained by the CONTRACTOR and its SUBCONTRACTORS for a period of at least three (3) years following completion of the work.
- 9.6.5 The CITY may withhold, or cause to be withheld from the CONTRACTOR, so much of any requisitioned payment as may be considered necessary to pay laborers, mechanics and apprentices the full amount of wages required by this section. The CITY, or its designee, may enter on the job site and conduct such inquiries of the CONTRACTOR'S workers and his/her subcontractor's workers to determine whether this section is being complied with. If the CONTRACTOR or its SUBCONTRACTOR fails to pay any laborers, mechanics or apprentices employed or working on the job site all or part of the wages required by this section, then the CITY may, after written notice to the CONTRACTOR, take such action as may be necessary to cause suspension of any further payments or advances until such violations have been corrected. If the violations are not corrected, the CITY may terminate the CONTRACTOR'S right to proceed with the work or such part of the work for which there has been a failure to pay the required wages and take such steps as are necessary to complete the work, whereupon the CONTRACTOR and its sureties shall be liable to the CITY for all excess costs incurred by the CITY.
- 9.6.6 The CONTRACTOR shall insert in any subcontracts such language as is necessary to require all of his/her SUBCONTRACTORS to comply with the requirements of this section. The CONTRACTOR shall be responsible for noncompliance by any of his/her SUBCONTRACTORS. This section shall be deemed part of any contract entered into between the CONTRACTOR and any of his/her SUBCONTRACTORS.

9.7 THIRD PARTY BENEFICIARIES

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

9.8 NOTICES

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

CITY OF HOLLYWOOD:

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

FOR CONTRACTOR:

<Name and Address of Representative>

9.9 ASSIGNMENT AND PERFORMANCE

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

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

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

9.10 CONFLICTS

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

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

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

9.11 CONTINGENCY FEE

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

9.12 MATERIALITY AND WAIVER OF BREACH

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

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

9.13 COMPLIANCE WITH LAWS

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

9.14 SEVERANCE

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

9.15 JOINT PREPARATION

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

9.16 PRIORITY OF PROVISIONS

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

9.17 APPLICABLE LAW AND VENUE

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for litigation or any proceedings concerning this Agreement shall be in Broward County, Florida.

9.18 AMENDMENTS

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

9.19 PRIOR AGREEMENTS

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with Section 9.18 above.

9.20 DRUG-FREE WORKPLACE

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

9.21 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth herein is acknowledged by the parties. The attached Exhibits A and B, and Forms 1, 2, 3 and 4 are incorporated into and made a part of this Agreement.

9.22 COUNTERPARTS

This contract may be executed in two (2) or more copies by all parties, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ARTICLE 10

SUBCONTRACTORS AND PURCHASE ORDERS

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

The CONTRACTOR shall prepare for CONSULTANT'S and PROJECT MANAGER'S review and approval a list of subcontractors and suppliers for each bid who meet the CONTRACTOR'S schedule of minimum requirements. The CONTRACTOR shall obtain bids from a minimum of three (3) such subcontractors for each subcontract, when available. After receiving such bids, the CONTRACTOR shall analyze them and make recommendations to the CONSULTANT for awards. When the CONSULTANT and the PROJECT MANAGER have approved the award of any such subcontract or purchase order, the CONTRACTOR shall contract solely in its own name and behalf, and not in the name or behalf of the CITY, with the specified subcontractor or supplier. The subcontract shall provide that the subcontractor shall perform its portion of the Work in accordance with all applicable provisions of this Contract and the other Contract Documents; that the subcontractor shall be bound to the CONTRACTOR, to the same extent as the CONTRACTOR is bound to the CITY, to name the CITY as an additional insured on its comprehensive general liability insurance; that the subcontractor shall provide an insurance certificate evidencing the same; that the CONTRACTOR shall have the right to terminate the subcontract in the same manner and by the same method as provided for termination of this Contract by the CITY, or as otherwise provided in the subcontract, whichever is more protective of the CITY'S interest; and that, in the event this Contract is terminated for any reason, the subcontractor shall, at the CITY'S option, perform its subcontract for the CITY, or for a CONTRACTOR designated by the CITY, without additional or increased cost, provided the subcontractor is paid in accordance with its subcontract. The CONTRACTOR shall sign and cause each subcontractor to sign an Assignment of Rights under Construction Subcontract. Nothing contained herein shall impose on the CITY an obligation to assume any subcontract or make any payments to any subcontractor to perform, and nothing contained herein shall create any contractual relationship between the CITY and any subcontractor. If the

CONSULTANT and the PROJECT MANAGER shall approve as the selected subcontractor or supplier a bidder whose bid exceeds that of the bidder recommended by the CONTRACTOR, whose bid complies with the Contract Documents (the amount by which the bid of the selected subcontractor exceeds the bid of the bidder recommended by the CONTRACTOR is referred to herein as the "preferred subcontractor cost differential"), then the PROJECT MANAGER may designate that the Guaranteed Maximum Price shall be increased by the amount of the preferred subcontractor cost differential or the Contingency Allowance. All subcontracts shall, so far as applicable, contain unit prices and any other feasible formula for use in determination of the cost of changes in the Work.

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

THE CITY OF HOLLYWOOD, FLORIDA
Party of the First Part

By: _____
JOSH LEVY, MAYOR

ATTEST:

PATRICIA A. CERNY, MMC
CITY CLERK

CONTRACTOR
Party of the Second Part

WHEN THE CONTRACTOR IS AN INDIVIDUAL:

Signed, sealed and delivered in the presence of:

(SEAL)

(Witness)
(Signature of individual)

(SEAL)

(Witness)
(Signature of individual)

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

Signed, sealed and delivered in the presence of:

Witness

(Name of Firm)

(SEAL)

(Witness)

(Signature of individual)

WHEN THE CONTRACTOR IS A PARTNERSHIP:

Signed, sealed and delivered in the presence of:

(Witness)

(Name of Firm)

(Witness)

BY:

(Partner)

WHEN THE CONTRACTOR IS A CORPORATION:

ATTEST:

Secretary

(Correct Name of Corporation)

(SEAL)

BY:

(President)

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

APPROVED AS TO FINANCE:

DOUGLAS R. GONZALES, CITY ATTORNEY

BY:

CINTYA RAMOS, DIRECTOR OF
FINANCIAL SERVICES

LIST OF EXHIBITS

EXHIBITS:

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

SCOPE OF SERVICES

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

I. SCHEDULING

- (A) The CONTRACTOR shall develop a Detailed Project Schedule, utilizing Critical path method (CPM) logic sequencing, reflecting the design (remaining portion thereof) and construction of the overall project.
- (B) The CONTRACTOR shall utilize the completed Detailed Project Schedule, to develop a Project Control Schedule, which shall be presented in a bar graph format. The purpose of the Project Control Schedule is to summarize the information contained in the CPM schedule in order to provide the project team with a management tool and an overall project visual aid to easily determine the schedule and status of the total project. The information derived from these two schedules are to become part of the CONTRACTOR's management plan developed by the CONTRACTOR.
- (C) CONTRACTOR shall periodically update on a monthly basis both the Detailed Project Schedule and the Project Control Schedule throughout the term of the preconstruction and construction phases of the project as part of the CONTRACTOR's management activity.

II. CONSTRUCTABILITY REVIEW

- (C) The CONTRACTOR shall review and evaluate Design Development documents (if applicable) for clarity, consistency, completeness, and ease of construction in order to achieve the overall objective of the project.
- (B) CONTRACTOR's review of the design documents shall include the following activities:
 - 1. Preparing a Master Checklist to be used as a guide for reviewing each technical discipline.

SCOPE OF SERVICES (CONTINUED)

2. Conducting reviews by preparing a “mark-up” set of documents and a list of comments corresponding to the “mark-up.”
3. Preparing and presenting a written report of constructability problems and concerns, including:
 - (a) recommendations
 - (b) checklist and comments
4. Attending workshop meetings with the Consultant and the PROJECT MANAGER to review proposed changes and recommending the changes, which are to be implemented for the project.
5. Verifying and conducting final review of changes to the construction Documents.

III. COST ESTIMATING

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

SCOPE OF SERVICES (CONTINUED)

- (D) The third Construction Cost Estimate shall be based on one hundred percent (100%) complete construction documents and shall be “permit ready” with sufficient detail to permit issuance of a building permit and to obtain all required approval of all governmental authorities having jurisdiction over the project. The third Construction Cost Estimate shall be used as the basis for negotiating the Guaranteed Maximum Price (GMP) for the project and the basis for monitoring status of the project throughout the construction phase.

IV. VALUE ENGINEERING

As a result of the CONTRACTOR'S Constructability Review or Construction Cost Estimate and in order to reduce or control costs, the CONTRACTOR shall analyze the building's structural, architectural, mechanical, electrical and plumbing systems and elements, and make cost/performance recommendations for the PROJECT MANAGER's and Consultant's consideration. The CONTRACTOR shall prepare its recommendation in the form of a written report to be presented to the project team.

V. GUARANTEED MAXIMUM PRICE (GMP)

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

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

VI. PREQUALIFICATION OF SUBCONTRACTORS

- (A) The CONTRACTOR shall conduct a community outreach program to identify potential local subcontractors who may be selected to participate in the project.
- (B) The CONTRACTOR shall evaluate potential participants to establish their qualifications (based on past work experience, similar projects, the building quality of those past projects, and other similar factors).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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