

**CONSTRUCTION MANAGEMENT AT RISK
PHASE 1 PRE-CONSTRUCTION SERVICES AGREEMENT**

**BY AND BETWEEN THE CITY OF OAKLAND PARK
AND STATE CONTRACTING & ENGINEERING CORPORATION
FOR
PROFESSIONAL CONSTRUCTION MANAGEMENT SERVICES
FOR CONSTRUCTION OF FIRE STATION 87 – PHASE 2 PROJECT**

This Agreement made this _____ day of _____ in the year _____, by and between the City of Oakland Park, Florida, a municipal corporation, hereinafter referred to as the “CITY” and State Contracting & Engineering Corp., a Florida corporation, duly licensed to do business in the State of Florida, hereinafter referred to as the “Construction Manager”.

WITNESSTH:

WHEREAS, the City of Oakland Park, Florida desires to construct and/or renovate the existing Fire Station 87; and

WHEREAS, it is the best interest of the CITY to obtain professional construction management services from a pre-approved professional Construction Manager At Risk (CMAR) to insure quality, timely and valued construction; and

WHEREAS, the CITY, issued a Request for Qualifications, (RFQ # 120919), for Construction Manager at Risk for the construction of Fire Station 87 – Phase 2 (the “Project”); and

WHEREAS, Construction Manager submitted the Response to the RFQ (the “Response”) that was deemed the most qualified for the performance of the services described in the RFQ, which Responses and RFQ are incorporated into and made a part of this Agreement; and

WHEREAS, Construction Manager represents that it possesses the requisite expertise and desires to enter into an agreement to act as Construction Manager at Risk to the City to provide the services as set forth herein; and

WHEREAS, the City Commission has authorized the City Manager to execute and enter into this Agreement by Resolution No.: _____ adopted _____; and

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and compensation set forth herein the City and Construction Manager agree as follows:

ARTICLE 1
GENERAL TERMS AND CONDITIONS

- 1. Overview/Recitals.** This agreement sets forth the terms and conditions pursuant to which Construction Manager will provide Construction Manager at Risk Services for the construction of Fire Station 87 – Phase 2, as further detailed in this Agreement. The Recitals are incorporated into and made a part of this Agreement.
- 2. Intention of City.** It is the intent of the City to describe in the Contract Documents a functionally complete Project to be constructed in accordance with the Contract Documents and in accordance with all codes and regulations governing construction of the Project. 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 Construction Manager whether or not specifically stated in this Agreement. Where 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 opening bids and Construction Manager shall comply therewith. City shall have no duties other than those duties and obligations expressly set forth within the Contract Documents.
- 3. Construction of the Agreement.** This Agreement is comprised of three sections, which are applicable in the following manner:
 - Section 1 – General Terms and Conditions: This Section applies to both the Pre-Construction and Construction Phase Services, if awarded, except where it is stated that the requirement applies only to a specific Phase.
 - Section 2 – Pre-Construction Phase: The provisions of this Section apply only to the Pre-Construction Phase Services.
 - Section 3 – Construction Phase: The provisions of this Section are only applicable to the Construction Phase Services and shall only become effective upon the City's execution of the GMP Amendment.
- 4. Agreement Term.** The Agreement shall commence upon issuance of the Notice of Award, which shall be issued subsequent to the execution of the Agreement by the City. The Agreement shall terminate upon notice by the City that the Agreement has been closed-out after Final Completion or otherwise terminated by the City pursuant to the terms and conditions herein set forth.

5. Definitions

Acceptance means the formal written acceptance by the CITY of the completed Work. Acceptance shall mean that all of the Work required by the Contract or individual work orders issued are fully executed and completed in accordance with the Construction Documents so that no Work remains to be completed. No further performance of Work shall be required except in regard to the correction of latent defects, gross mistakes and fraud. This shall require that all close-out documentation be fully completed, submitted, and approved.

Agreement means this Agreement, together with all documents incorporated herein by reference and the Contract Documents.

Agreement Time means the time period defined in this Agreement for the Construction Manager to complete the Pre-Construction Phase Services and submit the GMP Proposal, which shall be amended to reflect the Construction Phase should the City accept the GMP Proposal.

Basis of Design means a specific manufacturer's product that is named, including the make or model number or other designation, establishing the significant qualities related to type, function, dimension, in-service performance, physical properties, appearance, and other characteristics for purposes of evaluating comparable products of other manufacturers.

Change Order means a written document ordering a change in the Agreement Price or Agreement Time or a material change in the Work as determined by the Project Manager. A Change Order must comply with the Contract Documents.

City means the City of Oakland Park, Florida, a Florida municipal corporation. In all respects hereunder, City's performance is pursuant to the City's capacity as Owner of the Project. In the event the City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, authority as a governmental body and shall not be attributable in any manner to the City as a party to this Agreement. For the purposes of this Agreement, "City" without modification shall mean the City Manager or Director, as applicable.

City Commission means the legislative body of the City of Oakland Park.

City Manager means the duly appointed chief administrative officer of the City of Oakland Park.

Constructability means the creative, organized process of analyzing a project's drawings, specifications and other project documentation with a goal of minimizing design, detailing, and specification problems which might render the construction contract documents unbuildable or requiring addenda or change orders to make them buildable.

Construction Estimate means a cost estimate for the completion of the Work, which estimate shall include all components of the cost of the Work, as well as the Construction Manager's Fees for the Project.

Construction Change Directive means a written directive to effect changes to the Work, issued by the Consultant or the Project Manager that may affect the Agreement Price or Time.

Construction Manager means (name of Firm) selected to provide services including, but not limited to, preparation of cost estimates, constructability reviews, value engineering and assist in systems life cycle cost analysis, estimating, scheduling, bidding and submission of a GMP, as defined below, for construction, and construction management. Upon execution of the GMP Amendment, the Construction Manager shall serve, from that point forward, as the General Contractor under this Agreement.

Construction Manager's Fees means the Construction Phase fee to be negotiated with the Construction Manager for general conditions, overhead and profit compensation portion of the GMP, as defined below.

Construction Phase Services means the services to be performed through the Construction Manager during the construction phase of the Project, including without limitation, the Construction Work and such other services as required by this Agreement or reasonably inferred herein.

Construction Work means all Work required by this Agreement for the Construction Phase of Project.

Consultant means 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 City for this Project.

Contingency means the dollar amount or percentage included in the Guaranteed Maximum Price (GMP) to be used by the CONTRACTOR, with the CITY's written approval, for changes requested by the City in the ____% Construction Documents or Specifications. Any unused amount of the Contingency at Final Completion shall vest to the CITY.

Contract Documents means the Proposal submitted by the CONTRACTOR in response thereto as negotiated and accepted by the CITY, this Agreement and its Exhibits, attachments and Forms, final, permitted Construction Documents and Specifications, any Addenda to the RFQ, the Performance Bond, the Notice of Award, the Notice(s) to Proceed, the Purchase Order and all agreed upon modifications issued after execution of the Agreement are the documents which are collectively referred to as the Contractor Documents.

Contract Price means the amount established in the Contract as the Guaranteed Maximum Price (GMP), as may be amended by Change Order.

Cure means the action taken by the Construction Manager promptly after receipt of written notice from the City of a breach of the Agreement for the Work, which shall be performed at no cost to the City, to repair, replace, correct, or remedy all material, equipment, or other elements of the Work or the Agreement affected by such breach, or to otherwise make good and eliminate such breach, including, without limitation, repairing, replacing or correcting any portion of the Work or the Project site disturbed in performing such cure.

Cure Period means the period of time in which the Construction Manager is required to remedy deficiencies in the Work or compliance with the Contract Documents after receipt of written notice to Cure from the City identifying the deficiencies and the time to Cure.

Completion means 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 Construction Manager 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.

General Conditions means the provision of facilities or performance of work by the CONTRACTOR for items at cost and including:

1. Wages of construction workers directly employed by Construction Manager to perform the construction of the Work at the Project site or at off-site workshops;
2. Wages or salaries of the Construction Manager's supervisory, technical and administrative personnel who are stationed at the Project site;
3. Wages and salaries of Construction Manager's supervisory and administrative personnel engaged at factories, workshops or on the road in expediting the

- production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work;
4. Wages and salaries of Construction Manager's supervisory, technical, and administrative personnel when assigned to the Project and specifically working on this Project in the Construction Manager's administrative or home offices;
 5. Costs, including transportation, installation, maintenance, dismantling and removal, of materials, supplies, temporary facilities (including project field offices, furniture and fixtures), all temporary utilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site and fully consumed in the performance of the Work; and costs less salvage value on such items if not fully consumed, whether sold to others or retained by Construction Manager;
 6. Rental charges, at standard industry rates for the area, for temporary facilities, machinery, vehicles, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site, whether rented from Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of all equipment rented, whether from Construction Manager or others;
 7. Cost of clean-up on the Project site(s), and removal and proper disposal of debris from the Project sites;
 8. Costs of long distance telephone calls, cellular telephone calls, Internet service, postage and parcel delivery charges and telephone service at the Project site and reasonable petty cash expenses of the Project site office;
 9. That portion of the reasonable travel and subsistence expenses of Construction Manager's personnel, assigned to the Project site, incurred while traveling outside of the Broward County area in discharge of duties connected with the Work;
 10. Cost of reproducing and printing;
 11. Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which Construction Manager is liable.
 12. Fees and assessments for the building permit and for other permits, licenses and inspections for which Construction Manager is required by the Contract Documents to pay;
 13. Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded pursuant to the terms of this Contract;
 14. Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents;
 15. Deposits lost for causes other than Construction Manager's fault or negligence;

16. Legal, mediation and arbitration costs, other than those arising from disputes between Owner and Construction Manager, reasonably incurred by Construction Manager in performance of the Work and with Owner's prior written consent;
17. Costs incurred in repairing or correcting damage or nonconforming Work executed by Construction Manager, or its subcontractors or suppliers, provided that such damage or nonconforming Work was not caused by the negligence of Construction Manager;
18. Cost of site safety and security;
19. Cost of documentation, inspection and testing as required by the Contract Documents or the Construction Documents and Specifications;
20. Bonds and insurance premiums as required by Contract (except Builders Risk, General Liability and the Payment and Performance Bonds shall be invoiced separately as 'pass through costs');
21. Cost to protect the Work and adjacent property from loss and damage.

Final Completion means the date when all punch list items are completed, including all closeout requirements, submittals and approval by the CONSULTANT, is given to the CITY in writing. Final Completion not accepted until approved by the CITY.

Guaranteed Maximum Price means the sum agreed to between the Construction Manager and the City and set forth in the GMP Amendment as the maximum total Project price that the Construction Manager guarantees not to exceed for the construction of the Project and for all services under this Agreement, excluding only the Pre-Construction Fee. The CITY reserves the rights to request the submission of the GMP proposal to reflect one or more stages of construction.

GMP Amendment means the GMP Proposal, as may be amended and accepted by the City, at its sole discretion, which amendment shall automatically become incorporated herein upon the City and the Construction Manager's execution of same, and shall establish, among other things, the GMP, the names of the Construction Manager's on-site management and supervisory personnel for the Project, and the Agreement Time for the Construction Work.

GMP Proposal means a proposal for completing the Construction Work, which will be submitted based on ninety percent (90%) Construction Documents and Specifications for the Project. Such proposal shall include the GMP for the construction of the Project once it has been accepted by the City based upon the Drawings and Specifications, the Contract Documents and Memorandum of Changes. However, the City has no obligation to accept the GMP Proposal.

Inspector means an employee of the CITY of Oakland Park, Florida, assigned by the Director to make observations of work performed by a Contractor.

Materials means Materials incorporated in this Project, or used or consumed in the performance of the Work.

Project Schedule means the Schedule prepared by the Construction Manager and approved by the City and a scheduling consultant retained by the City, using a critical path method, as updated monthly, that identifies, coordinates and integrates the design and construction schedules for the development of the Project. The Preliminary Project Schedule is attached.

Memorandum of Changes means the notification provided to the City and the Consultant by the Construction Manager at the times specified in this Agreement that recommends changes based on the Value Engineering and Constructability reviews.

Notice to Proceed means written notice or directive issued by the Director or City's Project Manager acknowledging that all conditions precedent have been met and directing that the Construction Manager may commence work on the Project or a specific task of the Project.

Pre-Construction Fee means the fixed lump sum fee payable to the Construction Manager for the Work performed during the Pre-Construction Phase related to the Project, accepted by the City and the Construction Manager, which fee includes all direct and indirect costs incurred by the Construction Manager in the proper performance of the design, bid and award services.

Pre-Construction Phase Services means the services the Construction Manager shall perform for the design phase of the Agreement and culminates with the exercise by City of one of the City's options regarding the GMP proposal.

Pre-Construction Work means all work required by this Agreement during the Pre-Construction Phase of the Project.

Professional Services means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as applicable, as defined by the laws of the State of Florida, or those performed by any architect, professional engineer, landscape architect, or registered surveyor or mapper in connection with his or her professions employment or practice.

Progress Report means a monthly progress report to be prepared by Construction Manager and will contain the following: (a) listing of actual costs for completed activities and estimates for uncompleted tasks; (b) identification of variances between actual and budgeted or estimated costs; (c) the updated Project Schedule; (d) progress photos; (e)

executive summary; (f) a discussion of pending items and existing or anticipated problems

Project means the construction, alteration or repair, and all service and incidents thereto, of public facilities, as contemplated and budgeted by the City, including the work described herein.

Project Manager means an employee of the CITY of Oakland Park, expressly designated as PROJECT MANAGER in writing by the DIRECTOR, who is the representative of the City, concerning the Contract Documents.

Punch List means the list of items, prepared in connection with the inspection of the Project by the CITY'S Representative and the CONSULTANT in connection with Substantial Completion of the Work or a portion of the Work, which the City's Representative or CONSULTANT has designated as remaining to be performed, completed or corrected before the Work will be accepted by the CITY. The preparation of a complete Punch List for the area or building to be occupied as agreed upon between the CITY and CONTRACTOR by the CITY shall be an absolute condition precedent to the CITY'S occupancy of any portion of the Project.

RFQ means 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.

Resident Project Representative means an authorized representative of CONSULTANT on the Project.

Shop Drawings are drawings, diagrams, schedules and other product data specifically prepared for the Work by the CONTRACTOR or a Sub-Contractor, sub-Sub-Contractor, manufacturer, supplier or distributor to illustrate the specific requirements for some portion of the Work. The Construction Drawings shall not be used as Shop Drawings

Subcontractor means 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 RFQ for this work, but does not include a person, firm or corporation merely furnishing material not so worked.

Substantial Completion means 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 City or its designee can enjoy beneficial use or occupancy and can use or operate it in all respects for its intended purpose. A Certificate of Final Inspection must be issued for Substantial Completion to be achieved, however, the issuance of a Certificate of Occupancy or the date thereof is not to be determinative of the achievement or date of Substantial Completion.

Surety means 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.

Work means 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.

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 2

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 below and attached in Exhibit A, upon issuance of Contractor's Notice to Proceed by the Capital Projects Manager.

2.1 CONTRACTOR hereby agrees to furnish all of the labor, materials, equipment services and incidentals necessary to perform all services described in Articles 1 through 26, including the proposal of a Guaranteed Maximum Price (GMP), for the Project, based on ~~ninety~~ one-hundred percent (100%) Construction Drawings and Specifications prepared by ACAI Associates, Inc. (CONSULTANT).

The scope of work defining preconstruction services to be provided by the Construction Manager specifically shall be provided in the attached Exhibit A

Preconstruction Services, and the Proposed Approach submitted in response to RFQ # 120919.

- 2.2 CONTRACTOR shall provide and pay a livable wage for competent, suitably qualified personnel to perform the work as required by the Contract Documents. CONTRACTOR shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. CONTRACTOR shall at all times maintain good discipline and order at the site.

ARTICLE 3

TERM AND TIME OF PERFORMANCE

- 3.1 The term of this Agreement shall coincide with the design development of the construction documents by the consultant and it 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 RFQ # 120919 no later than the issuance of all final permits or the City's Notice To Proceed on the Guaranteed Maximum Price (GMP) for the project, whichever is the later, unless terminated in accordance with Article 8. The Contractor shall deliver to the City a GMP within 8 weeks of completion of the 90% construction documents. These 8 weeks will occur concurrent with the Designer of Records preparation of 100% plans. The CITY 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 and approved by the CITY. Any such extension shall be accomplished by an amendment to this Agreement in accordance with the "AMENDMENTS" provisions stated in Article 25 herein.
- 3.2 All duties, obligations, and responsibilities of CONTRACTOR required by this Agreement shall be completed no later than time specified in section 3.1 above. 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'S 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 may take such documents, as defined, and commence negotiations with the second and third ranked firm, respectively. Conditions precedent to a GMP Amendment for this Project are the satisfactory final completion of Phase I and an agreed upon GMP

ARTICLE 4

COMPENSATION

- 4.1 CITY agrees to pay CONTRACTOR, in the manner specified in Article 4.2, the total Lump Sum Compensation in the amount of Thirty-Nine Thousand (\$ 28,950) 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 Pre-Construction services related to the Scope of Services set forth in the RFQ, 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.
- 4.2 The Lump Sum Compensation shall be paid out in accordance with the percentage amount set forth therein as follows in Attached Exhibit A.
- 4.3 It is understood that the method of compensation is that of Lump Sum which means that CONTRACTOR shall perform all services set forth in the RFQ, and in this Agreement, for the total compensation in the Lump Sum amount, including all reimbursable expenses.
- 4.4 **METHOD OF BILLING AND PAYMENT**
- 4.4.1 CONTRACTOR may submit invoices for compensation 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.
- 4.4.2 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.

4.5 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 Article 4.1 herein. The amount withheld shall not be subject to payment of interest by CITY.

4.6 Payment shall be made to CONTRACTOR at:

5391 N Nob Hill
Sunrise, FL 33351

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 Article 25.

ARTICLE 6

INDEMNIFICATION

To the fullest extent permitted by law, the CONTRACTOR agrees to indemnify and hold-harmless the
City, its officers and employees from any claims, liabilities, damages, losses, and costs, including,
but
not limited to, reasonable attorney fees to the extent caused, in whole or in part, by the
professional
negligence, error or omission of the CONTRACTOR or persons employed or utilized by the
CONTRACTOR in performance of the Agreement.

To the fullest extent permitted by law, the CONTRACTOR agrees to indemnify and hold-harmless the
City, its officers and employees from any claims, liabilities, damages, losses, and costs, including,
but
not limited to, reasonable attorney fees to the extent caused, in whole or in part, by the
recklessness
or intentionally wrongful conduct, of the CONTRACTOR or persons employed or utilized by the

CONTRACTOR in performance of the Agreement.

CONTRACTOR agrees to indemnify, save harmless and, at the City Attorney's option, defend or pay for an attorney selected by CONTRACTOR, and CITY has right to reasonably object to selection of counsel, at which time CONTRACTOR will secure a mutually agreeable counsel to defend CITY, their officers, agents, servants and employees against any and all claims, losses, liabilities and expenditures of any kind, including attorney's fees, court costs, and other expenses, caused by negligent act or omission of CONTRACTOR, any sub-contractors, their employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature, whatsoever, resulting from injuries or damages sustained by any person or property. CONTRACTOR further agrees to indemnify and save harmless the CITY, their officers, agents and employees, for or on account of any injuries or damages received or sustained by any person or persons resulting from any construction defects, including latent defects. Neither the CONTRACTOR nor any of its sub-contractors will be liable under this section for damages arising out of intentional torts of CITY or their officers, agents or employees. In the event that any action or proceeding is brought against CITY by reason of any such claim or demand, CONTRACTOR, upon written notice from CITY, shall defend such action or proceeding.

ARTICLE 7

INSURANCE

CONTRACTOR shall procure and maintain for the duration of and in full compliance with the contract insurance against claims for injuries to persons and damage to property which may arise from or in connection with their performance hereunder by the CONTRACTOR, his agents, representatives, employees and subcontractors. The cost of such insurance shall be included in the CONTRACTOR'S Lump Sum Fee for Pre-Construction services and General Conditions for the GMP.

I. Minimum Scope of Insurance

A. Commercial General Liability, including:

1. Premises and Operations.

2. Explosion, Collapse and Underground
3. Products and Completed Operations
4. Independent Contractors
5. Broad Form Property Damage
6. Personal Injury
7. Fire Legal Liability

B. Automobile Liability Insurance, including:

1. Owned Automobiles.
2. Nonowned Automobiles.
3. Hired Automobiles.

C. Workers' Compensation Insurance.

D. Employer's Liability Insurance.

E. Builder's Risk Insurance.

F. Professional Liability Insurance

II. Minimum Limits of Insurance

A. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.

B. Auto Liability: \$1,000,000 combined single limit per occurrence for bodily injury and property damage arising from the operations of all Owned Automobiles, Nonowned Automobiles and Hired Automobiles.

C. Workers' Compensation: Workers' Compensation Insurance as required by the State of Florida.

D. Employer's Liability:

\$100,000 limit per occurrence,
\$500,000 annual aggregate for disease,
\$100,000 limit for disease of an individual employee.

III. Deductibles and Self-Insured Retentions

A. Deductibles/Self-Insurance Retentions Defined:

All deductibles and self-insured retentions must be shown clearly on the Certificates of Insurance and approved by the City.

B. Retention Levels:

The City has the option to reduce or eliminate any deductible or self-insured retention maintained by the contractor.

IV. Other Insurance Provisions

The policies shall contain the following provisions:

A. Additional Insured, Certificate Holder:

All insurances shall include as Additional Insured and Certificate Holder the City of Oakland Park. There are not to be any special limitations on the protection being provided to the City, its officials, officers, employees or volunteers.

B. CONTRACTOR'S Insurance is Primary:

The CONTRACTOR'S insurance coverages shall be primary insurance with respect to the CITY'S, its officials', officers', employees', and volunteers' insurances. Any insurance and self-insurance maintained by the CITY, its officials, officers, employees, or volunteers shall be excess of the contractor's insurances and shall not contribute with it.

C. Coverage Guaranteed:

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers.

D. Occurrence Basis:

The contractor's insurances shall be on an occurrence basis as opposed to a claims-made basis. In other words, claims which occur during the policy period can be reported months or years later and still be paid, if they occur during the policy period.

Claims-made policies cover only claims which occur and are made during the policy period. In the event occurrence based insurance is not available, use of claims-made insurance may be considered acceptable in limited circumstances, subject to written approval by the Risk Manager.

A. 30 Days Notice:

The following clause shall be included in all policies:

This policy shall not be suspended, voided, or cancelled by either party, or a reduction or revision in coverage or limits of coverage except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given the CITY.

F. Separation of Insureds:

The definition of insured shall read as follows: "The insurance afforded applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's liability". The company, in this context, being the CONTRACTOR'S insurance company.

If no such definition of the insured is quoted in the insurance, the contractor must provide "Cross Liability Clause" or "Severability of Interests Clause" endorsements for all liability insurances.

V. Acceptability of Insurance Company

A. Florida State Licensed:

All insurance policies and bonds herein required of the contractor shall be written by a company authorized and licensed to do insurance business in the State of Florida and be executed by agents licensed as agents by the State of Florida.

VI. Verification of Coverage

A. Certificates and Endorsements Provided:

The contractor shall furnish the CITY with a certificate of insurance specifically stating the bid number and title and with original endorsements affecting coverage. The certificates and endorsements must be received and approved before any work commences.

B. Authorized Signatures:

The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

C. Coverage Continuation:

Insurance coverage required in these specifications shall be in force throughout the contract. Should the CONTRACTOR fail to provide acceptable evidence of current insurance within seven (7) days of receipt of written notice at any time during the contract, the CITY shall have the right to consider the contract breached and justifying termination thereof.

Compliance by the CONTRACTOR and its subcontractors with the foregoing requirements as to carrying insurance and furnishing copies of the insurance policies shall not relieve the contractor and all subcontractors of their liabilities and obligations under this contract.

If coverage on the certificates of insurance is shown to expire prior to completion of all terms of the contract with the CITY, the contractor shall furnish certificates of insurance evidencing renewal of such coverage to the CITY.

VII. Limited Contractual Relationship

Nothing contained in these contract specifications shall be construed as creating any contractual relationship between any of the CONTRACTOR'S subcontractors or suppliers and the CITY.

The CONTRACTOR shall be as fully responsible to the CITY for acts and omissions of all subcontractors and suppliers and of all persons employed by the subcontractors and suppliers, as the CONTRACTOR is for acts and omissions of persons directly employed by the CONTRACTOR.

A. Joint Venture:

The parties agree that this agreement shall be the whole and total agreement between the parties, and the contractor is undertaking its activities as for its sole use and benefit and this agreement or the activities resulting therefrom shall in no way be construed to be a joint undertaking with the CITY, nor is the CITY in any way assuming responsibility or benefits of the contractor's activity. The CONTRACTOR acts independently and in its own right, risk and responsibilities. The CITY assumes no direction, control, responsibility or liability for the activities of the CONTRACTOR and, by the execution of this agreement, does not endorse or undertake any activity

heretofore conducted by the CONTRACTOR.

VIII. Other Requirements

A. Subcontractors' Insurance Requirements:

CONTRACTOR shall include all subcontractors as its insured under its policies or shall furnish separate certificates and all endorsements for each subcontractor's coverages. All coverages for subcontractors shall be subject to all the requirements stated herein.

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 the 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 Article 9 herein.

ARTICLE 9
RIGHTS IN DOCUMENTS AND WORK

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 the 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 the 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.

ARTICLE 10
SUBCONTRACTORS AND PURCHASE ORDERS

Unless waived in writing, for good cause, by the CITY, the CONTRACTOR must obtain competitive pricing, in compliance with the requirements of this Article 11, for One Hundred Percent (100%) of the CONTRACTOR's Direct Construction Cost required under this Contract.

ARTICLE 11
AUDIT RIGHT AND RETENTION OF RECORDS

CITY shall have the right to audit the books, records, and accounts of CONTRACTOR and its subcontractors that are related to this Project. CONTRACTOR and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of CONTRACTOR and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, CONTRACTOR or its subcontractor, as applicable, shall make same available at no cost to CITY in written form.

CONTRACTOR and its subcontractors 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, Florida Statutes, as may be amended from time to time, 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 and its subcontractors' records, CONTRACTOR and its subcontractors shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONTRACTOR or its subcontractors. 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.

CONTRACTOR shall, by written contract, require its subcontractors to agree to the requirements and obligations of this Section.

ARTICLE 12

PUBLIC ENTITY CRIME ACT

CONTRACTOR represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, 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, as may be amended from time to time, 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 Agreement and recovery of all monies paid by CITY pursuant to this Agreement 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 or whether CONTRACTOR has been placed on the convicted vendor list.

ARTICLE 13

INDEPENDENT CONTRACTOR

CONTRACTOR is an independent CONTRACTOR under this Agreement. In providing services, neither CONTRACTOR nor its agents shall act as officers, employees, or agents of CITY. No partnership, joint venture, or other joint relationship is created hereby. CITY does not extend to CONTRACTOR or CONTRACTOR's agents any authority of any kind to bind CITY in any respect whatsoever.

ARTICLE 14

THIRD PARTY BENEFICIARIES

Neither CONTRACTOR nor CITY intends 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 right or claim against either of them based upon this Agreement.

ARTICLE 15

ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. CITY may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by CONTRACTOR of this Agreement or any right or interest herein without CITY's written consent.

CONTRACTOR represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

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.

ARTICLE 16

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 and care related to its performance under this Agreement.

In the event CONTRACTOR is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, CONTRACTOR agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as CONTRACTOR.

ARTICLE 17

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.

ARTICLE 18

MATERIALITY AND WAIVER OF BREACH

CITY and CONTRACTOR agree that each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Agreement and that each is, therefore, 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.

ARTICLE 19

COMPLIANCE WITH LAWS

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

ARTICLE 20

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.

ARTICLE 21

JOINT PREPARATION

Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to express 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. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

ARTICLE 22

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 Articles 1 through 26 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 26 shall prevail and be given effect.

ARTICLE 23

JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking

any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. BY ENTERING INTO THIS AGREEMENT, CONTRACTOR AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

Nothing in this Agreement is intended to serve as a waiver of sovereign immunity, or of any other immunity, defense, or privilege enjoyed by the City pursuant to Section 768.28 Florida Statutes.

ARTICLE 24 **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 or others delegated authority to or otherwise authorized to execute same on their behalf.

ARTICLE 25 **PRIOR AGREEMENTS**

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

ARTICLE 26 **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 City:
City Manager

3250 NE 12 Avenue
Oakland Park, FL 33334

With Copy to:
Director, Engineering & Building Services
5399 N. Dixie Highway, Suite 3
Oakland Park, FL 33334

AND:
City Attorney

For Contractor:
State Contracting & Engineering Corp.
5391 N Nob Hill
Sunrise, FL 33351

And to Consultant:
ACAI Associates, Inc.
2937 W Cypress Creek Road, Suite 200
Fort Lauderdale, FL 33309

[EXECUTION ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: CITY OF OAKLAND PARK through its authorization to execute same by Commission action on __, day of __, 20__, signing by and through its City Manager, duly authorized to execute same, and State Contracting & Engineering Corp., signing by an through its _____, _____, duly authorized to execute same.

CITY

ATTEST:

CITY OF OAKLAND PARK

RENEE SHROUT
CITY CLERK

By _____
DAVID HEBERT
CITY MANAGER

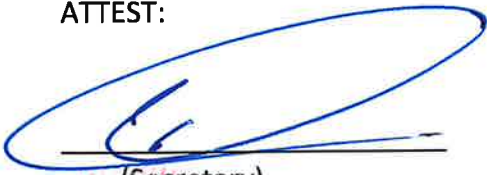
Approved as to legal sufficiency and form by

CITY ATTORNEY

CONTRACTOR MUST EXECUTE THIS CONTRACT AS INDICATED BELOW. USE CORPORATION OR NONCORPORATION FORMAT, AS APPLICABLE.

If the Company President does not sign the Contract, there must be a Secretary's Certificate Form provided to the CITY of Oakland Park, Florida indicating designee signing, has the authority to sign.

ATTEST:

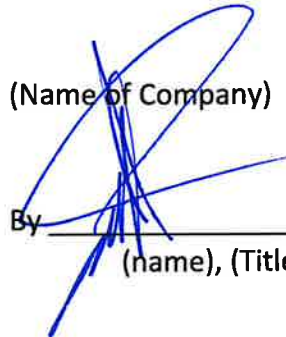


(Secretary)

CONTRACTOR

(Name of Company)

By



(name), (Title)

BARRY G. TRANSLEAU, CFO
(Type Name and Title Signed Above)

25th Day of JANUARY 2022.



PRE-CON FEE PROPOSAL

City of Oakland - Fire Station 87

ESTIMATE NO./REF. TBD
 LOCATION/OWNER: City of Oakland Park
 DATE: September 24, 2021

Project Description:

Selective interior demolition and renovation of existing Fire Station 87. Exterior work to include cosmetic changes on the exterior of existing building and landscaping. Interior renovations include complete interior demolition followed by new layout, MEP, Alarm System, and interior finishes. Renovation will address all items to bring up to code.

Task 1 Pre-Construction Services		
1	Review Owner's goals and priorities.	Included
2	Review Owner's overall Project Budget.	Included
3	Review Owner's time schedule.	Included
4	Develop an overall management plan and CPM Management Schedule of critical design and construction dates in order to accomplish the stated objective.	Included
Sub-Total		\$3,500.00

Task 2 Schematic Design Review Services (30%)		
1	Monitor evolving design and make suggestions with regard to equipment, material and systems selections.	Included
2	Consult with the Owner and Architect on means and methods of construction.	Included
3	Review 30% design documents.	Included
4	Prepare line item estimate to verify budget.	Included
5	Prepare a preliminary design and schedule.	Included
Sub-Total		\$5,500.00

Task 3. Design Development Review Services (60%)		
1	Review the design development documents.	Included
2	Prepare a detailed estimate based on available design drawing in a subcontractor bid format to insure that the project is within budget.	Included
3	Analyze the project for potential alternative equipment, material, and systems selections for cost savings.	Included
4	Review project Constructability.	Included
5	Review and update the CPM schedule.	Included
6	Discuss project with subcontractors and material suppliers to determine workloads, bonding capacity, availability, worker/mechanic availability, etc. and to develop interest in project, intent in bidding the work, and fine tuning the time schedule to provide best possible time to receive bids and construct the project.	Included
Sub-Total		\$7,500.00

Task 4. Construction Documents Review Services (90%)		
1	Prepare and update estimates at the 50% and 90% working drawings state and recommend any changes necessary to stay within the Owner's budget and time schedule.	Included
2	Review the drawings and specifications and make comments and suggestions.	Included
3	Develop a detailed CPM construction schedule.	Included
Sub-Total		\$5,500.00



PRE-CON FEE PROPOSAL

Task 5 GMP		
1	GMP Bidding and preparation of all documents needed to execute a formal construction agreement.	Included
Sub-Total		\$6,000.00

Task 5 Misc. Costs		
	Misc. Office Supplies	\$250.00
	Travel Expenses	\$300.00
	Reproduction & Photos	\$400.00
Sub Total		\$950.00

PROPOSED FEE LUMP SUM - TOTAL		\$28,950.00
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Other Services (based on actual expenses - No Mark-ups)		
	Reimbursable(s) Fee	\$0.00
	Geotechnical Investigation	\$0.00

OTHER SERVICES - TOTAL		\$0.00
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Requested by:

State Contracting & Engineering Corp.
CM/GC Firm

9/24/2021
Date

Reviewed by:

City of Oakland Park

Date