

CITY OF OAKLAND PARK



FIRE STATION 87 PHASE 1

CONSTRUCTION MANAGER AT RISK PHASE 2 CONSTRUCTION PHASE SERVICES AGREEMENT

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**CONSTRUCTION MANAGER AT RISK
CONSTRUCTION SERVICES
FIRE STATION 87 – PHASE 1**

ARTICLE 1 CONTRACT

THIS AGREEMENT is made and entered into on the _____ day of _____, 2022, by and between the City of Oakland Park, Florida, a municipal corporation, hereinafter referred to as the “CITY” and State Contracting and Engineering, a Florida corporation, duly licensed to do business in the State of Florida, hereinafter referred to as the “CMAR”.

1.1 PARTICIPANTS

CITY: **City of Oakland Park**
Department of Engineering & Building Services
5399 N. Dixie Highway, Suite #3
Project Manager:
Telephone:
Email

CMAR: **State Contracting and Engineering Corporation**
5391 N. Nob Hill Road
Sunrise, FL 33351
Paul Carty, President
Telephone: (954) 923-4747
Email: pcarty@statecontracting.com

CONSULTANT: **Song and Associates, Inc.**
1545 Centerpark Drive North
West Palm Beach, Florida 33401
Robert Castrovinci, Principal
Telephone: (561) 665-2423
Email: rcastrovinci@songandassociates.com

1.2 SCOPE OF WORK

1.2.1 CMAR hereby agrees to furnish all of the labor, materials, equipment services and incidentals to perform all work necessary and required fully, timely and properly complete the construction of the Fire Station 87 – Phase 1 Project in strict accordance with the Contract Documents in a good and workmanlike manner, as encompassed under the conditions specified, and within the schedule, provided.

1.2.2 Construction Phase Services: In exchange for the CMAR’s full, timely, and

acceptable performance and construction of the Work under this Contract, and subject to all of the terms of this Contract, the CITY will pay the CMAR the "Contract Price" agreed to by the CITY as set forth in the accepted Guaranteed Maximum Price (GMP) Proposal.

1.3 GUARANTEED MAXIMUM PRICE (GMP)

TOTAL GMP (ALL INCLUSIVE) \$1,736,018

1.4 CONTRACT DOCUMENTS

1.4.1 The Contract between the CITY and CMAR shall consist of the following Contract Documents:

- A. This Contract
- B. Construction Phase Services Scope of Work
- C. Accepted Guaranteed Maximum Price (GMP) Dated August 30, 2022
- D. Construction Schedule
- E. Labor Rates
- F. Project Plans and Specifications
- G. Addendums
- H. Grant Documents and others

Grants awarded to this project:

Hazard Mitigation Grant Program (HMGP)

Community Development Block Grant Mitigation Program
(CDBG-MIT)

1.4.2 The organization of the Specifications into divisions and sections and the arrangement of drawings shall not control the CMAR in dividing the Work among Subcontractors or in establishing the extent of the work to be performed by any trade. The organization of the Specifications and the arrangement of the Drawings is for the convenience of the CMAR and is not intended to relieve the CMAR from its obligation to conduct a complete study of the Drawings, Specifications and Addenda for the purpose of directing and coordinating the various Subcontractors and Suppliers as to their respective responsibilities.

1.5 PROJECT SCHEDULE

The Project Schedule, approved as part of the GMP Proposal and incorporated herein as part of the Contract Documents, shall be updated and maintained throughout the CMAR's performance under this Contract in accordance with Article 3.2.

1.6 SUBSTANTIAL COMPLETION

The Project shall be Substantially Completed within Two Hundred and Forty-Six (246) **calendar days** from the date of the Notice to Proceed. Substantial Completion shall be achieved not later than the Substantial Completion Date set forth in the Project Schedule.

1.7 FINAL COMPLETION AND FINAL ACCEPTANCE

Final Completion shall be achieved within thirty (30) **calendar days** from the date certified by the CITY as the date of Substantial Completion.

1.8 LIQUIDATED DAMAGES

1.8.1 SUBSTANTIAL COMPLETION LIQUIDATED DAMAGES

CMAR acknowledges and agrees that if the CMAR fails to achieve Substantial Completion of the Work within the Contract Time, the CITY will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be extremely difficult to ascertain and to calculate with an certainty either at the time of Contract or after any breach occurs. Therefore, to provide certainty to both the CITY and to the CMAR as to the risk associated with the potential for extensive actual damages related to delayed completion, the CITY and CMAR agree that if the CMAR fails to achieve Substantial Completion of the Work within the time set forth in section 1.6 above, the CITY shall be entitled to retain or recover from the CMAR, as liquidated damages and not as a penalty, the sum of One Thousand Dollars (\$1,000.00) for each calendar day after the time specified and until the actual date that Substantial Completion is achieved.

1.8.2 FINAL COMPLETION LIQUIDATED DAMAGES

For the same reasons set for in Article 1.8.1 above, the CITY and CMAR further agree that if the CMAR fails to achieve Final Completion of the Work within the time set forth in Article 1.7 above, the CITY shall be entitled to retain or recover from the CMAR, as liquidated damages and not as a penalty, the sum of five hundred Dollars (\$500.00) for each calendar day after the actual date of Substantial Completion or the Final Completion Date as required under the Contract, whichever is later, until the actual date of Final Completion.

ARTICLE 2 DEFINITIONS

Acceptance means the formal written acceptance by the City of the completed Work. Acceptance shall mean that all 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 regarding 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 number of days or the dates related to the applicable phase, Substantial Completion, and/or Final Completion as stated in the Contract Documents. The Agreement Time is set forth in the Contract and is based upon the Project Schedule agreed to by the City in writing.

Allowance means a specific amount for a specific item of work, if any, that the City agrees has not been sufficiently designed, detailed or selected at the time the contract price is agreed to for the Construction Manager at Risk (CMAR) to provide a definitive price. Work billed against the allowance shall be negotiated with the CMAR to determine total price pursuant to Article 5.5.

Change Order means a written instrument issued after execution of the contract documents signed by the City and Construction Manager, stating their agreement upon all of the following: the addition, deletion or revision in the scope of services or deliverables; the amount of the adjustment to the contract price, the extent of the adjustment to the contract time, or modification of other contract terms. The contract price and the contract time may be changed only by Change Order.

City means the City of Oakland Park, Florida, a Florida municipal corporation and its duly authorized agents in the performance of this contract. In all respects hereunder, City's performance is pursuant to the City's capacity as Owner of the Project.

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 Documents means the plans, specifications, and drawings prepared and issued by the Consultant and approved by the City for construction, meaning the documents are sealed by

the Consultant (as required), acceptable for permitting and incorporated into the Contract by reference. All amendments and modifications to the Construction Documents must be approved in writing by the City prior to incorporation into the Contract.

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 General Conditions and Fee for the Project.

Construction Manager at Risk (CMAR) means the person or firm selected by the CITY to provide pre-construction and/or construction phase services that includes, but not limited to, preparation of cost estimates, constructability reviews, value engineering and assistance in system life cycle cost analysis, estimating, scheduling, bidding and submission of a GMP, as defined for construction and construction management. Upon execution of the GMP, CMAR shall serve, from that point forward, as the CONTRACTOR under this Agreement.

Construction Manager's Fee means the agreed to percentage in an accepted GMP that represents the Contractor's fee for performance of the Work.

Construction Phase Services means the services to be performed through the CONTRACTOR 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.

Consultant means the qualified, licensed person, firm, partnership, corporation, association, joint venture, or any combination thereof, who furnished design services required under the Contract Documents to include, but not limited to: development of the Construction Documents, review of Contractor Submittal(s), response to Request for Information, approval and certification of progress payment applications, construction administration, Substantial Completion, and Final Acceptance and Completion, if so designated.

Contingency means an agreed to amount in the Guaranteed Maximum Price (GMP) that may only be used in accordance with the terms set forth in Article 5.6.

Contract Documents means the documents which together form the contract between the CITY and the CMAR, including the Contract, the exhibits thereto, any Notice to Proceed, the Plans and Specifications, Project Schedule, written and properly executed Change Orders, amendments, and any other documents so designated in the Contract.

Contract Price means compensation under the Contract is based upon a Guaranteed Maximum Price (GMP) accepted by the CITY; the term "Contract Price" refers to the GMP.

Cost of Work means the direct costs necessarily incurred by the CMAR in the proper, timely, and complete performance of the Work. These costs may include, but not limited to labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of temporary facilities, and equipment rental rates.

Critical Path means the sequence of the project network activities which add up to the longest overall duration. Once established in the Project Schedule, the Critical Path for the Project shall not be changed without prior written approval of the CITY.

Cure means the action taken by the CMAR promptly after receipt of written notice from the City of a breach of the Agreement for the Work, which shall be performed as a Cost of the Work within the Guaranteed Maximum Price, 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 CMAR 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.

Field Change Directive means a written directive prepared by the CITY and/or Consultant and signed by the CITY, directing a minor change in the Work where a Change Order is not required.

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.

General Conditions means the costs which may include, but are not limited to the following types of costs incurred by the CMAR during construction of the Work to the extent they are reimbursable Costs of the Work: payroll costs for Work conducted at the site, payroll costs for the superintendent and full-time general foremen, payroll costs for management personnel resident and working on the site, workers not included as direct labor costs engaged in support, administrative office personnel, costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the site, cost of liability insurance premiums not included in labor burdens for direct labor costs, costs of bond premiums, costs of consultants not in the direct employ of the Contractor or Subcontractors, fees for permits and licenses, costs to protect the Work and adjacent property from loss and damage.

Guaranteed Maximum Price (GMP) means the sum provided by the CMAR as a final deliverable under the Pre-Construction Services contract and agreed to by the CITY for full, timely, and acceptable completion of the Services and/or Work under the terms of this Contract. The Contract Sum shall not exceed the Guaranteed Maximum Price.

Inspector means an employee or Consultant for the CITY of Oakland Park, Florida, assigned by the Director to make observations of work performed by the CMAR.

Lump Sum means an agreed upon fixed value.

Materials means materials incorporated in this Project that are used and or consumed in the performance of the Work.

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

Notice to Proceed (NTP) means a written notice issued by the City to the CMAR acknowledging that all conditions precedent have been met and directing that the CMAR may start to perform the work described as the Contractor's obligations under the contract.

Open Book means on any GMP-based or Change Order, the CITY may attend any and all meetings or discussions pertaining to the Project, including bid openings, and shall have access to all books, invoices, accounts, memoranda, correspondence, and written communications or records of any kind pertaining to the Project, including without limitation, those stored in electronic format.

Pre-Construction Work means the services to be provided under the Pre-Construction Services Contract that includes participating as a member of the Project Team exercising the degree of care, skill, diligence and judgement a professional Construction Manager experienced in the performance of such services for construction and/or facilities of similar scope, function, size, quality, complexity and detail to the Project. CMAR shall, at all times, perform the required services consistent with sound and generally accepted engineering principles and construction management and construction contracting practices.

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 professional employment or practice.

Progress Report means a monthly progress report to be prepared by the CMAR 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 Project specified in this Contract, 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 the Project Manager in writing by the DIRECTOR, who is the representative of the CITY, concerning the Contract Documents.

Project Schedule means schedule for the completion of the Project agreed to and/or required by the CITY and incorporated into the Contract. The Project Schedule, developed and maintained by the CMAR to identify, coordinate and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team to utilize for managing and monitoring all member's compliance with the schedule requirements of the Project.

Proposal means an estimate/quote submitted in writing to the CITY by the CMAR in response to a request by the CITY. Proposals may be Fixed, Unit Price, or other forms as required or requested by the CITY.

Punch List means the list of items, prepared in connection with the inspection of the Project by the CITY'S Representative(s) 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 CMAR by the CITY shall be an absolute condition precedent to the CITY'S occupancy of any portion of the Project.

Request for Information (RFI) means a formal written request from the CMAR to the City and/or Consultant for the Project seeking clarification or additional information needed for the CMAR to properly complete the Work and/or Services under the Contract. The CITY may require RFI's to be submitted on a specific form or in a specified format.

Schedule of Values means the specified document prepared by the CMAR, and approved and accepted by the CITY, which divides the contract price into pay items, such that the sum of all pay items equals the GMP for the Construction Phase Work, or for any portion of the Work having a separate specified price.

Shop Drawings are drawings, diagrams, schedules and other product data specifically prepared for the Work by the CMAR 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.

Subconsultant means a person, firm or corporation having a Contract with the Consultant and/or CMAR to furnish services required as its independent professional associate or consultant with respect to the Project.

Subcontractor means a person, firm or corporation having a direct Contract with the CMAR or any other individual or firm having a Contract with the aforesaid CMAR at any tier, who undertakes to perform a part of the pre-construction services or construction phase Work at the site for which the CMAR is responsible.

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 the CMAR who is primarily liable, and which surety company or individual is responsible for the CMAR'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 or the obligations, including construction and other services required by the Contract Documents, whether completed or partially completed, including performing or furnishing all labor, tools, materials, resources, equipment and services to be provided by the CMAR to fulfill the CMAR'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 3 TIME FOR PERFORMANCE

3.1 CONTRACT TIME

- 3.1.1 The Contract Time shall start with the Notice to Proceed (NTP) and end with Final Acceptance as described herein.
- 3.1.2 CMAR shall be instructed to commence the Work by written Notice to Proceed issued by the CITY. The Notice to Proceed will not be issued until the CMAR's submission to CITY of all required documents, after execution of the CONTRACT by both parties. Receipt of all permits by the CMAR is a condition precedent to the issuance of the Notice to Proceed. The Work to be performed pursuant to the Notice to Proceed including the submission of a Schedule of Values, Project Schedule, Submittal Schedule, Shop Drawing Schedule and Material Leadtime List shall be completed within Fourteen (14) calendar days of the Project Initiation Date specified in the Notice to Proceed.
- 3.1.3 The Contract Time shall be set forth in the Project Schedule. CMAR agrees that it will commence performance of the Work and complete the Project through both Substantial Completion and Final Completion within the Contract Time.
- 3.1.4 Time is of the essence throughout this contract. The Project shall be Substantially Completed within the specified number of calendar days from the date of the Notice to Proceed, as established in Article 1.6 and pursuant to Article 3.3. The total Project shall be completed and ready for final payment in accordance with Article 3.5.
- 3.1.5 Upon failure of the CMAR to achieve Substantial and/or Final Completion of the Project, the CMAR shall pay to the CITY the sum established in Article 1.8 for Liquidated Damages, pursuant to Article 3.6. In the event damages are assessed, the assessment will be applied to the Final Payment.
- 3.1.6 Extensions to the Contract Time for delays caused by the effects of inclement weather shall be submitted as a request for change in Contract Time. These time extensions are justified only when rains or other inclement weather conditions, or related adverse soil conditions prevent, the CMAR from productively performing controlling items of work identified on the accepted schedule or updates resulting in the CMAR being unable to work at least fifty (50%) of the normal workday, or if the start of the work day prevents construction activities to start with anticipated uninterrupted work for minimum 4 hours, on Critical Path

items of work identified on the accepted schedule or updates due to adverse weather conditions.

3.2 SCHEDULE

- 3.2.1 The Project Schedule shall be updated and maintained throughout the Contract.
- 3.2.2 The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve the CMAR of its obligations to complete the Work within the Contract Time, as adjusted in accordance with the Contract Documents. No modification to the Contract Documents or the Contract Time shall be effective unless approved in advance by the CITY. The Critical Path for the Project shall not be changed without the prior written approval of the CITY.
- 3.2.3 An updated Project Schedule shall be submitted monthly to the CITY as part of the Payment Application.
- 3.2.4 CMAR shall provide the CITY with a monthly status report with each Project Schedule detailing the progress of Work, including:
 - a. if the Work is proceeding according to schedule,
 - b. any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and
 - c. other information detailing items that require resolution so as not to jeopardize the ability to complete the Work in the Contract Time.
 - d. Submittal of the schedule to the CITY should in no way be construed as acceptance, affirmation or admission that the schedule is reasonable or workable by the CMAR. The responsibility for completing the Work on the Project within the Contract Time remains the obligation of the CMAR. The CITY's review shall not relieve the CMAR from compliance with the requirements of the Contract Documents or be construed as relieving the CMAR of its complete and exclusive control over means, methods, sequences and techniques for executing the Work.
- 3.2.5 During the Owner, Architect/Engineer and CMAR (OAC) Meetings, the CMAR shall also submit a two week look-ahead forecast schedule updated weekly. These schedules shall be presented as a subset of the overall schedule or in a format such as an Excel spreadsheet and shall depict the upcoming work tasks and associated durations by days. Special actions or

tasks for certain subsets of the Work may be requested to be presented separately by the CITY and shall be furnished if so requested. The look-ahead schedule intent is to identify upcoming tasks, traffic control and/or public outreach needs, monitor anticipated progress, and allow the project team to discuss and coordinate project in accordance with the needs. These look-ahead forecast schedules shall be presented to the CITY in either electronic publishing (.pdf) or hardcopy format.

- 3.2.6 The CITY, Consultant and CMAR shall meet onsite every two (2) weeks to review the status of the Work, progress, payments and any issues impacting the performance and time of performance. In the event the CITY and Consultant determines that the Work is behind schedule or delayed, the CMAR shall propose an affirmative plan to correct the delay, including resequencing of the Work, overtime and/or additional labor, if necessary. In no event shall any determinations made during an OAC Meeting or representations in the OAC Meeting Minutes constitute an adjustment in the Contract Time, or the Contract Price unless any such adjustment is agreed to by the CITY and authorized pursuant to a properly executed written Change Order. CMAR shall keep proper records available for inspection by the CITY to substantiate actual activity, duration and completion dates.
- 3.2.7 CMAR shall review and assess all materials availability and delivery timeframes very early in the project and plan their activities for shop submittals, ordering and construction means and methods accordingly. If the CMAR discovers or encounters any potential schedule issues in this assessment process that will materially impact, restrict or prohibit work commencement and completion in accordance with the proposed contract dates noted, they shall promptly notify the CITY to discuss the issues and develop a mutually acceptable course of action.
 - a. CMAR, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a materials and shop drawings schedule for the Consultant's approval. The Consultant approval shall not be unreasonably delayed or withheld. The submittal schedule shall be:
 - i. Coordinated with the CMAR construction schedule
 - ii. Allow the Consultant reasonable time to review submittals
 - b. Long Lead Items: CMAR shall order all long lead items to be furnished and installed as part of the Project within seven (7) days after receiving approved Shop Drawings. For all long lead time items for which shop drawings are not required, CMAR shall order said long lead items

within thirty (30) days after execution of the Contract. Within seven (7) days after ordering long lead items, CMAR shall supply copies of all purchase orders, along with an accurate delivery schedule from the supplier.

- 3.2.8 If the CMAR fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the CMAR shall not be entitled to any increase in Contract Price or extension of Contract Time based on the time required for review of submittals.

3.2.9 CRITICAL PATH

- a. Unless otherwise specified in the Contract, the project Schedule shall include a Critical Path Method (CPM) diagram schedule showing the sequence of activities, the interdependence of each activity and identifies the Critical Path.
- b. The CPM diagram schedule shall be in Calendar Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float Time for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.

3.2.10 SPECIAL CONSTRUCTION & SCHEDULE CONSIDERATION

- a. Grants
 - i. CMAR shall review and implement any grant requirements associated with the funding for this project. The CMAR shall include grant required timelines as part of the Critical Path to ensure compliance with grant deadlines for completion of the project or applicable sections.
- b. Utilities
 - i. CMAR is expected to perform certain portions of Work at a time and in a manner that minimizes service interruption. CMAR shall work closely with the CITY Utilities Department and the Project Manager to develop a plan for work execution that minimizes service interruptions during operation hours, weekends or nights when businesses are closed. Work that interrupts electrical, sewer or water service shall be performed in a manner that allows the respective service to be restored as rapidly as possible and interrupts service for no longer than 8 hours. A work plan shall be presented for concurrence to the Project Manager and

affected City Staff at the CMAR's earliest convenience, but no later than at least seven (7) days prior to actual work efforts in the area. Adequate work planning to coordinate required operations, inspections, installation progress and completion testing shall be performed.

- ii. CMAR is expected to utilize their knowledge and expertise to minimize the duration and extent of any partial closures, service interruptions, weekend and night work.

3.3 SUBSTANTIAL COMPLETION

- 3.3.1 When the CMAR considers the Work, or portion thereof, which the CITY agrees to accept separately, is substantially complete, CMAR shall notify the CITY in writing. CMAR, in conjunction with the Inspector, Consultant and Project Manager, shall prepare and submit to the CITY a comprehensive Punch List of items to be completed or corrected prior to Final Acceptance and Final Payment.
- 3.3.2 Upon receipt of the CMAR's Punch List, the CITY will make another inspection to determine whether the Work or designated portion thereof is substantially complete.
- 3.3.3 The CITY shall not issue a Certificate of Substantial Completion unless and until the Work (or separable units or Phases as provided in the Contract Documents) is essentially and satisfactorily complete in accordance with the Contract Documents, such that the Project is ready for use by the CITY for its intended purpose, opening to the general public, full occupancy or use by the CITY (including, without limitation, all separate units, or rooms, facilities, access, income-generating areas, and/or areas serving the general public, as applicable, shall be ready for full operation without materials, equipment, systems, controls, features, facilities, accessories and similar elements are installed in the proper manner and in operating condition, inspected and approved; surfaces have been painted; masonry and concrete cleaned with any sealer or other finish applied; utilities and systems connected and functioning; site work complete; permanent heating, ventilation, air condition, and other systems properly operating with proper controls; lighting and electrical systems installed, operable and controlled; paving completed, signage installed, and/or other work as applicable, has been performed to a similar state of essential and satisfactory completion.
- 3.3.4 CITY will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion; shall state the

responsibilities of the CITY and CMAR for security, operation, safety, maintenance, utilities, damage to the Work, insurance, and warranties; shall list all work yet to be completed (Punch List) to satisfy the requirements of the Contract Documents for Final Completion. The failure to include any items of corrective work on such list does not alter the responsibility of the CMAR to complete all the Work in accordance with the Contract Documents. The Certificate of Substantial Completion shall be submitted to the CMAR, after execution by the CITY, indicating their written acceptance of such certificate.

3.4 USE OF COMPLETED PORTIONS

3.4.1 CITY shall have the right, at its sole option, to accept any completed or partially completed portions of the Project. Such possession and use shall not be deemed an acceptance of any of the Work not completed in accordance with the Contract Documents.

- a. In the event the CITY requires possession of any completed or partially completed portions of the project, the following shall occur:
 - i. CITY shall give notice to CMAR in writing at least fifteen (15) calendar days prior to CITY's intended occupancy of a designated area.
 - ii. CMAR shall complete to the point of Substantial Completion the designated area and request inspection and issuance of a Certificate of Substantial Completion in the form provided by the CITY.
 - iii. Upon issuance of a Certificate of Substantial Completion, CITY will assume full responsibility for maintenance, utilities, subsequent damages of or by the CITY and the public, adjustment of insurance coverage and start of warranty for the occupied area.
 - iv. CMAR shall complete all items noted on the Certificate of Substantial Completion within the time specified in Article 1.7 and request final acceptance of the portion of the Work occupied. Upon completion of final inspection and receipt of an application for final payment, the CITY shall issue a Final Certificate of Acceptance relative to the occupied area.
- b. If the CITY finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed upon by the CITY and CMAR and to which the insurance company or companies

providing the property insurance have consented by endorsement to the policy or policies. Insurance on the unoccupied or unused portion or portions shall not be canceled or lapsed on account of such partial occupancy or use. Consent of CMAR and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

3.5 FINAL COMPLETION/FINAL ACCEPTANCE

- 3.5.1 Unless otherwise expressly agreed to in writing by the CITY, Final Completion must be obtained pursuant to Article 1.7. Failure to timely obtain Final Completion will be a material breach of the Contract.
- 3.5.2 Upon receipt of written notice that the Work is ready for final inspection and acceptance, the CITY, Consultant and CMAR will jointly conduct an inspect to verify that the remaining items of Work have been completed. There shall be no partial acceptance unless approved per Article 3.4.1. Final Acceptance shall not be issued, and Final Completion shall not occur until all items of work, including Punch List Items, have been completed to the CITY's satisfaction as reflected in the written Final Acceptance.
- 3.5.3 Final Payment shall not be due, owing or paid by the CITY until Final Completion is obtained.

3.6 LIQUIDATED DAMAGES

3.6.1 SUBSTANTIAL COMPLETION LIQUIDATED DAMAGES

CMAR acknowledges and agrees that if the CMAR fails to achieve Substantial Completion of the Work within the Contract Time, the City will sustain extensive damages and serious loss as a result of such failure. Liquidated Damages are hereby fixed and agreed upon between the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by CITY as a consequence of such delay, and both parties desiring to obviate any questions of dispute concerning the amount of said damages and the cost and effect of the failure of the CMAR to complete the Contract on time.

- a. CITY and CMAR agree that if the CMAR fails to achieve Substantial Completion of the Work within the time set forth in Article 1.6, the CITY shall be entitled to retain or recover from the CMAR, as liquidated damages and not as a penalty, the per diem amount established in Article 1.8.1 commencing from the Substantial Completion Date required under the Contract until the actual date of Substantial

Completion.

- b. CITY may deduct liquidated damages described in this Article 3.6 from any unpaid amounts then or thereafter due to the CMAR under this Contract. Any liquidated damages not so deducted from any unpaid amounts due to the CMAR shall be payable to the CITY at the demand of the City, together with interest from the date of the demand at the highest lawful rate of interest payable by the CMAR.

3.6.2 FINAL COMPLETION LIQUIDATED DAMAGES

- a. For the same reasons set forth in Article 3.6.1 above, the CITY and the CMAR further agree that if the CMAR fails to achieve Final Completion of the Work within the Contract Time, the CITY shall be entitled to retain or recover from the CMAR, as liquidated damages and not as a penalty, the per diem established in Article 1.8.2 commencing from the actual date of Substantial Completion or the Final Completion Date as required under the Contract, whichever is later, until the actual date of Final Completion.

ARTICLE 4 CONTRACTOR'S RESPONSIBILITIES

4.1 REPRESENTATIVES

CMAR shall advise, the CITY, in writing of any limitations on the authority of the CMAR's representative; otherwise, CMAR's representative shall be considered to have full authority to execute any and all instruments requiring the CMAR's signature and to act on behalf of the CMAR with respect to all matters arising out of this Agreement. CMAR's Project Manager does not have the authority to enter into any written agreement that will materially change the Contract Agreement between the CITY and the CMAR (i.e., Owner Contract, Owner Change Orders).

4.2 INDEPENDENT CONTRACTOR

In performing, the CMAR shall be deemed an independent Contractor and not an agent or employee of the CITY. CMAR shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Contract, unless the Contract Documents give other specific instructions concerning these matters.

4.3 SECTION RESERVED

4.4 CONSTRUCTION PHASE SERVICES

4.4.1 PERSONNEL

- a. CMAR shall provide and pay a livable wage for competent, suitably qualified personnel to perform the Work as required by the Contract Documents. CMAR shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. CMAR shall at all times maintain good discipline and order at the site. CMAR agrees that it shall not employ any labor that will interfere with labor harmony at the Project site or with the introduction and storage of materials and the execution of Work by other Contractors or by Subcontractors.
- b. CMAR shall not change or replace any member of its Project Team, including CMAR's Representative and Project Manager, or Superintendent, without an explanation for the change being given to the CITY, and receiving prior written approval of the change from the CITY, which approval will not be unreasonable withheld.
- c. CMAR agrees that in the performance of the Work called for by this Contract, it will employ only such labor, and engage Subcontractors that employ only such labor, as will not delay or interfere with the speedy and lawful progress of the Project, and as will be acceptable to and work in harmony with all other workers employed on the Project site or on any other building, structure, or other improvement which the CMAR or any other Contractor may then be erecting or altering on behalf of the CITY.
- d. CMAR will not substitute or change any Subcontractor or Supplier without the prior written approval of the CITY. Any substitute or replacement Subcontractor or Supplier shall be required to meet the same qualifications and selection criteria and process as the original Subcontractor or Supplier.

4.4.2 SIGNAGE

- a. All construction signage located at the project location(s) shall be subject to the prior written approval of the CITY. CMAR recognizes that all signage may be disallowed, in the CITY's sole discretion, and that existing signage or advertising on construction field offices, trailers, construction fences, and other construction elements or aids, may be required to be masked or deleted at no cost or expense to the CITY. Such signage will be considered an overhead expense pursuant to Article 1.3 and if allowed shall not be included within the Cost of the Work.

4.4.3 PERFORMANACE OF WORK

- a. CMAR shall construct the Work in accordance with the Contract Documents and as outlined in the Contract to the satisfaction of the CITY, exercising the degree of professional care, skill, diligence, quality and judgement that a professional CMAR engaged, experienced and specializing in the construction of construction and/or facilities of similar scope, function, size, quality, complexity and detail in areas throughout the United States comparable to Oakland Park, Florida would exercise at such time, under similar conditions. CMAR shall, at all times, perform the Work in conformance with sound and generally accepted engineering principles and construction management and construction contracting practices.
- b. Unless otherwise provided in the Contract Documents to be the responsibility of the CITY or a separate Contractor, CMAR shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, and other temporary facilities to permit CMAR to complete the Work consistent with the Contract Documents.
- c. If CMAR observes error, discrepancies, or omissions in the Contract Documents, it shall promptly notify the Consultant and CITY and request clarification. CMAR shall be liable to the CITY for damages resulting from error, inconsistencies, or omissions in the Contract Documents or for differences between field measurements or conditions in the Contract Documents. If the CMAR, with the exercise of reasonable care, should have recognized such error, inconsistency, omission or difference and fails to report it to the CITY, and if the CMAR proceeds with the Work affected by such observed errors, discrepancies or omissions, without receiving such clarification, it does so at its own risk.
- d. CMAR's Superintendent shall be present at the Site at all times that material Work under this Contract is taking place. CMAR's Superintendent or designee shall be present at the Site at all times any other Work under this Contract is taking place. All elements of the Work shall be under the direct supervision of a foreman or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the Work.
- e. CMAR shall accept full responsibility for the Work against all loss or damage of whatsoever nature sustained until final acceptance by the

CITY and shall promptly repair any damage done from any cause whatsoever.

- f. CMAR shall be responsible for all materials, equipment and supplies pertaining to the Project. In the event any such materials, equipment and supplies are lost, stolen, damaged or destroyed prior to final acceptance by the City; CMAR shall replace it without cost to the CITY. CMAR shall be responsible to protect all materials, equipment and supplies, keeping them free from deterioration, weathering, rusting or other action detrimental to the materials.
- g. Before ordering materials or doing work, the CMAR and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the Contract Documents, including the drawings.
- h. CITY reserves the right to award other contracts in connection with this Project. CMAR shall afford other persons or contractors' reasonable opportunity for the introduction and storage of materials and the execution of Work under such separate contracts. CMAR shall properly connect and coordinate this Work with the Work of any other persons or contractors that might contract separately with the CITY.
- i. In all cases of interconnection of its Work with existing or other work, CMAR shall inspect, verify, and promptly report to the Consultant any defects in such work that render it unsuitable for such proper execution and results. CMAR's failure to so inspect and report shall constitute an acceptance of the other person's Work as fit and proper for the reception of the CMAR's Work. Any errors due to CMAR's failure to so verify all such grades, elevations, locations, or dimensions shall be promptly rectified by the CMAR without any increase in the Contract Price. Any design errors or omissions noted by the CMAR during this review shall be reported promptly to the CITY.
- j. CMAR shall conduct its operations and take all reasonable steps to coordinate the prosecution of the Work so as to create no interference or impact on any other contractor on the site. Should such interference or impact occur, and the CMAR did not take reasonable steps, the CMAR shall be liable to the affected Contractor for the cost of such interference or impact.
- k. To ensure the proper execution of subsequent Work, CMAR shall

inspect the Work already in place and shall at once report to Consultant any discrepancy between the executed Work and the requirements of the Contract Documents.

- I. CMAR shall be responsible for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between the CITY and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- m. CMAR shall be responsible to the CITY for the acts and omissions of CMAR's employees, Subcontractors and their agents and employees, and any other person performing any of the Work under a Contract with the CMAR, or claiming by, through or under the CMAR, for all damages, losses, costs and expenses resulting from such acts or omissions.

4.4.4 MATERIALS TESTING

- a. All construction materials to be used or incorporated in the Project shall meet all required specifications according to project plans and specifications; and are subject to inspection, Quality Control and Quality Assurance Testing, and approval or rejection by the CITY.
- b. Test, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities.
- c. CMAR shall hire an independent third-party Material Testing Firm to perform Quality Control testing for the project and pay all costs required. The Material Testing Firm shall establish, provide, and maintain an effective quality control program that details the methods and procedures that will be taken to assure that all materials and completed construction required by this Contract conform to Contract plans, technical specifications, and other requirements, whether manufactured by the CMAR, or procured from Subcontractors or vendors.
- d. Although guidelines are established, and certain minimum requirements are specified herein and elsewhere in the Contract technical specifications, CMAR shall assume full responsibility for accomplishing the stated purpose.

- e. CMAR shall maintain current quality control records of all inspections and tests performed. These records shall include factual evidence that the required inspections or tests have been performed, including types and number of inspections or tests involved; results of inspections or tests; nature of defects, deviations, causes for rejections, etc.; propose remedial action and corrective actions taken if required. These records must cover both conforming and defective features and must include a statement that all supplies and materials incorporated in the Work are in full compliance with the terms of the Contract.
- f. When QC test indicate noncompliance with the Contract Documents, retesting shall be performed. In the event additional (re-test) tests are required due to CMAR's work or materials having failed any initial test, the additional test shall be at the CMAR expense.
- g. Legible copies of all test results shall be furnished to the CITY in a Weekly Summary Report submitted in a timely manner to address any potential issues quickly. Before final completion, CMAR shall submit a final testing report summary containing all testing results which certified that the Work complies with the Contract Documents.
- h. CITY reserves the right to perform Quality Assurance testing required to certify the quality of materials for this project through its designated agent for professional materials testing services. The purpose of assurance testing will be to verify the quality of the finished project for the CITY. The testing will, in no way, relieve the CMAR of his/her responsibility for his own quality control, assurance and furnishing materials and finished products that meet the project specifications.

4.4.5 SPECIAL INSPECTOR

- a. CITY shall hire an independent Special Inspector to perform Inspections on construction elements mandated by permit requirements.
- b. CMAR shall be responsible for all scheduling and coordination required for the Special Inspector to perform such tests, inspections or approvals.

4.4.6 SHOP DRAWINGS

- a. Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the CMAR and/or Subcontractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those

portions of the Work for which the Contract Documents require submittals.

- b. CMAR shall prepare and submit Shop Drawings which show details of all work to ensure proper installation of the Work using those materials and equipment specified under the Approved Plans and Specifications.
- c. A schedule of Shop Drawing submissions shall be submitted with the Project Schedule for the CITY approval that avoids bulk submissions to the extent reasonably possible. The schedule of Shop Drawing submissions shall include all of the items for which Shop Drawings are required by the Contract Documents, including the Specifications.
- d. Shop Drawings shall be numbered consecutively for each specification section and shall accurately and distinctly present the following:
 - i. All working and erection dimensions.
 - ii. Arrangements and sectional views.
 - iii. Necessary details, including complete information for making connections between work under this Contract and work under other Contracts.
 - iv. Kinds of materials and finishes.
 - v. Parts list and description thereof.
- e. CMAR shall schedule, prepare and submit all shop drawings in accordance with a time-table that will allow its suppliers and manufactures sufficient time to fabricate, manufacture, inspect, test and deliver their respective products to the Project Site in a timely manner so as to not delay the complete performance of the Work.
- f. The review of Shop Drawings will be general and shall not relieve the CMAR of responsibility for the accuracy of such drawings, nor for the proper fitting and construction of the Work, nor for the furnishing of materials or work required by the Contract. No construction called for by Shop Drawings shall be initiated until such drawings have been reviewed and approved by the CITY or designated Consultant.

4.4.7 COOPERATION WITH CONTRACTOR

- a. CMAR shall reproduce and furnish to their Subcontractor(s) and crews the appropriate number of plan sets and contract books to allow successful execution of the project. CMAR and all Subcontractors personnel shall have available on site at least one set of plans,

referenced standard specifications and details, and special provisions at all times when performing work. CMAR and all Subcontractors shall produce such documents when requested on-site by the CITY Inspector or Project Management Staff.

- b. CMAR shall conduct and attend weekly project progress update meetings throughout the duration of the project. Attendees shall include the CMAR's Project Manager or Engineer, Project Superintendent, any Subcontractor's representative whose attendance may be important and add to the discussion that is expected to occur at the meeting, the CITY and other CITY staff and/or Consultants as may be desirable due to the expected content of the meeting.
- c. CMAR shall prepare and furnish an agenda and follow-up summary meeting notes reporting on the actions and discussion occurring at the meeting by agenda item. The agenda shall include at a minimum discussion of schedule and the upcoming two-week look-ahead work forecast, traffic control issues and needs, specific upcoming work tasks that may need coordination or discussion, specific issues that arose during the previous week that required discussion, action and/or resolution; outstanding past issues, contractual issues that have arisen or are outstanding; utility coordination issues that may exist; and public outreach needs and updates. Additional agenda items may be added or removed as the project and project progress dictates.

4.4.8 COOPERATION WITH UTILITIES

- a. It shall be the responsibility of the CMAR to field verify all utility locations and coordinate in a timely manner with the pertinent utility companies so that any obstructing utility installation may be adjusted without delay to the CMAR's project schedule. CMAR shall be responsible for potholing and/or soft digging any known utilities conflicts in a timely manner.
- b. CMAR shall endeavor to protect existing utility facilities present within the project limits but not anticipated to be in conflict with the improvements. To this end, the CMAR is expected to contact the respective Utility Agency when performing work near their facility that could impact it to provide the Utility Agency the opportunity to be present and re-identify their facility location and to present suggestions regarding protection if they have concerns. All such facilities shall be exposed or potholed if requested by the Utility Agency or CITY to verify clearance at no additional charge.

4.4.9 CONTROL OF PROJECT SITE

- a. Throughout all phases of construction, including suspension of Work, CMAR shall keep the Site(s) reasonably free from debris, trash and construction wastes to permit Contractor to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Prior to Final Acceptance of the Work, or a portion of the Work, CMAR shall remove all debris, trash construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit the CITY to occupy the Project or a portion of the Project for its intended use.
- b. CMAR shall take whatever steps, procedures or means necessary to minimize dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the CITY.
- c. CMAR shall be responsible to the CITY for the acts and omissions of CMAR's employees, Subcontractors and their agents and employees, and any other person performing any of the Work under a Contract with the CMAR, or claiming by, through or under the CMAR, for all damages, losses, costs and expenses resulting from such acts or omissions.

4.4.10 PROJECT SAFETY

- a. CMAR is responsible for safety of the job site for employees of CMAR as well as for members of the general public and others who may drive or walk through or be at the site. CMAR shall maintain and have sole responsibility for safety of the job site.
- b. CMAR assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.
- c. CMAR and Subcontractors shall comply with all legal and regulatory requirements relating to safety, as well as any CITY specific safety requirements set forth in the Contract Documents, provided that such CITY-specific requirements do not violate any applicable legal and regulatory requirements.
- d. As between the CITY and the CMAR, CMAR is responsible to the CITY for any and all the safety issues relating to the Work on the Project.

CMAR shall administer and manage the safety program. This will include, but not necessarily be limited to review of the safety programs of each Subcontractor. CMAR shall monitor the establishment and execution of compliance with all applicable regulatory and advisory agency construction safety standards.

4.5 OCCUPATIONAL HEALTH & SAFETY

4.5.1 In compliance with Chapter 442, Florida Statutes, any toxic substance listed in Section 38F- 41.03, Florida Administrative Code, delivered as a result of this Project must be accompanied by a Safety Data Sheet (SDS) which may be obtained from the manufacturer. The SDS must include the following information:

- a. The chemical name and the common name of the toxic substance.
- b. The hazards or other risks in the use of the toxic substance, including:
 - i. The potential for fire, explosion, corrosion, and reaction;
 - ii. The known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the toxic substance; and
 - iii. The primary routes of entry and symptoms of overexposure.
- c. The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the toxic substances, including appropriate emergency treatment in case of overexposure.
- d. The emergency procedure for spills, fire, disposal, and first aid.
- e. A description in lay terms of the known specific potential health risks posed by the toxic substance intended to alert any person reading this information.
- f. The year and month, if available, that the information was compiled and the name, address, and emergency telephone number of the manufacturer responsible for preparing the information.

4.5.2 CMAR agrees that it shall not knowingly transport to, use, generate, dispose of, or install at the project site any Hazardous Substance, (as defined in Article 4.5.2.c, except in accordance with applicable Environmental Laws. Further, in performing the Work, CMAR shall not

knowingly cause any release of hazardous substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws.

- a. In the event the CMAR encounters on the Project sites any Hazardous Substance, or what the CMAR reasonably believes to be a Hazardous Substance, and which is being introduced to the Work, or exists on the Project Location, in violation of any applicable Environmental Laws, CMAR shall immediately stop Work in the area affected and report the condition to the Consultant and CITY if in fact a Hazardous Substance has been encountered and has not been rendered harmless.
- b. CMAR shall not be required to remediate and/or render harmless the Hazardous Substance absent such direction. If the CMAR is not so directed, CMAR shall not be required to resume Work in any area affected by the Hazardous Substance until such time as the Hazardous Substance has been remediated and/or rendered harmless.
- c. For purposes of this Contract, the term "Hazardous Substance" shall mean and include, but shall not be limited to, any element, constituent, chemical, substance, compound or mixture, which are defined in or included under or regulated by any local, state, or federal law, rule, ordinance, by-law, or regulation pertaining to environmental Response, Compensation and Liability Act of 1980 (CERCLA), The Resource Conversation and Recovery Act (RCRA), The Toxic Substances Control Act (TSCA), The Clean Water Act (CWA), the Clean Air Act (CAA), and The Marine Protection Research and Sanctuaries Act (MPRSA), The Occupational Safety and Health Act (OSHA), The Superfund Amendments and Reauthorization Act of 1986 (SARA), or other state super lien or environmental clean-up or disclosure statues including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as Environmental Laws). It is the CMAR's responsibility to comply with this Article 4.5.2 based on the law in effect at the time its services are rendered and to comply with any amendments to those laws for all services rendered after the effective date of any such amendments.

4.6 PERMITS AND LICENSES

- 4.6.1 CMAR shall obtain all required permits and licenses as required for commencement and completion of this Project. Such permits and licenses, along with any corresponding general and specific conditions and requirements, shall become a part of the contract documents. CMAR shall

comply with all conditions and requirements of said permits and licenses. Payment of all such permits shall be made by the CITY.

- 4.6.2 Business Tax Receipts must be in effect as required by Florida Statutes 205.065 and must be submitted within ten (10) days of execution of this Contract.
- 4.6.3 It is CMAR's responsibility to have and maintain appropriate Certificate(s) of Competency, valid for the Work to be performed and valid for the jurisdiction in which the Work is to be performed for all persons working on the Project for whom a Certificate of Competency is required.

ARTICLE 5 CONTRACT PRICE

5.1 COST OF WORK

The term "Cost of Work" shall mean the sum of all direct costs necessarily and reasonably incurred and paid by the CMAR in the performance of the Work. Such costs shall be at rates not higher than those customarily paid in the locality of the Project except with the prior written consent of the CITY.

5.1.1 SUBCONTRACTOR COSTS

- a. Unless waived in writing for good cause, by the CITY, the CMAR must obtain competitive pricing and subcontracts, in compliance with the requirements of this Article, for One Hundred Percent (100%) of the CMAR's Direct Construction Cost required under this Contract. All subcontracts and purchase orders shall be awarded according to the following procedure:
 - i. CMAR shall prepare for the CITY's review and approval a list of subcontractors and suppliers for each bid who meet the CMAR's schedule of minimum requirements. CMAR shall obtain bids from a minimum of three (3) such subcontractors for each subcontract, when available. After receiving such bids, CMAR shall analyze them and make recommendations to the CITY for awards. When the CITY has approved the award of any such subcontract or purchase order, CMAR shall contract solely in its own name and behalf, and not in the name or behalf of the CITY, with the specified subcontractor or supplier. The subcontract shall provide that the Subcontractor shall perform its portion of the Work in accordance with all applicable provisions of this Contract and the other Contract Documents;
 - ii. Subcontractor shall be bound to the CMAR, to the same extent as the CMAR is bound to the CITY, to name the CITY as an

additional insured on its comprehensive general liability insurance;

- iii. Subcontractor shall provide an insurance certificate evidencing the same; that the CMAR shall have the right to terminate the subcontract in the same manner and by the same method as provided for termination of this Contract by the CITY, or as otherwise provided in the subcontract, whichever is more protective of the City's interest; and
 - iv. CMAR shall sign and cause each Subcontractor to sign an Assignment of Rights under the 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.
- b. If the CITY shall approve as the selected subcontractor or supplier a bidder whose bid exceeds that of the bidder recommended by the CMAR, whose bid complies with the Contract Documents (the amount by which the bid of the selected subcontractor exceeds the bid of the bidder recommended by the CMAR is referred to herein as the "Preferred Subcontractor cost differential"), then the CITY may designate that the Guaranteed Maximum Price shall be increased by the amount of the Preferred Subcontractor cost differential or utilize the Contingency or Change Order to fund the cost differential
 - c. 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.

5.1.2 MATERIALS & EQUIPMENT COSTS

Cost of materials and equipment furnished and incorporated in the work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith, adjusted in accordance with Article 5.3, pertaining to Discounts, Rebates and Refunds; rentals of all construction equipment and machinery and the parts thereof whether rented from the CMAR or others in accordance with rental agreements and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with the terms of said agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the work.

5.1.3 MISCELLANEOUS COSTS

- a. The cost, as documented by the CMAR's detailed receipts, of

telephone, telegrams, postage, photographs, blueprints, office supplies, first aid supplies and related miscellaneous costs reasonably incurred in direct support of the work at the project location.

- b. Premiums (Agreed upon Rate) on bonds and insurance, including subcontractor bonds, if any that the CMAR is obligated to secure and maintain under the terms of the CONTRACT DOCUMENTS and such other insurance and bonds as may be required, subject to the written approval of the CITY. Premiums paid, as part of the CMAR's Cost, shall be net of trade discounts, volume discounts, dividends and other adjustments. All insurance and bonds shall be provided by companies acceptable to the CITY.
- c. Self-insurance by the CMAR or insurance through any affiliates of the CMAR shall not be permitted without the CITY's prior written approval. CITY's approval shall not be required on a subcontractor bond, and premiums thereof shall be considered a Cost of the Work.
- d. The cost of obtaining and using any utility services required for the Work that are not paid directly by the CITY, including fuel and sanitary services at the Project sites.
- e. The cost of removal of debris from the sites. The Project sites, lay-down locations, and staging sites will be kept clear of all debris on a daily basis. All subcontracts shall require Subcontractors to remove all debris daily created by their activities, and the CMAR shall exercise its best efforts to enforce such requirements or effect the removal of the debris of the Subcontractors who fail in this regard. Provided, however, CMAR shall not be required to remove debris created by the CITY's separate contractors except pursuant to Change Order procedures set forth herein.
- f. The cost and expenses, actually sustained by the CMAR in connection with the work, of protecting and repairing adjoining property, if required, except to the extent that any such cost or expense is:
 - i. The responsibility of the CMAR under Article 1, reimbursable by insurance or otherwise;
 - ii. Due to the failure of the CMAR to comply with the requirements of the Contract Documents with respect to insurance; or
 - iii. Due to the failure of any officer of the CMAR or any of its representatives having supervision or direction of the Work to exercise good faith or the standard of care normally exercised in the conduct of the business of a general contractor

experienced in the performance of work of the magnitude, complexity and type encompassed by the Contract Documents, in any of which events any such expenses shall not be included in the CMAR's costs.

- g. Federal, state, municipal, sales, use and other taxes required by law, as applicable to the Project, all with respect to service performed or materials furnished for the work, it being understood that none of the foregoing includes, federal, state or local income or franchise taxes.
- h. All reasonable costs and expenditures necessary for the operation of the project job site office(s), including cost of field computer equipment and software.
- i. The proportion of necessary transportation, travel and subsistence expenses of the CMAR's employees, excluding travel time, incurred in discharge of duties connected with the work except for local travel to and from the site of the Work.
- j. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the work, and cost less than market value of such items used but not consumed which remain the property of the CMAR.
- k. Deposits lost for causes other than the CMAR's negligence, royalty payments and fees for permits and licenses.
- l. Cost of premiums for additional bonds and insurance required because of changes in the Work.
- m. Cost of special consultants, including, but not limited to, engineers, architects, testing laboratories, surveyors employed for services specifically related to the Work.
- n. Any other expenses or changes incurred, with the prior written approval of the City in the performance of the Work.

5.2 EXCLUSIONS TO THE COST OF WORK

- 5.2.1 Overhead is defined as any and all other costs, not referenced in Article 5.1 and 5.2, and its operation which are not in direct support of the Project. CMAR agrees to furnish and perform, as a part of the Construction

Manager's Fee and Overhead/Profit without reimbursement, said overhead items. The term "Cost of the Work" shall not include any of the following:

- a. Payroll costs and other compensation of the CMAR's officers, executives, principals (of partnership and sole proprietorship), general managers, estimators, purchasing and contracting agents, clerks and other personnel employed by the CMAR whether at the Project sites or in its principal or a branch office for general administration that are not specifically included in the General Conditions are to be considered administrative costs covered by the Construction Manager's fees.
- b. Other than those authorized expenses of the CMAR's principal and branch offices.
- c. Any part of the CMAR's capital expenses, including interest on CMAR's capital employed for the Work and charges against the CMAR for delinquent payments.
- d. Other overhead, general expense costs or charges of any kind and the cost of any item not specifically and expressly included in Article 5.
- e. Costs in excess of the Guaranteed Maximum Price.
- f. Entertainment and meal expenses and charges of a personal nature.
- g. Bonuses, pensions, profit sharing or other special labor charges not included in Article 5.1, above.
- h. Any outside legal or CITY accounting fees incurred without prior written approval from the CITY Counsel, which approval is at the sole discretion of the CITY Counsel.

5.3 DISCOUNTS, REBATES AND REFUNDS

All cash discounts obtained on payments made by the CMAR shall accrue to the CITY unless the CMAR actually advanced its own funds, prior to receipt of funds from City, to make the payment giving rise to the discount. When CMAR becomes aware that a cash discount may be available to the CITY, CMAR shall, prior to advancing its own funds, notify the CITY of such opportunity so CITY can make the required payment to achieve the discount for the City. CMAR shall only advance its own funds if the CITY declines to make the early payment. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment

shall accrue to CITY, and CMAR shall make provisions so that they may be obtained.

5.4 GENERAL CONDITIONS

- 5.4.1 General Conditions costs may include, but are not limited to the following types of costs incurred by the CMAR during construction of the Work to the extent they are reimbursable Costs of the Work: payroll costs for Work conducted at the site, payroll costs for the superintendent and full-time general foremen, payroll costs for management personnel resident and working on the site, workers not included as direct labor costs engaged in support, administrative office personnel, costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the site, cost of liability insurance premiums not included in labor burdens for direct labor costs, costs of bond premiums, costs of consultants not in the direct employ of the Contractor or Subcontractors, fees for permits and licenses.
- 5.4.2 General Conditions Costs may be paid on a percentage of the Contract Price or on a lump/stipulate sum basis as set forth on the Contract. All costs included in the General Conditions Costs shall not be separately invoiced to or paid by the CITY.
- 5.4.3 The total amount of General Conditions Costs for the Work may be divided by the number of days allowed for performance of the Work, to determine a fixed daily rate for General Conditions Costs that may be used in computing the General Conditions Costs allocated to any period of time, or for any adjustments in the General Conditions Costs agreed to in writing by the CITY.
- 5.4.4 Any and all savings on the GMP, or any separately guaranteed items comprising the GMP shall belong to the CITY, subject to any express right in the Contract for the CMAR to share in savings. Savings are subject to the CITY's right to audit, and may be audited separately.

5.5 ALLOWANCES

- 5.5.1 CMAR shall include in the Contract Price all Allowances stated in the Contract Documents and agreed to in writing by the CITY. Items covered by these Allowances shall be supplied for such amounts and by such persons as the CITY may direct, provided the CMAR will not be required to employ persons against whom the CMAR makes a reasonable objection. Materials and equipment under an Allowance shall be selected by the CITY

in accordance with a schedule to be mutually agreed upon by the CITY, Consultant and CMAR or otherwise in reasonably sufficient time to avoid delay in the Work.

5.5.2 Unless otherwise provided in the Contract Documents:

- a. These Allowances shall cover the cost to the CMAR, less any applicable trade discount, of the Materials and equipment required by the Allowance, delivered at the Site, and all applicable taxes;
- b. CMAR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit and other expenses relating to Material equipment required by the Allowance shall be include in the Contract Sum and not in the Allowance; and
- c. Whenever the cost is more or less than the Allowance, the Contract Sum shall be adjusted accordingly by a Change Order, the amount of which will recognize the difference between actual costs for an Allowance item and the amount of the Allowance item and changes, if any, in handling costs on the Site, labor, installation costs, overhead, profit and other expenses.

5.6 CONTINGENCY

- 5.6.1 Construction Contingency: An agreed upon sum included in the GMP for the purpose of defraying the CMAR's actual approved expenditures for completion of Cost of Work. Contingency is not to be used for CITY directed change orders. Any costs to be applied against the contingency must first be approved by the CITY in writing. The City will not unreasonably withhold approval. CMAR will be required to furnish documentation evidencing the expenditures charged to this Contingency prior to release of funds by the CITY. At Final Completion of the Project, any remaining monies in the Construction Contingency shall vest in the CITY. The GMP shall be reduced in the amount of the Construction Contingency remaining monies, if any.
- 5.6.2 Owner Contingency: An amount determined by the CITY, which is available to the Project during construction, only upon prior written approval of the CITY, to address Cost of the Work that were unforeseeable by the CMAR and CITY at the time of execution of the Guaranteed Maximum Price Agreement, notwithstanding the CMAR's exercise of due diligence in connection therewith. The CMAR may not access or utilize any portion of the Owner Contingency without the prior written approval of the CITY, which approval shall be in the sole discretion of the CITY, in the form of a Change Order approved by the CITY. To the extent that any portion of the

Contingency remains unallocated on the date of Final Completion of the Project and after the issuance of Final Payment for the Project, the remaining, unused portion of the Contingency shall be the CITY's.

ARTICLE 6 PAYMENTS AND COMPLETION

6.1 CONTRACT PRICE

- 6.1.1 The Guaranteed Maximum Price (GMP) as stated in the Agreement and, including authorized adjustments, is the total amount payable by the CITY to the CMAR for performance of the Work under the Contract Documents.
- 6.1.2 The intent of the Contract Document is to include the Guaranteed Maximum Price all items expressly stated, reasonably inferable and or necessary for the proper execution and completion of the Work by the CMAR and for fully functioning systems and a fully functioning Project. The Contract Documents are complementary, and what is required or reasonably inferable by one Document or any part thereof, shall be as binding as if required or inferable by all and all other parts; performance by the CMAR shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce a fully functioning Project, the indicated results and with all detail as shown in any portion of the Contract Documents.
- 6.1.3 The CMAR shall submit a schedule of values with the GMP, allocating the entire Contract Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy. This schedule shall be used as a basis for reviewing the CMAR's Application for Payment.

6.2 PROGRESS PAYMENTS

- 6.2.1 At least ten (10) days before the date established for each progress payment, the CMAR shall submit an itemized Application for Payment prepared in accordance with the schedule of values, for completed portions of the Work. The application shall be supported by all data substantiating the CMAR's right to payment that the CITY and Consultant require.
- 6.2.2 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. Each application shall include an updated progress schedule acceptable to the CITY, copies of requisitions, and releases and waivers of

liens from Subcontractors and Suppliers, and shall reflect retainage described below.

- 6.2.3 Five percent (5%) of the total amount billed per invoice shall be retained by the CITY until completion of the project and acceptance by the CITY.
- 6.2.4 CITY and Consultant shall review each Application for Payment and may make such exceptions, reasonably deem necessary or appropriate.
- 6.2.5 After receipt and review of the CMAR's Application for Payment, the Consultant will either (1) issue to the CITY a Certificate of Payment in the full amount of the Application for Payment; or (2) issue to the CITY a Certificate for Payment for such amounts as the Consultant determines is properly due, and notify the CMAR and CITY of the Consultants reasons for withholding certification in part; or (3) withhold certification of the entire Application for Payment, and notify the CMAR and CITY of the Consultant's reason for withholding certification in whole.
- 6.2.6 The issuance of a Certificate for Payment will constitute a representation by the Consultant to the CITY, based on the Consultant's evaluation of the Work and the data in the Application for Payment, that, to the best of the Consultant's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the CMAR is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction or minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Consultant. However, the issuance of a Certificate for Payment will not be a representation that the Consultant has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and Suppliers and other data requested by the CITY to substantiate the CMAR's right to payment; or (4) made examination to ascertain how or for what purpose the CMAR has used money previously paid on account of the Contract Price.
- 6.2.7 Consultant may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the CITY, if in the Consultant's opinion the representations to the CITY required by Article 6.2.6 cannot be made. If the Consultant is unable to certify payment in the amount of the Application, the Consultant will notify the CMAR and CITY as provided in

Article 6.2.5. If the CMAR and Consultant cannot agree on a revised amount, the Consultant will promptly issue a Certificate for Payment for the amount for which the Consultant is able to make such representation to the CITY. The Consultant may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of the Certificate for Payment previously issued, to such extent as may be necessary in the Consultant's opinion to protect the CITY from loss for which the CMAR is responsible, including loss resulting from acts and omissions because of:

- a. defective CMAR or subcontractor Work not remedied.
- b. damage to another contractor not remedied.
- c. failure of the CMAR to make payments properly to Subcontractors or Suppliers for labor, materials or equipment;
- d. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- e. reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- f. repeated failure to carry out the Work in accordance with the Contract Documents.

6.2.8 After the Consultant has issued a Certificate for Payment, the CITY shall make payment within thirty (30) days after approval of the CMAR's Application for Payment and submission of all required documentation.

6.2.9 CMAR shall promptly pay all bills for labor and material performed and furnished by its subcontractors, suppliers and materials providers, in connection with the construction, furnishing and equipping of the Work and the performance of the Work.

6.2.10 CMAR shall remain solely liable for Subcontractor's Work and for any unpaid laborers, material suppliers or subcontractors or Subcontractor in the event it is later discovered that said Work is deficient or that any of said laborers, material suppliers or subcontractors did not receive payments due them on the Project.

6.2.11 The CITY has the right to request written evidence from the CMAR that the CMAR has properly paid Subcontractors and Suppliers amounts paid by the

CITY to the CMAR for subcontracted Work. If the CMAR fails to furnish such evidence within seven (7) days, the CITY shall have the right to contact Subcontractors and Suppliers to ascertain whether they have been properly paid. Neither the CITY or the Consultant shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or Supplier, except as may otherwise be required by law.

6.2.12 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the CITY shall not constitute acceptance of Work not in accordance with the Contract Documents.

6.2.13 After Final Completion of the Work and acceptance thereof by the CITY, CMAR shall submit a Final Request For Payment, which shall set forth all amounts due and remaining unpaid to the CMAR (including the unpaid portion of the Construction Manager's Fee).

6.3 DIRECT PURCHASES

6.3.1 The City may utilize its Direct Purchase Option for this project whereby selected equipment and/or materials necessary for the project are specified by the CMAR and City to be directly purchased by the City, thereby saving sales tax on equipment and/or materials. It is intended that during the construction phase of the project the City and the CMAR will develop a schedule of necessary equipment and/or materials that are targeted for direct purchase by the City and the Direct Purchase Option will be implemented for this project and made part of this agreement such that the targeted amount of Potential Tax Saving will be realized.

6.3.2 Should the CMAR realize any savings under the Direct Purchase Option for equipment and/or materials purchased directly by the City, the City shall receive all savings.

6.4 PERFORMANCE & PAYMENT BOND

6.4.1 Prior to execution of the Contract, CMAR shall provide a Performance Bond and a Payment Bond, each in an amount equal to the full amount of the Contract Price.

6.4.2 Bonds:

a. Following bonds required

i. Performance Bond

ii. Labor and Materials Payment Bond

- b. The bonds shall be executed by a surety that is licensed in the state of Florida and shall remain in effect as required by law. The bonds shall be effective as of the Commencement Date and shall cover all Work and obligations under Contract.

6.4.3 All insurance policies and bonds herein required of the CMAR 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.

6.4.4 Should the CMAR fail to perform any of its obligations under this Contract, the CITY shall give the CMAR and Surety a thirty (30) day Notice of Default. After receipt of the 30-day Notice provided herein, the CMAR and Surety shall have the right and opportunity to cure the default(s). If after the 14-day Notice, the CMAR and Surety do not cure the default as provided in this Article, then the Surety, in addition to the CMAR, without the need to terminate the CMAR, shall be liable to the CITY for any damages the CITY may sustain and be entitled to pursuant to this Contract and the bonds. No further Notices shall be required by the CITY.

6.5 CERTIFIED PAYROLL

6.5.1 CMAR shall submit to the CITY, on a monthly basis, with each payment application, reasonable supporting documentation of the hours worked and rates applied for each employee charged to the project.

6.5.2 CMAR 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. CMAR shall be responsible for noncompliance by any of his/her SUBCONTRACTORS. This section shall be deemed part of any Contract entered into between the CMAR and any of his/her SUBCONTRACTORS.

6.6 FINAL PAYMENT

6.6.1 Subject to all of the CITY's rights to withhold or offset payment, and other rights under the Contract, Final Payment including remaining retainage shall be paid only after:

- a. The Work has been fully completed (including completion of all incorrect or incomplete work items) and the written Final Acceptance has been issued by the CITY;

- b. Necessary operating manuals, any excess materials and supplies

necessary for matching materials and supplies incorporated into the Work, and complete “as-built” drawings (including the Building Information, if required by the Contract Documents), plans and specifications have been delivered to the CITY, as specified in the Contract Documents;

- c. Full and unconditional lien waivers and releases by the CMAR and any person performing labor or supplying material, machinery, fixtures, or tools for the Work have been delivered to the CMAR;
- d. All conditions and requirements imposed by the City or any financing entity for the corresponding disbursement have been met; and
- e. CMAR delivers to the CITY an Application requesting Final Payment.

ARTICLE 7 CHANGES TO THE CONTRACT

- 7.1 Without invalidating the Contract and without notice to the surety, CITY reserves and shall have the right, from time to time, to make such increases, decreases or other changes in the character or quantity of the Work as may be considered necessary or desirable to complete fully and acceptably the proposed construction in a satisfactory manner. Any extra or additional work within the scope of this project must be accomplished by means of an appropriate Change Order in accordance with the requirements of the Contract Documents.
- 7.2 Any changes to the terms of the Contract Documents must be contained in a written document, executed by both parties hereto, with the same formality and of equal dignity prior to the initiation of any work reflecting such change.
- 7.3 CITY may direct the CMAR to expedite the Work by whatever means the CMAR may use, including, without limitation, increasing staffing or working overtime to bring the Work back within the progress schedule. If the expediting of Work is required due to reasons outside the control or responsibility of the CMAR, then the additional costs incurred shall be the subject of an appropriate adjustment issued pursuant to Article 7.5, as applicable. However, the expediting of Work and increasing staffing initiated by the CMAR to catch-up on schedule timelines in efforts to avoid delays is not subjected to a change order or additional compensation from the CITY.

7.4 NOTIFICATION OF CHANGE TO CONTRACT TERMS OR PRICE

- 7.4.1 Any claim for a change in the Contract Time or Contract Price shall be made by written notice and delivered by the CMAR to the CITY within five (5) calendar days of the commencement of the event giving rise to the claim

and stating the general nature of the claim. Notice of the nature and to the extent reasonably possible elements of the claim shall be delivered within twenty (20) calendar days after the date of such written notice. Thereafter, within ten (10) calendar days of the termination of the event giving to the claim, notice of the extent of the claim with supporting data shall be delivered unless the CITY allows an additional period of time to ascertain more accurate data in support of the claim and shall be accompanied by the CMAR's written statement that the adjustment claimed justified as a result of the occurrence of said event.

7.4.2 All claims for adjustment to the Contract Time or contract price shall be determined by the CITY in accordance with Article 4 herein. If the CITY and CMAR cannot otherwise agree; NO CLAIM FOR AN ADJUSTMENT IN THE CONTRACT TIME OR CONTRACT PRICE WILL BE VALID IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.

7.4.3 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of and through no fault or negligence of the CMAR if a claim is made therefore as provided in Article 7.4. Such delays shall include, but not be limited to, acts or neglect by any separate independent contractors employed by CITY, fires, floods, labor disputes, epidemics, conditions or acts of God.

7.5 CHANGE ORDERS

7.5.1 Changes in the quantity or character of the Work within the scope of the Project which are not properly executed, or the subject of Field Directives or Supplemental Instructions, including all changes resulting in changes in the Contract Price, or the Contract Time, shall be authorized only by written Change Orders approved and issued in accordance with the provisions of the Contract Documents and applicable of the CITY's Purchasing Policies.

7.5.2 Pursuant to the CITY Purchasing Policies, all changes to construction contracts which exceeds the GMP must be approved in advance in accordance with the value of the Change Order or the calculated value of the time extension. CMAR shall not start work on any changes requiring an increase in the Contract Price or the Contract Time until a Change Order setting forth adjustments is approved and issued by the CITY. If the CMAR commences work pertaining to a Change Order prior to receiving written authorization from the CITY, then they do so at their own risk and assume all associated responsibility and costs. Upon receipt of a Change Order, CMAR shall promptly proceed with the work set forth within the document.

- 7.5.3 In the event satisfactory adjustment cannot be reached for any item requiring a change in the Contract Price or Contract Time, and a Change Order has not been issued, CITY reserves the right at its sole option to have the disputed work performed by a separate Contractor and make such arrangements as may be deemed necessary to complete the disputed work; or submit the matter in dispute to the Consultant as set forth in Article 10.
- 7.5.4 On approval of any Contract change increasing or decreasing the Guaranteed Maximum Price, CMAR shall ensure that the Performance/Payment Bond is changed so that each reflects the Guaranteed Maximum Price as the penal sum of the bond.

7.6 FIELD CHANGE DIRECTIVES & SUPPLEMENTAL INSTRUCTIONS

- 7.6.1 The CITY shall have the right to approve and issue changes setting forth written interpretations of the intent of the Contract Documents and ordering minor changes in work execution, provided the Field Change Directive involves no change in the Contract Price or Contract Time.
- 7.6.2 The CITY and/or Consultant shall have the right to approve and issue Supplemental Instructions setting forth written orders, instructions, or interpretations concerning the Contract Documents, provided such supplemental instructions involve no change in the Contract Price or Contract Time.
- 7.6.3 At the completion of the Work, a Memorandum will be issued in conjunction with a final Change Order to remove any remaining sums within the Cost of the Work and reduce the GMP in accordance with Articles 7.5.

7.7 NO DAMAGES FOR DELAY

- 7.7.1 No claim for damages or any claim other than for an extension of time, shall be made or asserted against the CITY by reason of any delays. CMAR shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from the CITY for direct, indirect, consequential, impact or other costs, expenses or damages, including, but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, Eichleay Formula Costs, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by the CMAR for hindrance or delays due solely to

fraud bad faith or active interference on the part of the CITY or its agents. Otherwise, CMAR shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

- 7.7.2 Notwithstanding the foregoing, in the event of a delay caused by the City or by a force majeure to the CMAR may bill all General Conditions incurred by the CMAR on account of such delay, but any such increase to the CMAR's General Conditions shall not increase the GMP.

7.8 EXCUSABLE DELAY

- 7.8.1 Excusable Delay: Delay which extends the completion of the work which is caused by circumstances beyond the control of the CMAR (which shall be defined as war, acts of God, tropical storms or hurricanes, strikes, Declaration of Emergency effecting Broward County, but shall not include pandemics) or its subcontractors, materials persons, suppliers, or vendors is Excusable Delay. CMAR is entitled to a time extension of the Contract Time for each day the work is delayed due to excusable delay. CMAR shall document its claim for any time extensions.
- 7.8.2 Failure of the CMAR to comply with Article 7.4 hereof as to any particular event of delay shall be deemed conclusively to constitute a waiver, abandonment or relinquishment of any and all claims resulting from that particular event of delay.
- 7.8.3 Excusable Delay may be compensable or non-compensable.
- a. Compensable Excuse Delay: is only compensable when: (i) the delay extends the Contract Time, and (ii) is due solely to fraud, bad faith or active interference on the part of the CITY or its agents. In no event shall CMAR be compensated for interim or non-critical delays, which do not extend the Contract Time, except to the extent that the CMAR incurs General Conditions Costs which are within the Guaranteed Maximum Price.
 - b. Non-Compensable Excuse Delay: When delay is not due solely to fraud, bad faith or active interference on the part of the CITY or its agents, then CMAR shall be entitled only to a time extension and no further compensation for the delay, other than the CMAR's reimbursement of CMAR's General Conditions within the Guaranteed Maximum Price.

ARTICLE 8 PROJECT RECORDS

8.1 DRAWING DOCUMENTS

- 8.1.1 During the construction period, the CMAR shall maintain at the jobsite a full-size set of prints of the Construction Document Drawings and Shop Drawings for Project Record Document purposes.
- 8.1.2 Drawings shall be updated on a weekly basis or more frequent as necessary with a red pencil or red ink to reflect any field adjustments, changes, omissions, additions, etc. as they occur on the project.
- 8.1.3 CMAR shall mark these drawings to indicate the actual installation where the installation varies from the original Construction Documents. CMAR shall give particular attention to information on elements that will be concealed, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:
 - a. Dimensional changes to the Drawings
 - b. Revisions to details shown on Drawings
 - c. Locations and depths of underground utilities
 - d. Revisions to routing of piping and conduits
 - e. Actual equipment locations
 - f. Changes made by Change Orders or Addendums
 - g. Details not on original Contract Drawings
- 8.1.4 Any project drawing or quantity summary sheet that shows a quantity on it that is incorrect shall be corrected by drawing a neat line through the original quantity and writing in the correct information.
- 8.1.5 CMAR shall submit Project Record Drawing set and Shop Drawings to the City or its representative for review and comment.
- 8.1.6 CITY or its designee shall have the right to inspect and copy the books and records and accounts of the CMAR and all major subcontractors including but not limited to books, records, correspondence, instructions, drawings, receipts, payment records, vouchers, and memoranda which relate in any

way to the Project, and to any claim for additional compensation made by the CMAR which relate to the Project and to any claim for additional compensation made by the CMAR.

- 8.1.7 CMAR shall preserve and make available to CITY all financial records, supporting documents, statistical records and any other documents which relate to the Project and to any claim for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Statute), if applicable, and, if the Public Records Act is not applicable, for a period of three (3) years following final completion of the Project.
- 8.1.8 During the Project and for the appropriate record retention period, CMAR shall provide the CITY access to its books and records at CMAR's usual place of business upon seventy-two (72) hours written notice. If any audit has been initiated and audit findings have not been resolved at the end of the end of the retention period of 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 (Chapter 119, FL Statute) is determined by the CITY to be applicable to the CMAR's records, CMAR shall comply with all requirements thereof. Any incomplete or incorrect entry in such books, records and accounts shall be a basis for the CITY's disallowance and recovery of any payment upon such entry.
- 8.1.9 CMAR's records shall include, but not be limited to accounting records (hard copy, as well as computer readable data), written policies and procedures; subcontractor files (including proposals of successful and unsuccessful bidders and bid recaps), surety files and bond company files, original estimates, estimating work sheets, correspondence, change order files (including, but not limited to, documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends and any other supporting evidence deemed necessary by the CITY to substantiate charges related to this Contract (all of the foregoing hereinafter referred to as records).
- 8.1.10 CMAR shall require all subcontractors, insurance agents and material suppliers (payees) to keep and maintain comparable records for the same time period and to permit the CITY to review, inspect and audit such records. CMAR shall include such requirements in all written subcontracts and purchase orders issued.
- 8.1.11 If an audit inspection or other examination by the CITY or the CITY's representatives in accordance with this Article, disclose overcharges (of any nature) by the CMAR to the CITY in excess of ten (10%) percent of the

total billings, the cost of the CITY's audit (whether performed by the CITY or outside auditors) shall be reimbursed or paid to the CITY by the CMAR. Any adjustments and/or records shall be made within a reasonable amount of time (not to exceed thirty (30) days) from presentation of the CITY findings to the CMAR.

8.2 OWNERSHIP OF CONTRACT DOCUMENTS

Drawing, specifications, designs, models, photographs, reports, surveys, and other data submitted by the CMAR provided in connection with this Agreement are and shall remain the property of the CITY whether the Project for which they are made is completed or not. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the CMAR shall become the property of the CITY and shall be delivered by the CMAR to the CITY within seven (7) days of termination of the Contract Documents by either party. Any compensation due to the CMAR shall be withheld until all documents are received as provided herein.

8.3 SURVEY AND AS-BUILT DRAWINGS

Prior to final payment and as required by the technical specifications (or, in absence of technical specification requirements concurrent with the Final Payment Application), CMAR shall furnish final as-built drawings (in electronic and hard copy as designated by the CITY) and surveys and in electronic media utilizing CAD Standards as designated by the CITY, in addition to three (3) sets of hard copy, showing the exact locations of all structures and underground site utilities installed by CMAR, including all water, sewer, gas, fuel, telephone, security and electric lines and main, and locations of all easements for such utilities. Such surveys shall be prepared by a licensed Florida surveyor who shall certify that the Work is installed and erected entirely upon the Project Site and within the building restriction lines, if any, and does not overcharge or encroach upon any easement or right-of-way of others.

8.4 CONTRACTOR'S WARRANTIES

8.4.1 CMAR represents and warrants:

- a. That it is financially solvent, able to pay its debts as they mature, and is possessed of sufficient working capital to perform this Contract;
- b. that is able to furnish the materials, and services;
- c. that is experienced in and competent to perform the Work contemplated by this Contract; and

d. it is qualified to do the Work herein and is authorized to do business in the State of Florida.

8.4.2 That the CMAR holds a license, permit or other special license to perform the services included in this Contract, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license.

8.4.3 CMAR warrants to the CITY that all materials and equipment under this Contract will be new unless otherwise specified and that all of the Work shall be of good and workmanlike quality and completed in strict conformance with all applicable laws, rules and regulations and the plans and specifications and all other terms and conditions of the Contract Documents, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free from faults and defects not inherent in the materials required or specified and in conformance with the Contract Documents.

8.4.4 All Work not conforming to these requirements, including substitutions not properly approved and authorized by the CITY may be considered defective. If required by the CITY, CMAR shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Article 8 herein. Warranties shall be a minimum of one year, with the option to have extended warranties of identified equipment/installation.

8.4.5 The date of Final Acceptance shall be the beginning of the Warranty period irrespective of early completion by some Subcontractors of their work. CMAR shall furnish extended warranties for facilities placed in service before Substantial Completion and that expires no earlier than one year beyond Final Completion, except as otherwise required in the Contract Documents.

8.4.6 Nothing in the warranties contained in the Contract Documents are intended to limit any manufacturer's warranty which provides the CITY with greater warranty rights than set forth in this Article or the Contract Documents. CMAR will provide the CITY with all manufacturers' warranties prior to Final Acceptance.

8.5 DEFECTIVE WORK

8.5.1 CITY shall have the authority to reject or disapprove Work which the Project Manager and/or Consultant finds to be defective. If required by the

CITY, the CMAR shall promptly either correct all defective work or remove such defective work and replace it with proper, conforming work. CMAR shall pay all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel.

- 8.5.2 Should the CMAR fail or refuse to remove or correct any defective work or to make any necessary repairs in accordance with the requirements of the Contract Documents within the time indicated in writing by the Project Manager, CITY shall have the authority to cause the defective work to be removed or corrected, or make such repairs as may be necessary at the CMAR's expense. Any expense incurred by the CITY in making such removals, corrections or repairs shall be paid for out of any monies due or which may become due to CMAR and deducted from the GMP, or may be charged against the Performance Bond. In the event of failure of the CMAR to make all necessary repairs promptly and fully, CITY may declare a default.
- 8.5.3 If, within one (1) year after the date of Final Completion or such longer period of time as may be prescribed by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the CMAR, after receipt of written notice from the CITY, shall promptly correct such defective or nonconforming work specified by the CITY without cost to the CITY, to do so. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation, which the CMAR might have under the Contract Documents.
- 8.5.4 Failure to reject any defective work or material shall not in any way prevent later rejection when such defect is discovered, or obligate CITY to final acceptance.
- 8.5.5 CMAR shall (i) replace any part of the work that fails to conform with the requirements of this Contract that appear during progress of the work on the Project; (ii) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from the time of Final Completion of the Work or portions thereof hereunder or within such longer period of time as may be set forth in the Contract Documents or as may be required by law; and (iii) replace, repair or restore any parts of the Project or furniture, fixtures, equipment or other items placed therein (whether by the CITY or any other part) that are injured or damaged by any such parts of the Work that do not conform to the requirements of this Contract or are due to defects in the Work.
- 8.5.6 The provisions of this Article shall not apply to corrective work attributable

to the CITY's failure to maintain the work, non-conformance due to normal wear and tear or otherwise to the acts or omissions of any separate contractor or subcontractor of the CITY unless the CMAR is acting in such capacity or capacities.

8.5.7 The cost of the CMAR of performing any of its obligations under Article 5 shall be within the Guaranteed Maximum Price. CMAR's responsibility to make repairs and redo Work under this Article 8.5 is in addition to CMAR's responsibility to the CITY for any other damages of any kind for which the CMAR would be legally responsible.

8.5.8 If the CITY and CMAR deem it inexpedient to require the correction of work damaged or not performed in accordance with the Contract Documents, an equitable deduction from the Contract Price and the Guaranteed Maximum Price shall be made by agreement between the CMAR and the CITY. Until such settlement, the CITY may withhold such sums as the CITY deems just and reasonable from monies, if any, due to the CMAR. If no monies are held by the CITY, reimbursement shall be made to the CITY within thirty (30) days by the CMAR.

8.5.9 CMAR's express warranty herein shall be in addition to, and not in lieu of, any other warranties or remedies the CITY may have under this Contract, at law, or in equity for defective Work.

8.6 PROJECT CLOSEOUT

At the Final Completion of the Project, a Memorandum will be issued in conjunction with a Final Change Order to remove any amounts in excess of the Construction Manager's General Conditions, the Construction Manager's Fee and the Cost of the Work, all subtracted from the GMP with the Savings to be retained by the Owner.

ARTICLE 9 RIGHT TO TERMINATE CONTRACT

9.1 CITY'S RIGHT TO TERMINATE CONTRACT

9.1.1 If the CMAR fails to begin the Work within the (10) calendar days after the Notice to Proceed Date, or fails to perform the Work with sufficient workers and equipment or with sufficient materials to insure the prompt completion of the Work, or shall perform the Work unsuitably, or cause it to be rejected as defective and unsuitable, or shall discontinue the prosecution of the Work pursuant to the accepted schedule or it's CMAR shall fail to perform any material term set forth in the Contract Documents or if the CMAR shall become insolvent or be declared bankrupt, or commit

any act of bankruptcy or insolvency, or shall make an assignment for the benefit of creditors, or from any other cause whatsoever shall not carry on the Work in an acceptable manner, the CITY may give notice in writing to the CMAR and its Surety of such delay, neglect or default, specifying the same.

- 9.1.2 If the CMAR, within a period of ten (10) calendar days after such notice, shall not proceed in accordance therewith, then the CITY may upon written certificate from the CITY's Representative of the fact of such delay, neglect or default and the CMAR's failure to comply with such notice, terminate the services of the CMAR, exclude CMAR from the Project site and take the prosecution of the Work out of the hands of the CMAR, and appropriate or use any or all materials and equipment that are an integral part of the Work on the Project site as may be suitable and acceptable.
- 9.1.3 CITY may terminate the Contract if the CITY determines, in its sole discretion, that the CMAR has:
 - a. Refused or failed to supply enough properly skilled workers or proper materials;
 - b. Failed to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the CMAR and the Subcontractors;
 - c. Disregards laws, ordinances, or rules, regulation or orders of a public authority having jurisdiction; or
 - d. Otherwise breach a provision of the Contract Documents or any other contract between the CITY and the CMAR.
- 9.1.4 When any of the above reasons exist, the CITY may terminate the Contract, without prejudice to any other rights or remedies of the CITY, after giving the CMAR and Contractors' surety, if any, seven (7) days' prior written notice of the CITY's intent to terminate the Contract and CMAR's failure to cure any such reasons. Upon such termination, the CITY may:
 - a. Take possession of the Site(s) and of all materials thereon owned by the CMAR; and/or
 - b. Finish the Work by whatever reasonable method the CITY may deem expedient.
- 9.1.5 When the CITY terminates the Contract for one of the reasons stated

above, the CMAR shall not be entitled to receive further payment until the Project is completed. If the unpaid balance of the Contract Price, excluding any remaining Contingency existing at the time of such termination exceeds the costs and expenses of finishing the Work and any other damages incurred by the CITY, such excess shall be paid to the CMAR.

- 9.1.6 In addition, the CITY, may enter into an agreement for the completion of the Project according to the terms and provisions of the Contract Documents, or use such other methods as in the CITY's sole opinion shall be required for the completion of the Project according to the terms and provisions of the Contract Documents, or use such other methods as in the CITY's sole opinion shall be required for the completion of the Project in an acceptable manner. All damages, costs and charges incurred by the CITY, together with the costs of completing the Project, shall be deducted from any monies due or which may become due to the CMAR. In case the damages and expenses so incurred by the CITY shall exceed the unpaid balance, then the CMAR shall be liable and shall pay to the CITY the amount of said excess. This obligation shall survive termination of the Contract.
- 9.1.7 If after notice of termination of the CMAR's right to proceed, it is determined for any reason that the CMAR was not in default, the rights and obligations of the CITY and CMAR shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause as set forth in Section 9.1.8 below.
- 9.1.8 This Contract may be terminated for convenience in writing by the CITY upon ten (10) days written notice to the CMAR (delivered by certified mail, return receipt requested) of intent to terminate and the date on which such termination becomes effective. In such case, CMAR shall be paid for all work executed and expenses incurred prior to termination in addition to demobilization costs, and termination settlement costs reasonably incurred by the CMAR relating to commitments which had become firm prior to the termination. Payment shall include the Construction Manager's Fee and General Conditions Costs for work and/or services performed. No payment shall be made for profit for work and/or services that have not been performed.
- 9.1.9 Upon receipt of Notice of Termination pursuant to Article 9.1 above, CMAR shall promptly discontinue all affected work unless the Notice of Termination directs otherwise and deliver or otherwise make available to the CITY all data, drawings, specifications, reports, estimates, summaries and such other information as may have been required by the Contract Documents whether completed or in process.

9.2 CMAR'S RIGHT TO STOP WORK OR TERMINATE

9.2.1 If the CITY fails to review and approve or state in writing reasons for rejection of any Application for Payment within fourteen (14) days after it is properly submitted in accordance with Article 6.1, or if the CITY fails either to pay CMAR within thirty (30) days after presentation to the Project Manager by the CMAR of any sum certified by the Consultant, or to notify CMAR in writing of any objection to the Application for Payment, then the CMAR may give written notice to the CITY of such delay, neglect or default, specifying the same. If the CITY (where applicable), within a period of fourteen (14) calendar days after such notice shall not remedy the delay, neglect, or default upon which the notice is based, then the CMAR may stop work or terminate this Contract and recover from the CITY payment for all work executed and reasonable expenses sustained therein plus reasonable termination expenses. Any objection made by the CITY to an Application for Payment shall be submitted to Consultant in accordance with the provisions of Article 10 hereof.

ARTICLE 10 RESOLUTION OF DISPUTE

10.1 The parties to the Contract agree that time is of the essence in relation to performance of the Contract and completion of the Project, therefore any all disputes in relation to the Contract will initially be referred to the CITY Representative, the Consultant Representative and/or the CMAR Representative as applicable to the dispute, for immediate resolution.

10.2 To prevent all disputes and litigation, it is agreed by the parties hereto that the Consultant shall decide all questions, claims, difficulties and disputes of whatever nature which may arise relative to the technical interpretation of the Contract Documents and fulfillment of this Contract as to the character, quality amount value of any work done and materials furnished, or proposed to be done or furnished under or by reason of, the Contract Documents and Consultant's estimates and decisions upon all claims, questions, difficulties and disputes shall be final and binding to the extent provided in Article 16. Any claim, question, difficulty, or dispute which cannot be resolved by mutual agreement of the CITY and the CMAR shall be submitted to the Consultant in writing within ten (10) calendar days. The Consultant shall notify the CITY and CMAR in writing of Consultant's decision within ten (10) calendar days from the date of the submission of the claim, question, difficulty or dispute, unless the Consultant requires additional time to gather information or allow the parties to provide additional information. All nontechnical administrative disputes shall be determined by the CITY pursuant to the time periods provided herein. During the pendency of any dispute and after a determination thereof, the CMAR, Consultant, and CITY shall

act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction.

- 10.3 In the event the determination of a dispute under this Article is unacceptable to any of the parties hereto, the party objecting to the determination must notify the other party in writing within ten (10) days of receipt of the written determination. The notice must state the basis of the objection and must be accompanied by a statement that any Contract Price adjustment claimed is the entire adjustment to which the objecting party has reason to believe it is entitled to as a result of the determination. Within sixty (60) days after Final Completion of the Work, the parties shall participate in mediation to address all objections to any mediator mutually agreed upon by the parties. Should any objection not be resolved in mediation, the parties retain all their legal rights and remedies provided under State law. If a party objecting to a determination, fails to comply in strict accordance with the requirements of this Article, said party specifically waives all of its rights provided hereunder, including its rights and remedies under State law.
- 10.4 This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue sites, and shall be governed by the laws of the State of Florida. By entering into this Contract, the CMAR and CITY hereby expressly waive any rights either party may have to trial by jury of any civil litigation related to or arising out of the Project. CMAR, pursuant to Article 6.6 of this Agreement, shall specifically bind all subcontractors to the provisions of this Contract.
- 10.5 Pending resolution of any dispute arising under this Contract, other than termination hereof, the CMAR shall proceed diligently with performance of this Contract and the CITY shall continue to make payments in accordance with the Contract Documents.

ARTICLE 11 INDEMNIFICATION

- 11.1 To the fullest extent permitted by law, the CMAR, its successors and assigns shall indemnify and hold harmless the CITY and its agents, representatives, officers, directors, officials and employees from all demands, proceedings, suits, actions, claims, damages, or losses relating to, arising out of, resulting from or alleged to have resulted from the performance of Work, negligence, recklessness, or intentional wrongful conduct of the CMAR and persons employed or utilized by the CMAR in the performance of this Contract.
- 11.2 CMAR's duty to defend, indemnify and hold harmless the CITY and its agents,

representatives, officers, directors, officials and employees shall arise in connection with all demands, proceedings, suits, actions, claims, workers' compensation claims, unemployment claims, damages, losses or expenses (including but not limited to attorney's fees, court costs, and the cost of appellate proceedings) that are attributable to personal or bodily injury, sickness, disease, death or injury to, impairment or destruction of property including loss of use resulting therefrom, caused by any act or omission of the CMAR, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

- 11.3 CMAR has the duty to defend the CITY for any claim brought against the CITY for actions of the CMAR with the CITY having choice of counsel. CMAR shall not allow any mechanic lien to be filed against any city property for failure of the CMAR to pay its subcontractor, in the event lien is filed the CMAR is responsible for defending the CITY to have lien removed. 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 12 NOTICES

- 12.1 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, or shall be issued via email to the designated CITY Representative with authority to receive such notices. All notices to be given to the parties hereto shall be sent to or made to the addresses listed below.

For CITY:

City Manager
3250 NE 12th Avenue
Oakland Park, FL 33009

With Copy to:

Director of Engineering and Building Services
5399 N. Dixie Highway, Suite 3
Oakland Park, FL 33009

AND, in cases of default,

City Attorney
3099 East Commercial Blvd, Suite
200 Fort Lauderdale, FL 33308

For CMAR:

State Contracting and Engineering Corporation
5391 N. Nob Hill Road
Sunrise, FL 33351
Paul Carty, President
Telephone: (954) 923-4747
Email: pcarty@statecontracting.com

ARTICLE 13 PUBLIC ENTITY CRIME ACT

- 13.1 CMAR represents that the execution of this Contract will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to the CITY, may not submit a bid on a contract with the CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to the CITY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with the CITY, and may not transact any business with the 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 the CITY's competitive procurement activities.
- 13.2 In addition, to the foregoing, CMAR further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a public entity crime and that it has not been formally charged with committing an act defined as a public entity crime regardless of the amount of money involved and regardless of whether the CMAR has been placed on the convicted vendor list.

ARTICLE 14 HURRICANE PLAN & PRECAUTIONS

- 14.1 CMAR shall prior to commencement of Work, provide the CITY with a Hurricane Plan identifying all steps the CMAR shall take in the event of an approaching hurricane during performance of the Work. Said Hurricane Plan shall show how the CMAR will protect the Project and secure the Work, equipment and materials. Said Hurricane Plans is subjected to approval by the CITY and Consultant. All demobilization and re-mobilization expenses shall be borne solely by the CMAR. Directives to demobilize in the event of a hurricane warning shall be in writing from the CITY or the Consultant. Any time extension granted due to a Hurricane

will be limited only to those days when the Work Site is unsafe for Work to be performed.

- 14.2 During such periods of time as are designated by the United States Weather Bureau as being a hurricane warning or watch, CMAR shall take all precautions necessary to secure the project site in response to all threatened storm events, regardless of whether the CITY or Consultant has given notice of same. Addressed by a Change Order in accordance with Article 7. Suspension of the work caused by a threatened or actual storm event, regardless of whether the CITY has directed such suspension, will entitle the CMAR to additional Contract Time as non-compensable, excusable delay.

ARTICLE 15 INSURANCE

CMAR 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 CMAR, his agents, representatives, employees and subcontractors. The cost of such insurance shall be included in the CMAR's 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. Blanket Contractual Liability
5. Independent Contractors
6. Broad Form Property Damage
7. Personal Injury Liability
8. CITY's and CMAR's Protective Policy, issued by the same insurance company as that issuing liability insurance above (I.A.). The policy must be submitted to the CITY's Risk Manager and be issued in the name of the City of Oakland Park
9. Fire Legal Liability

B. Automobile Liability Insurance, including:

1. Owned Automobiles.
2. Non-owned 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, Non-owned Automobiles and Hired Automobiles.
- C. Workers' Compensation: Workers' Compensation Insurance as required by the State of Florida. If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.

D. Employer's Liability:

\$100,000 limit per occurrence,

\$500,000 annual aggregate for disease,

\$100,000 limit for disease of an individual employee.

E. Inland Marine Builder's Risk Insurance:

CMAR, prior to notice to proceed or commencement of Work, whichever occurs first, agrees to maintain an Inland Marine Builder's Risk insurance coverage form as approved by the CITY in writing prior to procurement of the Policy.

CMAR further agrees that any deductible (s) shall not exceed \$150,000, any wind percentage deductible (when applicable) shall not exceed ten percent (10%); and any flood sublimit shall not be less than 20% of the projected completed value of the Work for this policy.

CMAR agrees to endorse the Inland Marine Builder's Risk insurance with a manuscript endorsement eliminating the automatic termination of coverage in the event the building is occupied in whole or in part, or put to its intended use, or partially accepted by CITY. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the CITY's interest in the building ceases, or the building is accepted or insured by the City.

CMAR agrees to endorse the CITY as "Additional Insured" on the Inland Marine Builder's Risk Insurance coverage form. The CITY shall be fully responsible for the payment of the deductibles for any loss covered under the Builder's Risk

insurance policy, including without limitation basic deductible, water damage loss and flood and windstorm deductibles.

- F. Professional (Errors & Omissions) Liability of not less than \$1,000,000 per claim, \$1,000,000 Annual Aggregate, or a Combined Single limit. CMAR agrees the policy shall include a minimum three (3) year Discovery (tail) reporting period, and a Retroactive Date that equals or precedes the effective date of the Contract, or the performance of services hereunder. CMAR agrees the Self-Insured-Retention shall not exceed \$25,000. This coverage may be provided on a Per-Project Basis.

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 CMAR. In the event the CITY chooses to reduce deductibles, the City will be responsible for the difference in premium cost not included in the GMP.

IV. Other Insurance Provisions

The policies shall contain the following provisions:

- A. Additional Insured, Certificate Holder and Breach of Warranty Clause:

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. CMAR's Insurance is Primary:

CMAR'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 CMAR'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:

CMAR's insurances shall be on an occurrence basis as opposed to a claims-made basis (other than CMAR's Professional Liability Insurance). 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 CITY's Risk Manager.

E. 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 CMAR's insurance company.

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

G. Bonds:

The following bonds are required:

1. Performance Bond.
2. Labor and Materials Payment Bond

V. Acceptability of Insurance Company

A. Florida State Licensed:

All insurance policies and bonds herein required of the CMAR shall be written by a company authorized and licensed to do insurance business in the State of Florida with an A.M. Best rating of AA or better and be executed by agents licensed as agents by the State of Florida.

VI. Verification of Coverage

A. Certificates and Endorsements Provided:

CMAR 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. Insurance coverage required in these specifications shall be in force throughout the contract. Should the CMAR 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 CMAR and its subcontractors with the foregoing requirements as to carrying insurance and furnishing copies of the insurance policies shall not relieve the CMAR 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, CMAR 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 CMAR's subcontractors or suppliers and the CITY.

CMAR 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 CMAR is for acts and omissions of persons directly employed by the CMAR.

A. Joint Venture:

The parties agree that this agreement shall be the whole and total agreement between the parties, and the CMAR 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 CMAR's activity. The CMAR acts independently and in its own right, risk and responsibilities. The CITY assumes no direction, control, responsibility or liability for the activities of the CMAR and, by the execution of this agreement, does not endorse or undertake any activity heretofore conducted by the CMAR.

VIII. Other Requirements

Subcontractors' Insurance Requirements: CMAR 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 16 OTHER TERMS & AGREEMENTS

- 16.1 Third Party Beneficiaries: Neither the CMAR nor CITY intend to directly or substantially benefit a third party by this Contract. Therefore, the parties agree that there are no third- party beneficiaries to this Contract and that no third party shall be entitled to asset a claim against either of them based upon this Contract.
- 16.2 Conflicts: Neither the CMAR nor its employees shall have to hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with the CMAR's loyal and conscientious exercise of judgment related to its performance under this Contract. CMAR agrees that none of its employees shall, during the term of this Contract, serve as an adverse or hostile witness against the CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her opinion, which is adverse or prejudicial to the interests of the CITY in any such pending or threatened legal or administrative proceeding. The limitations of This Article shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding regarding this Contract. CMAR agrees to prohibit its subcontractors, by written contract, from having any conflicts as within the meaning of this Article.
- 16.3 Joint Preparation: Preparation of this Contract has been a joint effort of the CITY and CMAR and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.
- 16.4 Drug Free Workplace: It is a requirement of the CITY that it enter into contracts only with firms that certify the establishment of a drug-free workplace. Execution of this Contract by CMAR shall also serve, as CMAR's required certification that it either has or that it will establish a drug-free workplace.
- 16.5 Assignment: CMAR shall not assign this Contract or subcontract it as a whole without the written consent of the CITY; nor shall CMAR assign any monies due or to become due to it hereunder, without the previous written consent of the CITY.
- 16.6 Waiver: No consent or waiver, express or implied, by either party to this Contract to or of any breach or default by the other in the performance of any obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other of future breach or default by such party hereunder, nor deemed to be a modification of this Contract. Failure on the part of any party hereto to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder, provided however this section shall

not alter or amend the notice provisions set forth in the Construction Documents including but not limited to, in Article 5.6. Inspection by, payment by or tentative approval or acceptance by the CITY, or the failure of the CITY to perform any inspection hereunder shall not constitute a final acceptance of the Work or any part thereof and shall not release CMAR from any of its obligations hereunder.

- 16.7 Construction of Terms: Unless the context clearly intends to the contrary, words singular or plural in number shall be deemed to include the other and pronouns having masculine or feminine gender shall be deemed to include the other. The term "person" shall be deemed to include an individual, corporation, unincorporated organization, partnership, trust, government and governmental agency or subdivision, as the context shall require.
- 16.8 Captions: The captions used for the Articles of this Contract are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of the intent of this Contract or any Article hereof.
- 16.9 Entire Agreement; Severability; Amendments: These Contract Documents incorporate and include all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understanding concerning the subject matter of this Contract that are not contained in the Contract Documents. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document in accordance with Article 7. In the event any provision of the Contract Documents shall be found by a court of competent jurisdiction to be invalid or otherwise unenforceable, the remainder of this Contract shall not be affected thereby and each remaining provision, term, covenant or condition of the Contract Documents shall continue to be effective.
- 16.10 Counterparts: This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 16.11 Local Conditions and Project Site: Execution of the Contract by the CMAR is a representation that the CMAR has visited the Project Site(s), become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. CMAR represents that it has performed its own investigation and examination of the Project Work Site(s) and their surroundings and satisfied itself before entering into this Contract as to:

- 16.11.1 conditions bearing upon transportation, disposal, handling, and storage of materials;
- 16.11.2 the availability of labor, materials, equipment, water, electrical power, utilities and roads;
- 16.11.3 uncertainties of weather, flooding and similar characteristics of the site;
- 16.11.4 conditions bearing upon security and protection of material, equipment, and Work in progress;
- 16.11.5 the form and nature of the Work Site, including the surface and sub-surface conditions; and excluding unforeseen conditions.
- 16.11.6 the extent and nature of work and materials necessary for the execution of the Work and the remedying of any defects therein; and
- 16.11.7 the means of access to the site and the accommodations it may require and, in general, shall be deemed to have obtained all information as to risks, contingencies and other circumstances.
- 16.11.8 CMAR shall provide and pay a livable wage for competent, suitably qualified personnel to perform the Work as required by the Contract Documents.

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 _____ - _____, signing by and through its _____, duly authorized to execute same.

CITY

ATTEST:

CITY OF OAKLAND PARK

RENEE SHROUT, CITY CLERK

By: _____
DAVID HEBERT, CITY MANAGER

MAYOR

Approved as to legal sufficiency and form by

CITY ATTORNEY

[EXECUTION CONTINUED ON NEXT PAGE]

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.

CMAR

ATTEST:

STATE CONTRACTING AND ENGINEERING

SECRETARY

By: _____
PAUL CARTY, PRESIDENT

(Corporate Seal)

(Type Name and Title Signed Above)

_____ Day of _____, 20_____

GMP SUMMARY



Fire Station 87 Exterior Hardening

ESTIMATE NO./REF.

GMP

LOCATION/OWNER:

Broward County, City of Oakland Park

BID DATE:

August 30, 2022

1	2	3	4	5	6	7	8	9
Div. No.	CSI Cost Code	Bid Package	Description of Work	Total Bid Amount	Name of Bidder	Unit Measure	Unit	Cost Per Unit
Division 01 - General Requirements								
01	01 00 00	01100	✓ General Conditions	131,288	Estimate	LS	1	131,287.50
01	-	01450	✓ Testing Services	925	Nutting Eng	LS	1	925.00
01	-	00360	✓ Permits	-	By City	LS	1	-
01	-	02210	✓ GPR Survey	1,200	Blood Hound	LS	1	1,200.00
Division 02 - Existing Conditions								
02	02 40 00	02220	✓ Building Demolition	32,800	SCEC	SF	7,500	4.37
02	02 40 00	02220	✓ Site Demolition	-	W/Demolition	-	-	-
02	-	-	✓ Generator Building Enclosure	150,000	Allowance	LS	1	150,000.00
02	-	-	✓ Protection of Existing Surfaces	4,614	SCEC	SF	7500	0.62
Division 03 - Concrete								
03	03 30 00	03300	✓ Concrete	36,800	SCEC	SF	7,500	4.91
Division 05 - Metals								
05	05 12 23	05120	✓ Structural Steel	17,600	TWS	LS	1	17,600.00
05	05 50 00	05500	✓ Misc. Metals (Bollards, roof guardrail)	15,225	Allowance	LS	1	15,225.00
Division 06 - Wood, Plastics & Composites								
06	06 10 00	06100	✓ Miscellaneous Rough Carpentry	4,433	SCEC	LS	1	4,433.00
Division 07 - Thermal & Moisture Protection								
07	07 51 00	07510	✓ Built Up Bituminous Roofing	163,098	Latite	SF	7500	21.75
07	07 92 00	07900	✓ Joint Sealants	-	w/Windows	LS	1	-
Division 08 - Openings								
08	08 11 13	08100	✓ Hollow Metal Doors & Frames	46,071	Metro Doors	SF	7500	6.14
08	08 30 00	08300	✓ Bi Fold Doors (Fire Bay)	306,508	Coast to Coast	LS	1	306,508.00
08	08 41 13	08410	✓ Aluminum Entrances & Windows	60,620	Windglass	SF	7500	8.08
08	08 71 13	08710	✓ Door Hardware	-	w/ HM Doors/Frame	-	-	-
08	08 70 00	08700	✓ Door & Hardware Install	-	w/ HM Doors/Frame	-	-	-
08	08 81 00	08521	✓ Glass & Glazing	-	w/Windows	-	-	-
Division 09 - Finishes								
09	09 24 23	09220	✓ Patching at Doors, Windows, Steel	14,950	SCEC	LS	1	14,950.00
09	09 29 82	09260	✓ Metal Framing and Gypsum Board	8,670	Powertech	LS	1	8,670.00
09	09 90 00	09900	✓ Painting	14,250	MBR	SF	7,500	1.90
Division 10 - Specialties								
10	10 14 00	10400	✓ Signage	4,000	Allowance	LS	1	4,000.00
Division 11 - Equipment								
11	11 12 00	11140	✓ Fuel Tank Removal	5,488	EPAC	-	-	-
Division 26 - Electrical								
26	26 00 00	16050	✓ Electrical	365,400	Universal Electric	SF	7,500	48.72
Division 31 - Earthwork								
31	31 00 00	02300	✓ Earthwork	-	w/Concrete	LS	1	-
31	31 00 00	02360	✓ Termite Control - Soil Treatment	-	w/ Concrete	-	-	-

Fire Station 87 Exterior Hardening

ESTIMATE NO./REF. GMP
 LOCATION/OWNER: Broward County, City of Oakland Park
 BID DATE: August 30, 2022

1	2	3	4	5	6	7	8	9
Div. No.	CSI Cost Code	Bid Package	Description of Work	Total Bid Amount	Name of Bidder	Unit Measure	Unit	Cost Per Unit
Division 32 - Exterior Improvements								
32	32 00 00	02820 ✓	Fencing & Gates	16,993	Gomez & Sons	LS	1	16,993.00
32	32 80 00	02810 ✓	Irrigation	-	None	LS	1	-
32	32 90 00	02945 ✓	Sod Restoration	3,750	Unpurchased Scope	LS	1	3,750.00
Sub Total Direct Cost =				1,404,683				
PROJECT CONTINGENCY & MATERIAL ESCALATION				10.000%	140,468			
GENERAL LIABILITY INSURANCE				1.350%	20,860			
BUILDERS RISK INSURANCE				1.100%	17,226			
SUB TOTAL WITH INSURANCE					1,583,236			
BOND				1.060%	16,780			
SUB TOTAL WITH BOND					1,600,016			
CM FEE					136,001			
SUB TOTAL WITH FEE					1,736,018			
GMP Grand Total =					1,736,018			



ALTERNATES DETAILS

GMP

1 NO.	2 ITEMS	3 DESCRIPTION	4 AMOUNTS (w/ Soft Costs)
#1	ADD	Generator Building Enclosure	
	1	Earthwork	\$15,500
	2	Relocate Utilities	\$20,000
	3	Concrete Shell	\$65,000
	4	Stucco	\$9,000
	5	Door and Frame	\$6,000
	6	Roofing	\$18,000
	7	Paint	\$3,000
	8	Louver	\$3,500
	9	Electrical	\$26,000
	10	Muffler	\$5,000
	11	Sod and Landscape	\$6,000
	12	Credit Fence	(\$6,000)
	13	Credit Concrete Slab	(\$8,000)
	14	Credit Generator Enclosure	(\$38,000)
		Contingency	\$25,000
		TOTAL	\$150,000

EXHIBIT B ADDENDUM

THIS STANDARD CONTRACT ADDENDUM is made and entered into this ____ day of _____, 20____, by and between the CITY OF OAKLAND PARK, a Florida municipality, hereinafter referred to as the "CITY", and _____, hereinafter referred to as "CMAR", concerning that certain agreement entitled _____, dated _____ ("Agreement").

WITNESSETH:

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the CMAR's compliance for Florida's Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Florida law requires that public agency contracts be subject to non-appropriation and thereby contingent upon appropriation during the public agency's statutorily mandated annual budget approval process.

NOW, THEREFORE, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

1. **Amendment.** This Addendum hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of the Addendum, the terms of the Addendum shall prevail.
2. **Public Records Compliance.** CMAR agrees that, to the extent that it may "act on behalf" of the CITY within the meaning of Section 119.071(1)(a), Florida Statutes in providing its services under this Agreement, it shall:
 - (a) Keep and maintain public records required by the public agency to perform the service.
 - (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
 - (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following

completion of the contract if the CMAR does not transfer the records to the public agency.

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

(e) Pursuant to Section 119.0701(2)(a), Fla. Stat., IF THE Construction Manager HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CMAR's DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

Renee M. Shrout, CMC City Clerk
3650 NE 12th Avenue
Oakland Park, FL 33334

3. **Public Records Compliance Indemnification.** CMAR agrees to indemnify and hold the CITY harmless against any and all claims, damage awards, and causes of action arising from the CMAR's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by CMAR's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. CMAR authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against CMAR in Broward County Circuit Court on an expedited basis to enforce the requirements of this section.
4. **Compliance/Consistency with Section 768.28, Fla. Stat.** Any indemnification by City specified in the Agreement shall not be construed as a waiver of City's sovereign immunity, and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by CITY in the Agreement in derogation hereof shall be void and of no force or effect.

5. **Non-appropriation.** CITY's performance and obligation to pay under this Agreement is contingent upon an appropriation during the CITY's annual budget approval process. If funds are not appropriated for a fiscal year, then CMAR shall be notified as soon as is practical by memorandum from the CITY Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year-end shall be without penalty or expense to the City subject to the City paying all invoices for services rendered during the period the Agreement was funded by appropriations.
6. **Venue and Jurisdiction.** Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally: (i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Broward County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

Construction Manager at Risk

Print Name: Paul Carty

Title: President

Company: State Contracting and Engineering

City of Oakland Park

Print Name: