

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER at RISK
(CMAR)

THIS AGREEMENT, is made by and between CITY OF PORT ST. LUCIE, FLORIDA, a municipal corporation, duly organized under the laws of the State of Florida, hereinafter called, "Owner," and Burkhardt Construction Inc, 1400 Alabama Ave, Suite 20 West Palm Beach Florida 33401, a Florida corporation, and Licensed to Conduct Business in the State of Florida, hereinafter, "CMAR."

W I T N E S S E T H:

WHEREAS, on or about August 1, 2024, the Owner issued its Solicitation No. eRFP #20240112 for Construction Manager at Risk Services for Torino Regional Park; and

WHEREAS, the CMAR has timely submitted a proposal in response to the Owner's Request for Proposal, whereby the CMAR has offered to provide construction management services in accordance with the request contained in Owner's Request for Proposal; and

WHEREAS, on November 12, 2024, the Owner selected and designated **Burkhardt Construction Inc.**, to be the CMAR for the Construction Manager at Risk for the Torino Regional Park, hereinafter, "**PROJECT**," subject to the negotiation, preparation, approval and execution of a definitive agreement between Owner and CMAR; and

WHEREAS, the Owner and CMAR are desirous of entering into such a definitive agreement pursuant to which CMAR will provide construction management services, all as more fully set forth herein; and

WHEREAS, the Owner is obligating \$5,541,600.00 of the City's Local Fiscal Recovery Fund allocation under the American Rescue Plan Act ("ARPA") to the Project;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

ARTICLE 1.
EXTENT OF AGREEMENT; DEFINITIONS

1.01 Agreement. This **PROJECT** is comprised of two distinct parts identified as follows; (1) Phase 1 - Preconstruction Services (Exhibit E); (2) Phase 2 – Construction Services (to be established in a separate amendment). The CMAR accepts the relationship of trust and confidence established between it and the Owner by this Agreement. The CMAR covenants with the Owner to furnish its skill and judgment as a Construction Manager and General Contractor with specific

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WITNESSETH:

WHEREAS, on or about August 1, 2024, the Owner issued its Solicitation No. eRFP #20240112 for Construction Manager at Risk Services for Torino Regional Park; and

WHEREAS, the CMAR has timely submitted a proposal in response to the Owner's Request for Proposal, whereby the CMAR has offered to provide construction management services in accordance with the request contained in Owner's Request for Proposal; and

WHEREAS, on Click here to enter a date., the Owner selected and designated **Burkhardt Construction Inc.**, to be the CMAR for the Construction Manager at Risk for the Torino Regional Park, hereinafter, "**PROJECT**," subject to the negotiation, preparation, approval and execution of a definitive agreement between Owner and CMAR; and

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expertise in the planning and construction of the **PROJECT** and to cooperate with the Owner and the Owner's representatives, including specifically the Project Architect-Engineer (hereinafter referred to as "AE"), in furthering the interests of the Owner. The CMAR agrees to furnish efficient business administration and superintendence and use its best efforts to complete the **PROJECT** in the best and most expeditious and economical manner, consistent with the interests of the Owner. The CMAR agrees to provide the services required by this Agreement to complete such services consistent with the Owner's direction, the approved program, and the terms of this Agreement, in accordance with a standard of care which is ordinarily exercised by other construction managers and general contractors in similar circumstances.

1.02 Construction Team. The CMAR, Owner and AE shall be called the "Construction Team" and shall work together as a team from the date established by the Notice to Proceed through construction completion. The CMAR and AE shall work jointly during the preconstruction design phase and through final construction completion and shall be available thereafter should additional services be required. The CMAR shall provide leadership to the Construction Team on all matters relating to construction. The CMAR understands, acknowledges and agrees that the AE shall provide leadership to the Construction Team on all matters relating to design and engineering.

1.03 Extent of Agreement. This agreement for Construction Management Services for the **PROJECT** represents the entire agreement between the Owner and the CMAR and supersedes any prior negotiations, representations or agreements. This Agreement shall not be superseded by any provisions of the Project Plans and Specifications and may be amended only by written instrument signed by both Owner and CMAR. This Agreement is intended to be consistent with and implement the approved program for the **PROJECT** as set forth and further defined in that certain agreement between Owner and AE dated, October 30, 2024, or any other design documents from other contractors hired by the Owner or the AE.

1.04 Definitions. As used in this Agreement, the words and phrases described in Exhibit C attached hereto and incorporated herein, shall have the meanings as set forth in that Exhibit C.

1.05 Use of Words and Phrases. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural as well as the singular number, and the word "person" shall include corporations and associations, including public bodies, as well as natural persons. "Herein," "hereby," "hereunder," "hereof," "herein- before," and "hereinafter" and other equivalent words refer to this Agreement and not solely to the particular portion thereof in which any such word is used.

1.06 Grant Compliance. This Agreement is to be funded through the City's Local Fiscal Recovery Fund allocation under the American Rescue Plan Act ("ARPA") accepted by the City in the attached Exhibit A. CMAR agrees to comply with the federal requirements contained in Exhibit B. Failure of CMAR to perform in

accordance with Exhibits A and B and all applicable laws, rules, regulations, and guidance from the U.S. Department of the Treasury related to ARPA shall be a breach of this Agreement. All ARPA funds to be provided under this Agreement must be expended prior to December 31, 2026. CMAR shall not be entitled to receive any ARPA payment after December 31, 2026. This Article 1.06 shall not apply to delays outside of CMAR's control.

ARTICLE 2. PURPOSE; PROPOSAL; SCHEDULE

2.01 Purpose. The purpose of this Agreement is to provide for the provision of Construction Management Services for the **PROJECT** by the CMAR, and construction of the **PROJECT** by the CMAR in accordance with the Project Plans and Specifications. The further purpose of this Agreement is to define and delineate the responsibilities and obligations of the parties to this Agreement and to express the desire of all such parties to cooperate together to accomplish the purposes and expectations of this Agreement.

2.02 Response to Request for Proposal. CMAR's Response to the Request for Proposal for Construction Management Services submitted by CMAR to Owner is hereby found to be consistent with and in conformance with the provisions of Owner's Request for Solicitation No. eRFP #20240112 and is in the best interests of the citizens of the City of Port St. Lucie, Florida. It is the intent of the parties that the CMAR's Response to the Request for Proposal for Construction Management Services be implemented pursuant to this Agreement, and, therefore, such Response is hereby merged into and is effectuated by this Agreement. Reference is hereby made to the response to the Request for Proposal for Construction Management Services submitted by CMAR to the Owner, as well as any supplementary representations and statements furnished by CMAR to the Owner during the CMAR selection process. The parties acknowledge that the representations and statements or information contained therein have been relied upon by the Owner and have resulted in the selection of CMAR as the construction manager for this **PROJECT**. However, Owner acknowledges that the terms and conditions for the performance of the CMAR and for the provision of its services are solely as contained within the Contract Documents. The Contract Documents, shall include the following documents, listed in order of precedence:

- (1) Amendments or Change Orders
- (2) This Agreement
- (3) Exhibits A, B, C, D & E
- (4) The Request for Construction Management Services or Solicitation

Furthermore, the Request for Proposal for Construction Management Services, or Solicitation, shall be incorporated within the Agreement, to the extent that it does not conflict with the remainder of the Agreement (all of said documents, including

this Agreement, sometimes being referred to herein as the "Contract Documents" and sometimes as the "Agreement").

2.01 Project Schedule. The development and equipping of the **PROJECT** shall be undertaken and completed in accordance with the Project Schedule. The construction services portion of the Project Schedule may be amended, revised and supplemented, and may thereafter be revised from time to time by and in the reasonable good faith discretion of the CMAR and AE, which revision shall be effective upon receipt by the Owner of a written notice of revision, provided, however, that absent an event of Force Majeure or a revision to the Project Schedule authorized by the execution of a Change Order, no revision to the Project Schedule which extends the preconstruction phase or the Project Substantial Completion Date shall be effective without the prior written approval of the Owner.

ARTICLE 3. COMPENSATION

3.01 CMAR'S Compensation. The Owner agrees to pay to the CMAR as compensation for all of its services and work provided for hereunder, including preconstruction and construction services. The fee for preconstruction services, as provided in Exhibit D, is **\$163,020.00**, and the sum of a CMAR fee to be negotiated at the time GMP* is established for Construction Services, as provided for in Exhibit D.

*The GMP will be established in a separate amendment to this Agreement.

(1) Preconstruction Services (Exhibit D) shall be payable as follows: **Percentage complete based on tasks performed** thirty (30) calendar days following the start date established by the Notice to Proceed, and **percentage complete based on tasks performed** each thirty (30) calendar days thereafter, for an additional 12 monthly installments for a total of **13 months in the amount of \$163,020.00**. The compensation set forth in this paragraph is designed to pay CMAR for its services rendered in connection with the preconstruction design phase of the **PROJECT**. If at any time during the preconstruction design phase, it can reasonably be concluded that CMAR's services are not being provided in accordance with the schedule of preconstruction services, CMAR shall be reimbursed based upon a percentage of the services performed during the prior month.

(2) CMAR fee. Not more often than once per month, and on a date established at the Project Pre-Construction Conference, the CMAR will submit to the Project Manager for review the invoice for payment in a form agreed upon by the CMAR and Owner. This form shall be filled out and signed by the CMAR covering the Work-In-Place as of the date of the Application and supported by such data as the Project Manager may reasonably require. In the event that the Project Substantial Completion Date occurs prior to expiration of the construction phase period as set forth in the Project Schedule, the entire remaining balance due under

the terms of this Subparagraph (2) shall be due and payable on the Punch List Completion Date.

(3) Reimbursable Project Costs. Based on application for payment for the actual cost of work completed, submitted monthly, itemized to correspond to the basis of compensation as set forth in Exhibit D and Article 6.03, including supportive documentation.

3.02 The Project; Changes in the Project; Additional Fee. The Project is as established by the Owner and AE in certain construction documents to be created. If the Project GMP is increased by Owner, the CMAR shall be entitled to receive an additional fee **to be negotiated and established by the Parties, in writing, at the time of such increase to the GMP.** Payment of CMAR's additional fee shall be made in equal monthly installments calculated by dividing the additional fee by the months remaining in the construction phase of the Project schedule. Upon completion of the additional work and final payment to the subcontractors, the actual cost of such additional work shall be established and any adjustment in the fees paid to CMAR shall be made between Owner and CMAR. As an incentive for the CMAR to diligently pursue cost reducing alternatives no reduction in CMAR fee below the amount set in Article 3.01 will occur as a result of project cost savings including those resulting from recommendations of the CMAR.

3.03 Period of Construction; Additional Fee. Owner, AE and CMAR expect and believe that the period of construction or construction phase for the **PROJECT** shall be **(to be established with Phase 2 amendment)** calendar days to **substantial completion** and **(to be established with Phase 2 amendment)**, calendar days to **final completion**.

Pre-Construction Phase Services shall be completed within 13 Months. **from** the date specified in the Pre-Construction Notice to Proceed.

***First Construction GMP payment and the subsequent monthly installments to be determined after the GMP has been established with Phase 2 amendment.**

In the event that the construction schedule is extended by agreement of Owner and CMAR due to changes in the **PROJECT** requested by Owner, CMAR shall be entitled to additional CMAR fee as negotiated in the GMP Amendment less any fee increase as calculated in Section 3.02 for work resulting in the subject increase in construction period. Provided, however, CMAR shall not be entitled to receive any portion of such additional compensation to the extent that the delay in performance results from acts of commission, omission, negligence, or fault of the CMAR, its agents or employees.

3.04 Project Costs. Project Costs shall mean all costs incurred by the Owner and CMAR in planning, constructing and equipping the **PROJECT**, in accordance with the Project Plans and Specifications all of which Project Costs shall be paid by the Owner, all of which Project Costs shall be included within the GMP established by CMAR and are more specifically described in Exhibit D.

- (a) The Owner reserves the right to execute Direct Material Purchase(s) for any and all materials provided to the **PROJECT**.

3.04.1 Direct Material Purchases. The CMAR shall review the design for the purpose of identifying major equipment and/or material purchases that may be advantageous for the Owner to purchase directly from suppliers as a cost saving measure. Once items have been identified and quantified by the CMAR, and approved by the Owner for direct purchase, the Owner will issue purchase orders and process payment for invoices approved by the CMAR.

The CMAR shall prepare and be responsible for all quantities, descriptions, specifications, guarantees, payment schedules, etc., and all other required information to be included in the Owner issued purchase order.

3.05 Items and Expenses Included in CMAR's Compensation. Except as specifically set forth in Paragraphs 3.03 and 3.04 above, CMAR's compensation includes full payment for services set forth in this Agreement, including but not limited to, salaries or other compensation of CMAR's officers, partners and/or employees; general operating expenses incurred by CMAR and relating to this **PROJECT**, including the cost of management, supervision and data processing staff, job office equipment and supplies, and other similar items as shown in Exhibit D, Part I, and necessary for CMAR to perform its services hereunder, specifically excluding any items described on Exhibit D, Part II, attached hereto and incorporated herein, and including overhead and profit.

ARTICLE 4.

CONSTRUCTION MANAGER'S RESPONSIBILITIES AND SERVICES

4.01 Project Management Information System. Commencing immediately following the date established by the Notice to Proceed, the CMAR shall implement and shall utilize throughout the life of this Agreement an information system agreed upon by the City and CMAR. The system shall be PROCORE and Microsoft Project. The reports, documents and data to be provided through the information system shall represent an accurate assessment of the current status of the **PROJECT** and of the work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions. It shall be prepared and furnished to the Owner and the AE monthly and shall accompany each pay request. If requested by the Owner, the CMAR shall conduct a comprehensive workshop in Port St. Lucie, Florida, for participants designated by the Owner and such additional seminars as are required to provide instruction. The workshop and the seminars shall facilitate each participant's and the Owner's representatives' use and understanding of the information system. The information system shall be described in terms of the following major subsystems:

- (1) Narrative Reporting. The CMAR shall prepare written reports as described hereunder. All such reports shall be in 8 1/2" x 11" or other convenient

format. Copies shall be maintained at the Project Site and transmitted to the Owner and the AE. A bound copy of the complete narrative report shall be submitted to the Owner at the conclusion of the **PROJECT**. The narrative reporting subsystem shall include the following reports:

(a) A monthly executive summary which provides an overview of current and outstanding issues and pending decisions, primary party responsible for the decision, future developments and expected achievements, and any problems or delays, including code violations found by the Permitting Authority.

(b) A monthly cost narrative describing the current construction cost estimate and status of the **PROJECT**.

(c) A monthly scheduling narrative summarizing the current status of the overall Project Schedule. This report shall include an analysis of the various Project Schedules, a description of the critical path, and the analysis as necessary to compare planned performance with actual performance.

(d) A monthly accounting narrative describing the current actual cost and payment status of the **PROJECT** with supporting document. This report shall relate current encumbrances and expenditures to the budget allocations.

(e) A monthly construction progress report during the construction phase summarizing the work of the various subcontractors. This report shall include information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations programs, permits, construction problems and recommendations and plans for the succeeding month.

(f) A daily construction diary during the construction phase describing events and conditions on the project site.

(2) Schedule Control. As soon as reasonably possible following execution of this Agreement, but not later than thirty (30) calendar days following full execution hereof, the CMAR shall prepare a Project Schedule using the critical path bar chart method, establishing a detailed schedule for preconstruction services, construction and Owner occupancy of the **PROJECT**, subject to review of Owner and AE, and approval or rejection by Owner within thirty (30) calendar days of delivery to Owner. The Project Schedule shall include a scheduled Construction Commencement Date and Project Substantial Completion Date, which dates shall accommodate known or reasonably anticipated geographic, atmospheric and weather conditions. The Project Schedule will serve as the framework for the subsequent development of all detailed schedules. The Project Schedule shall be produced and updated monthly throughout the **PROJECT**. In a manner consistent with the Project Schedule the CMAR shall prepare and submit to the AE a construction schedule in quadruplicate graphically depicting the activities contemplated to occur as a necessary incident to performance of the work required to complete the **PROJECT**, showing the sequence in which the CMAR proposes for each such activity to occur as a necessary incident to performance of the work required to complete such activity to occur and duration (dates of commencement and completion, respectively) of each such activity. The AE shall determine

whether the construction schedule delivered and submitted by the CMAR meets the requirements stated above and whether the construction schedule is consistent with the Project Schedule. Following development and submittal of the construction schedule, the CMAR shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the **PROJECT**, or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the work performed and the occurrence of all events which have affected the progress of performance of the work already performed or will affect the progress of the performance of the work yet to be performed in contrast with the planned progress of performance of such work, as depicted on the original construction schedule and all updates and/or revisions thereto as reflected in the updated and/or revised construction schedule last submitted prior to submittal of each such monthly update and revision. Each such update and/or revision to the construction schedule shall be submitted to the Owner and AE in duplicate. The CMAR shall prepare and incorporate into the schedule data base, at the required intervals, the following schedules.

(a) The CMAR shall prepare a construction schedule for work encompassed in each bid package. The schedule shall be sufficiently detailed as to be suitable for inclusion in the bid package as a framework for contract completion by the successful bidder. It shall show the interrelationships between the work of the successful bidder and that of other subcontractors and shall establish initial completion objectives keyed to the Project Schedule.

(b) Upon the award of each subcontract, the CMAR shall jointly with the subcontractor, develop a schedule which is more detailed than the original construction schedule included in the specifications, taking into account the work schedule of the other subcontractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The construction schedule shall also show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.

(c) The CMAR shall jointly develop with the AE and Owner a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The occupancy schedule shall be produced and updated monthly from its inception through final Owner occupancy.

(3) Work by Others. The Owner may perform additional Work related to the **PROJECT** by itself, or it may let other direct contracts which shall contain General Conditions similar to these.

The CMAR will afford the other Contractors who are parties to such direct contracts (or the Owner, if it is performing the additional Work itself), reasonable

opportunity for the introduction and storage of materials and equipment and the execution of the Work, and shall properly connect and coordinate his work with theirs. Should the Contract require relocation of facilities not a part of this Contract, the CMAR will coordinate and cooperate with the applicable entity responsible for this portion of the work.

(4) Cost Control. The operation of this subsystem shall provide sufficient timely data and detail to permit the Construction Team to control and adjust the **PROJECT** requirements, needs, materials, equipment and systems by building and site elements so that construction will be completed at a cost which, together with all Project Costs, will not exceed the Project Budget. Based upon a quantitative material take off with current local costs for each bid group by subcontract package, within a reasonable time period as determined by the Owner in the Owner's sole discretion, the CMAR shall provide its estimate of the total Project Costs for the PROJECT. These costs will be detailed by line item budget with a cost corresponding to each of the following stages or phases:

- (a) At completion of the Schematic Design.
- (b) At completion of the Design Development Phase.
- (c) At completion of 60% of the Construction Documents Phase.
- (d) At completion of 90% of the Construction Documents Phase.
- (e) At establishment of the Guaranteed Maximum Price (GMP).

(5) Project Accounting. The operation of this subsystem shall enable the Construction Team to plan effectively and to monitor and control the funds available for the **PROJECT**, including information relating to cash flow, costs, change orders, payments, and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced and amounts payable. A schedule of values for each line item in the Project budget shall be integrated into the Project accounting contemplated by this paragraph. This subsystem will be produced and updated monthly and accompany each pay request. Project accounting includes the following reports which together will serve as a basic accounting tool and an audit trail:

(a) The budget, estimate, and base commitment (awarded contracts and purchase orders) for any given contract or budget line item. It shall show approved change orders for each contract which when added to the base commitment will become the total commitment. Pending change orders will also be shown to produce the total estimated probable cost to complete the work.

(b) The value in place (both current and cumulative), the amount invoiced (both current and cumulative) and the balance remaining.

(c) The complete activity history of each item in the Project accounting structure. It shall include the budget, estimate, and base commitment figures for each contract. It shall give the change order history including change

order numbers, description, proposed, and approved dates and the proposed and approved dollar amounts. It shall also show all pending or rejected change orders.

(d) A cash flow diagram showing the projected accumulation of cash payments against the **PROJECT**. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.

4.02 Design Review and Recommendations and Warranty

(1) Review and Recommendations. Immediately upon the start date established by the Notice to Proceed, CMAR shall familiarize itself thoroughly with the schematic design construction documents, and with the architectural, civil, mechanical, plumbing, electrical, and structural plans and specifications being developed by the AE for the **PROJECT**. CMAR shall follow and/or otherwise review, as appropriate, the development of the design for the **PROJECT** from the schematic design presently available up through and including the Construction Document Phase. The CMAR shall make recommendations with respect to the selection of systems and materials and cost reducing alternatives (i.e., value engineering and life cycle cost analysis) including assistance to the AE and Owner in evaluating alternative comparisons versus long-term cost effects. The evaluation shall speak to the benefits of the speed of erection and early completion of the **PROJECT**. The CMAR shall furnish pertinent information as to the availability of materials and labor that will be required. The CMAR shall submit to the Owner, Permitting Authority and AE such comments as may be appropriate concerning construction feasibility and practicality (i.e., constructability analysis). The CMAR shall call to the Owner's and the AE's attention any apparent defects in the design, drawings and specifications or other documents.

(2) Review Reports. Within thirty (60) calendar days after receiving the construction documents for each phase of the **PROJECT**, the CMAR shall perform a specific review thereof, focused upon factors of a nature encompassed in paragraph (1) above. Within the same 60-day period, the CMAR shall submit to the Owner and the AE a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as the CMAR may deem appropriate, and all actions taken by the AE with respect to same, any comments the CMAR may deem to be appropriate with respect to separating the work into separate contracts, and alternative materials. Prior to establishment of the GMP, CMAR shall warrant to Owner (without assuming any architectural or engineering responsibility) that the Project Plans and Specifications are practical, feasible, and constructible and that the construction of the improvements identified and described in the Project Plans and Specifications may be accomplished within the time frame identified and described in the Project Schedule.

(3) Long Lead Procurement. The CMAR shall review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials, and supplies). When each item is identified, the CMAR shall notify the subcontractors, Owner and the AE of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all

affected subcontracts. As soon as the AE has completed drawings and technical specifications and the CMAR has obtained permitting approval, the CMAR shall prepare invitations for bids. Copies shall be supplied to Owner in advance of the invitation to bid for Owner's information and comment. The CMAR shall keep itself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items and advise Owner and AE of any problems or prospective delay in delivery.

(4) Separate Contracts Planning. The CMAR shall review the design and shall determine how it desires to divide the sequence of construction activities and will determine the breakdown and composition of bid packages for award, based on the current schedule while the design is being completed and shall supply a copy for Owner for its review and approval. The CMAR shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, accesses and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the Owner. The CMAR will supply the Owner a copy of the schedule for the Owner's information and comment. The CMAR will work in conjunction with the Owner's representatives, including the AE, to ensure that the bid list includes local, small and/or minority businesses.

(5) Interfacing.

(a) The CMAR shall take such measures as are necessary to ensure proper construction and delivery of the **PROJECT**, including, but not limited to, providing that all construction requirements will be covered in the separate procurement of long lead items, the separate construction subcontracts and the general conditions items performed without duplication or overlap to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the work included in that particular separate subcontract, its scheduling for start and completion and its relationship to other separate contractors.

(b) Without assuming any design responsibilities for the AE, the CMAR shall include in the reports comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the AE may arrange for necessary corrections.

(6) Job Site Facilities. The CMAR shall arrange for all job site facilities required and necessary to enable the CMAR and AE to perform their respective duties and to accommodate any representatives of the Owner which the Owner may choose to have present on the job, the description of which shall be finalized prior to the establishment of the GMP.

(7) Weather Protection. The CMAR shall ascertain what temporary enclosures of building areas, if any, should be provided for and may be provided in order to assure orderly progress of the work in periods when extreme weather

conditions are likely to be experienced. The CMAR shall also be responsible for providing weather protection for work in progress and for materials stored on site.

(8) Market Analysis and Stimulation of Subcontractor Interest.

(a) The purpose of this subsection is to ensure that the CMAR makes a genuine effort to stimulate interest in the **PROJECT** and maximize participation of potential qualified subcontractors in the selection process with emphasis placed on recruiting and using local, small and/or minority businesses. The CMAR shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the **PROJECT**; and make analysis as necessary to (i) determine and report on availability of labor, materials, equipment, potential subcontractors and possible impact of any shortages or surpluses of labor or material, and (ii) in light of such determination, make recommendations and take action as may be appropriate with respect to long lead procurement, separation of construction into subcontractor packages, sequencing of work, use of alternative materials, equipment or methods, other economies in design or construction and other matters that will promote cost savings and completion within the schedule time.

4.03 Establishment of Guaranteed Maximum Price for Construction. Prior to entering into any subcontracts, the CMAR will establish and submit in writing to the Owner for its approval a Guaranteed Maximum Price, guaranteeing the maximum price to the Owner, for the Project Cost. Such Guaranteed Maximum Price shall only be subject to modification for changes in the **PROJECT** or as otherwise specifically provided for in this Agreement. However, the actual price paid for the work by the Owner shall either be: (1) the actual Project Cost, or (2) the GMP, whichever is the lesser when the work is finally complete. Owner may request and will be provided by CMAR copies of documents relating to the development of Project cost and GMP.

(1) At the end of the Project, all amounts of monies resulting from actual Project Costs, as described above, totaling less than the GMP shall be and accrue to the benefit of the Owner in the amount of 75% and the CMAR in the amount of 25%.

(2) The GMP will include only those applicable taxes in the Project Cost which are legally enacted at the time the GMP is established. Should any applicable taxes be enacted after the GMP then the GMP shall be increased by the same amount.

(3) At the time of submission of a Guaranteed Maximum Price, the CMAR will verify the time schedule for activities and work which were adopted by the Construction Team and used to determine the CMAR's GMP. The GMP will include an agreed-upon sum as the construction contingency which is included for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The CMAR will be required to furnish documentation evidencing proposed expenditures to this contingency prior to written authorization for the release of funds by the Owner. Actual and contemplated expenditures from the

contingency shall be displayed monthly in the information system. If bids are received below the applicable line items in the GMP, the surplus will be added to the contingency.

(4) If requested by the Owner, when 100% of the subcontracts have been executed, the contingency within the GMP shall be decreased in proportion to the percent of the work as it is completed. In other words, if 10% of the work has been completed and paid and all subcontracts have been executed, and the Owner requests that the contingency within the GMP be adjusted, then 10% of the contingency within the GMP will be removed from the GMP by Change Order.

(5) If any bid package consistent with the Project Plans and Specifications for which the lowest price submitted by a subcontractor is in excess of the amount allocated by the CMAR for such bid package (unless Owner through change order changes the Scope of Work and the Guaranteed Maximum Price (GMP)), one of the following may occur: (1) the price of the bid package may be negotiated with the lowest responsible bidder; or (2) at the CMAR's request and expense, and at the Owner's sole option, Owner may require the AE to make certain changes in the Project Plans and Specifications as are necessary to bring that particular package into line, consistent with Owner's program and the Project's financial feasibility; or (3) with the approval of the Owner, funds may be reallocated from the construction contingency within the GMP to pay the difference between the low bid price and the amount allocated for the bid package, but in no case shall such approval serve to increase the GMP of the **PROJECT**.

4.04 Performance Bond and Labor and Material Payment Bond. Prior to the Construction Commencement Date, the CMAR shall obtain for the benefit of and directed to the Owner, a labor and material payment and performance bond, satisfying the requirements of section 255.05, Florida Statutes, covering the faithful performance by the CMAR of its obligations under this Agreement, including but not limited to, the construction of the **PROJECT** on the Project Site, and the payment of all obligations arising thereunder, including all payments to subcontractors, laborers and materialmen (the "Payment and Performance Bond"). The surety selected by the CMAR to provide the Payment and Performance Bond shall be rated as "A or better" as to general policy holders rating as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc. and/or shall be approved by the Owner prior the issuance of such Bond, which approval shall not be unreasonably withheld.

Attorneys-in-fact who sign Bonds for Owner projects must file with such Bond a certified copy of their Power of Attorney to sign such Bond. All agents of Surety companies must list their name, address, and telephone number on all Bonds. The life of all Bonds provided to the Owner shall extend twelve (12) months beyond the date of final payment and shall contain a waiver of alternation to the terms of the Agreement, extensions of time and/or forbearance on the part of the Owner. The Owner shall not return or release the Bonds for a period of twelve (12) months after the date of final payment to allow time for claims against the Bonds during this period.

4.05 Construction Phase; Building Permit; Code Inspection.

(1) Permits. The Owner shall pay for all permits. The CMAR will be responsible for submitting all compliance and permitting documentation for review and approval with the appropriate City departments, as required by applicable City standards and procedures. The CMAR should anticipate any compliance or permitting related fees as part of the proposed GMP.

(2) Code Inspections. All projects require detailed code compliance inspection during construction in disciplines determined by the Permitting Authority. These disciplines normally include, but are not necessarily limited to, structural, mechanical, electrical, plumbing, and general building. The CMAR shall notify the appropriate inspector(s) and the AE's representative, no less than 24 hours in advance that the work is ready for inspection and before the work is covered up. All inspection shall be made for conformance with the applicable ordinances and building codes. Costs for all re-inspections of work found defective and subsequently repaired shall not be included as Project costs and shall be borne by the CMAR or as provided in the contract between CMAR and subcontractor.

(3) CMAR's Staff. The CMAR shall maintain sufficient off-site support staff and competent full-time staff at the Project Site authorized to act on behalf of the CMAR to coordinate, inspect and provide general direction of the work and progress of the subcontractors and the CMAR shall provide no less than those personnel during the respective phases of construction. The CMAR shall not change any of those persons unless mutually agreed to by the Owner and CMAR. In such case, the Owner shall have the right to approval of the qualifications of the replacement personnel. The Owner shall have the right to request to replace the staff at the Project site at any time during the construction.

(4) Lines of Authority. The CMAR shall establish and maintain lines of authority for its personnel and shall provide this information to the Owner and all other affected parties, such as the code inspectors of the Permitting Authority, the subcontractors, and the AE to provide general direction of the work and progress of the various phases and subcontractors. The Owner and AE may, but is not obligated to, attend meetings between the CMAR and his subcontractors.

(5) Schedule Provision - Construction Phase. The CMAR shall continue to provide current scheduling information and provide direction and coordination regarding beginning and finishing dates, responsibilities for performance and the relationships of the CMAR's work to the work of its subcontractors and suppliers to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall Project Schedule. The Project Schedule shall include all phases of procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements. The CMAR shall advise the Owner, its representatives, and the AE of their required

participation in any meeting or inspection giving each at least one week notice unless such notice is made impossible by conditions beyond its control. The CMAR shall hold job-site meetings at least biweekly with the Construction Team and at least once each week with the subcontractors and the AE's field representative, or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors. The CMAR shall prepare and maintain a record of such meetings and distribute copies as necessary.

(6) Solicitation of Subcontracts.

The Owner intends to bid, through the CMAR, all portions of this **PROJECT**.

(a) The CMAR shall prepare all documents for bidding procurement of long lead items, materials, and services, and for subcontractor contracts. The solicitation and award process shall be consistent with the requirements of Article 6 hereof.

(b) As part of such bid preparation, the CMAR shall review the specifications and drawings prepared by the AE. Ambiguities, conflicts, or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the CMAR shall be brought to the attention of the Owner and AE in written form.

(c) The CMAR shall, unless waived by Owner, conduct conferences with all prospective subcontractors, for the purpose of reviewing and approving awards. Invited will be the AE, Owner and Owner's representatives. In the event questions are raised which require an interpretation of the documents or otherwise indicate a need for clarification or correction, the CMAR shall transmit these to the AE and upon receiving clarification or correction in writing shall prepare an amendment to the document and issue same to all the prospective subcontractors.

(d) Selection and award of subcontracts shall be consistent with Article 6 hereof.

(e) Advertisement Timeframe

The CMAR shall publicly advertise the bidding for a period of time not less than the days provided in the schedule below. Such timeframes may only be waived or modified to a lesser time with approval of the City's Director of Procurement Management.

ESTIMATED CONSTRUCTION COSTS	CALENDAR DAYS FOR ADVERTISEMENT
\$200,000.00 +	20 DAYS

(f) Advertisement Location/Media

The CMAR shall publicly advertise for the period listed above in a regionally circulated newspaper and on their company website or through a third-party eProcurement system where available. The advertisement must run at least once 10-20 calendar days prior to the opening date following the above thresholds. The CMAR's advertisement must include the date and time of the submission deadline. The CMAR shall make every effort to receive maximum exposure and therefore receive adequate competition for their advertisement.

(g) Documentation Responsibility

The CMAR shall maintain files that adequately support the competitive solicitation process chosen and followed by the CMAR. At minimum, the CMAR shall provide to the City-assigned Project Manager a summary bid tabulation depicting all bids received broken down by discipline and clear indication of the selected subcontractor(s). Should the CMAR not select the lowest bidder in any instance, a written description as to why the lowest bidder was not selected must be provided within the bid tabulation summary.

The bid tabulation summary and the guaranteed maximum price documentation shall be provided to the City's Project Manager for review. The GMP documentation shall also provide a breakdown of pricing by discipline.

(7) Quality Control. The CMAR shall develop and maintain a program acceptable to the Owner and AE to assure quality control of the construction. The CMAR shall be responsible for and supervise the work of all subcontractors, providing instructions to each when their work does not conform to the requirements of the Project Plans and Specifications and the CMAR shall continue to coordinate the work of each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. Should a disagreement occur between the CMAR and the AE over the acceptability of the work, the Owner, at its sole discretion and in addition to any other remedies provided herein, shall have the right to determine acceptability.

(8) Subcontractor. The CMAR shall solely supervise the subcontractors. The CMAR shall negotiate all change orders and field orders with all affected subcontractors and shall review the costs and advise the Owner and AE of their validity and reasonableness, acting in the Owner's best interest. Before any work is begun on any change order which is to be funded through contingency, approval for use of contingency funds must be secured from Owner and a written authorization from the Owner must be issued. However, when there is an imminent threat to health and safety, and Owner's concurrence is impractical, the CMAR shall act immediately to remove the threats to health and safety and shall subsequently fully inform Owner of all such action taken. The CMAR shall also carefully review all shop drawings and then forward the same to the AE and Owner for review and actions. The AE will transmit them back to the CMAR who will then issue the shop drawings to the affected subcontractor for fabrication or revision.

The CMAR shall maintain a suspense control system to promote expeditious handling. The CMAR shall request the AE to make interpretations of the drawings or specifications requested of him by the subcontractors and shall maintain a business system to promote timely response. The CMAR shall inform the AE which shop drawings or requests for clarification have the greatest urgency and need to be responded to first. The purpose shall be to enable the AE to prioritize requests coming from the CMAR. The AE shall timely respond. The CMAR shall advise the Owner and AE when timely response is not occurring on any of the above.

(9) Job Site Requirements.

(a) The CMAR shall provide each of the following activities as a part of its services hereunder:

(i) Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.

(ii) Maintain a roster of companies on the **PROJECT** with names and telephone numbers of key personnel.

(iii) Establish and enforce job rules governing parking, clean-up, use of facilities and work discipline.

(iv) Provide labor relationships management and equal opportunity employment for a harmonious productive **PROJECT**.

(v) Provide and administer a safety program for the **PROJECT** to meet OSHA requirements. Monitor for subcontractor compliance without relieving them of responsibilities to perform work in accordance with best acceptable practice.

(vi) Provide quality control program.

(vii) Provide miscellaneous office supplies that support the construction efforts which are consumed by its own forces.

(viii) Provide for travel to and from its home office to the Project Site and to those other places within St. Lucie County as required by the **PROJECT**.

(b) The CMAR shall provide personnel and equipment or shall arrange for separate subcontractors to provide each of the following as a Project Cost:

(i) Distribution of all required bidding documents and shop drawings, including the sets required by the Permitting Authority's inspectors.

(10) Job Site Administration. The CMAR shall provide as part of its services, job site administrative functions during construction to assure proper documentation, including but not limited to the following:

(a) Job Meetings. Hold progress and coordination meetings to provide for a timely completed **PROJECT**. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing(s), labor allocation, etc. Review and implement revisions to the Project Schedule. Monitor and promote safety requirements. The CMAR shall use the job site meetings as a tool for (i) preplanning of work and enforcing schedules and for establishing procedures, responsibilities and identification of authority for all to clearly understand; (ii) identify party or parties responsible for follow up on any problems, delay items or questions, and (iii) record course for solution. The CMAR shall visit each pending item at each subsequent meeting until resolution is achieved and shall require all present to make known any problems or delaying event known to those present for appropriate attention and resolution.

(b) Material and Equipment Expediting. Provide staff to closely monitor material and equipment deliveries, critically important checking and follow-up procedures on supplier commitments of all subcontractors and maintain a material and equipment expediting log.

(c) Payments to Subcontractors. Develop and implement a procedure for review, processing and payment of applications by subcontractors for progress and final payments.

(d) Document Interpretation. Refer all questions for interpretation of the documents prepared by the AE to the AE and the Owner.

(e) Reports and Project Site Documents. Record the progress of the **PROJECT**. Submit written progress reports to the Owner and the AE, including information on subcontractors' work, and the percentage of completion. Keep a daily log available to the Owner, the AE and the Permitting Authority inspectors.

(f) Subcontractors Progress. Prepare periodic punch lists for subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.

(g) Substantial Completion. The CMAR, AE, and Owner will conduct a pre-substantial completion inspection. The CMAR will prepare the pre-substantial completion punch list from which the CMAR and AE will develop a completion schedule. The CMAR shall ascertain when the work or designated portions thereof are ready for Owner and AE substantial completion inspection. The CMAR shall provide a complete list of incomplete or unsatisfactory items (preliminary punch list) to the Owner and AE prior to this inspection. The Owner and AE shall add to this list additional incomplete or unsatisfactory item(s). The

CMAR shall prepare a punch list of items to be completed and a schedule for their completion including completion dates for review and approval by the Owner and AE ("Punch List Completion Date").

(h) Final Completion. Monitor the subcontractors' performance on the completion of the **PROJECT** and provide notice to the Owner and AE that the work is completed and ready for final inspection. Secure and transmit three (3) copies to the Owner, through the AE, all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings and maintenance books including a final completion form.

(i) Startup. With the Owner's personnel, direct the check-out of utilities, operations, systems and equipment for readiness and assist in their initial start up and testing by the subcontractors.

(j) Record Drawings. The CMAR shall monitor the progress of its own forces or its subcontractors on marked up field prints so as to provide completed record drawings to be turned over to the AE for preparation of As-builts as required herein.

(k) Administrative Records. The CMAR will provide the City with access, via PROCORE, on a current basis, files and records, such as, but not limited to the following:

- Contracts or Purchase Orders
- Shop Drawings submittal/Approval Logs
- Equipment Purchase/Delivery Logs
- Contract Drawings and Specifications with Amendment
- Warranties and Guarantees
- Cost Proposal Request
- Payment Request Records
- Meeting Minutes
- Cost Estimates
- Bulletin Quotations
- Lab Test Reports
- Insurance Certificates and Bonds
- Contract Changes
- Purchase Orders
- Material Purchase Delivery Logs
- Technical Standards
- Design Handbooks
- Record Drawing Marked Print
- Operating and Maintenance Instruction
- Daily Progress Reports
- Transmittal Records
- Inspection Reports

Bid/Award Information
Bid Analysis and Negotiations
Punch Lists
PMIS Schedule and updates
Suspense (Tickler) Files of Outstanding Requirements
Documentation of Good Faith Effort
Correspondence Files

The **PROJECT** records shall be available at all reasonable times to the Owner and AE for reference, review, or reproduction.

(11) Shop Drawings and Samples. After checking and verifying all field measurements, the CMAR will submit to the AE and Owner for approval, in accordance with the acceptable schedule of Shop Drawing submission, five copies of all Shop Drawings, which shall have been checked by and stamped with the approval of the CMAR and identified as the AE may require. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and the like to enable the AE to review the information as required.

The CMAR will also submit to the AE for approval with such promptness as to cause no delay in the Work, all samples required by the Contract Documents. All samples will have been checked by and stamped with the approval of the CMAR, identified clearly as to material, manufacturer, any pertinent numbers and the use for which intended.

(a) At the time of each submission, the CMAR will in writing call the AE's attention to any deviations that the Shop Drawing or sample may have from the requirements of the Contract Documents and, in addition, shall cause a specific notation to be made on each shop drawing submitted for review and approval of each such variation.

The AE will review and approve with reasonable promptness Shop Drawings and Samples, but its review and approval shall be only for conformance with the design concept of the **PROJECT** and for compliance with the information given in the Contract Documents. The approval of a separate item as such will not indicate approval of the assembly in which the item functions. The CMAR will make any corrections required by the AE and will return the required number of corrected copies of Shop Drawings and resubmit new samples until approved. All cost incurred for the resubmitted shop drawing shall be the CMAR responsibility. The CMAR's stamp of approval on any Shop Drawing or sample shall constitute a representation to the AE that the CMAR has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers and similar data or he assumes full responsibility for doing so, and that he has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Document.

No work requiring a Shop Drawing or sample submissions shall be commenced until the submission has been approved by the AE. Any related work performed prior to review and approval by the Owner of the pertinent submission

will be sole expense and responsibility of the CMAR. A copy of each approved Shop Drawing and each approved sample shall be kept in good order by the CMAR at the site and shall be available to the AE.

The AE approval of Shop Drawings or samples shall not relieve the CMAR from his responsibility for any deviations from the requirements of the Contract Documents, unless the CMAR has in writing called the AE's attention to such deviation at the time of submission and the Owner and the AE have given written approval to the specific deviation; or shall any approval by the AE relieve the CMAR from responsibility for errors or omissions in the Shop Drawings.

4.06 Project Schedule; Substantial Completion; Occupancy.

(1) Establishment of Project Substantial Completion Date. At the time a Guaranteed Maximum Price (GMP) is established, the Project Substantial Completion Date for completion of the construction may be amended by Owner upon recommendation of Construction Team, if reasonably necessary, which Project Substantial Completion Date shall be subject to Force Majeure. An amendment to Substantial Completion Date under this section will not necessarily involve additional CMAR compensation. The CMAR agrees to complete the construction prior to the Project Substantial Completion Date. The CMAR acknowledges that failure to complete the **PROJECT** prior to the Project Substantial Completion Date will result in substantial damages to the Owner. The CMAR shall be assessed liquidated damages in the amount, (*****Liquidated Damages will be established with Phase 2 amendment***), per calendar day for each day completion is extended beyond the Project Substantial Completion Date, plus any fines and penalties directly imposed against Owner by any regulatory and/or governmental authority against Owner. Provided, however, CMAR and Owner shall cooperate with each other, and shall use best efforts and due diligence to avoid the imposition of any such fines and/or penalties.

(2) Completion of Construction. The date of Substantial Completion of the **PROJECT** or a designated portion thereof is the date when construction is sufficiently complete in accordance with the Project Plans and Specifications so the Owner can lawfully occupy or utilize the **PROJECT** for the use for which it is intended. The CMAR warranty shall commence on the Project Final Completion Date.

(3) Owner Occupancy. The CMAR shall provide services during the design and construction phases which will provide a successful and timely Owner occupancy of the **PROJECT**. The CMAR shall provide consultation and Project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the subcontractors, "on line" in such conditions as will satisfy Owner operations requirements. The CMAR shall catalog operational and maintenance requirements of the equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability. The CMAR shall provide operations training, in equipment use, for building operators.

(4) Record Drawings. The CMAR shall continuously review Record Drawings and mark up progress prints. Upon receipt by CMAR of its final payment due hereunder, the CMAR shall provide to the AE and Owner an original of marked-up, Record Project Plans and Specifications showing the location and dimensions of the **PROJECT** as constructed, which documents shall be certified as being correct by the CMAR and the AE.

4.07 CMAR's Warranty. The CMAR warrants that all labor and materials will conform to the Project Plans and Specifications. The CMAR further warrants that all materials and equipment will be new, of good quality and free from any defects. With respect to the same work, the CMAR further agrees to correct or replace as necessary all work found by the Owner to be defective in material and workmanship or not in conformance with the Project Plans and Specifications for a period of one year from the Project Final Completion Date. CMAR shall use its best efforts and due diligence to ensure that, during the warranty period, those entities or individuals who have provided direct warranties to the Owner as required by the contract documents perform all required warranty work in a timely manner and at the sole cost and expense of such warranty providers. The direct cost of any warranty work shall be paid by CMAR. The CMAR shall collect and deliver to the Owner any specific written guaranties or warranties given by others as required by the contract documents. Also, the CMAR shall conduct, jointly with the Owner and the AE, a warranty inspection eleven (11) months after the Project Final Completion Date.

4.08 Lien Free Construction. All construction services provided by CMAR or any of the subcontractors in construction of the **PROJECT** on the Project Site shall be accomplished in a manner that will result in no liens, claims or encumbrances being imposed against the **PROJECT**. Subject to the laws of the State of Florida and of the United States, neither CMAR nor any subcontractor, supplier of materials, laborer, or other person shall file or maintain any lien for labor or materials delivered in the performance of this Agreement against the City. The right to maintain such lien for any or all of the above parties is hereby expressly waived.

4.09 Collaboration on Water Features. The City currently uses Commercial Energy Specialists, LLC ("CES"), for water feature system purchases and services. CMAR shall collaborate with CES, or any other company chosen by the City, on water feature systems for ease of access to necessary parts, equipment, and services.

ARTICLE 5. OWNER'S RESPONSIBILITY

5.01 Project Site; Title. The Owner hereby represents to the CMAR that it currently has and will maintain up through and including the Project Substantial Completion Date, good title to all of the real property constituting the Project Site. Owner agrees to resolve, at its expense, any disputes relating to the ownership and use of the Project Site which might arise during the course of construction.

5.02 Project Plans and Specifications; Architect. The parties hereto acknowledge and agree that owner has previously entered into an agreement between Owner and AE dated **October 30, 2024**. Pursuant to the terms of such agreement, the AE, as an agent and representative of Owner, is responsible for the preparation of Project Plans and Specifications which consist of drawings, specifications and other documents setting forth in detail the requirements for the construction of the **PROJECT**. All such Project Plans and Specifications shall be provided either by Owner or the AE and CMAR shall be under no obligation to provide same and shall be entitled to rely upon the accuracy and completeness of the Project Plans and Specifications provided by the AE, and all preliminary drawings prepared in connection therewith. The CMAR shall be notified of any written modification in the agreement between Owner and AE.

5.03 Surveys; Soil Tests and Other Project Site Information. Owner shall be responsible for providing a legal description and certified land survey of the Project Site in a form and content, and with such specificity as may be required by the AE and CMAR to perform their services. To the extent deemed necessary by Owner and AE, and solely at Owner's expense, Owner may engage the services of a Geotechnical Consultant to perform test borings and other underground soils testing as may be deemed necessary by the AE or the CMAR. CMAR shall not be obligated to provide such surveys or soil tests and shall be entitled to rely upon the accuracy and completeness of the information provided to CMAR. Owner shall provide CMAR as soon as reasonably possible following the execution of this Agreement all surveys or other survey information in its possession describing the physical characteristics of the Project Site, together with soils reports, subsurface investigations, utility locations, deed restrictions, easements and legal descriptions then in its possession or control.

5.04 Information; Communication; Coordination. The Owner hereby designates the City Manager or the City Manager's designee as Project Coordinator, to act in the Owner's behalf with respect to the **PROJECT**. The Project Coordinator shall examine all documents or requests for information submitted by the CMAR and shall advise CMAR of Owner's decisions pertaining thereto within a reasonable period of time to avoid unreasonable delay in the progress of the CMAR's services. CMAR shall indicate if any such documents or requests warrant priority consideration. However, decisions pertaining to approval of the Project Schedule as it relates to the date of Substantial Completion, the Project cost, CMAR's compensation, documentation relating to use of contingency, approving or changing the GMP shall only be effective when approved in writing by the Owner. Owner reserves the right to designate a different Project Coordinator provided CMAR is notified in writing of any such change. Owner and AE may communicate with subcontractors, materialmen, laborers or suppliers engaged to perform services on the **PROJECT**. Neither the Owner nor the AE shall attempt to direct

the work of or otherwise interfere with any subcontractor, materialmen, laborer or supplier or otherwise interfere with the work of the CMAR.

5.05 Construction Inspections and Coordination. Owner, AE and CMAR agree to cooperate and coordinate with each other and all Permitting Authorities, including specifically the **City of Port St. Lucie Building Department**.

5.06 Acknowledgment. The CMAR recognizes and acknowledges that Owner is a governmental body with certain procedural requirements to be satisfied. CMAR has and will make reasonable allowance in its performance of services for such additional time as may be required for approvals and decisions by the Owner and any other necessary government agency. Specific directions and approval made by the Owner shall be in writing authorized at its regular or special City Council meetings, or as otherwise consistent with authorities granted to the Project Coordinator.

ARTICLE 6. SUBCONTRACTOR SELECTION AND PAYMENT PROCESS

6.01 Definition. A subcontractor is a person or organization who has a direct contract with the CMAR to perform any work at the Project Site. Except as specifically set forth herein with respect to direct materials acquisitions by Owner, nothing contained in this Agreement or in any contract document does or shall create any contractual relation between the Owner or AE and any subcontractor. Specifically, the CMAR is not acting as an agent of the Owner with respect to any subcontractor.

6.02 Subcontracts. The CMAR shall provide a copy of all proposed subcontracts, including general supplementary conditions to the Owner. Prior to establishment of the GMP and CMAR's solicitation from subcontractors and/or suppliers, Owner and CMAR shall agree upon a procurement methodology and process which shall comply with the legal requirements and expectations of Owner. CMAR agrees to cooperate with Owner in any procurement methodology and process which is required by law, and also cooperate with Owner in any such methodology or process desired by Owner (and not otherwise legally required) provided that such cooperation does not result in any extension of the Project Substantial Completion Date established by the Project Schedule.

6.03 Application for Progress Payments.

(1) Not more often than once per month, nor less often than specified in the approved payment schedule, and on a date established at the Project Preconstruction Conference, the CMAR will submit to the AE and Owner for review an invoice filled out and signed by the CMAR covering the actual Work completed as of the date of the Application and supported by such data. Also, if payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to and authorized in writing, the application for Payment shall also be accompanied by such supporting data, satisfactory to the Owner, as well establish the Owner's title to the material and equipment and protect its interest therein, including applicable

insurance. All progress payments will be subject to the retainage percentage. Such retainage shall be paid and will be issued in the final payment after acceptance by the Owner of the Work.

The Estimate and Requisition for Payment form shall list individually, each instrument of change to the Guaranteed Maximum Price or Construction Contingency, its approved value, the amount previously requisitioned, the amount sought in the current requisition, the total value of completed work and, if requested by the Owner, the Estimate and Requisition for Payment form shall, for each instrument of change to the Guaranteed Maximum Price or Construction Contingency, be further detailed to provide a breakdown, by trade, of the values and requisition amounts for each trade, for each change instrument.

(2) Approval of Payments. The AE will, within ten (10) calendar days after receipt of each Application for Payment, either indicate his approval of payment and deliver the application to the Owner or return the Application to the CMAR indicating in writing the reason for refusing to approve payment. In the latter case, the CMAR may make the necessary corrections and resubmit the Application. The Owner will, within five (5) calendar days after receipt of each approved application for payment, either indicate their approval of payment and within fifteen (15) calendar days pay the CMAR ninety five percent (95%) of the portion of the GMP properly allocated to labor, materials and equipment incorporated in the Work and ninety-five percent (95%) of the portion of the GMP properly allocated to materials and equipment suitably stored at the site or at some other location or return the application to the CMAR through the AE indicating in writing the reason for refusing to approve payment. In the latter case, the CMAR may make the necessary corrections and resubmit the application to the AE.

The AE's approval of any payment requested in an Application for Payment shall constitute a representation by him to the Owner, based on the AE's on-site observations of the Work in progress and on his review of the Application for Payment and the supporting data that the CMAR is entitled to payment of the amount approved.

The AE may refuse to approve the whole or any part of any payment if in his opinion, he is unable to make such representations to the Owner. He may then refuse to approve any such payment because of subsequently discovered evidence or the results of subsequent inspections or test, nullify any such payment previously approved, to such extent as may be necessary in his opinion to protect the Owner from loss because:

- 1) The Work is defective.
- 2) A portion of such payment is the subject of a dispute or claim that has been filed.
- 3) The amount has been reduced because of Modifications.
- 4) The Owner has been required to correct defective Work or complete the Work in accordance with the guarantee and warranty.
- 5) Of unsatisfactory prosecution of the Work, including failure to clean up.

(3) The CMAR shall pay each subcontractor, upon receipt of payment from the Owner, out of the amount paid to the CMAR on account of such subcontractor's work, the amount to which the subcontractor is entitled in accordance with the terms of the CMAR's contract with such subcontractor. The CMAR shall, by appropriate agreement with each subcontract, require each subcontractor to make payments to subcontractors in a similar manner. After receipt of payment from Owner, if the need should arise to withhold payments to subcontractors for any reason, as solely determined by CMAR, the CMAR shall promptly restore such monies to the owner, adjusting pay requests and Project bookkeeping as required.

Commencing with second application of the Estimate and Requisition for Payment form, the Owner may require, as a condition of payment, the submission of releases of lien from any or all subcontractors. Where the Owner so requires, the releases furnished shall be original copies, properly executed and notarized, in a form acceptable to the Owner.

(4) The CMAR warrants that upon payment of any retainage, materials and equipment covered by a partial payment request will pass to Owner either by incorporation in construction or upon receipt of payment by the CMAR, whichever occurs first; (a) work, materials and equipment covered by previous partial payment requests are free and clear of liens, claims, security interests or encumbrances, hereinafter referred to as "liens"; and (b) no work, materials or equipment covered by a partial payment request will have been acquired by the CMAR, or any other person performing work at the site or furnishing materials or equipment for the **PROJECT** is subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the CMAR or other such person.

6.04 Application for Final Payment.

(1) Final Inspection. Upon written notice from the CMAR that the **PROJECT** is complete, the AE and Owner will make a final inspection with the CMAR and will notify the CMAR in writing of any particulars which this inspection reveals that the Work is defective. The CMAR shall immediately make such corrections as are necessary to remedy the defects within a reasonable time.

(2) Final Inspection for Payment. After the CMAR has completed any such corrections to the satisfaction of the AE and Owner and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection and other documents as required by the Contract Documents, he may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by legally effective final releases or waivers of liens from the CMAR and all subcontractor(s) which performed services for the CMAR pursuant to the Contract Documents and the consent of surety, if applicable to final payment.

(3) Approval of Final Payment. If, on the basis of its observations and review of the Work during construction, its final inspection and its review of the final Estimate and Requisition for Payment, all as required by the Contract Documents, the AE is satisfied that the Work has been completed and the CMAR has fulfilled all of his obligations under the Contract Documents, it will, within ten (10) calendar days after receipt of the final Application for Payment, indicate in writing its approval of payment and deliver the application to the Owner. Otherwise, it will return the Application to the CMAR, indicating in writing its reason for refusing to approve final payment, in which case the CMAR will make the necessary corrections and resubmit the Application. The Owner will, within fifteen (15) calendar days after receipt of approved application for final payment, either indicate their approval of the estimate and requisition application for payment and within fifteen (15) calendar days pay the CMAR the amount approved by the Owner and issue a Certificate of Final Completion or return the application through the AE indicating in writing the reason for refusing to approve payment. In the latter case, the CMAR may make the necessary corrections and resubmit the application to the AE.

If, after substantial Completion of the Work, final completion is materially delayed through no fault of the CMAR, and the AE so confirms, the Owner shall and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted, shall be submitted by the CMAR to the AE, prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

If liquidated damages are to be deducted from the final payment, the Owner shall so notify the CMAR in writing at least ten (10) calendar days prior to the Owner's submittal to Finance.

Upon receipt of the Contractor Performance Evaluation the CMAR will have seven (7) calendar days, from the date received, to review, comment, sign and return back to the Project manager. If the evaluation has not been received back from the CMAR within the seven (7) calendar days, the Owner will assume the CMAR fully agrees with and has no comments to the evaluation.

(4) Final Accounting Costs. Final accounting of costs of the work shall be provided by the CMAR in the form of a detailed cost report showing vendor, invoice number and date of invoice for all costs, all sorted by trade division cost code as is maintained by the CMAR in his accounting system. Upon receipt of the detailed cost report final accounting, the Owner may have access to all accounting records at the CMAR's place of business for review and reporting purposes by the Owner's accountant, whether external or internal.

ARTICLE 7 CHANGES IN THE PROJECT

7.01 Amending and Supplementing Contract Documents. The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- (a) a formal Written Amendment,
- (b) a Change Order, or
- (c) a Field Directive Change.

The Contract price and the Contract Time may only be changed by the Change Order or a Written Amendment.

In addition, the requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

- (a) a Field Change Order,
- (b) the AE approval of a Shop Drawing or sample, or
- (c) the AE written interpretation or clarification.

7.02 Changes in Work. Without invalidating the Agreement, the Owner may unilaterally and at any time or from time-to-time order additions, deletions or revisions in the Work; these will be authorized by Change Orders or Field Directive Change. Upon receipt of a Change Order or Field Directive Change, the CMAR will proceed with the Work involved.

All such Work shall be executed under the applicable conditions of the Contract Documents.

If any Change Order or Field Directive Change causes an increase or decrease in the Guaranteed Maximum Price (GMP) or any extension or shortening the Contract Time, an equitable adjustment will be made.

Additional Work performed by the CMAR without written authorization of a change in the form of an approved Change Order will not entitle him to an increase in the Guaranteed Maximum Price (GMP) or any extension of the Contract Time, except in the case of an emergency.

It is the CMAR's responsibility to notify the Surety of any changes affecting the general scope of the Work or change of the Guaranteed Maximum Price (GMP) and the amount of the applicable Bonds shall be adjusted accordingly. The Surety's Acceptance must be submitted to the AE, by the CMAR, within ten (10) calendar days of the initiation of the change.

7.03 Change of Guaranteed Maximum Price. The Guaranteed Maximum Price (GMP) constitutes the total compensation payable to the CMAR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the CMAR shall be at his expense without change in the Guaranteed Maximum Price.

The Guaranteed Maximum Price (GMP) may only be changed by a Change Order). Any claim for an increase or decrease in the Guaranteed Maximum Price (GMP) shall be in writing and delivered to the AE within fifteen (15) calendar days of the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within fifty (50) calendar days after such occurrence (unless Owner 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 amount claimed covers all known amounts (direct, indirect, and consequential) to which the CMAR has reason to believe it is entitled as a result of the occurrence of said event. No claim for an adjustment in the Guaranteed Maximum Price (GMP) will be valid if not submitted in accordance with this paragraph. All claims for adjustment in the Guaranteed Maximum Price (GMP) shall be reviewed by the AE. Any change in the Guaranteed Maximum Price (GMP) shall be incorporated in a Change Order and approved by the Owner. No claim by the CMAR for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Guaranteed Maximum Price shall be determined in one of the following ways:

(a) Where the Work involved is covered by unit prices contained in the Contract Documents or subsequently agreed upon, by application of unit prices to the quantities of the items involved.

(b) By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.

(c) By cost of the Work and mutually acceptable fixed amount for overhead and profit agreed upon by the parties.

In such cases the CMAR will submit in the form prescribed by the Owner an itemized cost breakdown together with supporting data. The amount of credit to be allowed by the CMAR to the Owner for any such change which results in a net decrease in cost will be the amount of the actual net decrease as determined by the Owner. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase or decrease, if any.

Regardless of how the value of Work covered by a Change Order or any other claim for an increase or decrease in the Guaranteed Maximum Price is

determined, in no case shall the total amount of overhead and profit, including all tiers of subcontractors, exceed 15% of the cost of the Work, unless otherwise approved by the Owner. Such 15% limit shall not include the cost of the Construction Manager's General Conditions or CMAR Fees where due.

7.04 Change of Contract Time. The Contract Time may only be changed by a Change Order. Any claim for an extension in the Contract Time shall be in writing and delivered to the AE within fifteen (15) calendar days of the occurrence of the event giving rise to the claim and stating general nature of the claim. Notice of the extent of the claim with supporting data (analysis and documentation) shall be delivered within sixty (60) calendar days after such occurrence (unless the AE allows an additional period of time to ascertain in more accurate data in support of the claim) and shall be accompanied by the CMAR's written statement that the adjustment claim is the entire adjustment to which the CMAR has reason to believe it is entitled as a result of the occurrence of said event. If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that the weather conditions had an adverse effect on the scheduled construction. No claim by the CMAR under this provision shall be allowed unless the CMAR has given the notice and the analysis and documentation required in this paragraph. All claims for adjustment in the Contract Time resulting from any such claim shall be incorporated in a Change Order.

The Owner shall not be responsible for any delay in the completion of the **PROJECT** where the delay is beyond the control or without fault or negligence on behalf of the Owner. The Owner shall not be held accountable for extra compensation or an extension of time due to default by the CMAR, subcontractors, or suppliers in the furnishing of labor or materials for the **PROJECT** or having to replace defective materials.

The CMAR shall be entitled to a claim for an extension of time when a delay or hindrance is caused by an act of God, or any act or omission on the part of the Owner, provided the CMAR gives notice to the AE within fifteen (15) calendar days of the occurrence of the event giving rise to the claim and having stated the general nature of the claim. The CMAR's sole remedy shall be an extension of Contract Time.

No extension of Contract Time or increases in Guaranteed Maximum Price (GMP) shall be granted for any delay caused either by (1) inadequate crewing, default or bankruptcy of lower tier contract, slow submittals, etc., (2) by severe though not unusual weather conditions (other than hurricanes and tornadoes), (3) any delay impacting a portion of the Work within the available total float or slack time and not necessarily preventing completion of the Work within the Contract Time unless otherwise agreed to by the Owner in its sole discretion, (4) for any delay which is caused by the CMAR having to replace defective material, or (5) delays attributable to the lack of performance by subcontractors regardless of the reasons.

ARTICLE 8.
RELATIONSHIP BETWEEN CMAR AND ARCHITECT-ENGINEER (AE)

8.01 Administration. The AE will provide administration of this Agreement as it relates to inspection of the **PROJECT** during construction and shall at all times have access to the work wherever it is in preparation and progress. Owner shall, in accordance with this Agreement and Owner's Agreement with AE, use its best efforts to maintain cooperation between the AE and CMAR.

8.02 Inspection of the Work. The AE will visit the Project Site at intervals appropriate to the stage of construction to become familiar with the progress and quality of the work and to determine in general if the work is proceeding in accordance with this Agreement and the Project Plans and Specifications. On the basis of the AE's on-site observations as the design professional, the AE will keep the Owner informed of the progress of the work and will endeavor to protect the Owner against defects and deficiencies in the work of the CMAR. The AE will not have control or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work which shall be the obligation of CMAR.

8.03 Interpretation of Project Plans and Specifications. The AE will be the interpreter of the requirements of the Project Plans and Specifications. Upon receipt of comments or objections by CMAR or Owner, the AE will make decisions on all claims, disputes or other matters pertaining to the interpretation of the plans and specifications. The AE's decisions in matters relating to artistic effect will be final if consistent with the Project Plans and Specifications.

8.04 Rejection of Nonconforming Work. The AE and Owner have the authority to reject work which does not conform to the Project Plans and Specifications.

8.05 Uncovering of Work.

(1) If any portion of the work should be covered contrary to the written request of the AE, it must, if required in writing by the AE, be uncovered for his observation and shall be recovered at the CMAR's expense.

(2) If any other portion of the work has been covered which the AE has not specifically requested to observe prior to being covered, the AE may request to see such work and it shall be uncovered by the CMAR. If such work be found to be in accordance with the Project Plans and Specifications, the cost of uncovering and replacement shall, by appropriate Change Order, be added to the Project Cost.

8.06 Correction of Work. The CMAR shall promptly correct all work rejected by the AE for being defective or as failing to conform to the Project Plans and Specifications whether observed before or after the Project Completion Date and whether or not fabricated, installed or completed. The CMAR shall bear all costs

of correcting such rejected work, including compensation for AE additional services made necessary thereby.

8.07 Timely Performance of AE. Owner, CMAR and AE understand, acknowledge and agree that timely performance and response by AE to certain information requested by CMAR is an important aspect of joint cooperation between and among the Construction Team. The CMAR shall identify which requests for information or response from the AE have the greatest urgency, and the CMAR shall identify those items which require prioritizing in response by the AE. The CMAR shall also identify the preferred time period for response and shall request a response time which is reasonably and demonstrably related to the needs of the **PROJECT** and CMAR. In the event that the period of time identified by CMAR for response is demonstrably unfair, AE shall communicate such information to CMAR, in writing, and AE shall identify the time necessary for response and a date upon which the AE's response will be made. In the event that the AE believes that any such information provided by CMAR is incomplete or otherwise inadequate to provide its response, AE shall immediately inform CMAR of such fact, in writing, with a copy to the Owner's Project Coordinator. In the event that the CMAR believes that AE is not providing timely services or responses as required by this paragraph, CMAR shall immediately inform AE of such fact, in writing, with a copy to the Owner's Project Coordinator.

ARTICLE 9 INSURANCE

The CMAR shall, on a primary basis and at its sole expense, agree to maintain in full force and effect at all times during the life of this Agreement, insurance coverage and limits, including endorsements, as described herein. The requirements contained herein, as well as Owner's review or acceptance of insurance maintained by the CMAR are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CMAR under the Agreement.

The parties agree and recognize that it is not the intent of the City of Port St. Lucie that any insurance policy/coverage that it may obtain pursuant to any provision of this Agreement will provide insurance coverage to any entity, corporation, business, person, or organization, other than the City of Port St. Lucie and the City shall not be obligated to provide any insurance coverage other than for the City of Port St. Lucie or extend its immunity pursuant to section 768.28, Florida Statutes, and as may be amended from time to time, under its self-insured program. Any provision contained herein to the contrary shall be considered void and unenforceable by any party. This provision does not apply to any obligation imposed on any other party to obtain insurance coverage for this project, and/or any obligation to name the City of Port St. Lucie as an additional insured under any other insurance policy or otherwise protect the interests of the City of Port St. Lucie as specified in this Agreement.

1. Workers' Compensation Insurance & Employer's Liability: The CMAR shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with section 440, Florida Statutes, and as may be amended from time to time. Employers' Liability must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, and \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement must be provided. Coverage shall apply on a primary basis. Should scope of work performed by the CMAR qualify its employee(s) for benefits under Federal Workers' Compensation Statute (for example, U.S. Longshore & Harbor Workers Act or Merchant Marine Act), proof of appropriate Federal Act coverage must be provided.

2. Commercial General Liability Insurance: The CMAR shall agree to maintain Commercial General Liability insurance, issued under an Occurrence form basis, including Contractual liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000
Products/completed operations aggregate	\$2,000,000
General aggregate	\$2,000,000
Fire damage	\$100,000 any 1 fire
Medical expense	\$10,000 any 1 person

3. Additional Insured: An Additional Insured endorsement **must** be attached to the certificate of insurance (should be CG2026) under the General Liability policy. Coverage is to be written on an occurrence form basis and shall apply as primary and non-contributory. Defense costs are to be in addition to the limit of liability. A waiver of subrogation is to be provided in favor of the Owner. Coverage shall extend to independent consultants and fellow employees. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interests provision as provided under the standard ISO form separation of insurers clause.

Except as to Workers' Compensation, Employers' Liability, and Professional Liability Insurance, Certificates of Insurance and policies shall clearly state that coverage required by the Contract has been endorsed to include the City of Port St. Lucie, a municipality of the State of Florida, its officers, agents, and employees as Additional Insured for Commercial General Liability and Business Auto Liability policies. The name for the Additional Insured endorsement issued by the insurer shall read: **"City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents shall be listed as additional insured and shall include Contract #20240112 – Construction Management at Risk Services at Torino Regional Park."** Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance. The policies shall be specifically endorsed to provide thirty (30) days written notice to the Owner prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. Formal written notice shall be sent to City of Port St. Lucie, 121 SW Port St. Lucie Blvd., Port St. Lucie, FL 34984, Attn: Procurement. In the event that the statutory liability of the Owner is amended during the term of this Agreement to exceed the above limits, the CMAR

shall be required, upon thirty (30) days written notice by the Owner, to provide coverage at least equal to the amended statutory limit of liability of the Owner. Copies of the Additional Insured endorsement shall be attached to the Certificate of Insurance.

4. Business Automobile Liability Insurance: The CMAR shall agree to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000.00 each accident covering any auto, owned, non-owned and hired automobiles. In the event the CMAR does not own any automobiles, the Business Auto Liability requirement shall be amended allowing CMAR to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form. Certificate holder must be listed as additional insured. A waiver of subrogation must be provided. Coverage shall apply on a primary and non-contributory basis.
5. Professional Liability Insurance: CMAR shall agree to maintain Professional Liability, or equivalent Errors & Omissions Liability, at a limit of liability not less than \$2,000,000 Per Occurrence. When a self-insured retention (SIR) or deductible exceeds \$10,000, the Owner reserves the right, but is not obligated, to review and request a copy of CMAR's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, CMAR warrants that the retroactive date equals or precedes the effective date of this Agreement. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this Agreement, CMAR shall agree to purchase a SERP with a minimum reporting period not less than four (4) years. If the policy contains an exclusion for dishonest or criminal acts, defense coverage for the same shall be provided.
6. Waiver of Subrogation: By entering into this Agreement, the CMAR agrees to a Waiver of Subrogation for each required policy. When required by the insurer or should a policy condition not permit an Insured to enter into a pre-loss contract to waive subrogation without an endorsement, then the CMAR shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent.
7. Deductibles: All deductible amounts shall be paid for and be the responsibility of the CMAR for any and all claims under this Agreement. Where an SIR or deductible exceeds \$5,000, the Owner reserves the right, but is not obligated, to review and request a copy of the CMAR's most recent annual report or audited financial statement.

It shall be the responsibility of the CMAR to ensure that all independent contractors and/or subcontractors comply with the same insurance requirements referenced herein. It will be the responsibility of the CMAR to obtain Certificates of Insurance from all independent contractors and subcontractors listing the Owner as an Additional Insured without the language, "when required by written contract." If the

CMAR, any independent contractors and/or any subcontractors maintain higher limits than the minimums listed above, the Owner requires and shall be entitled to coverage for the higher limits maintained by the CMAR/independent contractor/subcontractor.

The CMAR may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employers' Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employers' Liability. When required by the insurer, or when Umbrella or Excess Liability is written on Non-Follow Form, the Owner shall be endorsed as an "Additional Insured."

The Owner, by and through its Risk Management Department, reserves the right, but is not obligated, to review, modify, reject, or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Contract. All insurance carriers must have an AM Best rating of at least A:VII or better.

A failure on the part of the CMAR to execute the Agreement and/or punctually deliver the required insurance certificates and other documentation may be cause for annulment of the award.

ARTICLE 10. FORCE MAJEURE, FIRE OR OTHER CASUALTY

10.01 Force Majeure.

(1) Delays in any performance by any party contemplated or required hereunder due to: fire, flood, earthquake or hurricane, acts of God, war, declaration of hostilities, revolt, civil strife, altercation or commotion, strike, labor dispute, or epidemic, or any law, order, proclamation, regulation or ordinance of any government or any subdivision thereof, or for any other similar cause to those enumerated, beyond the reasonable control and which with due diligence could not have been reasonably anticipated and without the fault or negligence of the party seeking excuse from performance, shall be deemed to be events of Force Majeure and any such delays shall be excused. In the event such party is delayed in the performance of any work or obligation pursuant to this Agreement for any of the events of Force Majeure and any such delays shall be excused. In the event such party is delayed in the performance of any work or obligation pursuant to this Agreement for any of the events of Force Majeure, the date for performance required or contemplated by this Agreement shall be extended by the number of calendar days such party is actually delayed in such substantial completion.

(2) The party seeking excuse for nonperformance on the basis of Force Majeure shall promptly give written notice to the Owner, if with respect to the CMAR, or to the CMAR, if with respect to the Owner, specifying its actual or anticipated duration, and at least every-other-day thereafter, if such delay shall be

continuing, written notice stating whether the condition continues and giving its actual or then anticipated duration. Each party seeking excuse from nonperformance on the basis of Force Majeure shall use its best efforts to rectify any condition causing a delay and will cooperate with the other party, except that neither party shall be obligated to incur any unreasonable additional costs and expenses, to overcome any loss of time that has resulted.

10.02 Casualty; Actions by Owner and CMAR. During the Construction Period, if the **PROJECT**, or any part thereof, shall have been damaged or destroyed, in whole or in part, the CMAR shall promptly make proof of loss and Owner and CMAR shall proceed promptly to collect, or cause to be collected, all valid claims which may have arisen against insurers or others based upon such damage or destruction. The CMAR shall diligently assess the damages or destruction and shall prepare an estimate of the cost, expenses and other changes, including normal and ordinary compensation to the CMAR, necessary for reconstruction of the **PROJECT** substantially in accordance with the Project Plans and Specifications. Within fifteen (15) calendar days following satisfaction of the express conditions described in subsections (1), (2) and (3) below, the CMAR covenants and agrees diligently to commence reconstruction and to complete the reconstruction or repair of any loss or damage by fire or other casualty to the **PROJECT** to substantially the same size, floor area, cubic content and general appearance as prior to such loss or damage:

(1) receipt by the Owner of the proceeds derived from collection of all valid claims against insurers or others based upon such damage or destruction; and receipt of other sums from any source such that the funds necessary to pay the Project Cost and any additions to the Project Cost necessitated for repair or reconstruction are available;

(2) written agreement executed by the CMAR and the Owner, by amendment to this Agreement or otherwise, authorizing and approving the repair or reconstruction and any additions to the Project Cost necessitated thereby, including any required amendment to the GMP; and

(3) final approval by the Owner of the Project Plans and Specifications for such repair or reconstruction and issuance of any required Building Permit.

10.03 Approval of Plans and Specifications. The Owner agrees to approve the plans and specifications for such reconstruction or repair if the reconstruction or repair contemplated by such plans and specifications is economically feasible, and will restore the **PROJECT**, or the damaged portion thereof, to substantially the same condition as prior to such loss or damage and such plans and specifications conform to the applicable laws, ordinances, codes and regulations. The Owner agrees that all proceeds of any applicable insurance or other proceeds received by the Owner or the CMAR as a result of such loss or damage shall be used solely for payment of the costs, expenses, and other charges of the reconstruction or repair of the **PROJECT**.

10.04 Notice of Loss or Damage. The CMAR shall promptly give the Owner written notice of any significant damage or destruction to the **PROJECT**, defined as loss or damage which it is contemplated by CMAR will increase the GMP or extend the date of substantial completion, stating the date on which such damage or destruction occurred, the then expectations of CMAR as to the effect of such damage or destruction on the use of the **PROJECT**, and the then proposed schedule, if any, for repair or reconstruction of the **PROJECT**. Loss or damage which the CMAR determines will not affect the GMP or date of substantial completion will be reported to Owner and AE immediately and associated corrective actions will be undertaken without delay.

ARTICLE 11 INDEMNIFICATIONS

11.01 Indemnification by CMAR. The CMAR agrees to indemnify, defend, and hold harmless, the Owner, its officers, agents, and employees from, and against any and all claims, actions, liabilities, losses and expenses including, but not limited to, attorney's fees for personal, economic, or bodily injury, wrongful death, loss of or damage to property, at law or in equity, which may arise or may be alleged to have arisen from the negligent acts, errors, omissions or other wrongful conduct of the CMAR, agents, laborers, subcontractors or other personnel entity acting under the CMAR's control in connection with the CMAR's performance of services under this Agreement. To that extent, the CMAR shall pay any and all such claims and losses and shall pay any and all such costs and judgments which may issue from any lawsuit arising from such claims and losses including wrongful termination or allegations of discrimination or harassment, and shall pay all costs and attorney's fees expended by the Owner in defense of such claims and losses, including appeals. That the aforesaid hold-harmless agreement by the CMAR shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations of the CMAR or any agent laborers, subcontractors, or employee of the CMAR regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages. The CMAR shall be held responsible for any violation of laws, rules, regulations, or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by the CMAR on the work. This indemnification shall survive the termination of this Agreement.

The CMAR shall assume all risk and bear any loss or injury to property or persons occasioned by neglect or accident during the progress of work until the same shall have been completed and accepted. The CMAR agrees to repair, restore or rebuild any damages he causes to any property of the Owner. He shall also assume all blame or loss by reason of neglect or violation of any state or federal law or municipal rule, regulation or order. The CMAR shall give to the proper authorities all required notices relating to the work and obtain all official permits and licenses. He shall repair any damage that may have occurred to any adjoining building, structure, utility or private property in the course of this work.

11.02 Exculpation. Nothing contained in this Article or in this Agreement shall be construed as creating or otherwise resulting in the CMAR assuming any liability or responsibility for the services provided to Owner by AE, his agents, employees, subcontractors, or otherwise, including, but not limited to those services involved in the preparation or approval of maps, drawings, opinions, reports, surveys, design or specifications, or the giving of, or the failure to give, directions or instructions by the AE, his agents, employees, subcontractors or otherwise, providing that such giving or failure to give is the primary cause of the injury or damage.

11.03 CONSEQUENTIAL DAMAGES. The CMAR and Owner waive claims against each other for consequential damages arising out of or relating to this Agreement with the limited exception of liquidated damages as provided in Section 4.06(1) of this Agreement. This mutual waiver includes:

- (1) Damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- (2) Damages incurred by the CMAR for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

11.04 SOVEREIGN IMMUNITY. Nothing contained in this Agreement shall be deemed or otherwise interpreted as waiving the Owner's sovereign immunity protections existing under the laws of the State of Florida, or as increasing the limits of liability as set forth in section 768.28, Florida Statutes.

ARTICLE 12. DEFAULT; TERMINATION

12.01 Termination by Owner Without Cause. The Owner reserves the exclusive right to terminate this Agreement without cause as provided herein. In the event that Owner exercises its rights of termination, Owner shall provide thirty (30) days written notice to CMAR of termination and the termination shall become effective upon the date specified in the written notice. As a condition of Owner's termination rights provided for in this paragraph, CMAR shall be released and discharged from all obligations arising by, through or under the terms of this Agreement, and the Payment and Performance Bond shall be terminated. In the event of any such termination by Owner, Owner shall assume and become liable for obligations, commitments and unsettled contractual claims that CMAR has previously undertaken or incurred in connection with the **PROJECT** and as authorized under this agreement. In addition, Owner shall pay CMAR the additional compensation described below:

(1) Termination by Owner for Certain Identified Events. After the establishment of the GMP, if the final cost estimates make the **PROJECT** no longer reasonably feasible from the standpoint of the Owner, Owner shall provide written notice to CMAR of termination prior the Construction Commencement Date. Owner shall pay CMAR all compensation earned or accrued by CMAR up to and including the date of termination.

(2) Termination Based Upon Abandonment, Casualty or Force Majeure. If, after the Construction Commencement Date (i) Owner abandons the **PROJECT** (which for purposes of this paragraph shall mean the cessation of all construction and other activities relating to the **PROJECT**, excluding those which are necessary to wind down or otherwise terminate all outstanding obligations with respect to the **PROJECT**, and no recommencement of same within twelve (12) months following the date of termination), or (ii) the **PROJECT** is stopped for a period of sixty (60) consecutive calendar days due to an instance of force majeure or the result of a casualty resulting in a loss that cannot be corrected or restored within one-hundred and twenty (120) calendar days (excluding the time required to assess the damage and complete the steps contemplated), the Owner shall have the right to terminate this Agreement and pay the CMAR its compensation earned or accrued to date and all direct costs actually expended prior to City's notice of termination under this paragraph. CMAR shall immediately cease purchasing or accruing payment upon such notice of termination, unless necessary for the protection of the work already perform or safety and welfare of the public.

(3) Owner's Termination for Owner Convenience. Notwithstanding anything contained herein to the contrary, Owner may without cause, terminate this agreement at any time upon delivery of written notice to the CMAR. In the event Owner delivers such notice to the CMAR, CMAR agrees to withdraw its employees and its equipment, if any, from the work site on the effective date of the termination as specified in said notice (which effective date shall not be less than two (2) business days after the date of delivery of the notice), regardless of any claim the CMAR may or may not have against the Owner. In the event of such termination, CMAR shall be entitled to any unpaid Cost of the **PROJECT** incurred to the effective date of such termination, and to no compensation other than the fees owed or accrued through the date of termination and all direct costs actually expended prior to City's notice of termination under this paragraph. CMAR shall immediately cease purchasing or accruing payment upon such notice of termination, unless necessary for the protection of the work already perform or safety and welfare of the public.

12.02 Owner's Right to Perform CMAR's Obligations and Termination by Owner for Cause.

(1) If the CMAR fails to timely perform any of his obligations under this Agreement, including any obligation the CMAR assumes to perform work with his own forces, the Owner may, after seven (7) calendar days' written notice, during which period the CMAR fails to perform such obligation, make good such deficiencies and perform such actions. The GMP, or the actual cost of the **PROJECT**, whichever is less, shall be reduced by the cost to the Owner of making good such deficiencies and the CMAR's compensation shall be reduced by an amount required to manage the deficiencies, provided, however, nothing contained

herein shall limit or preclude Owner from pursuing additional damages from CMAR as a result of its breach.

(2) If the CMAR is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors or if a receiver is appointed on account of its insolvency, or if it persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or fails, without being excused, to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls thirty (30) calendar days or more behind schedule) which has been adopted by the Construction Team, or if it fails to make prompt payment to subcontractors for materials or labor, or disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of substantial violations of a provision of the Agreement, then the Owner may, without prejudice to any other right or remedy, and after giving the CMAR and its surety, if any, fourteen (14) calendar days' written notice, and during which period the CMAR fails to cure the violation, terminate the employment of the CMAR and take possession of the Project Site and of all materials, equipment, tools, construction equipment, and machinery thereon owned by the CMAR, and may finish the **PROJECT** by whatever method the Owner may deem expedient. In such case, the CMAR shall not be entitled to receive any further payment. Owner shall be entitled to recover all costs and damages arising as a result of failure of CMAR to perform as provided in this Agreement, as well as reasonable termination expenses and costs and damages incurred by the Owner may be deducted from any payments left owing the CMAR.

12.03 Obligations, Rights and Remedies Cumulative. The specific rights and remedies to which either the Owner or the CMAR are entitled are not exclusive and are intended to be in addition to any other remedies or means of redress to which the Owner or the CMAR may lawfully be entitled and are not specifically prohibited by this Agreement.

12.04 Non-action on Failure to Observe Provisions of This Agreement. The failure of the Owner or the CMAR to promptly insist upon strict performance of any terms, covenant, condition or provision of this Agreement or any exhibit or any other Agreement contemplated hereby, shall not be deemed a waiver of any right or remedy that the Owner or the CMAR may have, and shall not be deemed a waiver of any subsequent default or nonperformance of such term, covenant, condition or provision.

12.05 Litigation. All claims, disputes, or other matters in question between the Owner and the CMAR, arising under the terms of this Agreement and performance hereunder shall be decided by a court of competent jurisdiction, and shall not be the subject of arbitration. The parties agree that with respect to any Agreements executed by and between themselves relating to the **PROJECT** and any other persons or entities performing work on the **PROJECT**, that such agreements will contain a provision such that any disputes shall be resolved in a court of competent jurisdiction, it being the intention of all parties that any dispute be resolved in one consistent forum.

10521 SW Village Center Drive
Suite 103
Port St Lucie FL, 34987

With a copy to
Owner:

City of Port St Lucie
2195 SE Airose Blvd
Port St Lucite Florida 34984

Department of
Project Manager:

Parks and Recreation
Carrie Wilbur, Project Manager

The addresses to which notice is to be sent may be changed from time to time by a written notice delivered to each party to this Agreement. Until notice of change of address is received, a party may rely upon the last address given.

13.05 Severability. If any provision of this Agreement is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby if such reminder would then continue to conform to the requirements of applicable laws and if the remainder of this Agreement can substantially be reasonably performed without material hardship, so as to accomplish the intent and the goals of the parties hereto.

13.06 Applicable Law and Construction. The laws of the State of Florida shall govern the validity, performance, and enforcement of this Agreement. This Agreement has been negotiated by the Owner and the CMAR, and this Agreement, including the Exhibits, shall not be deemed to have been prepared by either the Owner or the CMAR, and each of them shall be deemed to have participated equally in the preparation hereof.

13.07 Submission to Jurisdiction.

(1) Each party to this Agreement hereby submits to the Jurisdiction of the courts of the State of Florida with venue in St. Lucie County, Florida, for the purposes of any suit, action or other proceeding arising out of or related to this Agreement and hereby agrees not to assert by way of a motion as a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by such courts.

(2) The present registered agent of **Burkhardt Construction Inc.** is **Marc Kleisley, Vice President**, the individual designated for service of process by the corporation, which is CMAR under the terms of this Agreement, with an address of **1400 Alabama Avenue, Suite 20, West Palm Beach, Florida 33401**. If at any time during the term of this Agreement, the CMAR is not a resident of the State of Florida or has no partner, officer, employee or agent thereof

available for service of process as a resident of the State of Florida, or if any permitted assignee thereof shall be a foreign corporation, partnership or other entity or shall have no officer, employee or agent available for service of process in the State of Florida, CMAR hereby designates the Secretary of State, State of Florida, its agent for the service of process in any court action between it and the Owner, arising out of or related to this Agreement and such service shall be made as provided by the laws of the State of Florida for service upon a nonresident; provided, however, that at the time of service on the Secretary of State, a copy of such service shall be mailed by prepaid, registered mail, return receipt requested, to the CMAR at the address for notices.

13.08 Estoppel Certificates. The CMAR and the Owner shall at any time and from time to time, upon not less than twenty-one (21) calendar days prior notice by the other party, execute, acknowledge and deliver to the other a statement certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications that the same as modified is in full force and effect and setting forth such modifications), the dates to which any changes have been paid in advance, if any, and, to the knowledge of such party, neither it nor the other party is then in default hereof, it being intended that any such statement delivered may be relied upon by any prospective purchaser, mortgagee, assignee of any mortgage or assignee of the respective interests in the **PROJECT**, if any, of either party made in accordance with the provisions of this Agreement.

13.09 Complete Agreement. The written form of this Agreement and the Exhibits supersede and control over any and all prior agreements, understandings, representations and statements, whether written or oral, specifically including, but not limited to, the Proposal, made with regard to the matters addressed by this Agreement.

13.10 Captions. The section headings and captions of this Agreement and the table of contents preceding this Agreement are for convenience and reference only and in no way definite, limit or describe the scope or intent of this Agreement, or any part thereof, or in any way affect this Agreement, or construe any article or section hereof.

13.11 Holidays. It is hereby agreed and declared that whenever the time period for a notice or performance under the terms of this Agreement is seven (7) days or greater, and would be made or given or done on a Saturday or Sunday or on a legal holiday observed by the City Council of the City of Port St. Lucie, Florida, it shall be postponed to the next following business day, not a Saturday, Sunday or legal holiday.

13.12 Exhibits. Each Exhibit referred to in and attached to this Agreement is an essential part of this Agreement. The Exhibits, and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Agreement.

13.13 Authorized Representatives. Within three (3) business days following the Effective Date of this Agreement, the Owner and the CMAR shall each designate an initial authorized representative (the Project Coordinator as to the Owner) to act on its behalf to the extent and for the duration of the **PROJECT** and shall provide to the other the name, address and specimen signature of such authorized representative. Unless otherwise designated by Owner to the contrary. Thereafter, subsequent or replacement designations may be made as deemed necessary and appropriate by the designating party. Upon such subsequent or replacement designation being made, the designating party shall promptly notify the other party hereto.

13.14 Nondiscrimination.

The CMAR shall not discriminate against any person in its operations, activities, or delivery of services under this Agreement. The CMAR shall affirmatively comply with all applicable provisions of federal, state, and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

CMAR

13.15 No General Obligation. In no event shall any obligation of the Owner under this Agreement be or constitute a pledge of the ad valorem taxing power of the Owner within the meaning of the Constitution of the State of Florida or any other applicable laws. Neither the CMAR nor any other party under or beneficiary of this Agreement shall ever have the right to compel the exercise of the ad valorem taxing power of the Owner, in any form on any real or personal property to pay the Owner's obligations or undertakings hereunder.

13.16 Members of the Owner Not Liable.

(1) All covenants, stipulations, obligations and agreements of the Owner contained in this Agreement shall be deemed to be covenants, stipulations, obligations and agreements of the Owner to the full extent authorized by the Constitution and laws of the State of Florida.

(2) No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member of the Governing Body or agent or employee of the Owner in its, his or their individual capacity, and neither the members of the Governing Body of the Owner, nor any official executing this Agreement shall be liable personally or shall be subject to any accountability by reason of the execution by the Owner of this Agreement or any act pertaining hereto.

13.17 Relationship of the Parties. No party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by the other party to third parties, and nothing in this Agreement shall be deemed to contemplate either party as a partner, agent or local

representative of the other party, or relationship between the parties or to create the relationship of employer/employees.

13.18 Maintenance of Records. The CMAR and any subcontractors shall comply with section 119.0701, Florida Statutes. The CMAR and any subcontractors are to allow public access to all documents, papers, letters, or other material made or received by the CMAR in conjunction with this Agreement, unless the records are exempt from Article I, section 24(a), Florida Constitution, and section 119.07(1)(a), Florida Statutes. Pursuant to section 119.10(2)(a), Florida Statutes, any person who willfully and knowingly violates any of the provisions of Ch. 119, Laws of Fla., commits a misdemeanor of the first degree, punishable as provided in sections 775.082 and 775.083, Florida Statutes.

RECORDS

The City of Port St. Lucie is a public agency subject to chapter 119, Florida Statutes. The CMAR shall comply with Florida's Public Records Law. THE CMAR'S RESPONSIBILITY FOR COMPLIANCE WITH CHAPTER 119, FLORIDA STATUTES. Pursuant to section 119.0701, Florida Statutes,

The CMAR agrees to comply with all public records laws, specifically to:

Keep and maintain public records required by the City in order to perform the service.

1. The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GS1-SL for State and Local Government Agencies.
2. During the term of the Agreement, the CMAR shall maintain all books, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this Agreement. The form of all records and reports shall be subject to the approval of the Owner.
3. Records include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the Owner. The CMAR's records under this Agreement include, but are not limited to, supplier/subcontractor invoices and contracts, project documents, meeting notes, emails, and all other documentation generated during this Agreement.
4. The CMAR agrees to make available to the Owner, during normal business hours all books of account, reports and records relating to this Agreement.

5. A contractor who fails to provide the public records to the Owner within a reasonable time may also be subject to penalties under section 119.10, Florida Statutes.

Upon request from the Owner'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.

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 Agreement term and following completion of the Agreement if the CMAR does not transfer the records to the Owner.

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

IF THE CMAR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CMAR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
121 SW Port St. Lucie Blvd.
Port St. Lucie, FL 34984
(772) 871 5157
pr@cityofpsl.com**

13.19 Audits. The CMAR shall establish and maintain a reasonable accounting system that enables the Owner to readily identify the CMAR's assets, expenses, costs of goods, and use of funds throughout the term of the Agreement for a period of at least seven (7) years following the date of final payment or completion of any required audit, whichever is later. Records shall include, but are not limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement

supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. The CMAR shall permit the Owner's authorized auditor or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and to make copies of all books, documents, papers, electronic or optically stored and created records, or other records relating or pertaining to this Agreement kept by or under the control of the CMAR, including, but not limited to, those kept by the CMAR, its employees, agents, assigns, successors, and subcontractors. Such records shall be made available to the Owner during normal business hours at the CMAR's office or place of business. The CMAR shall not impose a charge for audit or examination of the CMAR's books and records. If an audit discloses incorrect billings or improprieties, the Owner reserves the right to charge the CMAR for the cost of the audit and appropriate reimbursement. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the CMAR's invoices and/or records shall be made within a reasonable amount of time (not to exceed ninety (90) days) from presentation of the Owner's findings to the CMAR. Evidence of criminal conduct will be turned over to the proper authorities.

The CMAR shall also ensure the Owner has these rights with the CMAR's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the CMAR and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the CMAR's obligations to the Owner.

13.20 SCRUTINIZED COMPANIES. By entering into this Agreement with the Owner, the CMAR certifies that it and those related entities of the CMAR, as defined by Florida law, are not on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, and are not engaged in a boycott of Israel. The Owner may terminate this Agreement if the CMAR or any of those related entities of the CMAR, as defined by Florida law, are found to have submitted a false certification or any of the following occur with respect to the company or a related entity: (i) it has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, or (ii) for any contract for goods or services of one million dollars or more, it has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or it is found to have been engaged in business operations in Cuba or Syria. Notwithstanding the preceding, the Owner reserves the right and may, in its sole discretion, on a case by case basis, permit a company on such lists or engaged in business operations in Cuba or Syria to be eligible for, bid on, submit a proposal for, or enter into or renew a contract for goods or services of one million dollars or more, or may permit a company on the Scrutinized Companies that Boycott Israel List to be eligible for, bid on, submit a proposal for, or enter into or renew a contract for goods or services

of any amount, should the Owner determine that the conditions set forth in section 287.135(4), Florida Statutes, are met.

13.21 DISCRIMINATORY, CONVICTED, AND ANTITRUST VIOLATOR VENDOR LISTS. The CMAR certifies that neither it nor any of its affiliates, as defined in the statutes below, have been placed on the discriminatory vendor list under section 287.134, Florida Statutes; the convicted vendor list under section 287.133, Florida Statutes; or the antitrust violator vendor list under section 287.137, Florida Statutes. Absent certain conditions under these statutes, neither contractors nor their affiliates, as defined in the statutes, who have been placed on such lists may submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

13.22. COOPERATION WITH INSPECTOR GENERAL. Pursuant to section 20.055, Florida Statutes, it is the duty of every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section. The CMAR understands and will comply with this statute.

13.23. E-VERIFY. In accordance with section 448.095, Florida Statutes, the CMAR agrees to comply with the following:

1. The CMAR must register with and use the E-Verify system to verify the work authorization status of all new employees of the CMAR. The CMAR must provide the Owner with sufficient proof of compliance with this provision before beginning work under this Agreement.
2. If the CMAR enters into a contract with a subcontractor, the CMAR must require each and every subcontractor to provide the CMAR with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The CMAR shall maintain a copy of each and every such affidavit(s) for the duration of the Agreement and any renewals thereafter.
3. The Owner shall terminate this Agreement if it has a good faith belief that a person or an entity with which it is contracting has knowingly violated section 448.09(1), Florida Statutes.
4. The CMAR shall immediately terminate any contract with any subcontractor if the CMAR has, or develops, a good faith belief that the subcontractor has violated section 448.09(1), Florida Statutes. If the Owner has or develops a good faith belief that any subcontractor of the CMAR knowingly violated section 448.09(1), Florida Statutes, or any provision of section 448.095, Florida Statutes, the Owner shall promptly notify the CMAR and order the CMAR to immediately terminate the contract with the subcontractor.

5. The Owner shall terminate this Agreement for violation of any provision in this section. If the Agreement is terminated under this section, it is not a breach of contract and may not be considered as such. If the Owner terminates this Agreement under this section, the CMAR may not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. A contractor is liable for any additional costs incurred by the City as a result of the termination of a contract.
6. The Owner, CMAR, or any subcontractor may file a cause of action with a circuit or county court to challenge a termination under section 448.095(5)(c), Florida Statutes, no later than twenty (20) calendar days after the date on which the Contract was terminated. The parties agree that such a cause of action must be filed in St. Lucie County, Florida, in accordance with the Venue provision herein.

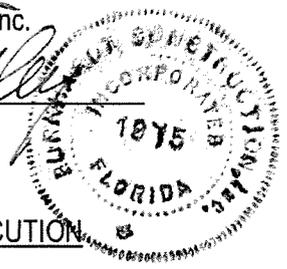
IN WITNESS WHEREOF, the parties have executed this contract, the day and year first above written.

CITY OF PORT ST. LUCIE FLORIDA

By: Caroline Sergio
Purchasing Agent

CMAR: Burkhardt Construction Inc.

By: Marc R. Kleisley
Authorized Representative



NOTARIZATION AS TO AUTHORIZED REPRESENTATIVE'S EXECUTION

STATE OF FLORIDA)
) ss
COUNTY OF Palm Beach)

The foregoing instrument was acknowledged before me by [] physical presence or [] online notarization, this 4th day of November, 20 24, by Marc R. Kleisley who is [] personally known to me, or who has [] produced the following identification:

Adam J. Rossmell

Signature of Notary Public

Adam J. Rossmell

Print Name of Notary Public
Notary Public, State of Florida
My Commission expires: March 20, 2025

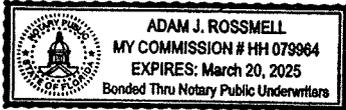


EXHIBIT A – Acceptance of Award Terms

OMB Approved No.: 1505-0271
Expiration Date: 11/30/2021

U.S. DEPARTMENT OF THE TREASURY
CORONAVIRUS LOCAL FISCAL RECOVERY FUND

Recipient name and address: City of Port St. Lucie 121 SW Port St. Lucie Blvd Port St. Lucie, Florida 34984	DUNS Number: 025204173 Taxpayer Identification Number: 596141662 Assistance Listing Number and Title: 21.019
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Sections 602(b) and 603(b) of the Social Security Act (the Act) as added by section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021) authorize the Department of the Treasury (Treasury) to make payments to certain recipients from the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund.

Recipient hereby agrees, as a condition to receiving such payment from Treasury, to the terms attached hereto.

Recipient:



Authorized Representative:
Title: CFO
Date signed: 6-4-21

U.S. Department of the Treasury:

Authorized Representative:
Title:
Date signed:

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 15 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

U.S. DEPARTMENT OF THE TREASURY
CORONAVIRUS LOCAL FISCAL RECOVERY FUND
AWARD TERMS AND CONDITIONS

1. Use of Funds.
 - a. Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Recipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
3. Reporting. Recipient agrees to comply with any reporting obligations established by Treasury as they relate to this award.
4. Maintenance of and Access to Records
 - a. Recipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Recipient in order to conduct audits or other investigations.
 - c. Records shall be maintained by Recipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Recipient may use funds provided under this award to cover both direct and indirect costs.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Recipient.
8. Conflicts of Interest. Recipient understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipient and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.
9. Compliance with Applicable Law and Regulations.
 - a. Recipient agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
 - b. Federal regulations applicable to this award include, without limitation, the following:
 - i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
 - ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
 - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
 - iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

- v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
 - vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
 - vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
 - viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
 - ix. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
 - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
10. Remedial Actions. In the event of Recipient's noncompliance with section 602 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 602(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 602(e) of the Act and any additional payments may be subject to withholding as provided in sections 602(b)(6)(A)(ii)(III) of the Act, as applicable.
11. Hatch Act. Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
12. False Statements. Recipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.
13. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."
14. Debts Owed the Federal Government.
- a. Any funds paid to Recipient (1) in excess of the amount to which Recipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by Recipient shall constitute a debt to the federal government.
 - b. Any debts determined to be owed the federal government must be paid promptly by Recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Recipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.
15. Disclaimer.

- a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.
- b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.

16. Protections for Whistleblowers.

- a. In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
- b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Treasury employee responsible for contract or grant oversight or management;
 - v. An authorized official of the Department of Justice or other law enforcement agency;
 - vi. A court or grand jury; or
 - vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
- c. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

18. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS
ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the recipient named below (hereinafter referred to as the "Recipient") provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to the Recipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Recipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Recipient's program(s) and activity(ies), so long as any portion of the Recipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Recipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Recipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Recipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Recipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Recipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Recipient's programs, services, and activities.
3. Recipient agrees to consider the need for language services for LEP persons when Recipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.
4. Recipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Recipient and Recipient's successors, transferees, and assignees for the period in which such assistance is provided.
5. Recipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Recipient and the Recipient's sub-grantees, contractors, subcontractors, successors, transferees, and assignees:

The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

6. Recipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Recipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal

financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Recipient for the period during which it retains ownership or possession of the property.

7. Recipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Recipient shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Recipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Recipient also must inform the Department of the Treasury if Recipient has received no complaints under Title VI.
9. Recipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Recipient and the administrative agency that made the finding. If the Recipient settles a case or matter alleging such discrimination, the Recipient must provide documentation of the settlement. If Recipient has not been the subject of any court or administrative agency finding of discrimination, please so state.
10. If the Recipient makes sub-awards to other agencies or other entities, the Recipient is responsible for ensuring that sub-recipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of subrecipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

Under penalty of perjury, the undersigned official(s) certifies that official(s) has read and understood the Recipient's obligations as herein described, that any information submitted in conjunction with this assurances document is accurate and complete, and that the Recipient is in compliance with the aforementioned nondiscrimination requirements.

City of Port St. Lucie

Recipient

6-4-21

Date

Signature of Authorized Official

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 30 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

EXHIBIT B – FEDERAL REQUIREMENTS

The following terms shall apply to the agreement between the City of Port St. Lucie, Florida (“City”) and **Burkhardt Construction Inc.** In the event of any conflict between this Exhibit B and other provisions of the Agreement, the provisions of this Exhibit B shall govern.

CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

Contractor name	Burkhardt Construction Inc.
Contractor unique entity identifier	TBD
Federal Award Identification Number (FAIN)	SLFR3358
Federal Award Date	June 4, 2021
Amount to Federal Funds Obligated	\$5,541,600.00
Federal Awarding Agency	US Treasury

Pursuant to 2 CFR 200.327 and Appendix II of 2 CFR 200, the following federal requirements and contract provisions are incorporated herein, where applicable.

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

All contracts in excess of \$10,000 must address termination for cause and for convenience by the City of Port St. Lucie including the manner by which it will be affected and the basis for settlement. Termination for cause and for convenience by the City of Port St. Lucie, including the manner by which it will be affected and the basis for settlement, are addressed in Article 12 of the Agreement.

The following Items (1) through (22) are “MANDATED CONDITIONS” that will be incorporated into the Agreement, where applicable.

(1) EQUAL OPPORTUNITY EMPLOYMENT

In accordance with 41 C.F.R. §60-1.4(b), the sub-recipient/contractor hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of the Agreement, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of the Agreement or with any of the said rules, regulations, or orders, the Agreement may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction

contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the contractor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the contractor under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such contractor; and refer the case to the Department of Justice for appropriate legal proceedings.

(2) COPELAND ANTI-KICKBACK ACT

The Sub-Recipient/contractor hereby agrees that, unless exempt under Federal law, it will incorporate or cause to be incorporated into any contract for construction work,

or modification thereof, the following clause:

Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into the Agreement.

Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the federal awarding agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

Breach. A breach of the contract clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(3) CONTRACT WORK HOURS AND SAFETY STANDARDS

If the Sub-Recipient/contractor, with the funds authorized by this Agreement, enters into a contract that exceeds \$100,000 and involves the employment of mechanics or laborers, then any such contract must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation.

For contracts to be in compliance with the Contract Work Hours and Safety Standards Act the following are required:

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and

any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The federal awarding agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(4) CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

If the Sub-Recipient/contractor, with the funds authorized by this Agreement, enters into a contract that exceeds \$150,000, then any such contract must include the following provision:

Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q).

The contractor agrees to report each violation to the City of Port St. Lucie and understands and agrees that the City of Port St. Lucie will, in turn, report each violation as required to assure notification to the federal awarding agency, and the appropriate Environmental Protection Agency Regional Office. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by the federal awarding agency.

The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant the Federal Water Pollution Control Act as amended (33 U.S.C.1251-1387).

The contractor agrees to report each violation to the City of Port St. Lucie and understands and agrees that the City of Port St. Lucie will, in turn, report each violation as required to assure notification to the federal awarding agency, and the appropriate Environmental Protection Agency Regional Office. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by the federal awarding agency.

The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the federal awarding agency.

(5) SUSPENSION AND DEBARMENT

This contract is a subject to 2 C.F.R. Part 180 and Treasury's implementing regulations at 31 C.F.R. Part 19.

If the Sub-Recipient/contractor, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following provisions:

This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by the City of Port St. Lucie. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City of Port St. Lucie, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(6) BYRD ANTI-LOBBYING AMENDMENT

If the Sub-Recipient/contractor, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following clause:

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each

tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

(7) CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

- a. If the Sub-Recipient/contractor, with the funds authorized by this Agreement, seeks to procure goods or services, then, in accordance with 2 C.F.R. §200.321, the Sub-Recipient/contractor shall take the following affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible:
- 1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - 2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - 3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - 4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - 5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - 6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs 1 through 5 of this subparagraph.
- b. The requirement outlined in subparagraph a. above, sometimes referred to as "socioeconomic contracting," does not impose an obligation to set aside either the solicitation or award of a contract to these types of firms. Rather, the requirement only imposes an obligation to carry out and document the six affirmative steps identified above.
- c. The "socioeconomic contracting" requirement outlines the affirmative steps that the Sub-Recipient must take; the requirements do not preclude the Sub-Recipient from undertaking additional steps to involve small and minority businesses and women's business enterprises.
- d. The requirement to divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises, does not authorize the Sub-Recipient to break a single project down into smaller components in order to circumvent the micro-purchase or small purchase thresholds so as to utilize streamlined acquisition procedures (e.g. "project splitting").

(8) DAVIS-BACON ACT, AS AMENDED (40 U.S.C. 3141–3148) N/A

(9) PROCUREMENT OF RECOVERED MATERIALS

Contractor agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act where applicable and provide such information and certification to City of Port St. Lucie. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage for recovered material practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds ten thousand (\$10,000) dollars or the value of the quantity acquired during the preceding fiscal year exceeds ten thousand (\$10,000) dollars; procuring solid waste management services in a manner that maximizes energy and resource recovery, and establishing an affirmative procurement program for the procurement of recovered materials identified in the EPA guidelines.

In the performance of this Agreement, the contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired competitively within a timeframe providing for compliance with the Agreement performance schedule; meeting Agreement performance requirements; or at a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

The contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

(10) PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

(a) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in Title 2 CFR §200.216 of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and as adopted by the federal awarding agency, as used in this clause—

(b) *Prohibitions.*

(1) Section 889(F)(1) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative

agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(1) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(2) Telecommunications or video surveillance services provided by such entities or using such equipment.

(3) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

- (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) *Exceptions.*

(1) This clause does not prohibit contractors from providing—

- (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

- (i) Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system.

- (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) *Reporting requirement.*

- (1) In the event the contractor identifies covered telecommunications equipment or services

used as a substantial or essential component of any system, or as critical technology as part of any system, during Contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in the Agreement, are established procedures for reporting the information.

- (2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

- (i) Within one business day from the date of such identification or notification: The Agreement number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
- (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

- (e) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

(11) RIGHT TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If the Federal award meets the definition of "funding agreement" under 37 CFR 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance or experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. Contractor agrees to comply with the above requirements when applicable.

(12) DOMESTIC PREFERENCE FOR PROCUREMENTS

As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of

goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(13) ACCESS TO RECORDS

The contractor agrees to provide the City of Port St. Lucie, the federal awarding agency, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers and records of the contractor which are directly pertinent to the Agreement for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall maintain records for a period of five (5) years after all funds have been expended or returned to the City of Port St. Lucie, whichever is later.

The contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The contractor agrees to permit the federal awarding agency or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the Agreement.

In compliance with the Disaster Recovery Act of 2018, the City of Port St. Lucie and the contractor acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the federal awarding agency or the Comptroller General of the United States.

(14) CHANGES

To be allowable under the grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable.

(15) COMPLIANCE WITH FEDERAL LAW, REGULATIONS AND EXECUTIVE ORDERS

This is an acknowledgement that federal financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders and policies, procedures and directives.

(16) NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to the Agreement and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the Agreement.

(17) PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENT OR RELATED ACTS

Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to the Agreement.

Any procurement involving funds authorized by this Agreement must comply with all applicable federal and state laws and regulations, to include 2 C.F.R. 200.318 through 200.326 as well as Appendix II to C.F.R. Part 200, and applicable guidance from the U.S. Department of the Treasury.

(18) INCREASING SEAT BELT USE IN THE UNITED STATES

Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), contractor should adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

(19) REDUCING TEXT MESSAGING WHILE DRIVING

Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Contractor should adopt and enforce policies that ban text messaging while driving and should establish workplace safety policies to decrease accidents caused by distracted drivers.

(20) PUBLICATIONS

Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient/Contractor] by the [federal awarding agency]."

(21) COPYRIGHT AND DATA RIGHTS *(If applicable)*

License and Delivery of Works Subject to Copyright and Data Rights

The contractor grants to the City of Port St. Lucie, FL, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of the Agreement to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the Agreement but not first produced in the performance of the Agreement, the Contractor will identify such data and grant to the City of Port St. Lucie, FL or acquires on its behalf a license of the same scope as for data first produced in the performance of the Agreement. Data, as used herein, shall include any work subject to

copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of the Agreement, the contractor will deliver to the City of Port St. Lucie, FL data first produced in the performance of the Agreement and data required by the Agreement but not first produced in the performance of the Agreement in formats acceptable by the City of Port St. Lucie, FL.

(22) ARPA CIVIL RIGHTS ASSURANCES

1. Contractor ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.

2. Contractor acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Contractor understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Contractor shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Recipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Contractor's programs, services, and activities.

3. Contractor agrees to consider the need for language services for LEP persons when Contractor develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>

4. Contractor acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Contractor and Contractor's successors, transferees, and assignees for the period in which such assistance is provided

Contractor acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Contractor and the Contractor's sub-grantees, contractors, subcontractors, successors, transferees, and assignees:

Contractor and any sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the

Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

EXHIBIT C

DEFINITIONS

1. "Agreement" means this Agreement between Owner and Construction Manager, including any Exhibits attached hereto, and any amendments or revisions to this Agreement or any of the exhibits.
2. "Authorized Representative" means the person designated by the Owner and CMAR, respectively, to act on its behalf, pursuant to the terms of this Agreement. The Authorized Representative is referred to herein in this Agreement as Project Coordinator.
3. "Change Order" means a written order to the CMAR signed by the Owner, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Guaranteed Maximum Price or the Contract Time. The Guaranteed Maximum Price and the Contract Time may be changed only by a Change Order. A Change Order signed by the CMAR indicates his agreement therewith, including the adjustment in the Guaranteed Maximum Price or the Contract Time.
4. "Completion (Final)" means acceptance of the Project by the Owner as evidenced by its signature upon a final payment Certification form and approval thereof by the Board of County Commissioners or their designee. The final payment Certification shall be signed only after the Owner has assured itself by tests, inspections, or otherwise that all of the provisions of the Contract have been carried out as required.
5. "Completion (Substantial)" means an acceptance of the Work by the Owner when construction is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the work or designated portion thereof for the use for which it is intended. A certificate of occupancy or compliance, when applicable, issued by the Building Official is required concurrent with or prior to issuance of the Certificate of Substantial Completion.
6. "Construction Commencement Date" means the date specified in the Construction Phase Notice to Proceed.
7. "Effective Date of the Agreement" means the date on which the Agreement is signed and delivered by the latter of the two parties.
8. "Exhibits" means those agreements, forms of agreements, instruments and other documents attached hereto and designated as exhibits to this Agreement or incorporated by reference into this Agreement.

9. "Field Change Order" is a written change order requested by the AE, accepted by the CMAR, and approved by the Project Coordinator for minor changes in the Work, not involving the adjustments in the Guaranteed Maximum Price or an extension of Time, and not inconsistent with the overall intent of the Contract Documents.
10. "Field Directive Change" is a written directive to the CMAR, issued on or after the effective date of the Agreement ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed or to emergencies. A Field Directive Change may not change the Guaranteed Maximum Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Field Directive Change will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Guaranteed Maximum Price (GMP) or the Contract Time.
11. "Force Majeure" means those conditions constituting excuse from performance as described in and subject to the conditions described in Paragraph 10.01 hereof.
12. "Guaranteed Maximum Price (GMP)" is established by the CMAR guaranteeing the maximum price to the Owner, for the construction cost of the project.
13. "Owner" means the City of Port St. Lucie, Florida, a municipal corporation, and any successor in interest thereto.
14. "Permitting Authority" means the City of Port St. Lucie and any other applicable governmental authority acting in its governmental and regulatory capacity, which is required to issue or grant any permit, certificate, or other approval which is required to issue or grant any permit, certificate, or other approval which is required as a condition precedent to the commencement of any construction of the Project, or any part thereof, including the Building Permit.
15. "Project" means the design, construction and equipping of the Project established in the "Agreement between Owner and Construction Manager" and related or appurtenant facilities thereto, in accordance with the Project Plans and Specifications.
16. "Project Architect" or "AE" means Architect or Engineer established in the "Agreement between Owner and Construction Manager" and their successors and assigns, who have been selected by and retained by the Owner to provide the services of licensed architect-engineer for the Project as contemplated by this Agreement.
17. "Project Budget" means the compilation of identified costs for all services to be provided by CMAR, Project Architect and Subcontractors in connection with the planning, design, construction and equipping of the Project in accordance with the Project Plans and Specifications.

18. "Project Plans and Specifications" means the construction drawings and final specifications prepared by the Project Architect and any changes, supplements, amendments or additions thereto approved by the Owner and CMAR, which shall also include any construction drawings and final specifications required for the repair or construction of the Project.
19. "Project Schedule" means the estimated and approximate schedule and sequence of events for the commencement, progression and completion of the Project, and as such schedule may be amended as provided for in the Agreement.
20. "Punch List Completion Date" means the date upon which all previously incomplete or unsatisfactory items, as identified by CMAR, Project Architect and/or Owner are completed in a competent and workmanlike manner, consistent with standards for renovation of this type and with good building practices in the State of Florida.
21. "Subcontractor" means any person or organization as defined in Paragraph 6.01 hereof.

End of Exhibit C

EXHIBIT D

PROJECT COSTS

"Project Costs" mean all the costs incurred by the Owner and CMAR [excluding Part II, below] in planning, constructing and equipping the Project, all of which Project Costs are to be incorporated within the Guaranteed Maximum Price (GMP) established by the CMAR, and without excluding any cost not listed but which is specifically identified in the Agreement, shall include the following:

PART I

Part IA - Costs Included Within CMAR Fees

Proportion related to this project of:

Salaries or other compensation of the CMAR's officers, partners and/or employees at its principal office and branch offices unless otherwise indicated in Part IB.

CMAR's general operating and overhead expenses of the CMAR's principal and branch offices, and all CMAR profit.

The costs of all data processing staff and data processing equipment.

Licenses.

Principal and branch office supplies including paper, pencils, paper clips, file folders, staples, etc.; janitorial supplies.

Costs for copies of documents created within the PMIS Reporting System and copies of all documents furnished to Owner.

Part IB – Reimbursable Project Costs Not Included within CMAR Fee

Wages and salaries of the CM's Project Manager and Superintendent when stationed at the site with the Owner's agreement.

Expenses such as telephone and facsimile service at the site, long-distance telephone charges, expressage, and postage.

Contractors public liability and property damage insurance; and Worker's Compensation insurance.

Construction or other work performed by CMAR or otherwise, which, when CMAR is permitted to bid pursuant to this agreement, shall be for the bid price or where such work is performed pursuant to emergency or similar circumstances, shall be for the wages paid for labor in the direct employ of the CMAR (as opposed to wages paid to management or supervisory personnel), and such fringe benefits, if any, as may be payable with respect thereto.

Blueprint/Printing Copies - Costs of all reproductions used for bidding or information which may be distributed to vendors and the public.

Electrical Power consumption (monthly) - temporary construction use only.

Water consumption (monthly) - temporary construction use only.

Cleanup at the job site.

Barricades and safety equipment at the job site.

Temporary fencing and gates at the job site.

Signs at the job site, only sign permitted on site is project sign as defined in construction specification.

Weather protection at the job site.

Construction office trailer at the job site.

Record Drawings.

Progress Photographs/Video.

Owner's Insurance, including Builders Risk and Completed Products and Operations insurance

Cost of all materials, supplies and equipment incorporated by CMAR in the Project, including costs of transportation and storage thereof.

Cost including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the work and cost less salvage value on such items used but not consumed which remain the property of the CMAR.

No costs shall be paid by the Owner to the CMAR for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Plans and Specifications or to correct any deficiency or damage caused by negligent acts by the CMAR.

Surveys; layout equipment and materials.

Temporary Toilets/holding tanks.

Dumpsters at the job site.

Watchmen at the job site.

All costs directly incurred in the performance of the Project for the benefit of the Project and not included in the CMAR's fees as set forth in the Agreement.

PART II

Owner's Expenses

The Agreement includes items designated or contemplated as items to be provided by Owner but excluded for the purposes of determination of the project costs or Guaranteed Maximum Price (GMP). These items include, but are not limited to, the following:

Site conditions (such as hazardous materials, concealed subsurface conditions and assorted tests and corrective measures).

Additional surveys, except construction layout.

Easements and temporary construction easements.

Land use approvals, if required.

Impact Fees.

Blueprint/Printing copies of the construction documents, plans and specifications.

Permits.

Additional insurance, if any.

Any additional consultant fees as may be required, additional AE fees, additional CMAR fees.

All furniture, equipment and materials purchased and installed by Owner or other than CMAR.

Previously approved AE fees.

Already paid site acquisition costs.

Already completed Geotechnical and site studies.

Services provided by the Owners employees in planning, constructing and equipping the project.

End of Exhibit D

EXHIBIT E
PRE-CONSTRUCTION PROPOSAL

**BURKHARDT
CONSTRUCTION, INC.**

Vincent G. Burkhardt
President



October 25, 2024

City Of Port St. Lucie
Procurement Management Department
Attn: Mr. Keith Stewart, NIGP-CPP, CPPO
Procurement Manager
121 S.W. Port St. Lucie Blvd.
Port St. Lucie, FL 34984-5099

**RE: Phase 1 Torino Reginal Park Project – eRFP #20240112
Construction Manager at Risk Pre-construction Services Proposal**

Dear Mr. Stewart:

Burkhardt Construction, Inc. (BCI), acting as Construction Manager at Risk (CMAR) is pleased to provide this proposal to the City of Port St. Lucie (Owner) for Pre-construction Services for the Phase 1 Torino Regional Park Project.

As CMAR, BCI shall function as an agent of the Owner, shall be paid a fixed fee for services performed and shall be an integral part of the design team. Pre-construction services will include:

1. Pre-construction Progress Meetings
2. Pre-construction Scheduling
3. Constructability Review / Value Engineering / Life Cycle Cost Analysis
4. Cost Estimating
5. Permit Tracking and Coordination
6. Guaranteed Maximum Price Development

Please feel free to contact me directly should you have any questions regarding any of the information included in this letter or the attached scope of work.

Respectfully submitted,

Burkhardt Construction, Inc.

A handwritten signature in black ink, appearing to read 'Marc R. Kleisley', is written over the printed name and title.

Marc R. Kleisley
Vice President



Pre-construction services shall be rendered and invoiced in the following format:

Task 1: Pre-Construction Progress Meetings:

- (A) The CMAR shall participate in design team progress meetings attended by the CMAR, Designer, Owner, and others as requested. The CMAR shall provide agendas and produce meeting notes from each meeting documenting the issues of the Project, assigning responsibilities for issue resolution and tracking timelines for issue resolution. CMAR shall provide meeting minutes after every progress meeting for the Owner and design team to review and accept.

The CMAR anticipates twenty four (24) meetings.

- (B) This task will include the CMAR participating in community meetings, City Council meetings and Development Review Committee meetings throughout the design process as required by the Owner. These meetings shall include the introduction of the project team, who & how to contact team individuals, discussion of the project sequences/phasing, project timelines and additional details as requested by the Owner.

The CMAR anticipates two (2) meetings.

Task 1 – \$ 28,000.00

Task 2: Pre-Construction Scheduling:

The CMAR shall develop a master Pre-Construction Phase Bar Chart schedule incorporating permitting, plan review and guaranteed maximum price preparation, submittal review and approval, long lead item identification and procurement, kickoff informational meeting, project ground-breaking, coordinated construction sequencing, staging, and the overall construction schedule for the Project. The initial schedule will be provided within 30 days after pre-construction contract execution. The schedule will be updated with the Schematic Design cost estimate, Design Development Phase cost estimate (30% Construction Document Phase), 60% Construction Document Phase cost estimate, 90% Construction Document Phase cost estimate, Subcontractor Bid Document Schedule and Guaranteed Maximum Price cost estimate.

Task 2 – \$ 28,980.00

Task 3: Constructability Review / Value Engineering / Life Cycle Cost Analysis

The CMAR will conduct a document design review and shall work with the designer to provide alternatives and design solutions that are cost effective, value added and provide risk mitigation during construction.

The CMAR shall provide construction expertise in review of the construction documents to provide optimal phasing and sequencing of the construction work to stay within budget and schedule. CMAR shall perform a constructability analysis to identify defects, omissions, and recommendations for alternatives, value engineering and life cycle cost analysis for the Project. The constructability analysis shall include a review of: accessibility, construction methods, assembly, installation, material handling, expandability, phasing and other construction phase activities. CMAR shall also identify and help resolve other issues that might affect the aesthetics and longevity of the final work product and to mitigate logistical construction constraints. The constructability review and value engineering will be performed at the 30%, 60%, 90% Construction Document Phases and Guaranteed Maximum Price Phase.

Task 3 – \$ 17,840.00

Task 4: Cost Estimates at Schematic Design, Design Development (30% Construction Documents Phase), 60% Construction Document Phase, and 90% Construction Document Phase thresholds:

This scope includes the preparation and presentation of cost estimates at various stages of design. The following activities will take place, but will not be limited to:

Cost Estimating: The CMAR will conduct cost estimates at Schematic Design, Design Development (30% Construction Documents Phase), 60% Construction Document Phase, and 90% Construction Document Phase plan design stages.

- A. Schematic Design – At the Schematic Design, the CMAR will use their extensive in-house cost history to produce an Initial Opinion of Probable Construction Cost (IOPCC). The IOPCC will be on an Excel worksheet and will be broken out into different categories that are specific to the work that is going to be performed under each category. (Example: Sitework, Clearing & Grubbing, Large Group Pavilion, Fishing Pier, Kayak Launch, Playground, Splash Pad, Skate Park, Pickle Ball Courts, etc.).
- B. 30% Construction Document Phase - At 30% we obtain numbers like square footage of concrete, number of trees proposed on site, and other quantities that will be used in the cost estimates. Upon completion of the 30% quantity surveys, the CMAR will use their extensive in-house cost history to produce the 30% cost estimate. The 30% cost estimate will be on an Excel worksheet and will be broken out into different categories that are specific to the work that is going to be performed under each category.

- C. 60% Construction Document Phase - At 60% design stage this scope will include an update/refinement of the 30% cost estimate. The CMAR will examine the 60% documents and conduct quantity surveys again to determine if there are any substantive changes that may materially affect budget or time. This estimate will include all materials and information that has been discussed and outlined in the job meetings up to that point.
- D. 90% Construction Document Phase - - At 90% design stage this scope will include an update/refinement of the 60% cost estimate. The CMAR will examine the 90% documents and conduct quantity surveys again to determine if there are any substantive changes that may materially affect budget or time. This estimate will include all materials and information that has been discussed and outlined in the job meetings up to that point.

Task 4 – \$ 33,740.00

Task 5: Permit Tracking and Coordination:

Permit Tracking and Coordination: The CMAR will coordinate with the Designer, Owner, and other applicable authorities to be sure permits are on track. The CMAR will also note permit progress, plan next steps, and work directly with the Designer through to permit issuance.

Task 5 – \$ 10,350.00

Task 6: Guaranteed Maximum Price (GMP) Development:

This scope consists of the CMAR preparing the Guaranteed Maximum Price and the final construction budget based on the Guaranteed Maximum Price construction documents provided by the Owner/Design Team. The GMP shall consist of detailed line items for all major work to be performed. The following activities will take place, but will not be limited to:

- A. Public Advertisement: The CMAR shall publicly advertise for no less than 20 consecutive days in a regionally circulated newspaper and on our company website or through a third party eProcurement system where available. The CMAR's advertisement must include the date and time of the submission deadline. The CMAR shall make every effort to receive maximum exposure and therefore receive adequate competition for their advertisement.

- B. Subcontractor Pre-Qualification: The CMAR will use a pre-qualification questionnaire to qualify subcontractors who wish to bid on the projects. The questionnaire has subcontractors address items like bonding capacity, insurance requirements, current schedule of work on hand, how many full time employees the firm has working for it, and other items that the CMAR feels are necessary to have a good subcontracting pool with which to issue bid packages. The CMAR will also respond to any questions the subcontractors have about prequalifying. The CMAR will then create a list of prequalified bidders and review them with the team to determine if a larger pool is required.
- C. Bid Package Preparation: The CMAR will conduct quantity surveys on the Guaranteed Maximum Price construction plans to form scopes of work for each trade. These quantities are an in-house product used as an independent verification for use in analyzing subcontractor bids. These quantities will be put in an Excel spreadsheet and distributed to the qualified subcontractors as the bid form with the Invitation to Bid and Instructions to Bidders. The bid packages that will be developed will be tailored to the market of prospective bidders.
- D. Issuance of Bid Packages: The CMAR will issue bid packages to all qualified subcontractors that will include the Invitation to Bid, Instructions to Bidders and the bid form. The CMAR will conduct pre-bid meetings with pre-qualified subcontractors and conduct pre-bid tours of the project site, if necessary. Any questions that arise during the bidding phase will be answered in an addendum that will be sent to all bidding subcontractors. A date will be set to receive bids from all subs. This date will be firm and any subcontractor who submits after this date will be disqualified.
- E. Analyzing of Subcontractor Bids: After the CMAR receives all qualified bids (i.e. The bidding subcontractor responds on time with a complete bid) they will then begin analyzing and comparing the subcontractor bids. The CMAR will first be sure that all bids received are complete and that they acknowledge any and all addenda. Then the CMAR will set up a bid comparison spreadsheet to compare which subcontractors are low in their scope of work. The CMAR will conduct post bid meetings with individual subcontractors to confirm scope coverage and where necessary, create a scope coordination matrix to avoid any overlap of scope. After preparing and analyzing the comparison spreadsheets, the CMAR will prepare a recommendation for the apparent low bidder in each scope of work.
- F. Preparation of the Guaranteed Maximum Price (GMP): After going through all these steps, the CMAR will compile the GMP for the Owner. Included in this GMP will be the CMAR's general conditions, management team, CMAR fee (profit) and contingency.

The aforementioned information shall be presented to the Owner along with all supporting documentation (bid advertisements, bid packages, quantity surveys, subcontract bids, vendor quotes, spread sheet analysis, CMAR recommendations, line-item direct construction costs, general conditions, management team, CMAR fee (profit), contingency, exceptions and clarifications, and plan log shall be bound and submitted to the Owner for review, discussion, and approval.

Once approved, the GMP shall become the basis of the construction phase of the contract and shall be documented as an amendment to the base Contract.

Task 6 – \$ 44,110.00

TOTAL PRE-CONSTRUCTION SERVICES FEE ALL TASKS 1 THROUGH 6:

\$ 163,020.00

All tasks and fees include supplies, presentation materials, equipment, personnel, travel, and related costs associated with performing the services described.

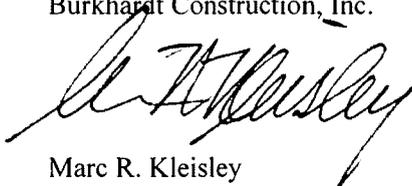
Presentation and acceptance, by the Owner, of a mutually acceptable GMP shall conclude preconstruction services.

We have attached our current hourly rates for your use should additional or alternative pre-construction services be requested. Additional pre-construction services scope and fee proposals for other services shall be prepared and submitted by the CMAR as requested by the Owner.

Thank you for the opportunity to submit this pre-construction services proposal. If you have any questions on this proposal, please contact us at (561) 659-1400.

Respectfully,

Burkhardt Construction, Inc.



Marc R. Kleisley
Vice President



City of Port St. Lucie
Scope and fee proposal for pre-construction services
eRFP #20240112
CMAR Phase 1 Torino Reginal Park Project

Hourly Rates for Additional Requested
Pre-Construction Services

<u>Name</u>	<u>Position</u>	<u>Rate</u>
Vincent G. Burkhardt	President	\$325.00
Sharon H. Burkhardt	Secretary/C.P.A.	\$215.00
Marc R. Kleisley	Vice President/Proj. Principal	\$215.00
Anthony Sabatino	Senior Project Manager	\$160.00
Bill Zammit	Snr. Vertical Project Manager	\$160.00
Adam Rossmell	Project Manager	\$125.00
CJ Rhody	Project Manager	\$125.00
Brandon Rhodes	Project Manager	\$125.00
Kevin Brennen	Project Manager	\$125.00
Nicholas Fasulo	Project Manager	\$125.00
Ruben Almazan	Const. Field Mgr.	\$105.00
Bob Woods	Const. Field Mgr.	\$105.00
Mike Vazquez	Const. Field Mgr.	\$105.00
Ivan Lopes	Utilities Const. Field Mgr.	\$105.00
Karl T. Kaminski	Utilities Const. Field Mgr.	\$105.00
Hemant Tank	Estimator/Cost Engineer	\$100.00
Diane Decker	Resident/Merchant Outreach	\$100.00
Sarah B. Hoadley	Accounting Manager/M.B.A.	\$ 95.00
Katy Pantaleon	Accounting	\$ 85.00
Rina Jorge	Admin. Ass't/Clerical	\$ 55.00
Crystal Caldwell	Admin. Ass't/Clerical	\$ 55.00