

**REQUEST FOR PROPOSALS
CONSTRUCTION MANAGER AT RISK (CMAR)**

**Preconstruction and Construction Phase Services for
(Camp Bowie Improvements)**



Crescent Property Services LLC

**Prepared for
Crescent Property Services LLC**

Drawings by:
Pacheco Koch a Westwood Company
Texas Registered Engineering Firm No.141705

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Crescent Property Services LLC desires to select a Construction Manager-at-Risk (CMAR) contractor to provide CMAR services in connection with the construction of Camp Bowie Improvements. The selection will be a one-step process in accordance with Texas Government Code Ch. 2269.251 et seq.

Crescent Property Services LLC will be evaluating the proposers, in general, on: project delivery techniques, approaches and relevant experience that results in the following value statements for the project, the City, community, and Crescent Property Services LLC:

1. Efficiency in overall delivery timeline (schedule).
2. Increased and/or enhanced functionality resulting from phasing and sequencing of project delivery to reduce impacts to homeowners and business owners and improve public mobility during construction.
3. Cost-savings and cost-avoidance (project construction change order/Field Order reductions) identified during preconstruction phase - constructability review of the design.
4. Reduced risk resulting from early engagement of the CMAR to optimize construction delivery in collaboration with the Crescent Property Services LLC's contracted Engineer.

CMAR or alternative delivery project management experience is desired and will be recognized in two ways:

1. Demonstrated relevant CMAR experience of the Proposer; and/or,
2. Value-delivery techniques on non-CMAR projects that demonstrate results and benefits to the project and Crescent Property Services LLC.

SECTION 1: DEFINITIONS AND DOCUMENTS

- A. Definitions: In this Request for Proposals capitalized terms whether defined herein or in the General Conditions (in the event of duplicate definitions which cannot be harmonized, the specific shall govern over the general) shall mean:

Agreement means the written instrument memorializing the understanding between Crescent Property Services LLC and CMAR regarding the prosecution of the Work's Preconstruction Phase Services and Construction Phase Services.

Developer means Crescent Property Services LLC and its affiliates.

City means the City of Fort Worth, Texas.

CMAR means Construction Manager-at-Risk, the entity or person with which Crescent Property Services LLC will contract to provide the construction manager-at-risk Preconstruction Phase Services and Construction Phase Services for the Project.

Construction Budget means the approximate amount of **\$7,500,000** in currently available funds, as detailed on **Exhibit I**.

Construction Phase Services means the Construction services for the Project as more fully described in this RFP and the Agreement.

Construction Phase Fee means the fee, generally expressed as a percentage of the Cost of Work, Proposer seeks to earn for fulfilling the general conditions (to include profit, general overhead and other costs associated with supporting the Work) and prosecution of the Work.

Contract Documents means the entire contract consisting of the Agreement, the Request for Proposals, the Construction Documents, and any exhibits thereto, and other documents expressly incorporated therein by reference.

Engineer means Westwood Professional Services, Inc., with whom Crescent Property Services LLC has contracted to design the Project.

Guaranteed Maximum Price (GMP) means the maximum cost to Crescent Property Services LLC for CMAR to construct the Project within the Construction Budget, inclusive of the Construction Phase Fee.

Preconstruction Phase Services means the preconstruction phase services that the CMAR must provide as more fully described in this RFP and the Agreement.

Preconstruction Phase Services Fee means the entire cost to provide the Preconstruction Phase Services including overhead, profit and all other expenses.

Project specifically means the construction of Camp Bowie Improvements from University Drive to Montgomery Street.

Proposal means the Proposer's written response to this RFP.

Proposer means a person, corporation, partnership, or other entity that submits a Proposal in response to this RFP.

RFP means Developer's request for proposals seeking responses from eligible Proposers including, at a minimum, the Proposer's proposed fees and prices for fulfilling any general conditions or Work related to the Project.

Project Manager means The Projects Group.

Utilization Plan means a Proposer's preliminary and final plans to address the diverse Business Equity Goal (as defined herein) for use when bids or proposals are sought from trade contractors or subcontractors for performance of all major elements of the Work.

Work means all labor, materials, equipment, and services necessary to construct, erect, install, equip, complete and commission the Project as provided in the Contract Documents. Work shall not include Preconstruction Phase Services.

- B. Documents: The Exhibits and Attachments listed above in the table of contents are attached hereto and are incorporated as part of this RFP.

SECTION 2: DESCRIPTION OF PROJECT

- A. The project consists of pavement improvement, sidewalk improvement, brick pavers, lighting, site furnishings, planting and irrigation within the existing right-of-way of Camp Bowie starting at the intersection at Montgomery Street going east and ending at the intersection at University Street approximately 2,850 linear feet.
- B. The design is approximately 60% complete awaiting approval on alternatives.
- C. The scope of Work includes:

The project consists of new pavement, brick pavers, waterline and sewer line replacements, lighting, site furnishings, planting and irrigation within the existing right-of-way of Camp Bowie starting at the intersection at Montgomery going east and ending at the intersection at University. Approximate quantities for major items include: 4200 SY of new brick pavers (vehicular), 8000 SY of 6" concrete pavement, 4100 SY stamped concrete, 5400 LF of 6" curb and gutter, 4100 LF integral concrete curb, 3,700 SY of 4" enhanced sidewalk.

Wet utilities consist of replacement of approximately 740 LF of 30" transmission waterline main, 1100 LF of 12" waterline, 340 LF of 8" waterline, and 620 LF of vitrified

clay pipe sanitary sewer and associated manholes. Included in this subsurface work will be considerable amounts of coordination with the various franchise utilities in the area.

An add alternate is also being proposed adjusting the amount of new brick pavers to 9,200 SY and concrete pavement to 3000 SY.

An add alternate is being proposed to include ornamental street lights in the center median of the Camp Bowie Right of way.

NOTE: REVISED DRAWINGS REFLECTING THE ADDITION OF WET UTILITIES WILL BE AVAILABLE FOR DOWNLOAD BY WEDNESDAY, AUGUST 9, 2023

- D. Project Team. Crescent Property Services LLC has selected Westwood Professional Services, Inc., as the Engineer & Landscape Architect. The Projects Group is serving as the Owner's Representative.

CMAR shall not be authorized to direct the Engineer to make changes to plans, specifications, quantities, or any other work product produced by the Engineer for the Project.

- E. Additional Professional Services. The Developer will contract separately for (1) inspection services, (2) testing of materials, (3) any verification testing services necessary for acceptance of the Project. The Developer reserves the right to retain other professionals and consultants to assist it with Preconstruction Phase and Construction Phase services and monitoring the Work.
- F. Permissions/Rejections. The CMAR will not perform any phase of services until the Developer provides the CMAR with written notice to proceed with that phase. The Developer may determine not to proceed with any and/or a portion of the Construction Phase Services at the Developer's sole discretion.

SECTION 3: BUSINESS EQUITY PROVISIONS FOR CONSTRUCTION MANAGER AT RISK (CMAR) SOLICITATION

Note: Capitalized terms used in this section not specifically defined herein are defined in the Business Equity Ordinance.

- A. All proposers shall note that the Business Equity Ordinance No. 25165-10-2021 (codified in Chapter 20, Article X of the Fort Worth Code of Ordinances) as amended, and any relevant policy or guidance documents, was adopted to ensure the full and equitable participation of certified Minority – and Women-owned business enterprises (M/WBEs), (collectively, "Business Equity Firms") in City contracts (or City-sponsored projects, including the Project) for the procurement of goods and services where a contract's total dollar value is greater than \$100,000, as detailed below.

The Business Equity Goal for Pre-Construction Phase Services is 0%.

The Business Equity Goal for Construction Phase Services is 15% (M/WBE).

- B. Unless modified herein, Proposers shall follow the guidelines found in **Attachment 3 - Business Equity Goal**. If a Proposer is certified as a Business Equity Firm, such Proposer can count its self-performance services towards meeting the Business Equity Goal(s) for the assigned NAICS commodity codes on their MBE or WBE certification. If such Proposer will not self-perform all of the work, it will be required to provide subcontracting opportunities with certified Business Equity Firms to meet the stated goal(s).
- C. Proposers **must** obtain a listing of certified Business Equity Firms from the City of Fort Worth's Department of Diversity and Inclusion (DVIN). The request for listings form can be found on the City's site at <https://www.fortworthtexas.gov/departments/diversity-inclusion/business-equity>, or email DVIN_BEOffice@fortworthtexas.gov or by calling (817) 392-2674. The selected CMAR acknowledges it will present Business Equity Firms currently certified by the North Central Texas Regional Certification Agency (NCTRCA) or Dallas/Fort Worth Minority Supplier Development Council (D/FW MSDC) and the Women's Business Council Southwest (WBCS) and accepted by the City of Fort Worth at the time the GMP is submitted, in order for the participation to be counted towards the established goal(s). The firms must be located in the Marketplace, or meet the requirements of the City's Significant Business Presence which means a Person (1) which has its principal place of business located inside the Marketplace; (2) which has its principal place of business located outside the Marketplace but has been verified to be in existence for a minimum of 24 months and from which at least 20% of the business's workforce is based in the Marketplace; or (3) which has cumulative business receipts greater than \$1,000,000 for work done in the Marketplace since January 1, 2013.
- D. Proposers shall submit with their proposals a preliminary Business Equity Utilization Plan ("Plan") to address how the Proposer will comply with the Business Equity Goal(s), if any, when proposals/bids are sought from trade contractors or subcontractors for performance of all major elements of the Work. At a minimum, the preliminary Plan must certify that the Proposer will comply with the requirements of Subsection C of this section and present evidence of the Proposer's past business diversity procurement practices. The preliminary Plan should also detail, to the extent possible, Proposer's anticipated efforts to comply with Subsection E herein.

Failure to submit a preliminary Plan may render a Proposer non-responsive and cause the Proposal to be rejected.

- E. At the time the Guaranteed Maximum Price proposal is submitted to Crescent Property Services LLC, it shall be accompanied by the CMAR's final Business Equity Utilization Plan detailing efforts to comply with the Business Equity Goal(s). The final Plan shall use the required documentation (see Attachment 3) and include, at a minimum:
1. A detailed description of the work to be performed by each Business Equity Firm;
 2. The expected sub-contract value or percentage of the GMP construction cost for each phase of work identified for each Business Equity Firm participant;

3. The timing of the major elements of the work including approximate advertising dates and provide the same identification information for all non- Business Equity Firm participants;
4. The Business Equity Firm company name, address, point of contact, email address, office and fax telephone numbers of the subcontractors and suppliers and their respective participation;
5. The tier level, i.e., 1st 2nd, 3rd, etc. (if other than 1st tier, the plan must clearly identify the firm name and tier from whom the Business Equity Firm firm will be receiving payment);
6. The Business Equity Firm percentage level of commitment achieved and/or a Good Faith Efforts statement.

During the Project, the CMAR shall communicate with, and report compliance to Crescent Property Services LLC, the designated Owner's Representative (TPG), and the DVIN, including providing letter(s) of intent, purchase orders and/or executed sub-contract agreements (after award by the CMAR) prior to the issuance of the notice to proceed of each relevant phase of the Work.

F. Business Equity Firms must be certified at the time each of the Work's major elements are bid or proposals submitted, in order for the participation to be counted towards the established goal.

G. Failure to comply with the Business Equity utilization commitments in the Plan may subject the CMAR to sanctions as provided in the Ordinance and/or render the CMAR in breach of the Agreement.

1. FAILURE TO SUBMIT THE REQUIRED BUSINESS EQUITY DOCUMENTATION OR OTHERWISE COMPLY WITH THE ORDINANCE DURING CONSTRUCTION MAY SUBJECT THE CMAR TO SANCTIONS AS DESCRIBED IN SEC. 20-373 OF THE ORDINANCE AND/OR RENDER THE CMAR IN BREACH OF THE AGREEMENT.

For additional information contact the DVIN at (817) 392-2678 or send email to DVIN_BEOffice@fortworthtexas.gov.

SECTION 4: CMAR SERVICES

A. PRECONSTRUCTION PHASE SERVICES

The CMAR Preconstruction Phase services will be provided for a fixed cost identified in the Proposal. The CMAR will provide the following Preconstruction Phase Services:

1. Provide a Project Manager, all Key Personnel and all other associated personnel necessary to fully meet the CMAR obligations for the Preconstruction Phase Services;
2. Participate in one Project kick off meeting for Preconstruction Phase Services;
3. Participate in bi-weekly meetings or workshops with the Engineer, Crescent Property Services LLC or others as needed;

4. Provide Insurance for the Pre-Construction and Construction Phases as described in the General Conditions;
5. Provide monthly progress reports and percent of complete billings;
6. Provide monthly project planning and scheduling report (using critical path method, if required) and prepare cash flow analyses for both the pre-construction and construction phases;
7. Consult with, advise and provide recommendations to Crescent Property Services LLC and the Engineer on all aspects of the design, proposed construction, drawings and specifications and review prequalification of subcontractor requirements, if any;
8. Provide constructability review and consult on constructability issues of the design documents, plans and specifications, including written reports and recommendations on design packaging to advance construction, material availability and independent quantity calculations;
9. Provide list of additional details needed on the design documents and final design review plans that would be needed to complete the project in the allotted time, facilitate the intent of the project, support cost control measures, or to accelerate aspects of the work;
10. Provide input and assist Engineer in developing construction sequencing;
11. Identify and evaluate methods to gain efficiency in Project delivery;
12. Incorporate the City's standard specifications and provisions relating to quality, safety, community, and environmental factors;
13. Identify, evaluate and propose alternatives to reduce schedule, reduce costs, or improvements that otherwise will improve the Project for Crescent Property Services LLC. Provide cost/benefit analysis of alternatives to Crescent Property Services LLC and Engineer for approval prior to incorporation in the GMP;
14. Identify and evaluate early enabling work packages of the Project that may require less than 100% design prior to commencing construction such as specific independent project elements, utilities relocation, grading or site clearing;
15. Not used;
16. Provide rough order of magnitude construction estimate at 30% and 60%, if applicable;
17. Develop for review an emergency/site safety plan and a quality management plan that complies with the Contract Documents. Develop for review a Quality Assurance/Quality Control (QA/QC) program to outline continuing attention to the production and installation of fit for purpose Work;
18. Provide an environmental management plan detailing programs for a storm water pollution prevention plan and handling other environmental issues (dust, on site chemicals and fuel, etc.) required to comply with permits and regulations applicable to the Project;
19. Identify Work which the Proposer intends to self-perform (if minor) or compete for award (if major) and inform the Project Manager of same;
20. Identify which work, if any, should be procured through value-based competitive selections in lieu of low bid and to the extent possible, inform the Project Manager of same;
21. Identify work types which will require pre-qualified contractors and obtain familiarization with the City's prequalification requirements;

22. Provide updated subsurface utility engineering (SUE) up to and including Level A, as required, to re-confirm the location of existing or relocated utilities after initial SUE, or, if none, to ascertain subsurface conditions and physical conditions of existing subsurface facilities and underground utilities as needed to minimize schedule delay and cost impacts in advance of construction. The CMAR may provide in the GMP for additional SUE investigations to improve the adequacy and completeness of the site condition information;
23. Create or utilize contract documents that are sufficiently clear and detailed to minimize ambiguity and scope interpretation during Preconstruction and Construction Phase;
24. Develop independent detailed construction cost estimates for the Project and Critical Path Method schedules at the 90% and final design milestones;
25. Publicly solicit and competitively procure, pursuant to City prequalification requirements, if any, trade contractors, including self-performance, or subcontractors or suppliers for all major elements of the construction work other than the minor work that may be included in the general conditions, as required by Texas Government Code Section 2269.255; The CMAR will review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the content of the bid or proposal during the selection process to a person not employed by the CMAR, Engineer, Crescent Property Services LLC, or the City; All bids or proposals shall be made available to Crescent Property Services LLC on request and to the public after the later of the award of the contract or the seventh day after the date of final selection of bids or proposals.
26. At 90% complete design, or at a mutually agreeable alternative design percent complete, provide a complete, detailed, written GMP proposal including a list of bids received, identifying the bidders, recommendations for the award of subcontracts to construct the Project, resource-loaded baseline schedule with anticipated cash flow, line-item cost breakdowns with conditions and assumptions and CMAR Contingency. Provide open book pricing, including raw costs, markups, bid adjustments, and conditioning, or other cost data for CMAR, or CMAR's subcontractors if requested by Crescent Property Services LLC;
27. Attend, prepare, and lead meetings with Crescent Property Services LLC and Engineer to present GMP proposal. CMAR shall negotiate in good faith with Crescent Property Services LLC on GMP proposal.

B. CONSTRUCTION PHASE SERVICES

The CMAR Construction Phase services will be provided for a percentage fee of the Cost of Work as identified in the Proposal and described in the General Conditions. The CMAR will provide the following Construction Phase Services:

1. Provide Performance Bond, Payment Bond, and 2-year Maintenance Bond(s) as described in Section 8;
2. Participate in one Project Kick Off Meeting for Construction Phase Services;
3. Coordinate, oversee, furnish, install, and manage construction of the Work in strict accordance with the Contract Documents including the plans and specifications and General Conditions within the Guaranteed Maximum Price and within the Contract Time agreed

upon by the CMAR and Crescent Property Services LLC. CMAR shall provide or procure all necessary labor, equipment, and materials to complete the Work;

4. Establish contracts with subcontractors and material suppliers to perform the Work and maintain strict enforcement of City's or other applicable prevailing wage requirements;
5. Review and monitor the final design and suggest equipment, materials and systems for selection;
6. Review site safety/emergency response plan with subcontractors;
7. Coordinate with and acquire all applicable permits from local and state agencies unless otherwise defined in the Contract Documents, as necessary;
8. Coordinate with all third parties hired by Crescent Property Services LLC or the City in connection with or to help facilitate the Work;
9. Procure all necessary labor, materials and equipment not previously procured during Preconstruction Phase to facilitate the Construction Phase of the Project;
10. Manage all procurement and construction-related subcontracts including compliance with the Business Equity Provisions. This includes inspection of the Work performed by subcontractors to verify conformance with the Contract Documents;
11. Monitor and maintain quality controls over shop drawings, equipment and materials, implementation and the Work;
12. Implement the construction site safety plan to provide a safe working environment for the Project; maintain, update and implement as needed the emergency response plan;
13. Conduct a Pre-Construction Meeting with Crescent Property Services LLC, all the contractors, sub-contractors, inspectors, City staff and other entities performing major elements of the work prior to the start of their work activities;
14. Implement traffic control plans created during Preconstruction Phase or provide mutually agreeable alternative plans based on actual field conditions;
15. Comply with City, county or state regulations for the management of storm water, dust and other regulatory environmental requirements;
16. Follow established protocols and procedures to track, expedite and process all submittals, Project change orders/Field Orders and requests for information;
17. Monitor and update monthly the Critical Path Method or other scheduling for the Project, prepare three week look ahead work schedules consistent with overall schedule. Provide monthly progress reports inclusive of earned value analysis of the progress achieved to date, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions;
18. Monitor and update monthly: contingency (CMAR's contingency and Owner's Contingency), project Allowance and shared savings tabulations and CMAR's cumulative earned fee;
19. Review and process all pay request applications from subcontractors;
20. Conduct monthly progress meetings with the on-site trade foremen or superintendents and subcontractor representatives, as applicable;

21. Attend bi-weekly (every two weeks) meetings with Crescent Property Services LLC, City Staff, inspectors, and other entities;
22. Supervise, receive and manage product warranties/guaranty documents, if any, issued for materials or equipment and related installation, and provide same to Crescent Property Services LLC upon Final Acceptance of the Project, or at a date negotiated by the Parties;
23. Conduct walk-throughs at Substantial Completion and for the Final Inspection with the Transportation and Public Works Department, Water Department, PARKS, TxDOT, and Engineer at the appropriate times and at 20 months after Final Acceptance regarding the two-year warranty;
24. Implement close out procedures and complete punch list items necessary for Crescent Property Services LLC and the City to accept the Project as being finally complete; provide lien waivers and affidavits of bills paid from all subcontractors and material suppliers;
25. Complete all Construction Phase Services and Work no later than the end date of the Project Time established as part of Article 6 – Project Time and Liquidated Damages, of the CMAR Agreement (**Attachment 2 – CMAR Agreement**);
26. Prepare a final report on all construction costs and provide final as-built documents in hard copy, PDF and/or other electronic format as specified by the Engineer.

C. SELF PERFORMANCE REQUIREMENTS

In accordance with Texas law, the CMAR may seek to self-perform work if the CMAR submits a bid or proposal in the same manner as all other trade subcontractors or suppliers and Crescent Property Services LLC in conjunction with the City determines that the CMAR's low bid or proposal provides the best value for the submitted work. The CMAR must still meet the Business Equity goal even if self-performing some or all of the Construction Phase Services.

SECTION 5: PROCEDURAL ITEMS

A. RESERVATION OF RIGHTS

1. Crescent Property Services LLC may reject any or all Proposals and/or waive minor deviations and/or irregularities therein and evaluate proposals.
2. Crescent Property Services LLC reserves the right to cancel this project for any reason at any time during the proposal evaluation process without incurring any obligations or liabilities.
3. Crescent Property Services LLC reserves the right to modify the CMAR procurement schedule.

B. SUBMISSION OF PROPOSALS

1. **Proposal** Each Proposal should be prepared simply and provide a straightforward and concise description of the Proposer's ability to perform, as a CMAR, the required

Preconstruction Phase Services and Construction Phase Services as described in this RFP and the Agreement as per the General Conditions. Emphasis should be on completeness, clarity of content, responsiveness to the requirements and an understanding of Crescent Property Services LLC needs. Vague or misleading statements will be viewed unfavorably.

2. ***Modifications to Submissions*** No modifications to materials that have been submitted to Crescent Property Services LLC are allowed unless Proposer withdraws its entire response. Resubmittal is acceptable up to the time specified for submittal of proposals.
3. ***Disclosure of Proprietary Information*** All materials submitted to Crescent Property Services LLC in connection with the Project will also be provided to the City and become public property and are subject to the Texas Public Information Act upon receipt.
4. ***Costs of Preparing Proposal*** All costs of preparing the Proposal shall be the sole responsibility of the person or entity submitting the information.
5. ***Pre-Proposal Conference*** A Pre-Proposal Conference will be held at 2:00 p.m. on August 21, 2023. The conference will be virtual.

Virtual Link:

Microsoft Teams meeting

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 267 455 345 891

Passcode: hDtsSb

[Download Teams](#) | [Join on the web](#)

The presentation given at the conference and any questions and answers provided at the conference will be issued as an Addendum to the bid. All interested proposers are strongly encouraged to participate in this conference.

6. ***Further Information and Questions*** Information requests and questions must be submitted in writing by email and received by The Projects Group and The City of Fort Worth no later than August 24, 2023 at 5:00 pm. Responses to all requests and questions will be provided, without revealing the party asking the question, to all known interested parties and posted to the City of Fort Worth Purchasing Division website at [http: www.fortworthtexas.gov/purchasing](http://www.fortworthtexas.gov/purchasing) by end of day August 31, 2023.

Please email all information requests and questions regarding this RFP, with “**Camp Bowie Improvements RFP**” noted in the email Subject Line, to:

Taylor Hansen, PMP
Senior Project Manager
The Projects Group

Email: Thansen@tpgfw.com

&

Victor V. Tornero Jr., P.E.

Engineering Manager- Development Services Department – Infrastructure Plan Review
Center (IPRC)

Email: victor.tornero@fortworthtexas.gov

&

Ty Thompson, P.E., CFM

Assistant Director

Development Services Department

Tyson.Thompson@fortworthtexas.gov

7. ***Anti-Lobbying*** Proposers submitting Proposals and any interested subcontractors are prohibited from directly or indirectly communicating with, including but not limited to contact by email, phone or in person, any Crescent Property Services LLC and City representatives regarding this RFP, except as provided herein for requests for further information.
8. ***Submission of Proposal*** The proposal shall be limited to 25 pages. Proposals must be printed on letter-sized (8.5 inch by 11 inch) paper. Sheets as large as 11 inches by 17 inches may be used for graphics and will be counted as two pages. Sections should be divided by tabs for ease of reference.

The 25-page maximum does not include a one-page cover letter and the required fee proposal form. The Proposal shall use 10 pt. font or larger for the text. Resumes of Key Personnel may be included in an appendix if desired, not to exceed an additional 10 pages. Each copy of the Proposal must be bound to ensure that pages are not lost. One (1) original, one (1) electronic (PDF format or equivalent). An original signature must appear on the cover letter. Please mark the document with the original signature as “ORIGINAL”.

9. ***Receipt of All Proposals*** Proposals shall be sealed in an envelope or container marked on the outside with the Proposer’s name and address and:

Camp Bowie Improvements

CMAR RFP

Transportation and Public Works Department

Facsimile submittals will not be accepted. Proposals may be mailed or delivered to:

City of Fort Worth Purchasing Division

200 Texas Street

Fort Worth, Texas 76102

All sealed proposals must be received by Crescent Property Services LLC no later than **1:30 pm on Thursday, September 7, 2023**. *All proposals will be publicly opened and the names of the Proposers and the submitted fees and prices for the Project will be read aloud at 2:00 pm the same day in the City Council Chambers.* **Proposals received after the date and time specified herein will be returned unopened.**

10. ***Conflict of Interest Questionnaire*** Each Proposer must complete and submit directly to the City Secretary's Office, an original Conflict of Interest Questionnaire. If a Proposer already has a Conflict of Interest Questionnaire on file with the City Secretary's Office, a Proposer may so certify to that fact. See **Exhibit E**.
11. ***Financial Statement*** Proposers should provide one copy of an audited financial statement from the current or previous year or, if the Proposer does not have audited financial statements, the previous year and current year-to-date financial statements. The single financial statement should be submitted with the original proposal, and may be provided in a separate sealed envelope and does not affect the page count.

SECTION 6: CONTENT OF PROPOSAL AND EVALUATION CRITERIA

Proposers shall submit complete responses to all requirements described in this RFP. Although concise submittals are preferred, proposals must be sufficiently detailed to demonstrate that the Proposer can successfully deliver the CMAR scope of services. All items in all tabs shall be included in each copy of the Proposal. Proposals containing incomplete information will be rejected.

A. The Proposal must contain the following information in the following order:

- 1. Cover Letter (Pass/Fail) Not included in page count**

The Proposer's one-page cover letter should clearly state that the Proposal is valid for 90 days from **submission of the Proposal** and should be signed by an individual with authority to commit the Proposer to the Project. The 90-day period applies to the **Exhibit I**.

- 2. Forms and Certifications (Pass/Fail) Not included in page count**

The Forms and Certifications in **Exhibits A – K** are attached for use in documenting compliance with the City's procurement process, Business Equity Firm requirements and for use in preparing the Proposer's Price Proposal.

- 3. Proposer's Corporate Experience and Financial Stability (10 point maximum, not to exceed 5 pages) Included in page count**

The Proposer shall provide information in a tabular format, for roadway construction & landscaping projects of similar size, and scope, including project durations for projects completed or currently in progress for all owners within the past ten years. The proposer

shall demonstrate a history of completing projects on time and financial capacity to deliver the Project.

Proposer shall identify and present a detailed summary on up to five projects that best represent the Proposer's relevant, demonstrated experience and services requested for the Project. The total number of projects presented shall not be less than three.

The Proposer shall identify its experience in the performance of CMAR Pre-Construction Services which will be required on this project, specifically (1) working with design engineers in the preparation of construction documents, (2) constructability reviews based on engineering drawings and site visits, (3) preparing cost estimates on partially completed construction documents, (4) project scheduling, and (5) developing a GMP. The proposer should explain the benefits of their experience in terms of value for the Project.

The Proposer shall identify the major work elements/trades of a typical project and identify if the Proposer intends to self-perform such elements/trades and provide examples of those elements/trades which it normally self-performs. The listing of major work elements/trades should, at a minimum, include those listed under Section 2 Description of Project above.

The Proposer's response will include related CMAR and non-CMAR project delivery experience, including safety record, self-performance capabilities, financial qualifications, corporate history of litigation and the forms of dispute, and history of completing projects on time. The Proposer can demonstrate relevant and recognized project delivery experience through using various project delivery techniques and best practices. The Proposer must explain the benefits of that experience in terms of value for the project and provide a current Company Financial Statement.

4. Pricing of CMAR Services (5 points maximum, not to exceed 1 page) Not included in page count

Provide the Preconstruction Phase Cost (expressed in dollars) and Construction Phase Fee (expressed as a percentage of cost of work) on **Exhibit I** – Construction Budget and Fee Proposal.

Provide any proposed incentives for delivery.

5. CMAR Qualifications and Experience of Key Personnel (relevant Non-CMAR construction experience acceptable) (15 points maximum, not to exceed 6 pages) Included in page count

Overall qualifications, capacity, experience and workload of the Proposer's Key Personnel to perform the required Preconstruction Phase Services and Construction Phase Services shall be provided.

Additional information should demonstrate results and successes with projects of similar size and scope (CMAR and Non-CMAR Experience) including Proposer's relevant

experience in project delivery such as: value engineering, constructability reviews, value analysis and best practices in construction delivery methods (design/bid/build, construction management at risk and design-build) and associated Preconstruction Services. The team's value proposition shall be clearly communicated through experience, results and assigned roles and responsibilities.

Proposer shall provide an organizational chart showing all Key Personnel and other personnel (either by name or job category) for both Preconstruction Phase and Construction Phase Services. Include a statement that proposed Key Personnel will be dedicated and available for the performance of the Project and will only be changed with prior written approval by Crescent Property Services LLC. State the amount of time, on a percentage basis, each Key Personnel is expected to charge during the Preconstruction Phase and Construction Phase Services.

The Proposer will provide client references for three of the projects listed in Item 3 using **Exhibit F**.

CMAR and non-CMAR experience is recognized when the team can demonstrate experience in various delivery techniques and, explain the benefits of that experience in terms of value for the project.

6. Project Approach (55 points maximum, not to exceed 15 pages) Included in page count

Preconstruction Services (10 points maximum)

Describe the approach to the successful completion of the Preconstruction Phase Services. Discuss the potential benefits from these activities to the overall Project. Use examples from prior efforts to prove benefits. Identify any specialized skills or special consideration that Proposer will be able to provide.

Construction Approach (15 points maximum)

Describe the approach to the successful completion of the Construction Phase Services and identify any specialized skills or special considerations that Proposer will be able to provide. Use specific examples where possible.

Describe in detail Proposer's approach to dealing with delivery impacts (i.e. adverse weather, operational issues, etc.), working with stakeholder and customer communities, and managing sub contractors. Approach to managing and maintaining cost and schedule as it relates to franchise utilities and third-party stakeholders.

QA/QC and Safety Plan (5 points maximum)

Describe how Proposer will develop and implement quality assurance/quality control and site safety plans to achieve a successful project.

Cost and Schedule Control (25 points maximum)

Describe how Proposer will manage and control costs and schedule. Discuss how change management process will be addressed. Include proposed project schedule with substantial completion date and sequencing identified.

7. Compliance with the Business Equity Ordinance (15 points maximum, Not to exceed 5 pages) Included in page count

Proposer shall acknowledge and commit to meeting or exceeding the MWBE Goal and commit to meet or exceed the overall diverse Business Equity goal and present its *preliminary* Utilization Plan (as defined above in Section 3.D.).

Demonstrate multiple previous projects where you exceed the Project's Business Equity Goals.

Failure to submit a preliminary Utilization Plan may render a Proposer non-responsive and cause the Proposal to be rejected.

B. Review of Proposals and Release of Information

Crescent Property Services LLC will convene a team (the "Best Value Committee") to apply the Evaluation Criteria set forth in this RFP and to rank the qualified Proposers with the goal to select the Proposer that offers the best value under the evaluation criteria.

Within seven days after the Best Value Committee authorizes execution of the CMAR contract, Crescent Property Services LLC will document the basis of its selection and make the evaluations public.

C. Guaranteed Maximum Price

1. The GMP will be established during the Preconstruction Phase Services and will be acknowledged as an amendment to the CMAR Agreement. The CMAR assumes the risk of completing the Work for the stated GMP and within the allotted Contract time. Cost sharing arrangements are more fully described in the Contract. Adherence to the GMP, as may be amended by the parties, shall be the responsibility of CMAR. Cost overruns shall be borne by the CMAR.
2. Prevailing Wages. The City is required to comply with Chapter 2258 (as amended) of the Texas Government Code. This statute, among other things, requires all contractors and subcontractors performing public works contracts to:
 - a. pay the prevailing wage rate as determined by the municipality;
 - b. keep records of the name and occupation of each worker, laborer and mechanic employed by them to work on the Project and the actual per diem wages paid to each; and
 - c. forfeit, as a penalty, sixty dollars (\$60.00) per day for each laborer, worker, or mechanic who is not paid the stipulated wage for the type of work performed by him as required by the Labor Classification and Minimum Wage Scale. The City (who is funding the

Project) is authorized to withhold the penalty amount from the CMAR's payment, as provided in the statute.

- d. The prevailing wage for this Project will be included in the GMP calculation and will be established at the time the bids/proposals are requested for the major elements of the Work.

SECTION 7: AWARD AND EXECUTION OF CONTRACT

After evaluation and ranking, the Developer will attempt to negotiate a contract with the top ranked Proposer. If negotiations fail, Crescent Property Services LLC will end the negotiations in writing and commence negotiations with the next-highest ranked Proposer, and so on, until a contract is negotiated or all candidates are rejected.

At this stage, the Developer will negotiate only those items listed as Exceptions to Agreement - Exhibit D, and any cost sharing proposals submitted on Exhibit I. Excessive contract exceptions will be viewed unfavorably.

The initial notice to proceed will be for the Preconstruction Phase Services. *Crescent Property Services LLC may elect to not proceed with the Construction Phase Services, at Crescent Property Services LLC sole and exclusive discretion.*

As provided in the Agreement, Crescent Property Services LLC may terminate the contract after the Preconstruction Phase if a GMP cannot be negotiated during the Preconstruction Phase as well as during the Construction Phase - with or without cause.

SECTION 8: BONDS AND INSURANCE REQUIREMENTS

Performance and Payment Bonds. If a fixed contract amount or guaranteed maximum price has not been determined at the time the CMAR contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the estimated Construction Budget, as specified in this RFP and on a form acceptable to the City. The CMAR shall deliver the bonds not later than the 10th day after the date the CMAR executes the contract unless the CMAR furnishes a bid bond or other financial security acceptable to Developer to ensure that the CMAR will furnish the required performance and payment bonds when a guaranteed maximum price is established.

If any Maintenance Bonds are required, said bonds shall be provided or procured by the CMAR and shall be in the name of and in favor of the City. All payment, performance and maintenance bonds issued with respect to this section shall be provided by a surety authorized to do business in the State of Texas and in accordance with Texas Gov't Code 2253.

The bond forms are provided in **Exhibit G**.

Insurance. Please refer to **Attachment 1 General Conditions for CMAR Project** at Article 5, Section 5.03-5.05 for detailed insurance values, limits and descriptions.

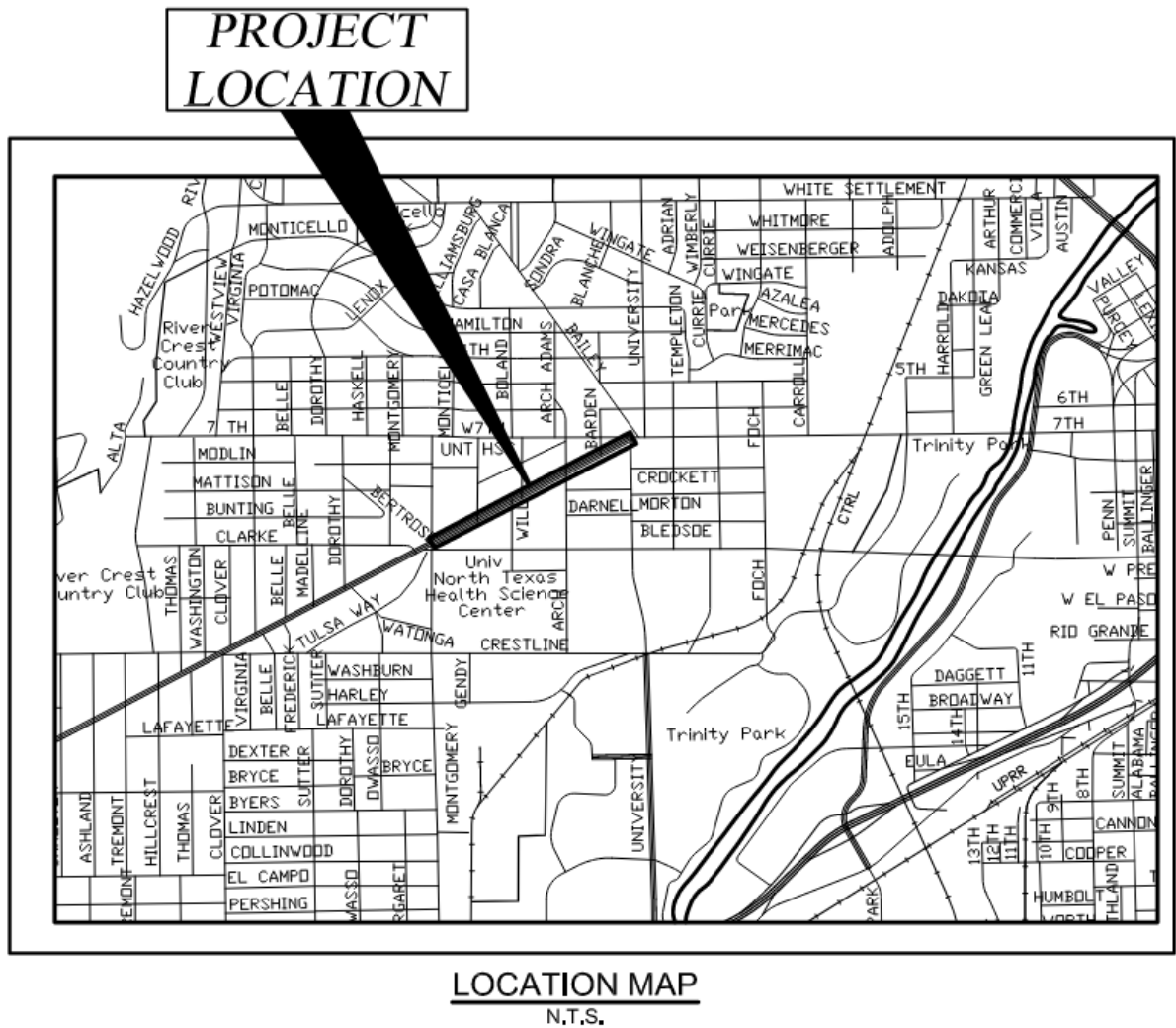
SECTION 9: INSPECTION AND CONSTRUCTION MATERIAL TESTING

The Developer will provide or contract for, independently of the CMAR's services, inspection services, construction materials testing, engineering, and the verification testing services necessary to accept the Work. The selected Proposer will be required to coordinate these services.

SECTION 10: PROPOSED SCHEDULE

Publication of Request for Proposals (1 st)	July 27, 2023
Publication of Request for Proposals (2 nd)	August 3, 2023
Pre-proposal Conference (2:00 PM)	August 21, 2023
Deadline for Comments (5:00 PM)	August 24, 2023
Final Addendum Posted (5:00 PM)	August 31, 2023
RFP Submittals Due: 1:30 PM	September 7, 2023
Opened and Read Aloud: 2:00 PM	September 7, 2023
Evaluation of Proposals	September/October 2023
Notice to Selected CMAR	September/October 2023
Contract Negotiations	September/October 2023
CMAR Contract Award	September/October 2023
Notice to Proceed (Preconstruction Phase)	September/October 2023
GMP Proposal Delivery	December 2023
Notice to Proceed (Construction Phase)	January/February 2024

Map 1 – Location Map



Map 2 – Schematic Layout of Project

Overall Layout Plan

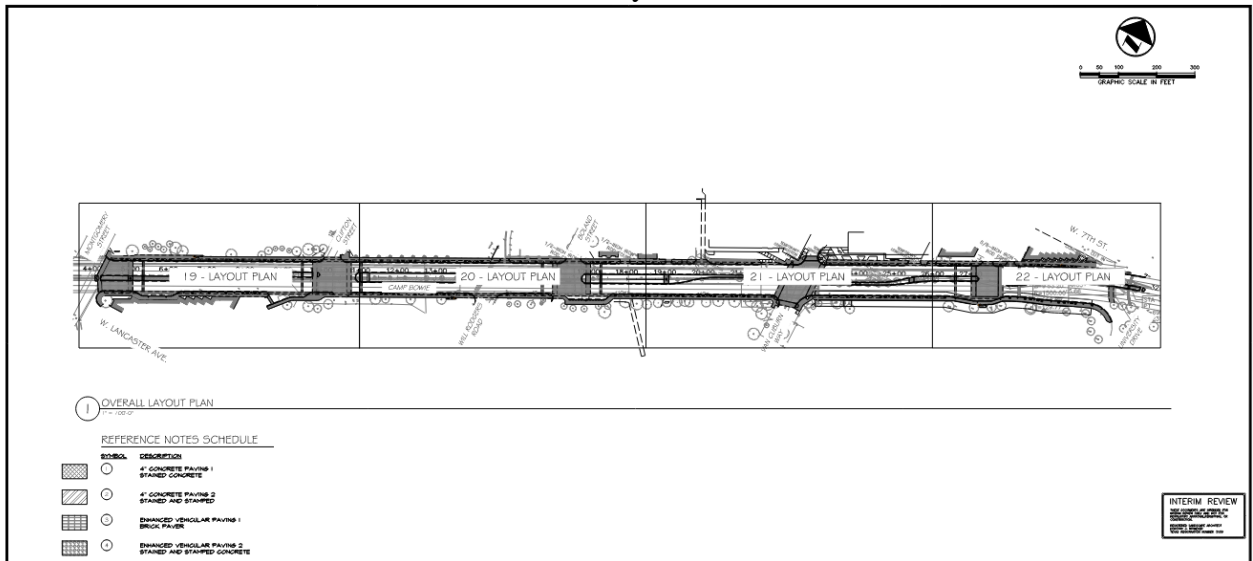


Exhibit A - Proposal Transmittal Letter

TO: City of Fort Worth, Texas

FROM: _____
(Proposer's Name)

FOR: Camp Bowie Improvements from University Drive to Montgomery Street.

Submitted: _____, 2022

The undersigned Proposer, in compliance with your Request for Proposal for this Project, having examined the Request for Proposal and Contract Documents and the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed Project, including the availability of materials and labor, hereby proposes to perform Construction Manager-at-Risk Services including development of a Guaranteed Maximum Price Proposal and to construct the Project in accordance with the said Contract Documents.

The Proposer agrees, if this Proposal is accepted, to enter into a written contract with Crescent Property Services LLC ("Developer") to furnish all items necessary to perform the Construction Manager-at-Risk Services including Pre-Construction Services and Construction Services in full and complete accordance with the reasonably intended requirements of the respective scopes of work to the full and entire satisfaction of Developer and the City of Fort Worth, Texas with a definite understanding that no compensation will be allowed for extra work except as set forth in the Contract Documents.

The Proposer agrees, if the Guaranteed Maximum Price Proposal is accepted, to commence with the construction of the Project completely by furnishing all necessary products, machinery, tools, apparatus, means of transportation and labor necessary to complete the construction of the Work in full and complete accordance with the reasonably intended requirements of the Contract Documents to the full and entire satisfaction of Developer and the City of Fort Worth, Texas with a definite understanding that no compensation will be allowed for extra work except as set forth in the Contract Documents.

The Proposer hereby affirms that the signatory is duly qualified and authorized to execute this Proposal Transmittal Letter submitting the Proposer's response to the RFP and further authorizes and hereby requests any person, firm, or corporation, if requested by Developer or the City, to furnish any information in verification of the recitals comprising this Proposal. By the signature provided below, the signatory affirms that the information provided herein and in this Proposal is true and correct to the best of his/her knowledge and belief. Attached hereto is authority provided by the Proposer's governing body verifying the authority of the signatory to so execute this document.

By: _____
(signature)

Title: _____

Date: _____

Exhibit B – Statement of Experience

Using the template format included below, list and describe three (3) projects that demonstrate Proposer's history of successful completion of both similarly sized and scoped projects and projects utilizing the CMAR or other applicable alternative project delivery methods within the past ten (10) years.

Project No. _____

Name of Project: _____

Location: _____

OWNER's Name and Address: _____

OWNER's Contact Person (Print): _____

Phone/Fax No.: / _____

Initial Contract Price: _____

Final Contract Price: _____

For Design Projects, Construction Cost: _____

Contract Start Date: (Date of Notice to Proceed) _____

Contract Time: _____ () Calendar Days () Working Days

Contract Substantial Completion Date: _____

Actual Substantial Completion Date: _____

If contract completion time extensions were added to the contract as a result of FIRM's responsibilities, provide a short explanation of each.

[illegible]

Exhibit C - Proposed Project Key Personnel

Project Manager

Organization Doing Business As				
Name of Individual				
Years of Experience as Project Manager (minimum 15+ years experience managing similar projects of scope, preferred)				
Years of Experience with this organization				
Number of similar projects as Project Manager				
Number of similar projects in other positions				
Similar Project Experience				
Project Name and Description	Initial Contract Price	Final Contract Price	Initial Contract Completion Date	Actual Contract Completion Date
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)				
Name		Name		
Title/ Position		Title/ Position		
Organization		Organization		
Telephone		Telephone		
E-mail		E-mail		
Project		Project		
Candidate role on Project		Candidate role on Project		
Current Project Assignments				
Name of Assignment	Percent of Time Used for this	Estimated Project Completion Date		

Exhibit C - Proposed Project Key Personnel – Continued

Construction Manager

Organization Doing Business As				
Name of Individual				
Years of Experience as Project Construction Manager (minimum 10+ years experience working with similar projects of scope preferred)				
Years of Experience with this organization				
Number of similar projects as Project Construction Manager				
Number of similar projects in other positions				
Similar Project Experience				
Project Name and Description	Initial Contract Price	Final Contract Price	Initial Contract Completion Date	Actual Contract Completion Date
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)				
Name		Name		
Title/ Position		Title/ Position		
Organization		Organization		
Telephone		Telephone		
E-mail		E-mail		
Project		Project		

Candidate role on Project		Candidate role on Project	
Current Project Assignments			
Name of Assignment		Percent of Time Used for this	Estimated Project Completion Date

Exhibit C - Proposed Project Key Personnel – Continued

Preconstruction Manager

Organization Doing Business As				
Name of Individual				
Years of Experience as Project Pre-Construction Manager (minimum 10+ years experience working with similar projects of scope preferred)				
Years of Experience with this organization				
Number of similar projects as Project Pre-Construction Manager				
Number of similar projects in other positions				
Similar Project Experience				
Project Name and Description	Initial Contract Price	Final Contract Price	Initial Contract Completion Date	Actual Contract Completion Date
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)				
Name		Name		
Title/ Position		Title/ Position		
Organization		Organization		
Telephone		Telephone		
E-mail		E-mail		
Project		Project		
Candidate role on Project		Candidate role on Project		
Current Project Assignments				
Name of Assignment	Percent of Time Used for this	Estimated Project Completion Date		

Exhibit C - Proposed Project Key Personnel – Continued

(Key Individual/Position as determined by Proposer)

Organization Doing Business As				
Name of Individual				
Years of Experience				
Years of Experience with this organization				
Number of similar projects				
Number of similar projects in other positions				
Similar Project Experience				
Project Name and Description	Initial Contract Price	Final Contract Price	Initial Contract Completion Date	Actual Contract Completion Date
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)				
Name		Name		
Title/ Position		Title/ Position		
Organization		Organization		
Telephone		Telephone		
E-mail		E-mail		
Project		Project		
Candidate role on Project		Candidate role on Project		
Current Project Assignments				
Name of Assignment	Percent of Time Used for this	Estimated Project Completion Date		

Exhibit D – Exceptions to Agreement (see Attachment 2)

Comment Number	Location in CMAR Agreement	Exception and Rationale	Suggested Alternate Language
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			

Exhibit E – Conflict of Interest

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
<p>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>		OFFICE USE ONLY
<p>1 Name of vendor who has a business relationship with local governmental entity.</p> 		Date Received
<p>2 Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p>		
<p>3 Name of local government officer about whom the information is being disclosed.</p> <div style="text-align: center; border-top: 1px solid black; margin-top: 20px;">Name of Officer</div>		
<p>4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</p> <p style="margin-left: 40px;">A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p style="text-align: center; margin-left: 100px;">Yes No</p> <p style="margin-left: 40px;">B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p style="text-align: center; margin-left: 100px;">Yes No</p>		
<p>5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</p> 		
<p>6 Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</p>		

Signature of vendor doing business with the governmental entity

Date

Form provided by Texas Ethics Commission

www.ethics.tx.us

Revised 1/1/2021

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;

or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:
 - (A) begins discussions or negotiations to enter into a contract with the local governmental entity;
or
 - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
- (2) the date the vendor becomes aware:
 - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
 - (B) that the vendor has given one or more gifts described by Subsection (a); or
 - (C) of a family relationship with a local government officer.

END SECTION

Exhibit F – Client Reference Form

Project Name:	
Owner's Name:	
Owner Contact's Phone Number:	
Owner's Contact Name & Title:	
Type of Contract (Design/Bid/Build, Design/Build, CM at Risk, etc.)	
Engineer/Architect/Construction Manager's Name:	
Engineer/Architect/Construction Manager's Phone Number:	
Engineer/Architect/Construction Manager's Contact Name & Title:	
Original Contract Value / GMP of Project:	
Cost Savings Identified:	
Final Contract Value of Project:	
Project Description:	
Original Project Duration:	
Original Project Completion Date:	
Actual Project Completion Date:	
Explanation for later project completion date or contract value overrun, if applicable:	

List Major Subcontractor's; names, contact phone numbers

Exhibit G – Bond Forms & Insurance

Pre-Construction Phase Services:

For Pre-Construction Phase Services, no bonds are required.

Construction Phase Services:

Construction Phase Bonds shall be the City's standard forms which have been included in this section:

00 62 13 Performance

00 62 14 Payment

00 62 19 Maintenance bonds

00 61 25 Certificate of Insurance

Navigation: 02 - Construction Documents/Specifications/Div 00 – General Conditions

SECTION 00 62 13

PERFORMANCE BOND

THE STATE OF TEXAS §
 § KNOW ALL BY THESE PRESENTS:
COUNTY OF TARRANT §

That we, _____, known as
“Principal” herein and _____, a corporate surety
(sureties, if more than one) duly authorized to do business in the State of Texas, known as “Surety”
herein (whether one or more), are held and firmly bound unto the Developer, Crescent Property
Services LLC, authorized to do business in Texas (“Developer”) and the City of Fort Worth, a
Texas municipal corporation (“City”), in the penal sum of,
_____ Dollars (\$_____),
lawful money of the United States, to be paid in Fort Worth, Tarrant County, Texas for the payment
of which sum well and truly to be made jointly unto the Developer and the City as dual obligees,
we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and
severally, firmly by these presents.

WHEREAS, Developer and City have entered into an Agreement for the construction of
community facilities in the City of Fort Worth by and through a Community Facilities Agreement,
CFA Number _____; and

WHEREAS, the Principal has entered into a certain written contract with the Developer
awarded the ____ day of _____, 20____, which Contract is hereby referred to and
made a part hereof for all purposes as if fully set forth herein, to furnish all materials, equipment
labor and other accessories defined by law, in the prosecution of the Work, including any Change
Orders, as provided for in said Contract designated as Camp Bowie Boulevard Roadway
Improvements (Montgomery Street to University Drive).

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall
faithfully perform it obligations under the Contract and shall in all respects duly and faithfully

perform the Work, including Change Orders, under the Contract, according to the plans, specifications, and contract documents therein referred to, and as well during any period of extension of the Contract that may be granted on the part of the Developer and/or City, then this obligation shall be and become null and void, otherwise to remain in full force and effect.

PROVIDED FURTHER, that if any legal action be filed on this Bond, venue shall lie in Tarrant County, Texas or the United States District Court for the Northern District of Texas, Fort Worth Division.

This bond is made and executed in compliance with the provisions of Chapter 2253 of the Texas Government Code, as amended, and all liabilities on this bond shall be determined in accordance with the provisions of said statute.

IN WITNESS WHEREOF, the Principal and the Surety have SIGNED and SEALED this instrument by duly authorized agents and officers on this the _____ day of _____, 20____.

PRINCIPAL:

BY: _____
Signature

ATTEST:

(Principal) Secretary

Name and Title

Address: _____

Witness as to Principal

SURETY:

BY: _____
Signature

Name and Title

Address: _____

Witness as to Surety

Telephone Number: _____

*Note: If signed by an officer of the Surety Company, there must be on file a certified extract from the by-laws showing that this person has authority to sign such obligation. If Surety's physical address is different from its mailing address, both must be provided.

The date of the bond shall not be prior to the date the Contract is awarded.

SECTION 00 62 14

PAYMENT BOND

THE STATE OF TEXAS §
 § KNOW ALL BY THESE PRESENTS:
COUNTY OF TARRANT §

That we, _____, known as
“Principal” herein, and _____, a
corporate surety (or sureties if more than one), duly authorized to do business in the State of Texas,
known as “Surety” herein (whether one or more), are held and firmly bound unto the Developer,
Crescent Property Services LLC, authorized to do business in Texas “(Developer”)), and the City of
Fort Worth, a Texas municipal corporation (“City”), in the penal sum
of _____ Dollars (\$ _____),
lawful money of the United States, to be paid in Fort Worth, Tarrant County, Texas, for the payment
of which sum well and truly be made jointly unto the Developer and the City as dual obligees, we
bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally,
firmly by these presents:

WHEREAS, Developer and City have entered into an Agreement for the construction of
community facilities in the City of Fort Worth, by and through a Community Facilities Agreement,
CFA Number _____; and

WHEREAS, Principal has entered into a certain written Contract with Developer, awarded
the _____ day of _____, 20____, which Contract is hereby referred to and
made a part hereof for all purposes as if fully set forth herein, to furnish all materials, equipment,
labor and other accessories as defined by law, in the prosecution of the Work as provided for in
said Contract and designated as Camp Bowie Boulevard Roadway Improvements (Montgomery
Street to University Drive).

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if Principal
shall pay all monies owing to any (and all) payment bond beneficiary (as defined in Chapter 2253

of the Texas Government Code, as amended) in the prosecution of the Work under the Contract, then this obligation shall be and become null and void; otherwise to remain in full force and effect.

This bond is made and executed in compliance with the provisions of Chapter 2253 of the Texas Government Code, as amended, and all liabilities on this bond shall be determined in accordance with the provisions of said statute.

IN WITNESS WHEREOF, the Principal and Surety have each SIGNED and SEALED this instrument by duly authorized agents and officers on this the _____ day of _____, 20____.

PRINCIPAL:

ATTEST:

BY: _____
Signature

(Principal) Secretary

Name and Title
Address: _____

Witness as to Principal

SURETY:

ATTEST:

BY: _____
Signature

(Surety) Secretary

Name and Title
Address: _____

Witness as to Surety

Telephone Number: _____

Note: If signed by an officer of the Surety, there must be on file a certified extract from the bylaws showing that this person has authority to sign such obligation. If Surety's physical address is different from its mailing address, both must be provided.

The date of the bond shall not be prior to the date the Contract is awarded.

END OF SECTION

SECTION 00 62 19

MAINTENANCE BOND

THE STATE OF TEXAS §
 § KNOW ALL BY THESE PRESENTS:
COUNTY OF TARRANT §

That we _____, known as
“Principal” herein and _____, a corporate surety
(sureties, if more than one) duly authorized to do business in the State of Texas, known as “Surety”
herein (whether one or more), are held and firmly bound unto the Developer, Crescent Property
Services LLC, authorized to do business in Texas (“Developer”) and the City of Fort Worth, a
Texas municipal corporation (“City”), in the sum
of _____ Dollars (\$ _____),
lawful money of the United States, to be paid in Fort Worth, Tarrant County, Texas, for payment
of which sum well and truly be made jointly unto the Developer and the City as dual obligees and
their successors, we bind ourselves, our heirs, executors, administrators, successors and assigns,
jointly and severally, firmly by these presents.

WHEREAS, Developer and City have entered into an Agreement for the construction of
community facilities in the City of Fort Worth by and through a Community Facilities Agreement,
CFA Number _____; and

WHEREAS, the Principal has entered into a certain written contract with the Developer
awarded the _____ day of _____, 20____, which Contract is hereby referred to and a
made part hereof for all purposes as if fully set forth herein, to furnish all materials, equipment
labor and other accessories as defined by law, in the prosecution of the Work, including any Work
resulting from a duly authorized Change Order (collectively herein, the “Work”) as provided for in
said Contract and designated as Camp Bowie Boulevard Roadway Improvements (Montgomery
Street to University Drive); and

WHEREAS, Principal binds itself to use such materials and to so construct the Work in accordance with the plans, specifications and Contract Documents that the Work is and will remain free from defects in materials or workmanship for and during the period of two (2) years after the date of Final Acceptance of the Work by the City (“Maintenance Period”); and

WHEREAS, Principal binds itself to repair or reconstruct the Work in whole or in part upon receiving notice from the Developer and/or City of the need thereof at any time within the Maintenance Period.

NOW THEREFORE, the condition of this obligation is such that if Principal shall remedy any defective Work, for which timely notice was provided by Developer or City, to a completion satisfactory to the City, then this obligation shall become null and void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, if Principal shall fail so to repair or reconstruct any timely noticed defective Work, it is agreed that the Developer or City may cause any and all such defective Work to be repaired and/or reconstructed with all associated costs thereof being borne by the Principal and the Surety under this Maintenance Bond; and

PROVIDED FURTHER, that if any legal action be filed on this Bond, venue shall lie in Tarrant County, Texas or the United States District Court for the Northern District of Texas, Fort Worth Division; and

PROVIDED FURTHER, that this obligation shall be continuous in nature and successive recoveries may be had hereon for successive breaches.

IN WITNESS WHEREOF, the Principal and the Surety have each SIGNED and SEALED this instrument by duly authorized agents and officers on this the ____ day of _____, 20____.

PRINCIPAL:

BY: _____
Signature

ATTEST:

(Principal) Secretary

Name and Title

Address: _____

Witness as to Principal

SURETY:

BY: _____
Signature

ATTEST:

(Surety) Secretary

Name and Title

Address: _____

Witness as to Surety

Telephone Number: _____

*Note: If signed by an officer of the Surety Company, there must be on file a certified extract from the by-laws showing that this person has authority to sign such obligation. If Surety's physical address is different from its mailing address, both must be provided.

The date of the bond shall not be prior to the date the Contract is awarded.

Section 00 61 25
Certificate of Insurance

Exhibit H – Safety History Table

		2019	2020	2021
A	Total Number of Field Man-Hours			
B	Number of Recordable Incidents with no lost time accidents			
C	Number of Recordable Incidents with lost time accidents			
D	Total Recordable Incident Rate (TRIR) $(B+C) \times (200,000) / A$			
E	Number of Fatalities			
F	Published Experience Modification Rate (EMR)			

Provide documentation as an appendix to support the above Experience Modification Rate information. Either of the following methods are acceptable:

- Letter from insurance agent, insurance carrier, or appropriate government agency (on their letterhead) verifying the modification rate.
- Copies of the Experience Rating Calculation Sheets for each of the above years that your insurance carrier forwards to you annually.

If the Total Recordable Incident Rate exceeds 2.0 for any of the past three years, provide OSHA 300 logs for each of the past three years.

Exhibit I – Construction Budget and Fee Proposals

Construction Budget

Developer's Construction Budget	\$7,500,000.00

CMAR Fee Proposal

Pre-Construction Phase Cost (Paid from other Project funds):	
Minimum Amount (required)	\$ 25,000
Additional Amount (if any, cannot be negative)	\$
Total Pre-Construction Phase Cost	\$
Construction Phase Fee:	
(expressed as a percentage of cost of Work; will be incorporated into GMP)	_____ %
CMAR's Share of Unspent CMAR Contingency - if any	<u>0.00%</u>
CMAR's Share of Unspent GMP (Exclusive of CMAR Contingency - if any	<u>30%</u>
(refer to Attachment 2, Agreement, Articles 2.D and 2.E)	

Note: Only the Total Pre-Construction Phase Cost and Construction Phase Fee percentage will be read publicly at the time the RFP is opened.

Exhibit J - Evaluation Criteria

Evaluation Criteria	Weighted Value
1. Cover Letter	Pass/Fail
2. Forms and Certifications	Pass/Fail

Evaluation Criteria	Weighted Value
<p>3. Proposer’s Corporate Experience and Financial Stability:</p> <p>The Proposer shall provide information in a tabular format, for roadway construction & landscaping projects of similar size, and scope, including project durations for projects completed or currently in progress for all owners within the past ten years. The proposer shall demonstrate a history of completing projects on time and financial capacity to deliver the Project.</p> <p>Proposer shall identify and present a detailed summary on up to five projects that best represent the Proposer’s relevant, demonstrated experience and services requested for the Project. The total number of projects presented shall not be less than three.</p> <p>The Proposer shall identify its experience in the performance of CMAR Pre-Construction Services which will be required on this project, specifically (1) working with design engineers in the preparation of construction documents, (2) constructability reviews based on engineering drawings and site visits, (3) preparing cost estimates on partially completed construction documents, (4) project scheduling, and (5) developing a GMP. The proposer should explain the benefits of their experience in terms of value for the Project.</p> <p>The Proposer shall identify the major work elements/trades of a typical project and identify if the Proposer intends to self-perform such elements/trades and provide examples of those elements/trades which it normally self-performs. The listing of major work elements/trades should, at a minimum, include those listed under Section 2 Description of Project above.</p> <p>The Proposer’s response will include related CMAR and non-CMAR project delivery experience, including safety record, self-performance capabilities, financial qualifications, corporate history of litigation and the forms of dispute, and history of completing projects on time. The Proposer can demonstrate relevant and recognized project delivery experience through using various project delivery techniques and best practices. The Proposer must explain the benefits of that experience in terms of value for the project and provide a current Company Financial Statement.</p>	<p>Maximum 10 points</p>

Evaluation Criteria	Weighted Value
<p>4. Pricing of CMAR services (Preconstruction and CMAR Fee) Exhibit I</p> <p>Provide the Preconstruction Phase Cost (expressed in dollars) and Construction Phase Fee (expressed as a percentage of cost of work) on Exhibit I – Construction Budget and Fee Proposal.</p> <p>Provide any proposed incentives for delivery.</p>	<p>Maximum 5 points</p>
<p>5. CMAR Qualifications and Experience of Key Personnel (Relevant Non-CMAR experience acceptable):</p> <p>Overall qualifications, capacity, experience and workload of the Proposer’s Key Personnel to perform the required Preconstruction Phase Services and Construction Phase Services.</p> <p>Demonstrated results and success with of projects of similar size and scope (CMAR and Non-CMAR Experience): Proposer’s relevant experience in project delivery including: value engineering, constructability reviews, value analysis and best practices in construction delivery methods (design/bid/build, construction management at risk and design-build) and associated Pre-Construction Services. The team’s value proposition is clearly communicated through experience, results and assigned roles and responsibilities.</p> <p>Proposer shall provide an organizational chart showing all Key Personnel and other personnel (either by name or job category) for both Preconstruction Phase and Construction Phase Services. Include a statement that proposed Key Personnel will be dedicated and available for the performance of the Project and will only be changed with prior written approval by Crescent Property Services LLC. State the amount of time, on a percentage basis, each Key Personnel is expected to charge during the Preconstruction Phase and Construction Phase Services.</p> <p>The Proposer will provide client references for three of the projects listed in Item 3 using Exhibit F.</p> <p>CMAR and non-CMAR experience is recognized when the team can demonstrate experience in various delivery techniques and, explain the benefits of that experience in terms of value for the project.</p>	<p>Maximum 15 points</p>

Evaluation Criteria	Weighted Value
<p>6. Project Approach</p> <p>a. Construction Approach: Proposer’s approach to dealing with delivery impacts (i.e. adverse weather, operational issues, etc.), working with stakeholder and customer communities, and managing sub contractors. Approach to managing and maintaining cost and schedule as it relates to franchise utilities and third party stakeholders.</p> <p>b. Pre-Construction Services: Team’s approach to performing pre-construction phase services, integration with Crescent Property Services LLC’s design firm, controlling schedule and budget to meet GMP and meet or exceed delivery timeline. Identify any specialized skills or special consideration that Proposer will be able to provide.</p> <p>c. QA/QC and Safety Plan: Demonstrated development and implementation of Quality Assurance/Quality Control and Safety Plans to achieve successful projects.</p> <p>d. Cost, Schedule, and change Management: Provide Schedule showing substantial completion date and sequencing. Approach to managing and controlling costs and schedules. Identify approach to change management process. Include proposed project schedule with substantial completion date and sequencing identified.</p>	<p>Maximum 15 points</p> <p>Maximum 10 points</p> <p>Maximum 5 points</p> <p>Maximum 25 points</p>
<p>7. Compliance with the Business Equity Ordinance</p> <p>Proposer shall acknowledge and commit to meeting or exceeding the MWBE Goal and commit to meet or exceed the <u>overall diverse Business Equity goal</u> and present its <i>preliminary</i> Utilization Plan (as defined above in Section 3.D.).</p> <p>Demonstrate multiple previous projects where you exceed the Project’s Business Equity Goals.</p> <p>Failure to submit a preliminary Utilization Plan may render a Proposer non-responsive and cause the Proposal to be rejected.</p>	<p>Maximum 15 points</p>
<p>Proposer’s responsiveness to Request for Proposal</p>	<p>Yes/No</p>

Exhibit K – Prevailing Wage Rates

(Commercial Construction Projects)

CLASSIFICATION DESCRIPTION	Wage Rate
AC Mechanic	\$ 25.24
AC Mechanic Helper	\$ 13.67
Acoustical Ceiling Installer	\$ 16.83
Acoustical Ceiling Installer Helper	\$ 12.70
Bricklayer/Stone Mason	\$ 19.45
Bricklayer/Stone Mason Trainee	\$ 13.31
Bricklayer/Stone Mason Helper	\$ 10.91
Carpenter	\$ 17.75
Carpenter Helper	\$ 14.32
Concrete Cutter/Sawer	\$ 17.00
Concrete Cutter/Sawer Helper	\$ 11.00
Concrete Finisher	\$ 15.77
Concrete Finisher Helper	\$ 11.00
Concrete Form Builder	\$ 15.27
Concrete Form Builder Helper	\$ 11.00
Drywall Mechanic	\$ 15.36
Drywall Helper	\$ 12.54
Drywall Taper	\$ 15.00
Drywall Taper Helper	\$ 11.50
Electrician (Journeyman)	\$ 19.63
Electrician Apprentice (Helper)	\$ 15.64
Electronic Technician	\$ 20.00
Floor Layer	\$ 18.00
Floor Layer Helper	\$ 10.00
Glazier	\$ 21.03
Glazier Helper	\$ 12.81
Insulator	\$ 16.59
Insulator Helper	\$ 11.21
Laborer Common	\$ 10.89
Laborer Skilled	\$ 14.15
Lather	\$ 12.99
Metal Building Assembler	\$ 16.00
Metal Building Assembler Helper	\$ 12.00
Metal Installer (Miscellaneous)	\$ 13.00
Metal Installer Helper (Miscellaneous)	\$ 11.00
Metal Stud Framer	\$ 16.12
Metal Stud Framer Helper	\$ 12.54
Painter	\$ 16.44
Painter Helper	\$ 9.98
Pipefitter	\$ 21.22
Pipefitter Helper	\$ 15.39
Plasterer	\$ 16.17
Plasterer Helper	\$ 12.85
Plumber	\$ 21.98

Plumber Helper	\$ 15.85
Reinforcing Steel Setter	\$ 12.87
Reinforcing Steel Setter Helper	\$ 11.08
Roofer	\$ 16.90
Roofer Helper	\$ 11.15
Sheet Metal Worker	\$ 16.35
Sheet Metal Worker Helper	\$ 13.11
Sprinkler System Installer	\$ 19.17
Sprinkler System Installer Helper	\$ 14.15
Steel Worker Structural	\$ 17.00
Steel Worker Structural Helper	\$ 13.74
Waterproofer	\$ 15.00

Equipment Operators

Concrete Pump	\$ 18.50
Crane, Clamsheel, Backhoe, Derrick, D'Line Shovel	\$ 19.31
Forklift	\$ 16.45
Foundation Drill Operator	\$ 22.50
Front End Loader	\$ 16.97
Truck Driver	\$ 16.77
Welder	\$ 19.96
Welder Helper	\$ 13.00

The prevailing wage rates shown for Commercial construction projects were based on a salary survey conducted and published by the North Texas Construction Industry (Fall 2012) independently compiled by the Lane Gorman Trubitt, PLLC Construction Group. The descriptions for the classifications listed are provided on the TEXO's (The Construction Association) website: www.texoassociation.org/Chapter/wagerates.asp

Attachment 1 – General Conditions for CMAR Project

General Conditions for CMAR Project are attached.

**STANDARD GENERAL CONDITIONS
FOR A CMAR AGREEMENT**

STANDARD GENERAL CONDITIONS OF A CMAR AGREEMENT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

Wherever used in these General Conditions or in other Contract Documents, the terms listed below have the meanings indicated which are applicable to both the singular and plural thereof, and words denoting gender shall include the masculine, feminine and neuter. Said terms are generally capitalized or written in italics, but not always. When used in a context consistent with the definition of a listed- defined term, the term shall have a meaning as defined below whether capitalized or italicized or otherwise. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
2. *Agreement*—The written instrument memorializing the understanding between Developer and CMAR covering the Work.
3. *Allowance Item* - The Allowance Item value includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, CMAR's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original GMP, and are not subject to adjustment notwithstanding the actual amount of the Allowance Item.
4. *Application for Payment*—The form acceptable to Developer which is to be used by CMAR during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
5. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
6. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
7. *Bidder*—The individual or entity who submits a Bid directly to CMAR. CMAR may be a Bidder should it seek to self-perform portions of the Work.
8. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).

9. *Bidding Requirements*—The advertisement or Invitation to Bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
10. *Business Day* – A business day is defined as a day that the City conducts normal business, generally Monday through Friday, except for federal or state holidays observed by the City.
11. *Business Diversity Enterprise Ordinance* - the City’s Business Diversity Enterprise Ordinance #25165-102021, as amended.
12. *Intentionally Deleted.*
13. *Calendar Day* – A day consisting of 24 hours measured from midnight to the next midnight.
14. *Change Order*—A document, which is prepared and approved by the Developer, which is signed by CMAR and Developer and authorizes an addition, deletion, or revision in the Work or an adjustment in the GMP or the Contract Time, issued on or after the Effective Date of the Agreement.
15. *City*— The City of Fort Worth, Texas, a Texas home-rule municipal corporation, acting by its governing body through its City Manager, his designee, or agents authorized under his behalf.
16. *City Attorney* – The officially appointed City Attorney of the City of Fort Worth, Texas, or her duly authorized representative.
17. *City Council* - The duly elected and qualified governing body of the City of Fort Worth, Texas.
18. *City Manager* – The officially appointed and authorized City Manager of the City of Fort Worth, Texas, or his duly authorized representative.
19. *Developer’s Contingency* – The dollar amount held exclusively by the Developer, outside of the GMP, to be utilized for project specific items at the Developer’s sole discretion.
20. *CMAR* – The sole proprietorship, partnership, corporation, or other legal entity that is a party to the Agreement and assumes the risk for construction, rehabilitation, alteration, or repair of the Project for a negotiated price as a general contractor and provides consultation to the Developer regarding construction during and after the design of the Project.
21. *CMAR’s Contingency* — Contingency available for CMAR’s exclusive use for costs that are incurred in performing the Work that are not included in a specific line item or the basis for a Change Order under the Contract Documents. This contingency is not available to Developer for any reason, including changes in Scope or any other item which would enable CMAR to increase the GMP under the Contract Documents.

22. *CMAR Fee*—The moneys payable by Developer to CMAR for prosecution of the Work in accordance with the Contract Documents as stated in the Agreement.
23. *Contract Claim*—A demand or assertion by Developer or CMAR seeking an adjustment of GMP or Contract Time, or both, or other relief with respect to the terms of the Agreement. A demand for money or services by a third party is not a Contract Claim.
24. *Contract Documents*—The Agreement, the Request for Proposals, the Construction Documents, and any exhibits thereto, and other documents expressly incorporated therein by reference Approved Submittals, other submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
25. *Contract Time*— The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, and (ii) complete the Work so that it is ready for Final Acceptance.
26. *Construction Documents*—Those written or electronic documents indicating the basic scope of work as set forth by the Engineer, Engineer's formal construction documents, Drawings and Specifications, including materials, and work package(s) bid documents.
27. *Construction Phase Services* – Those services to be provided by CMAR as defined in the RFP, the Agreement, and these General Conditions, and the relevant portion of the CMAR's Proposal incorporated as an attachment to the Agreement..
28. *Cost of the Work*— The included costs described in Paragraph 11.01 of these General Conditions which CMAR shall consider when developing the CMAR's Fee and the GMP.
29. *Damage Claims* – A demand for money or services arising from the Project or Site from a third party, Developer, or CMAR exclusive of a Contract Claim.
30. *Day or day* – A day, unless otherwise defined, shall mean a Calendar Day.
31. *Director of Aviation* – The officially appointed Director of the Aviation Department of the City of Fort Worth, Texas, or his duly appointed representative, assistant, or agents.
32. *Director of Parks and Community Services* – The officially appointed Director of the Parks and Community Services Department of the City of Fort Worth, Texas, or his duly appointed representative, assistant, or agents
33. *Director of Planning and Development* – The officially appointed Director of the Planning and Development Department of the City of Fort Worth, Texas, or his duly appointed representative, assistant, or agents.
34. *Director of Transportation and Public Works* – The officially appointed Director of the Transportation and Public Works Department of the City of Fort Worth, Texas, or his duly appointed representative, assistant, or agents.

35. *Director of Water Department* – The officially appointed Director of the Water Department of the City of Fort Worth, Texas, or his duly appointed representative, assistant, or agents.
36. *Drawings* — That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by CMAR. Submittals are not Drawings as so defined.
37. *Engineer* – The licensed professional engineer or engineering firm registered in the State of Texas performing professional services for the Developer.
38. *Extra Work* – Additional work made necessary by changes or alterations of the Contract Documents or of quantities or for other reasons for which no prices are provided in the Contract Documents. Extra Work shall be incorporated into the Work.
39. *Field Order* — A written order issued by Developer which requires changes in the Work but which does not involve a change in the GMP, Contract Time, or the intent of the Engineer. Payment for Field Orders are paid from Allowances, if any, or other funding sources incorporated into the Agreement.
40. *Final Acceptance* – The written notice given by the Developer to the CMAR that the Work specified
in the Contract Documents has been completed to the satisfaction of the
Developer and City.
41. *Final Inspection* – Inspection carried out by the Developer and the City, to verify that the CMAR has completed the Work, and each and every part or appurtenance thereof, fully, entirely, and in conformance with the Contract Documents.
42. *General Requirements*—Sections of Division 1 of the Contract Documents.
43. *Guaranteed Maximum Price (GMP)* - The maximum cost to the Developer for the Work as established by the CMAR according to the Contract Documents and as approved by the Developer.
44. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, or other materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
45. *Hazardous Waste*—Hazardous waste is defined as any solid waste listed as hazardous or possesses one or more hazardous characteristics as defined in the federal waste regulations, as amended from time to time.
46. *Laws and Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts

having jurisdiction. Without limiting the foregoing, the term Laws and Regulations includes the City of Fort Worth's Community Facilities Agreements Ordinance.

47. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
48. *Liquidated Damages*. A specified sum of money that, for each calendar day that any work shall remain uncompleted after the time specified in the Agreement, will be deducted from the monies due the CMAR (or payable from CMAR to Developer on demand), not as a penalty, but as liquidated damages suffered by the Developer.
49. *Major Item* – An Item of work included in the Contract Documents that has a total cost equal to or greater than 5% of the original GMP or \$25,000 whichever is less.
50. *MBE* - A business entity as defined in the Business Equity Ordinance #25165-10-2021, as amended. meeting the following criteria: which is at least 51 percent owned by one or more Minority Individuals, or, in the case of any publicly traded business, at least 51 percent of all classes of the stock of which is owned by one or more Minority Individuals; and whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more such Minority Individuals. Minority Individuals is defined in the Business Equity Ordinance.
51. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate Contract Time prior to Final Acceptance of the Work.
52. *Notice to Proceed*—A written notice given by Developer to CMAR fixing the date on which the Contract Time will commence to run and on which CMAR shall start to perform the Work specified in Contract Documents.
53. *PCBs*—Polychlorinated biphenyls.
54. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
55. *Plans* – See definition of Drawings.
56. *Preconstruction Phase Services* – Those services to be provided by CMAR as defined in the RFP.
57. *Project*—The Work to be performed under the Contract Documents.
58. *Project Manager* – A third-party retained by Developer to serve as Developer's project manager.
59. *Project Schedule*—A schedule, prepared and maintained by CMAR, in accordance with the General Requirements, describing the sequence and duration of the activities comprising the CMAR's plan to accomplish the Work within the Contract Time.

- 60.*Project Representative*—The authorized representative of the Developer who will be assigned to the Project. The Project Representative is not a City inspector for purposes of inspecting detailed aspects of the construction phase of the Work.
- 61.*Public Meeting* – An announced meeting conducted by the Developer and/or CMAR to facilitate public participation and to inform the public of the Project.
- 62.*Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
- 63.*Regular Working Hours* – Hours beginning at 7:00 a.m. and ending at 6:00 p.m., Monday thru Friday (excluding legal holidays).
- 64.*Request for Proposals (RFP)* – The request issued by the Developer seeking qualified CMAR Firms to submit Proposals to perform CMAR services for the Project.
- 65.*Retainage* – The amount of money, on a percentage basis, identified in the Agreement to be withheld by Developer from each of CMAR’s progress payments
- 66.*Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
- 67.*Schedule of Submittals*—A schedule, prepared and maintained by CMAR, of required submittals and the time requirements to support scheduled performance of related construction activities.
- 68.*Schedule of Values*—A schedule prepared and maintained by CMAR, allocating portions of the GMP to various portions of the Work and used as the basis for reviewing CMAR Applications for Payment.
- 69.*Site*—Lands or areas indicated in the Contract Documents as being furnished by City upon which the Work is to be performed, including rights-of-way, permits, and easements for access thereto, and such other lands furnished by City which are designated for the use of CMAR in furtherance of the Project.
- 70.*Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto. Specifications may be specifically made a part of the Contract Documents by attachment or, if not attached, may be incorporated by reference.
- 71.*Subcontractor*—An individual or entity having a contract with CMAR or with any other Subcontractor for the performance of a part of the Work at the Site.

- 72.*Submittals*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for CMAR and submitted to Developer by CMAR to illustrate some portion of the Work.
- 73.*Substantial Completion* – The stage in the progress of the Project when the Work (or designated portion thereof) is sufficiently complete in accordance with the Contract Documents so that the Developer and City can utilize the Project (or a designated portion thereof) for its intended use; provided, however, as a condition precedent to Substantial Completion, the Developer has received all permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial use of the Project.
- 74.*Superintendent* – The representative of the CMAR who is available at all times and able to receive instructions from the Developer and to act for the CMAR.
- 75.*Supplementary Conditions*—If used, Supplementary Conditions are that part of the Contract Documents which amends or supplements these General Conditions.
- 76.*Supplier*—A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with CMAR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work.
- 77.*Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to, those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
- 78.*Unit Price Work*—See Paragraph 11.03 of these General Conditions for definition.
- 79.*Weekend Working Hours* – Hours beginning at 9:00 a.m. and ending at 5:00 p.m., Saturday, Sunday or legal holiday, as approved in advance by the City and Developer.
- 80.*Work*—The collective design-phase and construction-phase, or the various separately identifiable parts thereof, required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such design and construction including any Change Order or Field Order, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

1.02 Terminology

- A. The words and terms discussed in Paragraph 1.02.B through E are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. Intent of Certain Terms or Adjectives:

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of judgment by Developer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Developer as to the Work. It is intended that such exercise of judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise).

C. Defective:

The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:

- a. does not conform to the Contract Documents; or
- b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
- c. has been damaged prior to Developer’s written acceptance.

D. Furnish, Install, Perform, Provide, Supply:

The word “Furnish” or the word “Install” or the word “Perform” or the word “Provide” or the word

“Supply,” or any combination or similar directive or usage thereof, shall mean *furnishing and incorporating in the Work* including all necessary labor, materials, equipment, and everything necessary to perform the Work indicated, unless specifically limited in the context used.

E. Common Construction Terms:

Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 Copies of Documents

Developer shall furnish to CMAR one (1) original executed copy and one (1) electronic copy of the Agreement and Contract Documents, and up to four (4) additional copies of the Drawings, as requested by CMAR. Additional copies will be furnished upon request at the cost of reproduction.

2.02 Commencement of Contract Time; Notice to Proceed

The Contract Time will commence to run on the day indicated in the Notice to Proceed for Construction Phase Services. A Notice to Proceed may be given at any time after the GMP is established through amendment to the Agreement.

2.03 Starting the Work

CMAR shall begin compensable performance of the design-phase portion of the Work (Preconstruction Phase Services) as set forth in Paragraph 1.B of the Agreement. No constructionphase Work shall be done at the Site prior to the date on which the Developer approves the final design of the Work, unless an early works package, whether one or more, is requested and permission is specifically granted by the Developer as set forth in Paragraph 1.B of the Agreement.

2.04 Before Starting Construction, Baseline Schedules

CMAR shall submit to Developer its schedule in accordance with the Contract Documents, and prior to starting the Work. No progress payment shall be made to CMAR until acceptable schedules are submitted to Developer in accordance with the Schedule Specification as provided in the Contract Documents.

2.05 Preconstruction Conference

Before any construction-phase Work at the Site is started, the CMAR shall attend a Preconstruction Conference as specified in the Contract Documents.

2.06 Public Meeting

CMAR may not mobilize any equipment, materials or resources to the Site prior to CMAR attending the Public Meeting if required by the City.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Developer.

- C. Clarifications and interpretations of the Contract Documents shall be issued by Developer.
- D. The Specifications may vary in form, format and style. Some Specification sections may be written in varying degrees of streamlined or declarative style and some sections may be relatively narrative by comparison. Omission of such words and phrases as “the Contractor shall,” “in conformity with,” “as shown,” or “as specified” are intentional in streamlined sections. Omitted words and phrases shall be supplied by inference. Similar types of provisions may appear in various parts of a section or articles within a part depending on the format of the section. The CMAR or Subcontractor shall not take advantage of any variation of form, format or style in making Contract Claims.
- E. The cross referencing of specification sections under the subparagraph heading “Related Sections include but are not necessarily limited to:” and elsewhere within each Specification section is provided as an aid and convenience to the CMAR. The CMAR shall not rely on the cross referencing provided and shall be responsible to coordinate the entire Work under the Contract Documents and provide a complete Project whether or not the cross referencing is provided in each section or whether or not the cross referencing is complete.

3.02 Reference Standards

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of the effective date of the Agreement, except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Developer, CMAR, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Developer or any of its officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents. Notwithstanding anything to the contrary herein, CMAR shall be obligated to comply with all Laws and Regulations applicable to the Work that are in effect at the time the Work is performed; if CMAR believes it is entitled to an increase in the GMP as a result in a change in Laws and Regulations, to the extent

permitted under the terms of the Contract Documents, it will submit a Contract Claim.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies:

1. *CMAR's and Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, CMAR shall carefully study and compare the Contract Documents and check and verify pertinent figures therein against all applicable field measurements and conditions. CMAR shall promptly report in writing to Developer any conflict, error, ambiguity, or discrepancy which CMAR discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Developer before proceeding with any Work affected thereby.
2. *CMAR's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, CMAR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or
(c) any instruction of any Supplier, then CMAR shall promptly report it to Developer in writing. CMAR shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.18.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. If the CMAR fails to disclose a defect in the Contract Documents as required by Texas Business and Commerce Code Section 59.051(b), then, as provided in Texas Business and Commerce Code Section 59.051(c), the CMAR will be liable for the consequences of defects that result from the failure to disclose.

B. Resolving Discrepancies:

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and the provisions of any standard, specification, manual, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents).
2. In case of discrepancies, figured dimensions shall govern over scaled dimensions, Plans shall govern over Specifications, Supplementary Conditions (if used) shall govern over General Conditions and Specifications, and quantities shown on the Plans shall govern over those shown in the proposal.

3.04 Amending and Supplementing Contract Documents

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by a Change Order.
- B. The requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work not involving a change in GMP or Contract Time, may be authorized, by one or more of the following ways:
 - 1. A Field Order;
 - 2. Developer's review of a Submittal (subject to the provisions of Paragraph 6.19.C); or
 - 3. Developer's written interpretation or clarification.

3.05 Reuse of Documents

- A. CMAR and any Subcontractor or Supplier shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer, including electronic media editions; or
 - 2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Developer and specific written verification or adaptation by Engineer.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Agreement. Nothing herein shall preclude CMAR from retaining copies of the Contract Documents for record purposes.

3.06 Electronic Data

- A. Unless otherwise stated in the Supplementary Conditions (if used), the data furnished by Developer or Engineer to CMAR that may be relied upon are limited to the printed copies included in the Construction Documents (also known as hard copies) and other Specifications included within the Construction Documents, subject to CMAR's obligations under Section 3.03.A.3. Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the CMAR. Any conclusion or information obtained or derived from such electronic files will be at the CMAR's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. When transferring documents in electronic media format, the Developer makes no representations as to long term compatibility, usability, or readability of

documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 Availability of Lands

A. City shall furnish the Site. Developer shall notify CMAR of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CMAR must comply in performing the Work. Developer will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities.

1. The City and/or Developer has obtained or anticipates acquisition of and/or access to right-of-way, and/or easements. Any outstanding right-of-way and/or easements are anticipated to be acquired in accordance with the schedule set forth in the Supplementary Conditions (if used) or as otherwise communicated by Developer. The Project Schedule submitted by the CMAR in accordance with the Contract Documents must consider any outstanding right-of-way, and/or easements.
2. The Developer may remove and/or relocate utilities. Any outstanding removal or relocation of utilities is anticipated in accordance with the schedule set forth in the Agreement. The Project Schedule submitted by the CMAR in accordance with the Contract Documents must consider any outstanding utilities to be removed, adjusted, and/or relocated by others.
3. The City and/or Developer may obtain temporary construction easements to facilitate the Work by the CMAR. Developer will identify in the Supplementary Conditions (if used) or Contract Documents or otherwise communicated to CMAR which temporary construction easements will be obtained prior to GMP delivery for use by the CMAR. Developer makes no guarantee of duration of availability, access, warranty, suitability, or other performance of the temporary construction easement unless stated in the Supplementary Conditions (if used) or Contract Documents.

B. Not Used.

C. CMAR shall provide for all additional lands and access thereto that may be required for construction facilities, parking, or storage of materials and equipment.

4.02 Subsurface and Physical Conditions

A. *Reports and Drawings:* The Supplementary Conditions (if used) identify:

1. those reports known to Developer of explorations and tests of subsurface conditions at or contiguous to the Site; and
2. those drawings known to Developer of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. Limited Reliance by CMAR on Technical Data Authorized: CMAR may review the “technical data” contained in such reports and drawings for informational purposes only, but such reports and drawings are not Contract Documents. CMAR must, on its own, confirm all field conditions, including without limitation those concerning the location of existing utilities. CMAR may not make any Contract Claim against Developer, or any of its officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for CMAR’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CMAR, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any CMAR interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information.

4.03 Differing Subsurface or Physical Conditions

A. Notice: If CMAR believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any “technical data” identified in Paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then CMAR shall, immediately after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.18.A), notify Developer in writing about such condition.

B. Possible Price and Time Adjustments

CMAR shall be entitled to an adjustment in the GMP or Contract Time if:

1. CMAR did not know of the existence of such conditions at the time CMAR made a final commitment to Developer with respect to GMP and Contract Time in the GMP Amendment;
2. the existence of such condition could not reasonably have been discovered or revealed as a result of the examination of the Contract Documents or the Site; and
3. CMAR gave the written notice as required by Paragraph 4.03.A.

4.04 Underground Facilities

A. Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Developer or Engineer by the owners of such Underground Facilities, including City, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions (if used):

1. Developer and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
2. The cost of all of the following will be included in the GMP, and CMAR shall have full responsibility for:
 - a. reviewing and checking all such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. coordination and adjustment of the Work with the owners of such Underground Facilities, including City, during construction; and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. Not Shown or Indicated:

1. If an Underground Facility which conflicts with the Work is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, CMAR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.18.A), identify

the owner of such Underground Facility and give notice to that owner and to Developer. Developer will review the discovered Underground Facility and determine the extent, if any, to which a change may be required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. CMAR shall be responsible for the safety and protection of such discovered Underground Facility.

2. If Developer concludes that a change in the Contract Documents is required, a Change Order may be issued to reflect and document such consequences.
3. Verification of existing utilities, structures, and service lines shall include notification of all utility companies a minimum of 48 hours in advance of construction including exploratory excavation if necessary.

4.05 Reference Points

CMAR shall provide engineering surveys to establish reference points for construction, which are necessary to enable CMAR to proceed with the Work. CMAR will provide construction stakes or other customary method of marking to establish line and grades for roadway and utility construction, centerlines and benchmarks for bridgework. CMAR shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations. CMAR shall report to Developer whenever any reference point or property monument requires relocation because of necessary changes in grades or locations. CMAR shall be responsible for the replacement or relocation of reference points or property monuments destroyed by the CMAR or its Subcontractors or Suppliers.

4.06 Hazardous Environmental Condition at Site

- A. *Reports and Drawings:* The Supplementary Conditions (if used) identify those reports and drawings known to Developer relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by CMAR on Technical Data Authorized:* CMAR may review the “technical data” contained in such reports and drawings for informational purposes only, but such reports and drawings are not Contract Documents. CMAR may not make any Contract Claim against Developer, or any of its officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 1. the completeness of such reports and drawings for CMAR’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CMAR and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any CMAR interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions or information.
- C. CMAR shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. CMAR shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by CMAR, Subcontractors, Suppliers, or anyone else for whom CMAR is responsible.
- D. If CMAR encounters a Hazardous Environmental Condition or if CMAR or anyone for whom CMAR is responsible creates a Hazardous Environmental Condition, CMAR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.18.A); and (iii) verbally notify Developer (and promptly thereafter confirm such notice in writing). Developer may consider the necessity to retain a qualified expert to evaluate such condition or take corrective action, if any. When the Hazardous Environmental Condition has been rendered harmless by the Developer’s separate remediation contractor, the work in the affected area shall resume upon written agreement of the Developer and CMAR. For such Hazardous Environmental Conditions that CMAR encounters that are not within CMAR’s scope of work or created with any materials brought to the Site by CMAR, Subcontractors, Suppliers, or anyone else for whom CMAR is responsible, the Contract Time shall be extended appropriately and the GMP shall be increased in the amount of CMAR’s reasonable costs of shut-down, delay and start-up, by Change Order.
- E. CMAR shall not be required to resume Work in connection with such condition or in any affected area until after Developer has obtained any required permits related thereto and delivered written notice to CMAR: (i) specifying that such condition and any affected area is or has been rendered suitable for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed.
- F. If after receipt of such written notice CMAR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Developer may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. Developer may have such deleted portion of the Work performed by Developer’s own forces or others.
- G. To the fullest extent permitted by Laws and Regulations, CMAR shall indemnify and hold harmless City and Developer, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by CMAR or by anyone for whom CMAR is responsible.***

Nothing in this Paragraph shall obligate CMAR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – INDEMNITY, BONDS AND INSURANCE

5.01 Indemnification – TO THE FULLEST EXTENT PERMITTED BY LAW, CMAR COVENANTS

AND AGREES TO, AND DOES HEREBY ASSUME LIABILITY, INDEMNIFY, HOLD HARMLESS AND DEFEND, AT ITS OWN EXPENSE, DEVELOPER, THE CITY, AND THEIR PARTNERS, RELATED COMPANIES, LENDER, OFFICERS, DIRECTORS, AGENTS, SERVANTS AND EMPLOYEES (“INDEMNITEES”), FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, COSTS, EXPENSES (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS’ FEES), OR SUITS ARISING OUT OF OR IN CONNECTION WITH, DIRECTLY OR INDIRECTLY, THE WORK TO BE PERFORMED UNDER THE AGREEMENT OR ANY OTHER ACTIVITIES OF CMAR OR SUBCONTRACTORS OR SUPPLIERS; BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENCE, ACT, OR OMISSION OF CMAR, ITS SUBCONTRACTORS OR SUPPLIERS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY CMAR OR ANYONE FOR WHOSE ACTS CMAR MAY BE LIABLE.

IN ADDITION TO THE INDEMNIFICATION PROVIDED THE PARAGRAPH ABOVE, TO THE FULLEST EXTENT PERMITTED BY LAW, CMAR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND INDEMNITEE(S), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS’ FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY TO, OR SICKNESS, DISEASE OR DEATH OF, ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF CMAR OR ANY OF ITS SUBCONTRACTORS OR SUPPLIERS, REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED, OR IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART BY THE SOLE OR CONCURRENT NEGLIGENCE OF ANY INDEMNITEE, IT BEING

THE EXPRESSED INTENT OF DEVELOPER AND CMAR THAT IN SUCH EVENT THE CMAR IS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNITEE(S) FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHETHER IT IS OR IS ALLEGED TO BE THE SOLE OR CONCURRING CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE OR DEATH OF CMAR'S EMPLOYEE OR THE EMPLOYEE OF ANY OF ITS SUBCONTRACTORS OR SUPPLIERS. THE INDEMNIFICATION OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED BY ANY BENEFITS PAYABLE BY OR FOR CMAR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. CMAR SHALL PROCURE LIABILITY INSURANCE COVERING ITS OBLIGATIONS UNDER THIS SECTION.

IN ADDITION TO THE INDEMNIFICATION PROVIDED BY THE PARAGRAPHS ABOVE, CMAR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS DEVELOPER, THE CITY, AND THEIR OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, SUITS OR CAUSES OF ACTION OF ANY NATURE WHATSOEVER, WHETHER REAL OR ASSERTED, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES TO PERSONS OR PROPERTY, INCLUDING DEATH, RESULTING FROM, OR IN ANY WAY CONNECTED WITH, THE CONSTRUCTION OF THE IMPROVEMENTS CONTEMPLATED HEREIN, WHETHER OR NOT SUCH INJURIES, DEATH OR DAMAGES ARE CAUSED, IN WHOLE OR IN PART, BY THE ALLEGED NEGLIGENCE OF THE CITY OF FORT WORTH, ITS OFFICERS, SERVANTS, OR EMPLOYEES. FURTHER, CMAR WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE DEVELOPER AND THE CITY FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES SUFFERED BY THE CITY OR CAUSED AS A RESULT OF SAID CMAR'S FAILURE TO COMPLETE THE WORK AND CONSTRUCT THE IMPROVEMENTS IN A GOOD AND WORKMANLIKE MANNER, FREE FROM DEFECTS, IN CONFORMANCE WITH THE CFA ORDINANCE, AND IN ACCORDANCE WITH ALL PLANS AND SPECIFICATIONS.

5.02 *Bonds*

All bonds and insurance required by the Contract Documents to be purchased and maintained by CMAR shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Texas to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall

also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions (if used).

Performance, Payment, and Maintenance Bonds

- A. If a fixed contract amount or GMP has not been determined at the time the Agreement is awarded,
the penal sums of the performance and payment bonds must each be in an amount equal to the construction budget.
- B. The CMAR shall, not later than the tenth day after the CMAR executes the Agreement, deliver to the Developer payment and performance bonds or a bid bond or other financial security acceptable to Developer to ensure that the CMAR will furnish the payment and performance bonds prior to commencement of the construction Work. No payment or performance bond is required for the design portion of the Agreement. The payment and performance bonds shall each be on a form acceptable to the City and Developer and in compliance with Texas Government Code Chapter 2253 and be in the name of the City and Developer.
- C. Maintenance bond(s), valid for two years from the Substantial Completion date of the construction Work, shall be procured and provided by the CMAR to Developer prior to final acceptance of the Work. Maintenance bond(s) shall be on a form acceptable to and in the name of and in favor of the City and Developer.
- D. All payment, performance and maintenance bonds issued shall be provided by a surety in accordance with Texas Gov't Code 2253. No sureties will be accepted by the City and Developer that are at the time of issuance in default or delinquent on any bonds or which are interested in any litigation against the City or Developer. Should any surety on the contract be determined unsatisfactory at any time by the City or Developer, notice will be given to the CMAR to that effect and the CMAR shall immediately provide a new surety and bonds satisfactory to the City and Developer. All bonds signed by an agent or attorney-in-fact must be accompanied by a sealed and dated power of attorney which shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- E. If the surety on any bond furnished by CMAR is declared bankrupt or becomes insolvent or its right to do business in the State of Texas is terminated or it ceases to meet the requirements of Paragraph 5.02.D, CMAR shall promptly notify Developer and shall, within 30 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01 and 5.02.D.

5.03 Certificates of Insurance

CMAR shall deliver to Developer, with copies to each additional insured and loss payee identified below, certificates of insurance (and other evidence of insurance requested by Developer or any other additional insured) which CMAR is required to purchase and maintain (and which its Subcontractors are required to purchase and

maintain). CMAR shall maintain, and require its Subcontractors to maintain, the coverages set forth in Section 5.03-5.05.

1. The certificate of insurance shall document the Developer, and all identified entities named in Section 5.03(14) below as “Additional Insured” on all policies as outlined in this agreement.
2. The general liability insurance shall include a, “per project” or “per location”, endorsement, which shall be identified in the certificate of insurance provided to the Developer.
3. The certificate shall be signed by an agent authorized to bind coverage on behalf of the insured, be complete in its entirety, and show complete insurance carrier names as listed in the current A.M. Best Property & Casualty Guide.
4. The insurers for all policies must be licensed and/or approved to do business in the State of Texas. Except for workers’ compensation, all insurers must have a minimum rating of A-: VII in the current A. M. Best Key Rating Guide or have reasonably equivalent financial strength and solvency to the satisfaction of the City and Developer. If the rating is below that required, written approval of Developer is required.
5. All applicable policies shall include a Waiver of Subrogation (Rights of Recovery) in favor of the Developer and the other Indemnitees (including without limitation the City). In addition, the CMAR agrees to waive all rights of subrogation against the Engineer (if applicable, and except related to any Builders’ Risk insurance provided by CMAR), and each additional insured identified in Section 5.03(14) below.
6. Failure of the Developer to demand such certificates or other evidence of full compliance with the insurance requirements or failure of the Developer to identify a deficiency from evidence that is provided shall not be construed as a waiver of CMAR’s obligation to maintain such lines of insurance coverage.
7. If insurance policies are not written for specified coverage limits, an Umbrella or Excess Liability insurance for any differences is required. Excess Liability shall follow form of the primary coverage.
8. Unless otherwise stated, all required insurance shall be written on the “occurrence basis”. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the effective date of the agreement and the certificate of insurance shall state that the coverage is claims-made and the retroactive date. The insurance coverage shall be maintained for the duration of the Agreement and for the full period of repose. An annual certificate of insurance submitted to the Developer shall evidence such insurance coverage.

9. Policies shall have no exclusions by endorsements which nullify or amend the required lines of coverage, or decrease the limits of said coverage unless such endorsements are approved in writing by the Developer. In the event a Contract has been awarded and the exclusions are determined to be unacceptable or the Developer desires additional insurance coverage, and the Developer desires the CMAR to obtain such coverage, the GMP shall be adjusted by the cost of the premium for such additional coverage plus 10%.
10. Any self-insured retention (SIR) or deductible in excess of \$25,000.00 affecting required insurance coverage shall be approved by the Developer in regards to asset value and stockholders' equity. All deductibles and SIRs shall be paid by CMAR or its Subcontractors without reimbursement from Developer. In lieu of traditional insurance, alternative coverage maintained through insurance pools or risk retention groups, must also be approved by Developer.
11. Developer, at its sole discretion, reserves the right to review the insurance requirements and to make reasonable adjustments to insurance coverages and their limits when deemed necessary and prudent by the Developer based upon changes in statutory law, court decision or the claims history of the industry as well as of the contracting party to the Developer. The Developer shall be required to provide prior notice of 90 days, and the insurance adjustments shall be incorporated into the Agreement by amendment.
12. Developer shall be entitled, upon written request and without expense, to receive copies of policies and endorsements thereto.
13. Developer shall not be responsible for the direct payment of insurance premium costs for CMAR's or any Subcontractor's insurance.
14. Except for Worker's Compensation and Professional Liability, the Developer and all other Indemnitees shall be endorsed as an additional insured on all insurance policies under additional endorsement forms acceptable to Developer. Developer and Indemnitees shall be included as additional insureds on each CGL policy procured using ISO Additional Insured Endorsements CG 20 10 10 01 (ongoing operations) and CG 20 37 10 01 (completed operations) or endorsements providing equivalent coverage.
15. Each insurance policy shall be endorsed to provide the Developer a minimum thirty days' notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten days' notice shall be acceptable in the event of non-payment of premium.
16. All insurance policies shall each be endorsed to provide that such insurance is primary protection and any self-funded or commercial coverage maintained by Developer shall not be called upon to contribute to loss recovery.

17. In the course of the Agreement, CMAR shall report, in a timely manner, to Developer's Project Representative any known loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.
18. CMAR's liability shall not be limited to the specified amounts of insurance required herein.
19. CMAR will certify in writing that it provides workers' compensation insurance to all of its employees, and will require each Subcontractor to certify in writing to CMAR that the Subcontractor's employees are covered by worker's compensation insurance. CMAR will provide each Subcontractor's written certification to Developer.

5.04 Categories of Insurance

- A. *Workers Compensation and Employers' Liability.* CMAR and Subcontractors shall purchase and maintain such insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Texas Labor Code, Ch. 406, as amended), and minimum limits for Employers' Liability as is appropriate for the Work being performed (and with limits at least as great as set forth in Section 5.05 below) and as will provide protection from claims set forth below which may arise out of or result from performance of the Work and CMAR's other obligations under the Contract Documents, whether it is to be performed by CMAR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable for:
 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 2. claims for damages because of bodily injury, occupational sickness or disease, or death of employees.
- B. *Commercial General Liability.* Coverage shall include but not be limited to covering liability (bodily injury or property damage) arising from: premises/operations, independent contractors, products/completed operations, personal injury, and liability under an insured contract. Insurance shall be provided on an occurrence basis, and as comprehensive as the current Insurance Services Office (ISO) policy. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Developer. The Commercial General Liability policy, shall have no exclusions by endorsements that would alter or nullify premises/operations, products/completed operations, contractual, personal injury, or advertising injury, which are normally contained with the policy, unless the Developer approves such exclusions in writing.

- C. *Automobile Liability.* A commercial business auto policy shall provide coverage on “any auto”, defined as autos owned, hired and non-owned and provide indemnity for claims for damages because bodily injury or death of any person and or property damage arising out of the work, maintenance or use of any motor vehicle by the CMAR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- D. *Excess Liability.* Excess liability insurance shall be excess of the CGL, business auto, and employers liability insurance on a "following form" basis. Continuing excess coverage shall include liability coverage for damage to the insured's completed work.
- E. *Professional Liability (only to be provided by CMAR and Subcontractors providing design services).* Professional liability coverage ("CPrL") will insure from and against all negligent acts, errors, and omissions in the professional services performed by CMAR, its agents, representatives, employees, and Subcontractors. CPrL coverage shall provide full prior acts coverage or a retroactive date not later than the date the services are first performed by or for CMAR in connection with the Project.
- F. *Pollution Liability (only to be provided by CMAR, not Subcontractors).* CMAR's pollution liability policy shall cover a pollution event or release on the Project site resulting from the CMAR's or any Subcontractor's activities under and during the term of the Contract and for completed operations and shall include the activities of CMAR, Subcontractors, and Suppliers. The annual aggregate shall apply separately to this Project. CMAR's pollution liability coverage shall include mold, mold remediation, bacteria, naturally occurring hazardous substances, and diminution in value resulting from mold as it pertains to work performed by the CMAR or its Subcontractors.
- G. *Railroad Protective Liability.* If any of the work or any warranty work is within the limits of railroad right-of-way, the CMAR shall comply with the requirements identified in the Supplementary Conditions (if used).
- H. *Builder's Risk / Property Insurance / Installation Floater.* CMAR and Subcontractors shall provide property insurance covering the full replacement value of building materials in transit, building materials in temporary storage, job trailers, machinery, tools, equipment (including cranes), and property of a similar nature owned, leased, or borrowed by the CMAR or Subcontractors and not destined to become a part of the completed construction, and the CMAR and Subcontractors hereby waive (and shall require any third-party owners of this property, including lessors of equipment and any persons from which the CMAR borrows items, to waive) all claims against the Additional Insureds for loss or damage to these items, regardless of the cause. With respect to any cranes used in connection with the Work, the CMAR shall obtain upset coverage, boom coverage, and riggers liability coverage with limits and coverages acceptable to the Developer.

- I. Notification of Policy Cancellation:* CMAR shall immediately notify Developer upon cancellation or other loss of insurance coverage. CMAR shall stop work until replacement insurance has been procured. There shall be no time credit for days not worked pursuant to this section.

5.05 Insurance Requirements

A. Preconstruction Phase Services:

1. CMAR shall not commence work under this Agreement until it has, and its Subcontractors have, obtained all insurance required as specified herein and the Developer has approved such insurance.

Commercial General Liability
\$1,000,000 each occurrence
\$1,000,000 aggregate

Automobile Liability
\$1,000,000 each accident (or reasonably equivalent limits of coverage if written on a split limits basis). Coverage shall be on any vehicle used in the course of the Project.

Worker's Compensation Coverage
Statutory limits
Employer's Liability
\$1,000,000 disease - policy limit
\$1,000,000 disease - each employee
\$1,000,000 disease - each accident

Excess
\$10,000,000 each occurrence
\$10,000,000 aggregate

Professional Liability
\$5,000,000 each claim
\$5,000,000 aggregate

Pollution
\$5,000,000 each occurrence
\$5,000,000 aggregate

B. Construction Phase:

The limits of liability for the required insurance shall provide the following coverages for not less than the following amounts or greater where required by laws and regulations:

Workers'
Compensation:
Statutory
limits
Employer's liability
\$1,000,000 each accident/occurrence
\$1,000,000 Disease - each employee
\$1,000,000 Disease - policy limit

Commercial General Liability:

Commercial General Liability shall be on a per project basis covering the CMAR with minimum limits of:

\$1,000,000 each
occurrence \$2,000,000
aggregate limit

The policy must have an endorsement (Amendment – Aggregate Limits of Insurance) making the General Aggregate Limits apply separately to each job site or each work package, if more than one.

The Commercial General Liability Insurance policies shall provide “X”, “C”, and “U” coverage’s. Verification of such coverage must be shown in the Remarks Article of the Certificate of Insurance.

Automobile Liability:

A commercial business policy shall provide coverage on "Any Auto", defined as autos owned, hired and non-owned and shall be in an amount not less than the following amounts:

\$1,000,000 each accident on a combined single limit basis. Split limits are acceptable if limits are at least:

\$250,000 Bodily Injury per person /
\$500,000 Bodily Injury per accident /
\$100,000 Property Damage

Excess

\$10,000,000 each occurrence
\$10,000,000 aggregate

Professional Liability

\$5,000,000 each claim
\$5,000,000 aggregate

Pollution

\$5,000,000 each occurrence
\$5,000,000 aggregate

ARTICLE 6 – CMAR’S RESPONSIBILITIES

6.01 Supervision and Superintendence

- A. CMAR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CMAR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. At all times during the progress of the Work, CMAR shall assign a competent, English- speaking, Superintendent who shall not be replaced without written notice to Developer. The Superintendent will be CMAR's representative at the Site and shall have authority to act on behalf of CMAR. All communication given to or received from the Superintendent shall be binding on CMAR.
- C. CMAR shall notify the Developer and the City's Construction Services Division 72 hours prior to moving on site for the commencement of construction- phase Work.

6.02 Labor; Working Hours

- A. CMAR shall provide competent, suitably qualified personnel to perform construction as required by the Contract Documents. CMAR shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during Regular Working Hours. CMAR will not permit the performance of Work beyond Regular Working Hours or for Weekend Working Hours without Developer's written consent (which will not be unreasonably withheld). Written request (by letter or electronic communication) to perform Work:
 - 1. for beyond Regular Working Hours request must be made by noon at least two (2) Business Days prior;
 - 2. for Weekend Working Hours request must be made by noon of the preceding Thursday;
 - 3. for legal holidays request must be made by noon two Business Days prior to the legal holiday.

6.03 Solicitation of Construction-Phase Work.

- A. CMAR shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the Work other than minor work that may be included in the

Construction Documents. CMAR may seek to self- perform portions of the Work by submitting its Bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and upon a determination by Developer that the CMAR's bid or proposal provides the best value for the Developer.

B. The CMAR shall review all trade contractor or subcontractor Bids or proposals in a manner that does not disclose the contents of the Bid or proposal during the selection process to a person not employed by the CMAR, Engineer Developer, or the City. All Bids or proposals shall be made available to the Developer on request and to the public after the later of the award of the Contract or the seventh day after the date of final selection of bids or proposals. If the CMAR reviews, evaluates, and recommends to the Developer a Bid or proposal from a trade contractor or subcontractor but the Developer requires another Bid or proposal to be accepted, Developer shall compensate the CMAR by a change in price, time, or GMP for any additional cost and risk that the CMAR incurs because of the Developer's requirement that another Bid or proposal be accepted.

C. If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a Contract after being so selected, the CMAR may fulfill, without advertising, the Contract requirements or select a replacement trade contractor or subcontractor to fulfill the Contract requirements.

6.04 Services, Materials, and Equipment

A. Unless otherwise specified in the Contract Documents, CMAR shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, required testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Developer and City. If required by Developer or City, CMAR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment to be incorporated into the Work shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

D. All items of standard equipment to be incorporated into the Work shall be the latest model at the time of Agreement, unless otherwise specified.

6.05 Project Schedule

A. CMAR shall adhere to the Project Schedule established in accordance with Paragraph 2.04 and the General Requirements as it may be adjusted from time to time as provided below.

1. CMAR shall submit to Developer for acceptance (to the extent indicated in Paragraph 2.04 and the General Requirements) proposed adjustments in the Project Schedule that will not result in changing the Contract Time. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. CMAR shall submit to Developer a monthly Project Schedule with a monthly progress payment for the duration of the Agreement in accordance with the schedule Specification 01 32 16. Additionally, in the event CMAR shall fall behind schedule at any time, for any reason which does not justify an extension of the Contract Time, CMAR shall develop and deliver a recovery plan to the Developer with a recovery schedule and a program describing the additional manpower, overtime, material expediting, re-sequencing of the Work, and other steps CMAR shall take to meet the requirements of the Agreement with regard to the Contract Time.

Proposed adjustments in the Project Schedule that will change the Contract Time shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Time may only be made by a Change Order.

6.06 *Substitutes and "Or-Equals"*

A. Whenever an item of material or equipment is specified or described in the Construction Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that: no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment of other Suppliers may be submitted to Developer by CMAR for review under the circumstances described below.

1. *"Or-Equal" Items:* If in Developer's sole discretion an item of material or equipment proposed by CMAR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Developer as an "or-equal" item, in which case review and approval of the proposed item may, in Developer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.06.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. The Developer determines that:

- 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
 - 3) it has a proven record of performance and availability of responsive service;and
- b. CMAR certifies that, if approved and incorporated into the Work:
- 1) there will be no increase in cost to the Developer or increase in Contract Time; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Construction Documents.

2. Substitute Items:

- a. If in Developer's sole discretion an item of material or equipment proposed by CMAR does not qualify as an "or-equal" item, it may be submitted as a proposed substitute item.
- b. CMAR shall submit sufficient information as provided below to allow City and Developer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Developer from anyone other than CMAR.
- c. CMAR shall make written application to Developer for review of a proposed substitute item of material or equipment that CMAR seeks to furnish or use. The application shall comply with Section 01 25 00 and:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design;
 - b) be similar in substance to that specified;
 - c) be suited to the same use as that specified; and
 - 2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice CMAR's achievement of final completion on time;

b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Developer for other work on the Project) to adapt the design to the proposed substitute item;

c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty; and

3) will identify:

a) all variations of the proposed substitute item from that specified;

b) available engineering, sales, maintenance, repair, and replacement services; and

4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and Damage Claims of other contractors affected by any resulting change.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, CMAR may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by City and Developer. CMAR shall submit sufficient information to allow City and Developer, in their sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. CMAR shall make written application to Developer for review in the same manner as those provided in Paragraph 6.06.A.2.

C. *Developer's Evaluation:* City and Developer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.06.A and 6.06.B. CMAR understands that the City may also be required to review and evaluate the proposal or submittal once approved by Developer, and will allow sufficient and reasonable time for the City's review as well. Developer or the City may require CMAR to furnish additional data about the proposed substitute. Developer and/or the City will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized until Developer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an accepted Submittal for an "or-equal." Developer will advise CMAR in writing of its determination.

- D. *Special Guarantee*: City or Developer may require CMAR to furnish at CMAR's expense a warranty with respect to any substitute. ***CMAR shall indemnify and hold harmless Developer, other Indemnitees, and anyone directly or indirectly employed by them from and against any and all claims, damages, losses and expenses (including attorneys' fees) arising out of the use of substituted materials or equipment, except to the extent prohibited by Texas Insurance Code Chapter 151.***
- E. *Developer's Cost Reimbursement*: Developer will record Developer's and the City's costs in evaluating a substitute proposed or submitted by CMAR pursuant to Paragraphs 6.06.A.2 and 6.06.B. Whether or not Developer and/or the City approves a substitute so proposed or submitted by CMAR, CMAR may be required to reimburse Developer and the City for evaluating each such proposed substitute. CMAR may also be required to reimburse Developer for the charges for making changes in the Contract Documents (or in the provisions of any other direct contract with Developer) resulting from the acceptance of each proposed substitute.
- F. *CMAR's Expense*: CMAR shall provide all data in support of any proposed substitute or "or-equal" at CMAR's expense.
- G. *Developer Substitute Reimbursement*: Costs (savings or charges) attributable to acceptance of a substitute shall be incorporated to the Agreement by Change Order.
- H. *Time Extensions*: No additional time will be granted for substitutions.

6.07 Concerning Subcontractors, Suppliers, and Others

- A. *Business Equity Ordinance Compliance*: It is a City requirement to ensure the full and equitable participation by Minority and Women-owned Business Enterprises (collectively, "Business Equity Firms") in the procurement of goods and services pursuant to the Business Equity Ordinance. If the Contract Documents provide for an MBE and/or SBE goal, CMAR is required to comply with the City's Business Equity Ordinance by complying with the requirements detailed in the RFP and by doing the following:
 - 1. CMAR shall provide complete and accurate information to the DVIN regarding actual work performed, and payment therefor, by any Business Equity Firms under contract to CMAR.
 - 2. CMAR's failure to make payments as provided by state law may, in addition to any other remedies provided by law, subject CMAR to penalties for violations as described in the Business Equity Ordinance.
 - 3. CMAR will not make additions, deletions, or substitutions of accepted MBE/WBE firms without written consent of the Developer and City. Any unjustified change or deletion shall be a material breach of the Agreement and

may result in disciplinary action in accordance with the procedures outlined in the Business Equity Ordinance.

4. CMAR shall, upon request by Developer or City, allow an audit and/or examination of any books, records, or files in the possession of the CMAR that will substantiate the actual work performed by an MBE and/or WBE. Material misrepresentation of any nature may be grounds for termination of the Agreement in accordance with Paragraph 15.02.A. Any such misrepresentation may subject CMAR to disciplinary action in accordance with the procedures outlined in the Business Equity Ordinance.

B. CMAR shall be fully responsible to Developer for all acts and omissions of its Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as CMAR is responsible for CMAR's own acts and omissions. Nothing in the Contract Documents shall:

1. create for the benefit of any such Subcontractor, Supplier, or other individual or entity, any contractual relationship between Developer and any such Subcontractor, Supplier or other individual or entity; nor

2. create any obligation on the part of Developer or City to pay or to see to the payment of any monies due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

C. CMAR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with CMAR.

D. All Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work shall communicate with Developer through CMAR.

E. All Work performed for CMAR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CMAR and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Developer, including the insurance and indemnity obligations in these General Conditions.

6.08 Wage Rates

A. *Duty to pay Prevailing Wage Rates.* The CMAR shall comply with all requirements of Chapter 2258, Texas Government Code (as amended), including the payment of not less than the rates determined by the City Council of the City of Fort Worth to be the prevailing wage rates in accordance with Chapter 2258. Such prevailing wage rates are included in these Contract Documents.

B. *Penalty for Violation.* CMAR or any Subcontractor who does not pay the prevailing wage shall, upon demand made by the City, pay to the City \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the prevailing wage rates stipulated in these contract documents. This penalty shall be retained by the City to offset its administrative costs, pursuant to Texas Government Code 2258.023.

Complaints of Violations and City Determination of Good Cause. On receipt of information, including a complaint by a worker, concerning an alleged violation of 2258.023, Texas Government Code, by a Subcontractor, the City shall make an initial determination, before the 31st day after the date the City receives the information, as to whether good cause exists to believe that the violation occurred. The City shall notify in writing the CMAR, Subcontractor and any affected worker of its initial determination. Upon the City's determination that there is good cause to believe the CMAR or Subcontractor has violated Chapter 2258, the City shall retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage rates, such amounts being subtracted from successive progress payments pending a final determination of the violation.

C. *Arbitration Required if Violation Not Resolved.* An issue relating to an alleged violation of Section 2258.023, Texas Government Code, including a penalty owed to the City or an affected worker, shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act (Civil Practice and Remedies Code Chapter 171 et seq.) if the CMAR or Subcontractor and any affected worker does not resolve the issue by agreement before the 15th day after the date the City makes its initial determination pursuant to Paragraph C above. If the persons required to arbitrate under this section do not agree on an arbitrator before the 11th day after the date that arbitration is required, a district court shall appoint an arbitrator on the petition of any of the persons. The City and Developer are not a party in the arbitration. The decision and award of the arbitrator is final and binding on all parties and may be enforced in any court of competent jurisdiction.

D. *Records to be Maintained.* The CMAR and each Subcontractor shall, for a period of three (3) years following the date of acceptance of the work, maintain records that show (i) the name and occupation of each worker employed by the CMAR or Subcontractor in the construction of the Work provided for in this Agreement; and (ii) the actual per diem wages paid to each worker. The records shall be open at all reasonable hours for inspection by the Developer or City. The provisions of Paragraph 6.23, Right to Audit, shall pertain to this inspection.

E. *Progress Payments.* With each progress payment or payroll period, whichever is more frequent, the CMAR shall submit an affidavit stating that the CMAR has complied with the requirements of Chapter 2258, Texas Government Code.

F. *Posting of Wage Rates.* The CMAR shall post prevailing wage rates in a conspicuous place at all times.

G. *Subcontractor Compliance.* The CMAR shall include in its subcontracts and/or shall otherwise require all of its Subcontractors to comply with Paragraphs A through G above.

6.09 *Patent Fees and Royalties*

A. CMAR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Developer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Developer in the Contract Documents. Failure of the Developer to disclose such information does not relieve the CMAR from its obligations to pay for the use of said fees or royalties to others.

B. To the fullest extent permitted by Laws and Regulations, CMAR shall indemnify and hold harmless Developer and the other Indemnitees, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.10 *Permits and Utilities*

A. *CMAR obtained permits and licenses.* CMAR shall obtain and pay for all construction permits and licenses except those provided for below, in the Supplementary Conditions (if used), or Contract Documents. Developer shall assist CMAR, when necessary, in obtaining such permits and licenses.

CMAR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the effective date of the Agreement, except for permits provided by the Developer as specified in 6.10.B. Developer shall pay all charges of utility owners for connections providing permanent service to the Work.

B. *Developer obtained permits and licenses.* Developer will obtain and pay for all permits and licenses as provided for below, in the Supplementary Conditions (if used), or Contract Documents. It will be the CMAR's responsibility to carry out the provisions of the permit. If the CMAR initiates changes to the Work beyond the scope of any Developer-acquired permit, the CMAR is responsible for

obtaining clearances and coordinating with the appropriate regulatory agency. The Developer will not reimburse the CMAR for any cost associated with these additional requirements of any Developer- acquired permit. The following are permits the Developer will obtain if required:

1. Texas Department of Transportation Permits
2. U.S. Army Corps of Engineers Permits
3. Texas Commission on Environmental Quality Permits
4. Railroad Company Permits

6.11 Laws and Regulations

- A. CMAR shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, the Developer shall not be responsible for monitoring CMAR's compliance with any Laws or Regulations.
- B. If CMAR performs any Work that it is contrary to Laws or Regulations, CMAR shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be CMAR's responsibility to make certain that the Construction Documents are in accordance with Laws and Regulations, but this shall not relieve CMAR of CMAR's obligations under Paragraph 3.02.
- C. Changes in Laws or Regulations not known at the time of opening of Bids having an effect on the cost or time of performance of the Work may be the subject of an adjustment in GMP or Contract Time.

6.12 Taxes

- A. CMAR may be eligible for tax exemptions for materials incorporated into the Work. CMAR is responsible for obtaining such determination from the Texas Comptroller of Public Accounts. Texas Tax Code, Subchapter H, Sections 151.301-335 (as amended), provides guidance thereon.
- B. Texas Tax permits and information may be obtained from:
 1. Comptroller of Public Accounts
Sales Tax Division
Capitol Station
Austin, TX 78711; or
 2. <http://www.window.state.tx.us/taxinfo/taxforms/93-forms.html>

6.13 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas:

1. CMAR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. CMAR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. At any time when, in the judgment of the Developer, the CMAR has obstructed or closed or is carrying on operations in a portion of a street, right-of-way, or easement greater than is necessary for proper execution of the Work, the Developer may require the CMAR to finish the section on which operations are in progress before work is commenced on any additional area of the Site.

3. Should any Damage Claim be made by any such owner or occupant because of the performance of the Work, CMAR shall promptly attempt to resolve the Damage Claim.

4. ***To the fullest extent permitted by law, CMAR shall indemnify and hold harmless Developer and other Indemnitees from and against all claims, costs, losses, and damages arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Developer or other Indemnitees pursuant to this Section.***

B. *Removal of Debris During Performance of the Work:* During the progress of the Work CMAR shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Site Maintenance Cleaning:* 24- hours after written notice is given to the CMAR that the clean-up on the job site is proceeding in a manner unsatisfactory to the Developer, and if the CMAR fails to correct the unsatisfactory procedure, the Developer may take such direct action as the Developer deems appropriate to correct the clean-up deficiencies cited to the CMAR in the written notice (by letter or electronic communication), and the costs of such direct action, plus 25 % of such costs, shall be deducted from the monies due or to become due to the CMAR.

D. *Final Site Cleaning:* Prior to Final Acceptance of the Work, CMAR shall clean the Site and the Work and make it ready for utilization by Developer or adjacent property owner. At the completion of the Work, CMAR shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition or better all property disturbed by the Work.

- E. Loading Structures:* CMAR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CMAR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.14 Record Documents

A. CMAR shall maintain in a safe place at the Site or in a place designated by the CMAR and approved by the Developer, one (1) record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all accepted Submittals will be available to Developer for reference. Upon completion of the Work, these record documents, any operation and maintenance manuals and Submittals will be delivered to Developer prior to Final Inspection. CMAR shall include accurate locations for buried and imbedded items.

6.15 Safety and Protection

- A. CMAR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractor(s) of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.

CMAR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;
 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction of the Work.
- B. CMAR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CMAR shall notify owners of adjacent property and owners of Underground Facilities and other utility owners when prosecution of the Work may affect them and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

- C. CMAR shall comply with the applicable requirements of City's safety programs, if any.
- D. CMAR shall inform Developer of the specific requirements of CMAR's safety program, if any, with which Developer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.15.A.2 or 6.15.A.3 caused, in whole or in part, by CMAR, any Subcontractor, Supplier, or any other individual or entity employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CMAR.
- F. CMAR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Developer has accepted the Work.

6.16 Safety Representative

CMAR shall inform Developer in writing of CMAR's designated safety representative at the Site.

6.17 Hazard Communication Programs

CMAR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers in accordance with Laws or Regulations.

6.18 Emergencies and/or Rectification

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, CMAR is obligated to act to prevent threatened damage, injury, or loss. CMAR shall give Developer prompt written notice if CMAR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Developer determines that a change in the Contract Documents is required because of the action taken by CMAR in response to such an emergency, a Change Order may be issued. In no event will CMAR be entitled to additional time or money if the emergency was caused by the acts, errors, or omissions of CMAR, its Subcontractors, or its Suppliers.

B. Should the CMAR fail to respond to a request from the Developer to rectify any discrepancies, omissions, or correction necessary to conform with the requirements of the Contract Documents, the Developer shall give the CMAR written notice that such work or changes are to be performed. The written notice shall direct attention to the discrepant condition and request the CMAR to take remedial action to correct the condition. In the event the CMAR does not take positive steps to fulfill this written request, or does not show just cause for not

taking the proper action, within 24 hours, the Developer may take such remedial action with Developer forces or by contract. The Developer shall deduct an amount equal to the entire costs for such remedial action, plus 25%, from any funds due or become due the CMAR on the Project.

6.19 Submittals and Samples

- A. CMAR shall submit required Submittals and Samples to Developer for review and acceptance.

Each Submittal or Sample shall be uniquely identified.

1. Submit three copies of any Submittal unless otherwise specified in the Supplemental Conditions.

2. Data shown on the Submittals will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Developer the services, materials, and equipment CMAR proposes to provide and to enable Developer to review the information for the limited purposes required by Paragraph 6.19.C.

3. Submittals submitted as herein provided by CMAR and reviewed by Developer for conformance with the design concept shall be executed in conformity with the Contract Documents unless otherwise required by Developer.

4. When Submittals are submitted for the purpose of showing the installation in greater detail, their review shall not excuse CMAR from requirements shown on the Drawings and Specifications.

5. For-Information-Only Submittals upon which the Developer is not expected to conduct review or take responsive action shall be so identified.

6. Submit the required number of Samples as specified in the Supplemental Conditions.

7. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Developer may require to enable Developer to review the submittal for the limited purposes required by Paragraph 6.19.C.

- B. Where a Submittal is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Developer's review and acceptance of the pertinent submittal will be at the sole expense and responsibility of CMAR.

C. *Developer's Review:*

1. Developer will provide timely review of Submittals. Developer's review and acceptance will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole.

2. Developer's review and acceptance will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and acceptance of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Developer's review and acceptance shall not relieve CMAR from responsibility for any variation from the requirements of the Contract Documents unless CMAR has complied with the requirements of Section 01 33 00 and Developer has given written acceptance of each such variation by specific written notation thereof incorporated in or accompanying the Submittal.

Developer's review and acceptance shall not relieve CMAR from responsibility for complying with the requirements of the Contract Documents.

6.20 Continuing the Work

Except as otherwise provided, CMAR shall carry on the Work and adhere to the Project Schedule during all disputes or disagreements with Developer. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Developer and CMAR may otherwise agree in writing.

6.21 CMAR's General Warranty and Guarantee

A. CMAR warrants and guarantees to Developer and the City that all Work will be in accordance with the Contract Documents and will not be defective. Developer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors and the City shall be entitled to rely on representation of CMAR's warranty and guarantee.

B. CMAR's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than CMAR, Subcontractors, Suppliers, or any other individual or entity for whom CMAR is responsible; or
2. normal wear and tear under normal usage.

- C. CMAR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents nor act as a release of CMAR's obligation to perform the Work in accordance with the Contract Documents:
1. observations by Developer or the City;
 2. recommendation or payment by Developer of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion or Final Acceptance by Developer or the City or any payment related thereto by Developer;
 4. use or occupancy of the Work or any part thereof by Developer or the City;
 5. any review and acceptance of a Submittal by Developer or the City;
 6. any inspection, test, or approval by others; or
 7. any correction of defective Work by Developer or the City.
- D. The CMAR shall remedy any defects or damages in the Work that was not performed in accordance with the Contract Documents, and pay for any damage to other work or property resulting therefrom which shall appear within a period of two (2) years from the date of Substantial Completion of the Work and shall furnish a good and sufficient maintenance bond, complying with the requirements of Article 5.02.C. The Developer will give notice of observed defects with reasonable promptness. This obligation to correct the work shall not act as a limitation on the time period in which Developer or the City may bring a claim against CMAR. All such claims may be raised for the full period of repose.

6.22 Additional Professional Design Services

A. CMAR will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out CMAR's responsibilities for construction means, methods, techniques, sequences and procedures.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of CMAR by the Contract Documents, Developer will specify all performance and design criteria that such services must satisfy. CMAR shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such professional. Submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Developer.

C. Developer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by CMAR's design professionals.

D. Pursuant to this Paragraph 6.21, Developer's review, if any, of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Developer's review and acceptance of Submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.19.C.

6.23 Right to Audit

A. The CMAR agrees that the Developer and the City shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any directly pertinent books, documents, papers, and records of the CMAR involving transactions relating to this Agreement. CMAR agrees that the Developer and City shall have access during Regular Working Hours to all necessary CMAR facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this Paragraph. The Developer and City shall give CMAR reasonable advance notice of intended audits.

B. CMAR further agrees to include in all its subcontracts hereunder a provision to the effect that the Subcontractor(s) agree that the Developer and City shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any directly pertinent books, documents, papers, and records of such Subcontractor, involving transactions to the subcontract (except that any lump sum amounts or agreed-upon rates shall not be subject to audit), and further, that Developer and City shall have access during Regular Working Hours to all Subcontractor facilities, and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this Paragraph. The Developer and City shall give Subcontractor reasonable advance notice of intended audits.

C. CMAR and Subcontractor agree to photocopy such documents as may be requested by the Developer. The Developer agrees to reimburse CMAR or Subcontractor for the cost of the copies at the rate published in the Texas Administrative Code in effect as of the time copying is performed.

6.24 Nondiscrimination

A. The City is responsible for operating Public Transportation Programs and implementing transit-related projects, which are funded in part with Federal financial assistance awarded by the U.S. Department of Transportation and the Federal Transit

Administration (FTA), without discriminating against any person in the United States on the basis of race, color, or national origin.

- B. *Title VI, Civil Rights Act of 1964 (the “Act”) as amended:* CMAR shall comply with the requirements of the Act and the Regulations as further defined in the Supplementary Conditions (if used) for any project receiving Federal assistance.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

A. Developer and/or the City may perform other work related to the Project at the Site with Developer’s employees, or other contractors, or through other direct contracts therefor, or have other work performed by utility owners; and such other contractors shall be responsible for procuring their own property, liability or workers compensation insurance. If such other work is not noted in the Contract Documents, then written notice thereof will be given to CMAR prior to starting any such other work.

B. CMAR shall afford each other contractor who is a party to such a direct contract, each utility owner, and Developer/City, if Developer/City is performing other work with Developer/City’s employees or other Developer/City contractors, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. CMAR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CMAR shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that CMAR may cut or alter others' work with the written consent of Developer and the others whose work will be affected.

C. If the proper execution or results of any part of CMAR’s Work depends upon work performed by others under this Article 7, CMAR shall inspect such other work and promptly report to Developer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CMAR’s Work. CMAR’s failure to so report will constitute an acceptance of such other work as fit and proper for integration with CMAR’s Work except for latent defects in the work provided by others.

7.02 *Coordination*

A. If Developer intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions (if used) or otherwise communicated to CMAR:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions (if used), Developer shall have authority for such coordination.

ARTICLE 8 – DEVELOPER’S RESPONSIBILITIES

8.01 *Communications to CMAR*

Developer shall issue all communications to CMAR.

8.02 *Furnish Data*

Developer shall timely:

- A. Provide to CMAR all criteria and full information as to its requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which the Developer will require to be included in the Project’s design or other information required under the Contract Documents.
- B. Provide to CMAR all non-confidential technical data in its possession which it may lawfully release, including but not limited to, maps, surveys, drawings, soils or geotechnical reports, and any other information required by CMAR. Unless such technical data is included in the Construction Documents, it is provided to CMAR for informational purposes only and CMAR will rely on the same at its own risk.

8.03 *Pay When Due*

Developer shall make payments to CMAR in accordance with Article 14.

8.04 *Change Orders*

Developer shall execute Change Orders in accordance with Paragraph 10.03.

8.05 *Inspections, Tests, and Approvals*

Developer’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.

8.06 *Limitations on Developer’s Responsibilities*

- A. The Developer shall not supervise, direct, or have control or authority over, nor be responsible for, CMAR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CMAR to comply with Laws and Regulations applicable to the performance of the Work. Developer will not be responsible for CMAR's failure to perform the Work in accordance with the Contract Documents.
- B. Developer will notify the CMAR of any applicable Developer safety plans pursuant to Paragraph 6.15.

8.07 Undisclosed Hazardous Environmental Condition

Developer's responsibility with respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

ARTICLE 9 – DEVELOPER'S OBSERVATION STATUS DURING CONSTRUCTION

9.01 Developer's Project Representative

Developer will provide one or more Project Representative(s) for the duration of the Project. The duties and responsibilities and the limitations of authority of Developer's Project Representative(s) during each phase of the Work are set forth in the Contract Documents. Developer, in its discretion, may perform any of its obligations under this Article 9 through its Project Manager, provided that CMAR understands and agrees that Project Manager does not have the authority to authorize any adjustment to the GMP or Contract Time, any Change Order or Field Order, any amendment to the Contract Documents, or any waiver of Developer's rights under the Contract Documents.

9.02 Visits to Site

A. Developer's Project Representative will make visits to the Site at intervals appropriate to the various stages of the Work as Developer deems necessary in order to observe the progress that has been made on the various aspects of the Work. Based on information obtained during such visits and observations, Developer's Project Representative will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Developer's Project Representative will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Developer's Project Representative's efforts will be directed toward providing Developer a greater degree of confidence that the completed Work will conform generally to the Contract Documents.

B. Developer's Project Representative's visits and observations are subject to all the limitations on authority and responsibility in the Contract Documents including those set forth in Paragraph 8.06.

9.03 Authorized Variations in Work

Developer's Project Representative may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the GMP or the Contract Time and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Developer and CMAR, who shall perform the Work involved promptly.

9.04 Rejecting Defective Work

Developer will have authority to reject Work which Developer's Project Representative, in conjunction with input from Developer and City inspectors, believes to be defective, or will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Developer will have authority to conduct special inspection or testing of the Work as provided in Article 13, whether or not the Work is fabricated, installed, or completed.

9.05 Determinations for Work Performed

CMAR will determine the actual quantities and classifications of Work performed. Developer's Project Representative will review with CMAR the preliminary determinations on such matters before rendering a written recommendation. Developer's written decision will be final (except as modified to reflect changed factual conditions or more accurate data).

9.06 Decisions on Requirements of Contract Documents and Acceptability of Work

- A. Developer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder.
- B. Developer will render a written decision on any issue referred.
- C. Developer's written decision on the issue referred will be final and binding on the CMAR, subject to the provisions of Paragraph 10.06.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS; EXTRA WORK

10.01 Authorized Changes in the Work

- A. Without invalidating the Agreement and without notice to any surety, Developer may, at any time or from time to time, order Extra Work. Upon notice of such Extra Work, CMAR shall provide Developer with any impact to the GMP or Contract Time. Upon Developer's approval of the same, the Extra Work shall be memorialized by a Change Order signed by Developer and CMAR.

- B. For minor changes of Work not requiring changes to Contract Time or GMP, a Field Order may be issued by the Developer.

10.02 Unauthorized Changes in the Work

CMAR shall not be entitled to an increase in the GMP or an extension of the Contract Time with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.18.

10.03 Execution of Change Orders

A. Developer and CMAR shall execute appropriate Change Orders covering:

1. changes in the Work which are: (i) ordered by Developer pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08 or Developer's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
2. changes in the GMP or Contract Time which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed.

10.04 Extra Work

A. Should a difference arise as to what does or does not constitute Extra Work, or as to the payment thereof or impact to the Contract Time, and the Developer insists upon its performance, the CMAR shall proceed with the work after making written request for written orders and shall keep accurate account of the actual reasonable cost thereof. Contract Claims regarding Extra Work shall be made pursuant to Paragraph 10.06.

B. The CMAR shall furnish the Developer such installation records of all deviations from the original Contract Documents as may be necessary to enable the Developer to prepare for permanent record a corrected set of plans showing the actual installation.

C. The compensation agreed upon for Extra Work whether initiated by a Change Order or as set forth in Section 10.04A shall be a full, complete and final payment for all adjustments to the Contract Time and costs CMAR incurs as a result or relating to the change or Extra Work, whether said costs are known, unknown, foreseen or unforeseen at that time, including without limitation, any costs for delay, extended overhead, ripple or impact cost, or any other effect on changed or unchanged work as a result of the change or Extra Work.

10.05 Notification to Surety

If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents

(including, but not limited to, GMP or Contract Time), the giving of any such notice will be CMAR's responsibility. The amount of each applicable bond will be adjusted by the CMAR to reflect the effect of any such change.

10.06 Contract Claims Process

A. *Developer's Decision Required:* All Contract Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Developer for decision. A decision by Developer shall be required as a condition precedent to any exercise by CMAR of any rights or remedies it may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Contract Claims.

B. *Notice:*

1. written notice stating the general nature of each Contract Claim shall be delivered by the CMAR to Developer no later than 15 days after the start of the event giving rise thereto. The responsibility to substantiate a Contract Claim shall rest with the party making the Contract Claim.

2. notice of the amount or extent of the Contract Claim, with supporting data shall be delivered to the Developer on or before 45 days from the start of the event giving rise thereto (unless the Developer allows additional time for CMAR to submit additional or more accurate data in support of such Contract Claim).

3. a Contract Claim for an adjustment in GMP shall be prepared in accordance with the provisions of Paragraph 12.02.

4. a Contract Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 12.03.

5. each Contract Claim shall be accompanied by CMAR's written statement that the adjustment claimed is the entire adjustment to which the CMAR believes it is entitled as a result of said event.

C. *Developer's Action:* Developer will review each Contract Claim and, within 30 days after receipt of the last submittal of the CMAR, if any, take one of the following actions in writing:

1. deny the Contract Claim in whole or in part; or

2. notify the CMAR that the Developer is unable to resolve the Contract Claim if, in the Developer's sole discretion, it would be inappropriate for the Developer to do so. For purposes of further resolution of the Contract Claim, such notice shall be deemed a denial.

- D. Developer's written action under Paragraph 10.06.C will be final and binding, unless Developer or CMAR invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- E. No Contract Claim for an adjustment in GMP or Contract Time will be valid if not submitted in accordance with this Paragraph 10.06.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 Cost of the Work

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by CMAR in the proper performance of the Work. When the value of any Work is covered by a Change Order, the costs to be reimbursed to CMAR will be only those additional or incremental costs required because of the change in the Work. Such Cost of the Work shall not include any of the costs itemized in Paragraph 11.01.B, but shall include, but not be limited to, the following items:
 - 1. payroll costs for employees in the direct employ of CMAR in the performance of the Work under schedules of job classifications agreed upon by Developer and CMAR. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include;
 - a. salaries with a 55% markup, or
 - b. salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of Regular Working Hours, Weekend Working Hours, or legal holidays, shall be included in the above to the extent authorized by Developer.
 - 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. Costs of materials described in this paragraph in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be provided to the Developer at the completion of the Work or, at the Developer's option, shall be sold by the CMAR or returned to the supplier; amounts realized, if any, from such sales or returns shall be credited to the Developer as a deduction from the Cost of the Work.

3. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from CMAR or others in accordance with rental agreements approved by Developer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
4. Payments made by CMAR to its Subcontractors for Work performed by Subcontractors. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined by the CMAR.
 - a. Full rental cost for rented, leased, and/or owned equipment shall not exceed the rates listed in the Rental Rate Blue Book published by Equipment Watch, a unit of Penton Media, Inc. ("Blue Book"), as adjusted to the regional area of the Project. The most recent published edition in effect at the commencement of the actual equipment use shall be used.
 - b. Rates shall apply to equipment in good working condition. Equipment not in good condition, or larger than required, may be rejected by Developer's Project Representative or Engineer or accepted at reduced rates.
 - c. Equipment in Use: Actual equipment use time documented by the Engineer shall be the basis that the equipment was on and utilized at the Project site. In addition to the leasing rate above, equipment operational costs shall be paid at the estimated operating cost, payment category (and the table below), and associated rate set forth in the Blue Book if not already included in the lease rate. The hours of operation shall be based upon actual equipment usage to the nearest full hour, as recorded by the Engineer.

Actual Usage	Blue Book Payment Category
Less than 8 hours	Hourly Rate
8 or more hours but less than 7 days	Daily Rate
7 or more days but less than 30 days	Weekly Rate
30 days or more	Monthly Rate

- d. Equipment when idle (Standby): Idle or standby equipment is equipment on-site or in transit to and from the Work site and necessary to perform the Work under the modification but not in actual use. Idle equipment time, as documented by the Engineer, shall be paid at the leasing rate determined in Paragraph 11.01.A.4.c., excluding operational costs.
 - e. Where a breakdown occurs on any piece of equipment, payment shall cease for that equipment and any other equipment idled by the breakdown. If any part of the Work is shut down by the Developer, standby time will be paid during non-operating work hours if diversion of equipment to other Work is not practicable. Project Representative reserves the right to cease standby time payment when an extended shutdown is anticipated.
- 5. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed by CMAR for services specifically related to the Work.
 - 6. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of CMAR's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, dismantling and removal of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of CMAR.
 - c. Sales, consumer, use, and other similar taxes related to the Work, and for which CMAR is liable not covered under Paragraph 6.12, as imposed by Laws and Regulations.
 - d. Deposits lost for causes other than negligence of CMAR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - e. Losses and damages (and related expenses) caused by damage to any of the Work that has been completed and accepted by the Developer, not compensated by insurance or otherwise, sustained by CMAR in connection with the performance of the Work, provided such losses and damages have resulted from causes other than the negligence of CMAR, any subcontractor, or anyone directly or indirectly employed by any of them or

for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Developer. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CMAR's fee. If, however, any such loss or damage to the Work that has been accepted by Developer requires reconstruction and CMAR is placed in charge thereof, CMAR shall be paid for services, a fee proportionate to that stated in Paragraph 12.01.

- f. The cost of utilities, fuel, and sanitary facilities at the Site.
- g. Minor expenses such as long distance telephone calls, telephone, facsimile transmissions and communication services at the Site, reproduction costs, progress photography costs, costs of general office and similar supplies, postage, express delivery and courier services, and similar petty cash items in connection with the Work.
- h. The costs of premiums for all bonds CMAR is required by the Contract Documents to purchase and maintain; the cost of all subcontractor bonds and/or an agreed-upon rate for subcontractor default insurance; and insurance at an agreed-upon rate.
- i. Costs of removal of debris from the site.
- j. That portion of the reasonable travel and subsistence expenses of the CMAR's personnel incurred while traveling in discharge of duties connected with the Work in accordance with the CMAR's written policies for personnel at or below the level of Project Superintendent.
- k. Company owned trucks, trailers and equipment while directly engaged in performance of Work for this Project, excluding the purchase of new vehicles by CMAR or subcontractors for this Project.
- l. Not Used.
- m. Fees and assessments for the building permit and for other permits, licenses and inspections for which the CMAR is required by the Contract Documents to pay.
- n. Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Paragraph *t* below.
- o. Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents and payments made in accordance with legal judgments or settlements against the CMAR

resulting from such suits or claims, such payments made only with the Developer's consent; provided, however, that such costs of legal defenses, judgments and settlements shall not be included in the calculation of the CMAR's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by provisions of the Contract Documents. In no event is CMAR entitled to recover any costs under this Section if CMAR had reason to believe that the required design, process, or product was an infringement of a patent or other intellectual property right and failed to promptly notify Developer.

- p. Legal or mediation costs, other than those arising from disputes between the Developer or City and CMAR, the CMAR/Developer/City and any Subcontractor, or reasonably incurred by the CMAR in the performance of the Work, except where covered under any indemnity by CMAR and only with the Developer's written permission.
- q. Reasonable expenses incurred in accordance with the CMAR's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel, for personnel below the level of Project Superintendent as defined in the Contract Documents.
- r. Reasonable costs incurred by the CMAR in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons or property, unless the emergency was caused by the acts, errors, or omissions of CMAR or its Subcontractors or Suppliers.
- s. Costs incurred by the CMAR in repairing or correcting damaged or nonconforming Work performed by the CMAR or its Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure of the CMAR or the CMAR's employees, including supervisory, administrative or managerial personnel, or Subcontractors or Suppliers to perform in accordance with the Contract Documents or by the failure of the CMAR's personnel to supervise adequately the Work of the subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the CMAR from insurance, its Subcontractors or its suppliers.
- t. Other costs incurred by the CMAR in performance of the Work if and to the extent approved in advance in writing by the Developer.
- u. Rental charges for temporary facilities, including site office trailer, office equipment, temporary facilities, temporary utilities, dumpsters and toilets.
- v. Mobilization and demobilization cost associated with Project.

- w. Project specific, on-site, safety inspection and related safety supplies and costs.
- x. Project specific, on site, quality control inspection and quality assurance and control costs.
- y. CMAR's contingency.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of CMAR's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by CMAR, whether at the Site or in CMAR's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the CMAR's fee.
2. Expenses of CMAR's principal and branch offices other than CMAR's office at the Site.
3. Any part of CMAR's capital expenses, including interest on CMAR's capital employed for the Work and charges against CMAR for delinquent payments.
4. Costs due primarily to the negligence of CMAR, any Subcontractor, any Supplier or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.
6. The CMAR's capital expenses, including interest on the CMAR's capital employed for the Work.
7. Rental costs of machinery and equipment, except as specifically provided in Paragraph 11.01.A.3.
8. Liquidated damages assessed the CMAR by the Developer.
9. Data processing and software costs related to the Work.

10. Company owned, leased or rented trucks for personal use of those persons listed in Paragraph 11.01.B.1 above.
 11. That portion of the reasonable travel and subsistence expenses of the CMAR's personnel incurred while traveling in discharge of duties connected with the Work in accordance with the CMAR's written policies for personnel identified in Paragraph 11.01.B.1 above.
 12. Developer's Contingency (unless Developer has authorized by Change Order additional scope into GMP).
 13. Allowance Items.
 14. Deductibles or self-insured retentions.
- C. *CMAR's Fee*: CMAR's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order for an adjustment in GMP is determined on the basis of Cost of the Work, CMAR's fee shall be determined as set forth in Paragraph 12.02.
- D. *Documentation*: Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, CMAR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Developer an itemized cost breakdown together with supporting data.
- E. For all subcontracts, the CMAR shall ensure compliance with Texas law.
- F. *Discounts, Rebates and Refunds*: Cash discounts obtained on payments made by the CMAR shall accrue to the Developer if (1) before making the payment, the CMAR included them in an Application for Payment and received payment therefore from the Developer or (2) the Developer has deposited funds with the CMAR with which to make payments; otherwise, cash discounts shall accrue to the CMAR. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Developer, and the CMAR shall make provisions so that they can be secured. Amounts which accrue to the Developer in accordance with the provisions of this paragraph shall be credited to the Developer as a deduction from the Cost of the Work.
- G Accounting Records*: The CMAR shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract Documents; the accounting and control systems shall be satisfactory to the Developer.

11.02 Allowances/Contingency

A. CMAR's Contingency

1. Any and all contingency funds proposed by CMAR shall be mutually agreed upon between the Developer and CMAR and included in the GMP.
2. CMAR's Contingency is available for the exclusive use of CMAR for unanticipated costs the CMAR has incurred that are not the basis for a Change Order under the Contract Documents. Examples may include but are not limited to trade buy-out differentials, overtime or acceleration, escalation of materials costs, correction of defective, damaged, or nonconforming Work, or subcontractor defaults, provided, however, that CMAR may not use CMAR's Contingency for any costs that are excluded under Section 11.01B.
3. These funds shall not be used to increase the GMP under the Contract Documents.
4. CMAR shall provide Developer notice of all anticipated charges against CMAR's contingency and shall provide monthly accounting of the balance including all reasonably foreseen future uses or potential uses of this contingency.

B. Developer's Contingency

1. Developer may hold its own contingency funds as determined solely by Developer which shall not be included in the GMP.
2. Developer's contingency funds are available for the exclusive use of the Developer to utilize in connection with this project. Any utilization of these funds shall be negotiated between the CMAR and the Developer and approved by a Change Order.
3. The Developer's Contingency is not available to the CMAR for any reason unless explicitly authorized by Change Order.

C. Allowance Item:

1. Any and all Allowance Items, as well as their corresponding Allowance values, are set forth at the GMP proposal and are included within the GMP.
2. Allowance Items may be based on design information then available to determine reasonable estimates for the Allowance Items. Examples may include non-critical path work, utility reimbursements, and pass-through items.
3. No work shall be performed on any Allowance Item without CMAR first obtaining in writing advanced authorization to proceed from Developer.

- D. Prior to Final Payment, appropriate documentation will be issued to reflect actual amounts due CMAR on account of Work covered by allowance, and the GMP, if necessary, shall be correspondingly adjusted.

11.03 Unit Price Work

- A. Where the Construction Documents provide that all or part of the Work is to be Unit Price Work, initially the GMP will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial GMP. Determinations of the actual quantities and classifications of Unit Price Work performed by CMAR will be made by Developer subject to the provisions of Paragraph 9.05.
- C. Work described in the Contract Documents, or reasonably inferred as required for a functionally complete installation, but not identified in the listing of unit price items shall be considered incidental to unit price work listed and the cost of incidental work included as part of the unit price.
- D. Developer may make an adjustment in the GMP in accordance with Paragraph 12.02if:
 - 1. the quantity of any item of Unit Price Work performed by CMAR differs materially and significantly from the estimated quantity of such item indicated in the Construction Documents; and
 - 2. there is no corresponding adjustment with respect to any other item of Work.
- E. *Increased or Decreased Quantities:* The Developer reserves the right to order Extra Work in accordance with Paragraph 10.01.
 - 1. If the changes in quantities or the alterations do not significantly change the character of work under the Contract Documents, the altered work may be paid for with allowance or contingency funds.
 - 2. If the changes in quantities or alterations significantly change the character of work, the Agreement will be amended by a Change Order in accordance with Article 10.
- 4. A significant change in the character of work occurs when:
 - a. the character of work for any item as altered differs materially in kind or nature from that in accordance with the Plans or the Construction Documents; or
 - b. a Major Item of work varies by more than 25% from the original Plans or Construction Documents quantity.

5. When the quantity of work to be done under any Major Item of the Agreement is more than 125% of the original quantity stated in the Agreement, then either party may request an adjustment to the unit price on the portion of the work that is above 125%.
6. When the quantity of work to be done under any Major Item of the Agreement is less than 75% of the original quantity stated in the Agreement, then either party may request an adjustment to the unit price.

11.04 Additional Compensation. Where CMAR may be entitled to additional compensation, the calculation to determine such additional compensation shall not include any costs or expenses for any home- office overhead and expenses and shall be limited to the costs incurred at the Project Site, examples of which include: project site trailer, project site utility costs, project site supervision, Project Engineer (billed on hourly rate) and Project Manager (based on hourly rate) and like Project site specific costs.

ARTICLE 12 – CMAR’S FEE, CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIME, DELAYS

12.01 CMAR’s Fee

The CMAR’s Fee shall be as negotiated and memorialized in the Agreement.

12.02 Change of GMP

- A. The GMP may only be changed by a Change Order.
- B. The value of any Work covered by a Change Order will be determined as follows:
 1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum or unit price plus CMAR’s Construction Services Fee, and shall include the cost of any secondary impacts that are foreseeable at the time of pricing the cost of Extra Work; or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum or unit price is not reached under Paragraph 12.02.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus CMAR’s Construction Services Fee.

4. the amount of credit to be allowed by CMAR to Developer for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a corresponding deduction in CMAR's Fee.

12.03 Change of Contract Time

- A. The Contract Time may only be changed by a Change Order.
- B. No extension of the Contract Time will be allowed for Extra Work or for a claimed delay unless the Extra Work or claimed delay is shown to be on the critical path of the Project Schedule or CMAR can show by critical path method analysis how the Extra Work or claimed delay adversely affects the critical path.

12.04 Delays

- A. Where CMAR is reasonably delayed in the performance or completion of any part of the Work due to delay beyond the control of CMAR, and that affected Work is on the critical path, the Contract Time may be extended in an amount equal to the impact to the critical path resulting from such delay if a Contract Claim is made therefor. Delays beyond the control of CMAR shall include, but not be limited to, acts or neglect by Developer or its Engineer or consultants, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics that are not in effect or reasonable capable of anticipation at the time of this Agreement (which excludes COVID-19 generally, but could include a new variant), abnormal weather conditions, or acts of God; provided that CMAR acknowledges and agrees that adjustments in the Contract Time will be NOT permitted for a delay (1) that is proximately caused by the negligence or fault of the CMAR or its Subcontractors or Suppliers tier or (2) that could have been avoided by the CMAR's timely notice to the Developer of the delay.
- B. If CMAR is delayed, Developer shall not be liable to CMAR for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) sustained by CMAR on or in connection with any other project or anticipated project of CMAR.
- C. CMAR shall not be entitled to an adjustment in GMP or Contract Time for delays within the control of CMAR. Delays, labor shortages, logistical challenges for material delivery, and supply chain issues attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CMAR.
- D. The CMAR shall receive no compensation for delays or hindrances to the Work, except when direct and unavoidable extra cost to the CMAR is caused by the acts or neglect of the Developer or its Engineer or consultants, or utility owners or separate contractors, including without limitation the failure of the Developer to provide information or material, if any, which is to be furnished by the Developer.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 Notice of Defects

Notice of all defective Work of which Developer has actual knowledge will be given to CMAR. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

Developer, independent testing laboratories, the City, and governmental agencies with jurisdictional interests shall have access to the Site and the Work at reasonable times for their observation, inspection, and testing. CMAR shall provide them proper and safe conditions for such access and advise them of CMAR's safety procedures and programs so that they may comply therewith as applicable.

13.03 Tests and Inspections

- A. CMAR will allow all laboratory tests as may be required by City. CMAR shall give Developer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests. To the extent CMAR provides any material testing, CMAR must contract with material testing laboratories pre-approved by the City.
- B. If Contract Documents, Laws or Regulations require any of the Work (or part thereof) to be inspected or tested by a third-party testing company, the City will perform such inspections, and Developer will pay all costs associated with any third-party testing outside of the GMP. All material testing laboratories will be selected from the City's pre-approved list.
- C. CMAR shall be responsible for arranging and obtaining and shall pay all costs in connection with any additional inspections, tests, re-tests, or approvals required for Developer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to CMAR's purchase thereof for incorporation in the Work. Such inspections, tests, re-tests, or approvals shall be performed by firms acceptable to Developer.
- D. Developer may arrange for the services of an independent testing laboratory ("Testing Lab") to perform any inspections or tests for any part of the Work, as determined solely by Developer.

1. Developer will coordinate such testing with CMAR;

2. Should any testing under this Section 13.03 D result in a “fail”, “did not pass” or other similar negative result, the CMAR shall be responsible for paying for any and all retests. CMAR’s cancellation without cause of Developer initiated testing shall be deemed a negative result and require retest.
 3. Any amounts owed for any retest under this Section 13.03 D shall be paid directly to the Testing Lab by CMAR. Developer will forward all invoices for retests to CMAR.
 4. If CMAR fails to pay the Testing Lab, Developer will not issue Final Payment until the Testing Lab is paid.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by CMAR without written concurrence of Developer, CMAR shall, upon request by Developer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at CMAR’s expense.
- G. CMAR shall have the right to make a Contract Claim regarding any retest or invoice issued under Section 13.03 D.
- H. CMAR will not install or relocate any sanitary sewer, storm drain, or water pipe unless a City inspector is present and gives consent to proceed.

13.04 Uncovering Work

- A. If any Work is covered contrary to the Contract Documents or specific instructions by the Developer or the City, it must, if requested by Developer, be uncovered for Developer’s observation and replaced at CMAR’s expense.
- B. If Developer considers it necessary or advisable that covered Work be observed by Developer or inspected or tested by others, CMAR, at Developer’s request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Developer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
1. If it is found that the uncovered Work is defective, CMAR shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); or Developer shall be entitled to accept defective Work in accordance with Paragraph 13.08 in which case CMAR shall still be responsible for all costs associated with exposing, observing, and testing the defective Work.

2. If the uncovered Work is not found to be defective, CMAR shall be compensated for costs and/or time directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction.

13.05 City or Developer May Stop the Work

If the Work is defective, or CMAR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, City or Developer may order CMAR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Developer to stop the Work shall not give rise to any duty on the part of Developer to exercise this right for the benefit of CMAR, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 Correction or Removal of Defective Work

- A. Promptly after receipt of written notice, CMAR shall correct all defective Work pursuant to an acceptable schedule, whether or not fabricated, installed, or completed, or, if the Work has been rejected by City or Developer, remove it from the Project and replace it with Work that is not defective. CMAR shall pay all claims, costs, additional testing, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others). Failure to require the removal of any defective Work shall not constitute acceptance of such Work.
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, CMAR shall take no action that would void or otherwise impair Developer's special warranty and guarantee, if any, on said Work.

13.07 Correction Period

- A. If within two (2) years after the date of Substantial Completion, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CMAR's use by City or Developer or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, CMAR shall promptly, without cost to City or Developer and in accordance with Developer's written instructions:
 1. repair such defective land or areas; or
 2. correct such defective Work; or
 3. if the defective Work has been rejected by City or Developer, remove it from the Project and replace it with Work that is not defective, and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If CMAR does not promptly comply with the terms of Developer's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Developer may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CMAR.

C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Contract Documents.

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work may be required to be extended for an additional period of six months after the end of the initial correction period. Developer shall provide 30 days written notice to CMAR should such additional warranty coverage be required. CMAR may dispute this requirement by filing a Contract Claim.

E. CMAR's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 Acceptance of Defective Work

If, instead of requiring correction or removal and replacement of defective Work, City or Developer prefers to accept it, Developer may do so. CMAR shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) attributable to City or Developer's evaluation of and determination to accept such defective Work and for the diminished value of the Work to the extent not otherwise paid by CMAR. If any such acceptance occurs prior to Final Acceptance, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Developer shall be entitled to an appropriate decrease in the GMP, reflecting the diminished value of Work so accepted.

13.09 Developer May Correct Defective Work

A. If CMAR fails within a reasonable time after written notice from Developer to correct defective

Work, or to remove and replace rejected Work as required by Developer in accordance with Paragraph 13.06.A, or if CMAR fails to perform the Work in accordance with the Contract Documents, or if CMAR fails to comply with any other provision of the Contract Documents, Developer may, after seven (7) days written notice to CMAR, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.09, Developer shall proceed expeditiously. In connection with such corrective or remedial action, Developer may exclude CMAR from all or part of the Site, take possession of all or part of the Work and suspend services related thereto, and incorporate in the Work all materials and equipment incorporated in the Work, stored at the Site or for which Developer has paid CMAR but which are stored elsewhere. CMAR shall allow the City, Developer, Developer's representatives, agents, consultants, employees, and Developer's other contractors, access to the Site to enable Developer to exercise the rights and remedies under this Paragraph 13.09.

C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) incurred or sustained by Developer in exercising the rights and remedies under this Paragraph 13.09 will be charged against CMAR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Developer shall be entitled to an appropriate decrease in the GMP (or payment of such costs by CMAR to Developer upon demand).

D. CMAR shall not be allowed an extension of the Contract Time because of any delay in the performance of the Work attributable to the exercise of Developer's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CMAR AND COMPLETION

14.01 Schedule of Values

The Schedule of Values will serve as the basis for progress payments and will be incorporated into an Application for Payment acceptable to Developer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 Progress Payments

A. Applications for Payments:

1. CMAR is responsible for providing all information as required to become a vendor of the Developer.

2. CMAR shall submit to Developer for review an Application for Payment filled out and signed by CMAR covering the Work completed as of the date of the Application for Payment and accompanied by such supporting documentation as is required by the Contract Documents (including all Subcontractor and supplier invoices and conditional and, for previously paid Applications for Payment, unconditional lien/bond claim waivers on the statutory form from CMAR, Subcontractors, and suppliers). The CMAR's Fee for overhead and profit shall be payable on a monthly basis, prorated as a percentage of the contract time expended.
3. 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 in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that CMAR, on behalf of Developer, has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate insurance or other arrangements to protect Developer's interest therein, all of which must be satisfactory to Developer (including but not limited to proper segregation, tagging, and security for the materials).
4. Beginning with the second Application for Payment, it and each subsequent Application for Payment shall include an affidavit from CMAR stating that previous progress payments received on account of the Work have been applied on account to discharge CMAR's legitimate obligations associated with prior Applications for Payment. CMAR will deliver conditional and unconditional lien/bond claim waivers on the statutory form from itself and its Subcontractors and Suppliers demonstrating the same.
5. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications for Payment:

1. Developer will, within 30 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment or return the Application for Payment to CMAR indicating reasons for refusing payment. In the latter case, CMAR may make the necessary corrections and resubmit the Application for Payment.
2. Developer's processing of any payment requested in an Application for Payment will be based on Developer's observations of the executed Work, and on Developer's review of the Application for Payment and the accompanying data and schedules, that to the best of Developer's knowledge:
 - a. the Work has progressed to the point indicated;

- b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Final Acceptance, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Work performed under Paragraph 9.05, and any other qualifications stated in the recommendation).
- 3. Processing any such payment will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Developer in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle CMAR to be paid additionally by Developer or entitle Developer to withhold payment to CMAR, or
 - c. CMAR has complied with Laws and Regulations applicable to CMAR's performance of the Work.
- 4. Developer may refuse to process the whole or any part of any payment due to evidence or the results of inspections or tests, to such extent as may be necessary to protect Developer from loss because:
 - a. the Work is defective, or the completed Work has been damaged by the CMAR or his subcontractors, requiring correction or replacement;
 - b. discrepancies in quantities contained in the current or previous Applications for Payment;
 - c. the GMP has been reduced by Change Orders;
 - d. Developer has been required to correct Defective Work or complete Work in accordance with Paragraph 13.09; or
 - e. Developer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A. C. C. *Payment*:
- 1. CMAR will be paid pursuant to the requirements of this Article 14 and payment of any undisputed portion of an Application for Payment will become due within seven (7) days after Developer receives payment of the same from the City.

2. Upon failure by Developer to so pay, CMAR may upon ten days' notice and opportunity to cure suspend performance of Work (whichever phase), or in the event any Application for Payment remains unpaid for ninety days on the basis of non-performance on the part of the Developer, to terminate this Agreement. Interest at the rate of two percent per annum shall be payable on any amounts which are not in dispute but are unpaid by Developer after sixty days after receipt of an Application for Payment. When such progress payments are restored, unless terminated as provided for herein, CMAR shall resume providing all agreed-upon Services.

D. Reduction in Payment:

1. Developer may refuse to make payment of the amount requested because:

- a. Liens have been filed in connection with the Work, except where CMAR has delivered a specific bond satisfactory to Developer to secure the satisfaction and discharge of such Liens;
- b. there are other items entitling Developer to a set-off against the amount recommended; or
- c. Developer has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.4.a through 14.02.B.4.e or Paragraph 15.02.A.

2. If Developer refuses to make payment of the amount requested, Developer will give CMAR written notice stating the reasons for such action and shall pay CMAR any amount remaining after deduction of the amount so withheld. Developer shall pay CMAR the amount so withheld, or any adjustment thereto agreed to by Developer and CMAR, when CMAR remedies the reasons for such action.

14.03 CMAR's Warranty of Title

CMAR warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to City via Developer no later than the time of payment free and clear of all Liens.

14.04 Partial Utilization

A. Prior to Final Acceptance of all the Work, the public may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which City and Developer determine constitutes a separately functioning and usable part of the Work that can be used for its intended purpose without significant interference with CMAR's performance of the remainder of the Work. Developer at any time may notify CMAR in writing

to permit the public to use or occupy any such part of the Work which City, Developer and CMAR determine to be ready for its intended use, subject to the following conditions:

1. CMAR at any time may notify Developer in writing that CMAR considers any such part of the Work ready for its intended use.
2. Within a reasonable time after notification, City, Developer and CMAR shall make an inspection of that part of the Work to determine its status of completion. If City or Developer do not consider that part of the Work to be substantially complete, Developer will notify CMAR in writing giving the reasons therefor.
3. Partial Utilization will not constitute Final Acceptance by Developer.

14.05 Final Inspection

A. Upon written notice from CMAR that the entire Work is complete in accordance with the Contract Documents Developer will:

1. within 10 days schedule a Final Inspection with CMAR; and
2. no later than 10 days thereafter, notify CMAR in writing of all particulars which the Final Inspection reveals that the Work is incomplete or defective. CMAR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

B. No time charge will be made against the CMAR between the date the written notice to the Developer is issued and the date of Final Inspection. Should the Developer determine that the Work is not ready for Final Inspection, Developer will notify the CMAR in writing of the reasons and Contract Time will resume.

14.06 Final Acceptance

Upon completion by CMAR, to City's and Developer's satisfaction, of any additional Work identified in the Final Inspection, City will issue to CMAR a letter of Final Acceptance.

14.07 Final Payment

A. *Application for Final Payment:*

1. Upon receipt of a letter of Final Acceptance, CMAR may make an application for final payment following the procedure for progress payments in accordance with the Contract Documents.
2. The final Application for Payment shall be accompanied by:

- a. all documentation called for in the Contract Documents(except as previously delivered), including but not limited to the evidence of insurance required by Paragraph 5.03;
- b. consent of the surety, if any, to final payment;
- c. a list of all pending or released Damage Claims against City or Developer that CMAR believes are unsettled; and
- d. affidavits of payments and complete and legally effective releases or waivers (satisfactory to Developer) of all Lien rights arising in connection with the Work.

B. Payment Becomes Due:

- 1. After Developer's acceptance of the Application for Final Payment and accompanying documentation, and:
 - a. after subtracting previous payments made; and
 - b. after subtracting any sum(s) to which the Developer is entitled, including but not limited to liquidated damages; and
 - c. after all Damage Claims have been resolved:
 - i) directly by the CMAR; or
 - ii) CMAR provides evidence that the Damage Claim has been reported to CMAR's insurance provider for resolution; then
 - d. Final Payment will become due and payable.
- 2. The making of the final payment by the Developer shall not relieve the CMAR of any guarantees or other requirements of the Contract Documents which specifically continue thereafter.

14.08 Final Completion Delayed and Partial Retainage Release

A. If after Substantial Completion final completion of the Work is significantly delayed, and if Developer so confirms, Developer may, upon receipt of CMAR's Application for Final Payment, 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 to be held by Developer for Work not fully completed or corrected is less than the retainage stipulated in Paragraph 14.02.A.5., and if bonds have been furnished as required in Paragraph 5.02, 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 CMAR to Developer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Contract Claims.

B. *Partial Retainage Release.* The Developer may release a portion of the amount retained pursuant to Paragraph 14.02.A.5. provided that all required Work is completed as determined by the Developer. Before the release, all submittals and final quantities must be completed and accepted by the Developer. An amount sufficient to ensure Final Completion will be retained.

14.09 Waiver of Claims

The acceptance of final payment by CMAR will constitute a release of the Developer and City from all claims or liabilities under the Agreement for anything done or furnished or relating to the Work under the Contract Documents or any act or neglect of Developer or City related to or connected with the Agreement.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 Developer May Suspend Work

A. At any time and without cause, Developer may suspend the Work or any portion thereof by written notice to CMAR and which may fix the date on which Work will be resumed. CMAR shall resume the Work on the date so fixed. During temporary suspension of the Work covered by these Contract Documents, for any reason, the Developer will make no extra payment for stand-by time of construction equipment and/or construction crews.

B. Following such suspension, should the CMAR not be able to complete a portion of the Project due to causes beyond the control of and without the fault or negligence of the CMAR, and should it be determined by mutual consent of the CMAR and Developer that a solution to allow construction to proceed is not available within a reasonable period of time, CMAR may request an extension in Contract Time, directly attributable to any such suspension.

C. If it should become necessary to suspend the Work for an indefinite period, the CMAR shall store all materials in such a manner that they will not obstruct or impede the public unnecessarily nor become damaged in any way, and CMAR shall take every precaution to prevent damage or deterioration of the work performed; CMAR shall provide suitable drainage about the work, and erect temporary structures where necessary.

D. CMAR may be reimbursed for the cost of moving its equipment off the job and returning the necessary equipment to the job when it is determined by the Developer that construction may be resumed. Such reimbursement shall be based on actual cost to the CMAR of moving the equipment and no profit will be allowed. Reimbursement may not be allowed if the equipment is moved to another construction project for the Developer.

15.02 Developer May Terminate for Cause

A. The occurrence of any one or more of the following events, by way of example but not of limitation, may justify termination for cause:

1. CMAR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, failure to adhere to the Project Schedule, as adjusted from time to time;
2. CMAR's failure to adhere to the City's Business Diversity Enterprise Ordinance;
3. CMAR's failure to perform and meet timelines as set forth in Paragraph 6.05.
4. CMAR's disregard of Laws or Regulations of any public body having jurisdiction;
5. CMAR's repeated disregard of the authority of City or Developer;
6. CMAR's violation in any substantial way of any provisions of the Contract Documents;
7. CMAR's failure to promptly make good any defect in materials or workmanship, or defects of any nature, the correction of which has been directed in writing by the City or Developer;
8. Substantial indication that the CMAR has made an unauthorized assignment of the Agreement or any funds due therefrom for the benefit of any creditor or for any other purpose;
9. Substantial evidence that the CMAR has become insolvent or bankrupt, or otherwise financially unable to carry on the Work satisfactorily; or
10. CMAR commences legal action in a court of competent jurisdiction against the City or Developer.

B. If one or more of the events identified in Paragraph 15.02A. occur, Developer will provide written notice to CMAR and Surety to arrange a conference with CMAR and Surety to address CMAR's failure to perform the Work. The Conference shall be held not later than 15 days, after receipt of notice.

1. If the Developer, CMAR, and Surety do not agree to allow the CMAR to proceed to perform under the Agreement, the Developer may, to the extent permitted by Laws and Regulations, declare CMAR in default and formally terminate the CMAR's right to complete the Agreement. CMAR's default shall not be declared earlier than 20 days after the CMAR and Surety have received notice of conference to address CMAR's failure to perform the Work.

2. If CMAR's services are terminated, Surety shall be obligated to take over and perform the Work. If Surety does not commence performance thereof within 15 calendar days after the date of written notice demanding Surety's performance of its obligations, then Developer, without process or action at law, may take over any portion of the Work.

3. If Developer completes the Work, Developer may exclude CMAR and Surety from the site and take possession of the Work, and all materials and equipment incorporated into the Work stored at the Site or for which Developer has paid CMAR or Surety but which are stored elsewhere, and finish the Work as Developer may deem expedient.

4. Whether Developer or Surety completes the Work, CMAR shall not be entitled to receive any further payment for Work satisfactorily completed prior to Termination until the Work is completely finished. If the unpaid balance of the GMP exceeds all claims, costs, losses and damages sustained by Developer arising out of or resulting from Developer or Surety completing the Work, such excess will be paid to CMAR, with Surety approval, up to the amount withheld prior to Termination. Any excess shall be retained by Developer unless any completion or take over agreement between Developer and Surety require said money to be paid to Surety. If Developer completes the Work due to Surety's failure to so perform, and any claims, costs, losses and damages exceed the unpaid balance, CMAR or Surety shall pay the difference to Developer. Such claims, costs, losses and damages incurred by Developer will be incorporated in a Change Order, provided that when exercising any rights or remedies under this Paragraph, Developer shall not be required to obtain the lowest price for the Work performed.

5. Neither Developer, nor any of its respective consultants, agents, officers, directors or employees shall be in any way liable or accountable to CMAR or Surety for the method by which the completion of the said Work, or any portion thereof, may be accomplished or for the price paid therefor.

6. Developer, notwithstanding the method used in completing the Agreement, shall not forfeit the right to recover damages from CMAR or Surety for CMAR's failure to timely complete the Work. CMAR shall not be entitled to any claim on account of the method used by Developer in completing the Work.

7. Maintenance of the Work shall continue to be CMAR and Surety's responsibilities as provided for in the bond requirements of the Contract Documents or any special guarantees provided for under the Contract Documents or any other obligations otherwise prescribed by law.

8. Termination of CMAR for Cause shall nullify any financial incentives which may be contained in the Agreement.

- C. Notwithstanding Paragraphs 15.02.B, CMAR's services will not be terminated if CMAR begins, within seven days of receipt of notice of intent to terminate, to correct its failure to perform and proceeds diligently to cure such failure within not more than 30 days of receipt of said notice.
- D. Where CMAR's services have been so terminated by Developer, the termination will not affect any rights or remedies of Developer against CMAR then existing or which may thereafter accrue. Any retention or payment of moneys due CMAR by Developer will not release CMAR from liability.
- E. To the extent that CMAR has provided a performance bond under the provisions of Paragraph 5.02, the termination procedures of that bond, if any, shall not supersede the provisions of this Article.

15.03 Developer May Terminate For Convenience

- A. Developer may, without cause and without prejudice to any other right or remedy of Developer, terminate the Agreement. Any termination shall be effected by mailing a notice of the termination to the CMAR specifying the extent to which performance of Work under the contract is terminated, and the date upon which such termination becomes effective. Receipt of the notice shall be deemed conclusively presumed and established when the letter is placed in the United States Postal Service Mail by the Developer. Further, it shall be deemed conclusively presumed and established that such termination is made with just cause as therein stated; and no proof in any claim, demand or suit shall be required of the Developer regarding such discretionary action.
- B. After receipt of a notice of Termination for Convenience, and except as otherwise directed by the Developer, the CMAR shall:
 - 1. Stop work under the Agreement on the date and to the extent specified in the notice of termination;
 - 2. place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the Work under the Agreement as is not terminated;
 - 3. terminate all orders and subcontracts to the extent that they relate to the performance of the Work terminated by notice of termination;
 - 4. transfer title to the City via Developer and deliver in the manner, at the times, and to the extent, if any, directed by the Developer:
 - a. the fabricated or un-fabricated parts, Work in progress, completed Work, supplies and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of the termination; and

- b. the completed, or partially completed plans, drawings, information and other property which, if the Agreement had been completed, would have been required to be furnished to the Developer;
- 5. complete performance of such Work as shall not have been terminated by the notice of termination; and
- 6. take such action as may be necessary, or as the Developer may direct, for the protection and preservation of the property related to its contract which is in the possession of the CMAR and in which the owner has or may acquire an interest.
- C. At a time not later than 30 days after the termination date specified in the notice of termination, the CMAR may submit to the Developer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by Developer.
- D. Not later than 15 days thereafter, the City shall accept title to such items provided, that the list submitted shall be subject to verification by the Developer upon removal of the items or, if the items are stored, within 45 days from the date of submission of the list, and any necessary adjustments to correct the list as submitted, shall be made prior to final settlement.
- E. Not later than 60 days after the notice of termination, the CMAR shall submit a termination claim to the Developer in the form and with the certification acceptable to the Developer. Unless a written extension request is made within such 60 day period by the CMAR, and granted by the Developer, any and all such claims shall be conclusively deemed waived.
- F. In such case, CMAR shall be paid, without duplication of any items, for:
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination;
 - 2. direct expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work;
 - 3. reasonable expenses directly attributable to termination; and
 - 4. overhead and profit in the form of a prorated amount of the CMAR's Fee, with such proportion
being "the cost of the work completed to date" divided by "GMP minus the CMAR's Fee".

- G. In the event of the failure of the CMAR and Developer to agree upon the whole amount to be paid to the CMAR by reason of the termination of the Work under Paragraph 15.03, the Developer shall determine, on the basis of information available to it, the amount, if any, due to the CMAR by reason of the termination and shall pay to the CMAR the amounts determined. CMAR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

ARTICLE 16 – DISPUTE RESOLUTION

Methods and Procedures

- A. Either Developer or CMAR may request mediation of any Contract Claim submitted for a decision under Paragraph 10.06 before such decision becomes final and binding. The request for mediation shall be submitted to the other party to the Agreement. Timely submission of the request shall stay the effect of Paragraph 10.06.E.
- B. Developer and CMAR shall participate in the mediation process in good faith. The process shall be commenced within 60 days of filing of the request.
- C. If the Contract Claim is not resolved by mediation, Developer’s action under Paragraph 10.06.C or a denial pursuant to Paragraphs 10.06.C.3 or 10.06.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Developer or CMAR:
1. elects in writing to invoke any other dispute resolution process provided for in the Supplementary Conditions (if used); or
 2. agrees with the other party to submit the Contract Claim to another dispute resolution process; or
 3. gives written notice to the other party of the intent to submit the Contract Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 Giving Notice

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
1. delivered in person to the individual noted in 17.01D below; or
 2. delivered electronically to the email address noted in 17.01D with a “read receipt verification” requested; or

3. In the case of any notice of Claim or Termination, delivered or sent by registered or certified mail, postage prepaid, or overnight delivery to the address noted in 17.01D.
- B. Business address changes must be promptly made in writing to the other party.
 - C. Whenever the Contract Documents specifies giving notice by electronic means such electronic notice shall be deemed sufficient upon confirmation of receipt by the receiving party.
 - D. Notice under this Section 17.01 shall be provided as set forth in Article 17 of the Agreement.

17.02 Computation of Times

When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday the next Business Day shall become the last day of the period.

17.03 Cumulative Remedies

The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 Survival of Obligations

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of CMAR.

17.05 Headings

Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

Attachment 2 –Construction Manager at Risk Agreement

Construction Manager at Risk Agreement is attached.

**AGREEMENT FOR CONSTRUCTION MANAGER-AT-RISK
PRE-CONSTRUCTION AND CONSTRUCTION SERVICES**

for

**CAMP BOWIE BOULEVARD ROADWAY
IMPROVEMENTS (MONTGOMERY
STREET TO UNIVERSITY DRIVE)**

THIS AGREEMENT FOR CONSTRUCTION MANAGER-AT-RISK SERVICES (CMAR)

which

INCLUDES SECTIONS FOR PRE-CONSTRUCTION PHASE SERVICES AND CONSTRUCTION PHASE SERVICES (“Agreement”), is made and entered into by and between the Crescent Property Services LLC (“Developer”) and **Construction, Inc.** (“CMAR”), a legal entity existing under the laws of the State of [REDACTED] and authorized to conduct business in the State of Texas. Developer and CMAR may be referred to herein as a “Party” or the “Parties”.

WHEREAS, the City of Fort Worth has identified a project known as Camp Bowie Boulevard Roadway Improvements (Montgomery Street to University Drive) (the “Project”) and has entered into that certain Community Facilities Agreement (City Secretary No. [REDACTED]) whereby Developer will deliver the Project on City’s behalf; and

WHEREAS, Developer desires to engage the CMAR to perform Construction Manager-At-Risk services, which consist of Pre-Construction Phase Services and Construction Phase Services, for the Project; and

WHEREAS, CMAR possesses broad experience, knowledge and technical resources to provide such services related to the design, permitting, construction and construction management for the Project; and

WHEREAS, Developer has engaged the services of Westwood Professional Services, Inc. (“Design Engineer”), to prepare the design of the Project; and

WHEREAS, CMAR was selected by Developer through a public competitive procurement process; and

WHEREAS, CMAR is willing and able to undertake and provide the services and to be responsible for the overall completion of the Project, as described on **Attachment A**, within a project budget of **\$7,500,000.00**, upon the terms, covenants, recitals, and conditions hereinafter set forth; and

WHEREAS, CMAR agrees to provide Preconstruction and Construction services as defined in **Attachments A and C**, and as further set forth in the relevant portion of the written proposal from the CMAR, dated the ____ day of ____, 20__, attached hereto as **Attachment B**; and

WHEREAS, the CMAR agrees to be bound by, and may incorporate into its construction phase contracts with its primary contractors, the Standard General Conditions for a CMAR Agreement (“General Conditions”), attached hereto as **Attachment C**; and

WHEREAS, capitalized terms not specifically defined herein shall have the meaning associated with those capitalized/defined terms as found in **Attachments A and C**. Conflicting definitions shall be harmonized to obtain a meaning within the intent of the Agreement or the Project’s scope.

NOW THEREFORE, for and in consideration of these recitals, compensation by Developer for the services to be rendered by CMAR, and the covenants and promises to be carried out by each Party, the Developer and CMAR hereby agree to perform the services described herein upon the terms and conditions set forth herein and any Attachments and Exhibits hereto, which are hereby incorporated.

ARTICLE 1 – SERVICES

- A. CMAR agrees to furnish all Preconstruction and Construction Phase Services, as described in **Attachments A and B**.
- B. The Preconstruction Phase Services shall commence within 7 calendar days after receipt of an authorization in the form of a Notice to Proceed from the Developer to CMAR and terminate upon conclusion of Guaranteed Maximum Price (GMP) negotiations. CMAR may initiate early works packages in advance of the Construction Phase, such as, but not limited to, preliminary site grading, utility relocations or procuring long-lead materials prior to final development of the GMP. No Construction Phase Services will commence until the Parties have entered into a written early work package which describes the Work to be performed thereunder, establishes a sub-GMP for such Work, establishes a Substantial Completion date for such Work, and establishes Liquidated Damages for CMAR’s failure to achieve such completion date. Costs of early works packages shall be included in the GMP.
- C. The Construction Phase Services shall commence within 7 calendar days after receipt of an authorization in the form of a Notice to Proceed from the Developer to CMAR. CMAR agrees to furnish all Construction Phase Services, as described in **Attachments A and B**, for the amount of the GMP, as hereinafter described, abiding by this Agreement and its Attachments and Amendments, to also include the Construction Documents created to affect the Work on the Project.
 - 1. CMAR agrees to timely commence construction to substantially complete the Work within the Contract Time, subject to Article 6 herein – Contract Time and Liquidated Damages.
 - 2. CMAR shall perform all Work in accordance with the requirements of the Contract Documents. CMAR shall at all times exercise complete and exclusive control over the construction means, methods, sequences, and techniques. CMAR shall provide all

necessary construction labor, materials, tools, equipment, as well as all construction supervision, inspection, and temporary utilities as required to complete the Work pursuant to the Construction Documents. CMAR shall be responsible for the proper performance of the work, including all work performed by its subcontractors, and any acts and omissions in connection with such performance.

- D. CMAR shall be responsible for obtaining and paying for any necessary temporary construction easements or permission from adjacent landowners to allow CMAR to perform the Work. CMAR shall present documentation of temporary construction easements or other permissions at the time the GMP is submitted to Developer.
- E. CMAR warrants to Developer that all materials and equipment furnished under this Agreement will be new, unless otherwise specified. The CMAR also warrants to Developer that all materials and equipment furnished under this Agreement will be in conformance with the Construction Documents.

ARTICLE 2 – COMPENSATION

- A. The Developer shall compensate CMAR for providing the Preconstruction Phase Services in the amount of \$ [REDACTED] (“Preconstruction Phase Fee”).
- B. The Developer shall compensate CMAR for providing the Construction Phase Services in the amount of [REDACTED] % of the Cost of Work (“Construction Phase Fee”).
- C. Notwithstanding Article 1, Paragraph C. or Paragraph B. of this Article, Developer may, by giving written notice at any time before the end of the Pre-Construction Services Phase, elect to terminate this Agreement should a GMP not be successfully negotiated or if the GMP, in the Developer’s reasonable estimation, exceeds or would exceed the Developer’s estimated Construction Budget. In such event, CMAR shall be paid for Preconstruction Services and Work authorized through an early work package performed up to the date of termination in accordance with this Agreement.
- D. Any unspent CMAR Contingency shall revert 100% to Developer.
- E. Savings – In the event the actual Cost of Work, inclusive of the Construction Phase Fee, is less than the GMP, as may be adjusted by Change Orders, at completion of the Project, 30.00% of the resulting savings will be paid to the CMAR as a performance incentive.
- F. Schedule Incentives to promote performance results by contractors may be established by CMAR for the Construction Phase. During development of the GMP, CMAR and Developer may determine an amount, which will be a part of the GMP, to be used for schedule incentives for subcontractors (subject to Developer’s sole discretion). Any of these funds which remain unspent shall be returned to Developer.

ARTICLE 3 – PAYMENT

Payment by Developer to CMAR is to be made as follows:

A. CMAR shall submit monthly an Application for Payment for Pre-Construction Phase Services describing the work performed during the preceding month. The Developer shall make payment pursuant to Paragraph 14.02 of the General Conditions.

B. CMAR shall submit monthly an Application for Payment for Construction Phase Services describing the Work performed during the preceding month. The Developer shall make payment pursuant to Paragraph 14.02 of the General Conditions, **less 5% withheld as retainage per pay application**, except that no retainage shall be held on CMAR's Construction Services Fee or General Conditions Costs. CMAR's Construction Services Fee and General Conditions costs shall each be shown as a line item in the Application for Payment.

ARTICLE 4 – GUARANTEED MAXIMUM PRICE

A. The GMP proposal for Construction of the Project shall be presented to the Developer no later than 30 days after receipt by CMAR of approved 90% plans or as otherwise mutually agreed. Elements to be considered in the GMP include but are not limited to:

1. Hard Costs (estimated or actually obtained by bid)
 - a. General Conditions Costs, see Section 11.01 of the General Conditions
 - b. Cost of Work (estimated or formally procured) (Open Book)
 - c. Other Fees as may be presented in **Attachments A or B**
2. CMAR's Construction Phase Fee
3. Contingencies and Allowances
 - a. CMAR's Contingency
 - b. Allowance Items

CMAR shall also submit, along with its GMP proposal: (1) a list of the clarifications and assumptions, if any, made by CMAR; and (2) the Project Schedule.

- B. After submission of the GMP proposal, CMAR and Developer shall meet to discuss and review the Design Documents and the GMP Proposal in an effort to negotiate a final GMP.
- C. When established and accepted by Developer in writing, the GMP shall be memorialized and incorporated as an amendment to this Agreement.
- D. If Developer rejects the GMP proposal, Developer and CMAR shall meet and confer as to how the Project may proceed or to affect a termination.

ARTICLE 5 – CHANGES IN THE WORK

The Developer, during either phase of services and without invalidating this Agreement, may order changes in the design of the Project and/or the Work consisting of additions, deletions or other revisions issued in the form of a Field Order or, where necessary, a Change Order to adjust the GMP and the Contract Time.

ARTICLE 6 - CONTRACT TIME AND LIQUIDATED DAMAGES

- A. Contract Time shall be calendar days from issuance of the Notice to Proceed for Construction Phase Services. The Contract Time will be reflected in the Project Schedule presented to Developer as part of the GMP proposal, provided that the Project Schedule will not exceed the Contract Time as indicated in this Article 6. CMAR will perform the required services in a timely manner and comply with the Project Schedule and any minor adjustments as reasonably requested by Developer. Major changes to the Project Schedule may be negotiated and memorialized by a Change Order. Unless delayed, as defined in the General Conditions, CMAR shall achieve Final Acceptance of the Work, including all punch list items, within sixty (60) days from the date of Substantial Completion.
- B. CMAR recognizes that *time is of the essence* to this Agreement and that City or Developer will suffer financial loss if the Work is not completed within the Contract Time plus any mutually agreed extension thereof. The CMAR recognizes the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the City or Developer if the Work is not completed on time and, instead of requiring any such proof, CMAR agrees that Liquidated Damages, not as a penalty but as just compensation, shall be \$1,250.00 for each day that expires after the expiration of the Contract Time until such time as Substantial Completion of the entire Project is issued by the Developer in writing. Such liquidated damages are hereby agreed to be a reasonable pre-estimate of damages the City or Developer will incur as a result of delayed completion of the Work.

ARTICLE 7 – MBE/WBE

- A. The CMAR must meet, and hereby commits to meet, the Business Equity participation goal of 0% for the Pre-Construction Phase Services for this Project.
- B. CMAR must meet, and hereby commits to meet, the Business Equity goal of 15% during Construction Phase Services for this Project.

ARTICLE 8 - GENERAL TERMS

- A. *Professional standards.* The standard of care for all design professional services performed under this Agreement shall be the professional skill and care ordinarily provided by competent design professionals practicing under the same or similar circumstances and professional license. The CMAR shall be responsible for the professional and technical soundness, accuracy, and adequacy of all consultation, cost estimating, pre-construction, construction and other services and materials furnished under this Agreement.
- B. *Mutual obligations.* CMAR and Developer agree to fully cooperate with each other in providing to each other information available, and in facilitating the Work within the scope of this Agreement. Developer shall, throughout the performance of the Construction Work, cooperate with CMAR and perform its responsibilities, obligations and services in a timely manner so as not to delay or interfere with CMAR'S timely and efficient performance of its obligations under the Contract Documents. The Developer shall cooperate and provide reasonable assistance to the CMAR in obtaining the permits, approvals, and licenses that are CMAR's responsibility to obtain.

- C. *General conditions.* **Attachment C** contains the General Conditions applicable to this Project. CMAR hereby agrees to comply with said General Conditions, including providing a copy to any contractors or subcontractors, as applicable.
- D. *City's Standard Conditions.* **Attachment D** contains the City's Standard Conditions for Developer Awarded Projects. In addition to the requirements of the Agreement, CMAR must comply with such Standard Conditions. In the event of any conflict between the insurance required in the General Conditions and that contained in the Standard Conditions, CMAR will be responsible for providing the higher/greater coverage.
- E. *Project progress.* CMAR's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion.
- F. *Assignment.* CMAR shall not assign its interest in this Agreement without the written consent of the Developer. CMAR may enter into subcontracts with respect to the services required by this Agreement but shall remain fully responsible to the Developer in connection therewith. Developer may assign its interest in the Agreement and/or the warranties provided by CMAR with the written consent of the City.
- G. *Personnel.* CMAR, an Equal Opportunity Employer, (including any agents, employees, subcontractors, successors and assigns of CMAR), now has or will secure at its own expense, personnel required to perform the services under this Agreement. Such personnel are not employees of, nor have any contractual relationship with the Developer. CMAR acknowledges responsibility for all federal, state, and local requirements for employers that apply to CMAR.
- H. *Extent of agreement/no third-party rights.* The Developer and CMAR agree that this Agreement represents the entire and integrated Agreement between them and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement is solely and exclusively for the benefit of the Developer and CMAR and not for the benefit of any third party other than Indemnitees (as defined in the General Conditions), who are express third-party beneficiaries with the right to enforce the Agreement. The Developer and CMAR agree that there are no third-party beneficiaries (other than Indemnitees), and each agrees that the obligations in this Agreement are owed exclusively to the other party to the Agreement and are not intended to create any rights, contractual or otherwise, to any other person or entity (other than Indemnitees). Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of Developer. The doctrine of *respondeat superior* shall not apply.
- I. *Reproduction, use and ownership of work product.* All designs, drawings, specifications, documents, and other work products of the CMAR whether in hard copy or in electronic form, are instruments of service for this Project, whether the Project is completed or not. Reuse, change, or alteration by Developer or by others acting through or on behalf of Developer of any such instruments of service without the written permission of the CMAR will be at the Developer's sole risk. The Developer shall own the final, printed

designs, drawings, specifications and documents. Transfer of ownership of the contract documents does not constitute sale of the documents.

J. *Insurance.* CMAR shall, during the performance of the Agreement, keep in force insurance as described in Article 5 of the General Conditions.

K. *Termination.* This Agreement may be terminated as provided for by Article 2, Section C of this Agreement or as otherwise provided by the General Conditions.

L. *Cost estimates.* CMAR's opinions of probable cost are to be made on the basis of CMAR's experience and qualifications and represent CMAR's best judgment as a qualified professional familiar with the industry.

M. **INDEMNIFICATION. CMAR COVENANTS THAT IT HAS READ, UNDERSTANDS AND AGREES TO THE INDEMNITY PROVISIONS FOUND IN THE GENERAL CONDITIONS.**

N. *Surety bonds.* The CMAR shall furnish the required performance, payment and maintenance bonds as described in Article 5 of the General Conditions.

O. *Intentionally Deleted.*

P. *Extra services.* In the event of any legal proceedings or other claims requiring services of CMAR in providing expert testimony on behalf of the Developer in connection with the Project(except suits or claims by a third party against the Developer arising out of alleged errors or omissions of Design Engineer or CMAR, disputes between CMAR and Developer, disputes between CMAR/Developer and any subcontractor, or disputes arising from the acts or omission of CMAR or its subcontractors), the Developer shall provide additional compensation to CMAR based on actual cost.

Q. *No cause of action against engineer.* CMAR, its subcontractors and equipment and materials suppliers on the Project or their sureties, shall maintain no direct action against the Engineer, its officers, employees, and subcontractors, for any claim arising out of, in connection with, or resulting from the engineering services performed. Only the Developer will be the beneficiary of any undertaking by the Engineer. The presence or duties of the Engineer's personnel at a construction site, whether as on-site representatives or otherwise, do not make the Engineer or its personnel in any way responsible for those duties that belong to the Developer and/or the Developer's construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the Contract Documents and any health or safety precautions required by such construction work. The Engineer and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions.

R. *Mutual Waiver of Consequential Damages.* The CMAR and Developer waive Claims against each other for consequential damages arising out of or relating to this Agreement.

This mutual waiver includes: (1) damages incurred by the Developer 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 performed. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with the Contract Documents. Nothing contained in this subsection shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. Additionally, notwithstanding anything in this Section, Developer and CMAR agree that the following liabilities, obligations, and damages are expressly excluded from the waiver of consequential damages set forth herein: (1) damages covered in, arising out of, or related to the CMAR's indemnification obligations in the General Conditions; (2) damages, losses, or costs incurred by either party to the extent such loss or damage is covered by any insurance policy required under Article 5 of the General Conditions; and (3) intentional acts or gross negligence of CMAR or anyone for whom CMAR is responsible.

ARTICLE 9 – THE DEVELOPER'S RESPONSIBILITIES

The Developer shall:

- A. Designate a Project Representative to act as its representative with respect to the services to be rendered under this Agreement for Pre-Construction Services. Such Project Representative will have complete authority to transmit instructions, receive information, interpret, and define Developer's policies and decisions with respect to CMAR's services.
- B. Provide timely reviews of studies, reports, sketches, estimates, and other documents presented by CMAR consistent with Developer's normal business practices. CMAR understands and agrees that all documents requiring Developer's review and approval will also require City review and approval, that the City will review in accordance with its normal business practices, and that Developer has no control over the same.
- C. Secure and execute all necessary permanent easements and agreements with adjacent land or property owners that are necessary for the Project. Developer is further responsible for all costs, including attorneys' fees, incurred in securing these necessary permanent easements and agreements. Developer is responsible for securing all zoning approvals required for the Project for the construction to proceed without delay.

ARTICLE 10 – AMENDMENTS

This Agreement may only be amended in writing, agreed to by both Parties

ARTICLE 11 - EXTENT OF AGREEMENT

This Agreement represents the entire and integrated agreement between the Developer and CMAR with respect to the subject matter of this Agreement and supersedes all prior understandings, negotiations, representations, or agreements, either written or oral contracts

between Developer and CMAR respecting this Project. This Agreement will be binding upon and inure to the benefit of Developer and CMAR and their respective successors and assigns.

ARTICLE 12 – GOVERNING LAW & JURISDICTION

Except as provided for in the General Conditions, Paragraph 6.08, arbitration will not be allowed on this Project. The performance of the work and terms of the Agreement shall be construed and interpreted under, and all respective rights and duties of the parties shall be governed by, the laws of the State of Texas, without regard to its conflict of law provisions. Performance shall be specifically governed by Subchapter F, Texas Government Code 2269.251 et seq. CMAR hereby submits to the jurisdiction of the Texas courts and will obtain and maintain an agent for service of process in the State of Texas. Neither party will bring any action against the other party arising out of or relating to this Agreement in any forum or venue except in the state courts located in Tarrant County, Texas, or the United States District Court for the Northern District of Texas, Fort Worth Division. CMAR irrevocably waives any present or future objections to such legal action and irrevocably waives the right to bring any legal action in any other jurisdiction. The prevailing party or parties in any dispute related to or arising from this Agreement to which Developer and CMAR are parties shall be entitled to recover its or their attorneys' fees and costs incurred in connection therewith. The prevailing party within the meaning of this Agreement shall mean the party who is successful in the pursuit of its claims (or defenses) on the major disputed issues so that it obtains substantially the relief it sought in the matter when considered in the totality of the circumstances.

ARTICLE 13 – SEVERABILITY

It is agreed that in the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided however, that the invalidity of any such covenant, condition or provision does not materially prejudice either CMAR or Developer in connection with the rights and obligations contained in the valid covenants, conditions or provisions of this agreement.

ARTICLE 14 – WAIVER

The waiver by the Developer of any default or breach of a term, covenant or condition of this Agreement shall not be deemed to be a waiver of any other breach of that term, covenant or condition or any other term, covenant, or condition of this Agreement, regardless of when the breach occurred.

ARTICLE 15 – CONFLICT IN TERMS

In the event there is a conflict between the terms of this Agreement, and any other Contract Document, the terms of this Agreement shall control over the other Contract Documents.

ARTICLE 16 - HEADINGS

The headings in this Agreement are inserted for reference only and shall not define or limit the provisions hereof.

ARTICLE 17 - NOTICE

All notices required herein shall be addressed to Developer as follows:

Crescent Property Services LLC 777
Main Street, Suite 2260
Fort Worth, Texas 76102
Email: kcrum@crescent.com
Attn: Kevin Crum

From and after September 1, 2023:

Crescent Property Services LLC
3230 Camp Bowie Blvd., Suite 500
Fort Worth, TX 76107
Email: [@crescent.com](mailto:kcrum@crescent.com)
Attn: Kevin Crum

With Copy to:

Crescent Real Estate LLC
777 Main Street, Suite 2260
Fort Worth, Texas 76102-5325
Email: ngarsek@crescent.com
Attention: Legal Department

From and after September 1, 2023:

Crescent Real Estate LLC
3230 Camp Bowie Blvd., Suite 500
Fort Worth, TX 76107
Email: ngarsek@crescent.com
Attention: Legal Department

All notices to CMAR shall be addressed as follows:

Construction, Inc.
Address
City, Texas 7
Phone name@company.com

ARTICLE 18 – PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

CMAR, unless a sole proprietor, acknowledges that in accordance with Chapter 2271 of the Texas Government Code, if CMAR has 10 or more full time-employees and the contract value is \$100,000 or more, the City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms “boycott Israel” and “company” shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. While the City is not entering into this Agreement, the Work will be performed on the City’s property and the Work will be paid by City funds. **By signing this contract, CMAR certifies that CMAR’s representative’s signature provides written verification to the Developer and City that if Chapter 2271, Texas Government Code applies, CMAR: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.**

ARTICLE 19 – IMMIGRATION NATIONALITY ACT

CMAR shall verify the identity and employment eligibility of its employees who perform work under this Agreement, including completing the Employment Eligibility Verification Form (I-9). Upon request by Developer, CMAR shall provide Developer with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this Agreement. CMAR shall adhere to all Federal and State laws as well as establish appropriate procedures and controls so that no services will be performed by any CMAR employee who is not legally eligible to perform such services. **CMAR SHALL INDEMNIFY DEVELOPER AND HOLD DEVELOPER HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY CMAR, CMAR’S EMPLOYEES, SUBCONTRACTORS, AGENTS, OR LICENSEES.** Developer, upon written notice to CMAR, shall have the right to immediately terminate this Agreement for violations of this provision by CMAR.

ARTICLE 20 - PROHIBITION ON BOYCOTTING ENERGY COMPANIES.

CMAR acknowledges that in accordance with Chapter 2274 of the Texas Government Code (as added by Acts 2021, 87th Leg., R.S., S.B. 13, § 2), the City is prohibited from entering into a contract for goods or services that has a value of \$100,000 or more, which will be paid wholly or partly from public funds of the City, with a company (with 10 or more full-time employees) unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms “boycott energy company” and “company” have the meaning ascribed to those terms by Chapter 2274 of the Texas Government Code (as added by Acts 2021, 87th Leg., R.S., S.B. 13, § 2). While the City is not entering into this Agreement, the Work will be performed on the City’s property and the Work will be paid by City funds. **To the extent that Chapter 2274 of the Government Code is applicable to this Agreement, by signing this Agreement, CMAR certifies that CMAR’s signature provides written verification to the Developer and City that CMAR: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of this Agreement.**

ARTICLE 21 - PROHIBITION ON DISCRIMINATION AGAINST FIREARM AND AMMUNITION INDUSTRIES.

CMAR acknowledges that except as otherwise provided by Chapter 2274 of the Texas Government Code (as added by Acts 2021, 87th Leg., R.S., S.B. 19, § 1), the City is prohibited from entering into a contract for goods or services that has a value of \$100,000 or more which will be paid wholly or partly from public funds of the City, with a company (with 10 or more full-time employees) unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms “discriminate,” “firearm entity” and “firearm trade association” have the meaning ascribed to those terms by Chapter 2274 of the Texas Government Code (as added by Acts 2021, 87th Leg., R.S., S.B. 19, § 1). While the City is not entering into this Agreement, the Work will be performed on the City’s property and the Work will be paid by City funds. **To the extent that Chapter 2274 of the Government Code is applicable to this Agreement, by signing this Agreement, CMAR certifies that CMAR’s signature provides written verification to the Developer and City that CMAR: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate against a firearm entity or firearm trade association during the term of this Agreement.**

ARTICLE 22– AUTHORITY TO SIGN

CMAR shall attach evidence of authority to sign Agreement if signed by someone other than the duly authorized signatory of the CMAR.

ARTICLE 22 – MISCELLANEOUS

CMAR represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas

Government Code, and posted on any of the following pages of such officer's internet website:
<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,

<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or

<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

CMAR will submit to the City a completed Form 1295 generated by the Texas Ethics Commission's (the "TEC") electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the "Form 1295") on or before the time CMAR submits its signature page to this Agreement.

**REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE
AND ATTACHMENTS/EXHIBITS TO FOLLOW**

ACCORDINGLY, Developer and CMAR have each executed this Agreement to be effective as of the date subscribed below (“Effective Date”).

XXXX CONSTRUCTION, INC.

CRESCENT PROPERTY SERVICES LLC:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attachment 3 – Business Equity Goal

APPLICATION OF POLICY

If the total dollar value of the contract is \$100,000 or more, then a Business Equity goal is applicable.

A Business Equity Firm refers to certified Minority-, and/or Women-, owned Business Enterprises (M/WBEs).

POLICY STATEMENT

It is the policy of the City of Fort Worth to ensure the full and equitable participation of Business Equity Firms when applicable, in the procurement of all goods and services. All requirements and regulations stated in the City's Business Equity Ordinance No.25165-10-2021, (replacing Ordinance No. 24534-11-2020 and all prior Ordinances (to be codified at:

https://codelibrary.amlegal.com/codes/ftworth/latest/ftworth_tx/0-0-0-22593) apply to this CMAR procurement.

BUSINESS EQUITY PROJECT GOAL

The Business Equity goal(s) on this project is **[as stated in Section 3. A. to this RFP.](#)**

METHODS TO COMPLY WITH THE GOAL

On CMAR projects where a Business Equity Goal is applied, offerors are required to comply with the City's Business Equity Ordinance by meeting or exceeding the above stated goal(s) or otherwise complying with the ordinance through one of the following methods: **1. Commercially useful services performed by a Business Equity prime contractor, including the CMAR, 2. Business Equity subcontracting participation, 3. Combination of Business Equity prime services and Business Equity subcontracting participation, 4. Business Equity Joint Venture/Mentor-Protégé participation, 5. Good Faith Effort documentation, or 6. Prime contractor Waiver documentation.**

SUBMITTAL OF REQUIRED DOCUMENTATION

Pre-Construction Phase: CMAR shall ensure that contractors responding to CMAR's notice of bids or requests for qualifications shall provide their business diversity documentation to the CMAR no later than 2:00 p.m., on the third City business day after the bids/proposals opening date. CMAR shall provide notice of compliance to the PM by the close of business that same day.

CMAR is encouraged to engage with DVIN staff during this phase should any assistance be required.

Applicable documents identified below must be submitted by the CMAR to the Developer, **concurrent with submittal of the GMP.**

During the GMP evaluation period, Developer and DVIN staff will evaluate the CMAR's Business Equity Firm utilization proposal to verify the proposed firms and for compliance with the Utilization Plan.

FAILURE TO ACHIEVE THE GOAL OR OTHERWISE COMPLY WITH THE ORDINANCE WILL RESULT IN THE CMAR'S GMP BEING REJECTED.

CMAR may resubmit documentation in order to achieve a GMP in compliance with the ordinance.

The CMAR, as part of establishing the GMP, must submit one or more of the following documents:

- 1. Business Equity Utilization Form (2022),** if the goal is met or exceeded;
- 2. Letter(s) of Intent,** if the goal is met or exceeded;

3. **Good Faith Effort Form**, including supporting documentation, if participation is less than stated goal, or no Business Equity participation is accomplished;
4. **Prime Contractor Waiver Form**, including supporting documentation, if the CMAR will self-perform all subcontracting/supplier opportunities; or
5. **M/WBE Joint Venture Eligibility Form**, if goal is met or exceeded with a Joint Venture or Mentor-Protégé participation.

These forms can be found in the Diversity & Inclusion Website at:

<https://apps.fortworthtexas.gov/ProjectResources/>

Construction Phase:

CMAR shall coordinate with the Developer and DVIN to ensure ongoing compliance with the Business Equity Ordinance.

FOR QUESTIONS, PLEASE CONTACT THE DEPARTMENT OF DIVERSITY AND INCLUSION, BUSINESS EQUITY DIVISION BY EMAIL AT:

DVIN_BEOFFICE@FORTWORTHTEXAS.GOV OR CALL (817) 392-2674.

Attachment 4 – Prequalification

- 1.1. All contractors and subcontractors for major elements of the Work are required to be prequalified for the work types requiring prequalification as indicated below. CMAR shall not submit a proposed GMP containing bids from contractors or subcontractors who are not prequalified if so required. Prequalification requirement work types and documentation are available by accessing BIM 360 project folder or the City's website at: <https://apps.fortworthtexas.gov/ProjectResources/>.

- 1.1.1. Paving – Requirements document located at:

<https://apps.fortworthtexas.gov/ProjectResources/ResourcesP/02%20-%20Construction%20Documents/Contractor%20Prequalification/TPW%20Paving%20Contractor%20Prequalification%20Program/PREQUALIFICATION%20REQUIREMENTS%20FOR%20PAVING%20CONTRACTORS.pdf>

- 1.1.2. Roadway and Pedestrian Lighting – Requirements document located at:

<https://apps.fortworthtexas.gov/ProjectResources/ResourcesP/02%20-%20Construction%20Documents/Contractor%20Prequalification/TPW%20Roadway%20and%20Pedestrian%20Lighting%20Prequalification%20Program/STREET%20LIGHT%20PREQUAL%20REQUIREMENTS.pdf>

- 1.1.3. Water and Sanitary Sewer – Requirements document located at:

<https://apps.fortworthtexas.gov/ProjectResources/ResourcesP/02%20-%20Construction%20Documents/Contractor%20Prequalification/Water%20and%20Sanitary%20Sewer%20Contractor%20Prequalification%20Program/WSS%20prequalification%20requirements.pdf>

- 1.1.4. Other (if necessary):

- 1.2. CMAR shall prior to or concurrent with submittal of the GMP proposal, submit to Developer the prequalification status of all relevant contractors or subcontractors.

Attachment 5 – Project Drawings

Download drawings from the link below:

<https://www.fortworthtexas.gov/files/assets/public/finance/documents/purchasing/manual-bids/plandev/rfp-for-dsd-camp-bowie-drawing-cmar.pdf>