

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2023-74**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, ACCEPTING THE RANKING AND RECOMMENDATION OF THE CITY'S EVALUATION TEAM FOR A CONTINUOUS SERVICE CONTRACT FOR A CONSTRUCTION MANAGER AT RISK; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO NEGOTIATE CONTRACTS WITH THE TOP TWO RANKED FIRMS OF CHRIS-TEL CONSTRUCTION, AND KEYSTAR, INC; AND PROVIDING FOR AN EFFECTIVE DATE AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Marathon (the "City") issued a Request for Qualifications for Construction Manger at Risk (General Contractor) for the development of several upcoming projects (the "Projects"); and

**WHEREAS**, the City wishes to execute a continuous service contract with one or more Construction Managers to complete the development of these projects. The process should provide for more competitive costs, as it allows the City to participate, along with the Construction Manager, in the costing for services by the different trades; and

**WHEREAS**, staff recommends that the Council approve the rankings and authorize the City Manager to enter into a contract with the two highest ranked firms, Chris Tel Construction and KeyStar, Inc.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:**

**Section 1.** The foregoing recitals are true and correct and are incorporated herein by this reference.

**Section 2.** The City is hereby authorized to enter into a continuing services contract with , Chris Tel Construction and KeyStar, Inc. for construction manager at risk for the Projects. Such contract shall be substantially in the form of the Agreement attached hereto as Exhibit "A", together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney.

**Section 3.** The City Manager is authorized to sign the agreement.

**Section 4.** This resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8<sup>th</sup> DAY OF AUGUST 2023.**

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
Luis Gonzalez, Mayor

AYES: Landry, Matlock, Smith, Still, Gonzalez  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**

  
\_\_\_\_\_  
Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE  
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

  
\_\_\_\_\_  
Steve Williams, City Attorney

**CITY OF MARATHON**  
**CONTINUING ENGINEERING SERVICES AGREEMENT**

THIS CONTINUING CONSTRUCTION MANGER AT RISK (CMAR) S E R V I C E S AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 17th day of August, 2023, by and between **The City of Marathon, Florida**, a Florida municipal corporation, ("City") and (Chris Tel Construction) whose address is (2534-A Edison Ave. Fort Myers, FL 33901), ("CMAR").

WHEREAS, following a Request for Proposals process, the City has identified CMAR as qualified to perform construction management at risk services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with a CMAR under which CMAR may be assigned specific tasks or projects to be performed by CMAR under the terms and conditions herein.

NOW THEREFORE in consideration of the mutual covenants, terms, and conditions herein, City and CMAR, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with two (2) additional one (1) year extensions exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the CMAR with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the CMAR with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for CMAR services to be performed on behalf of the City. The agreement scope of work and responsibility of the CMAR and more particularly described in exhibit A, attached hereto. The specific projects or tasks assigned to CMAR, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given. For each Project Specific Agreement, the CMAR and City will agree upon the project scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement.

The scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work CMAR represents that it is prepared and qualified to perform (with its own employees or subcontractors) include the matters in the scope of work on Exhibit A. CMAR anticipates utilizing its own staff and/or subcontractors to preform work within as may be assigned and specific tasks.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall CMAR have an exclusive or sole right to perform the work as described in this Agreement.

### **3. The Agreement Sum.**

The compensation sum for each assignment will be based on the established fixed fee for pre-construction services and percentages of the guaranteed maximum price described in Exhibit B, attached here to. City shall pay CMAR in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. CMAR agrees to be bound by the prices set forth in this assessment agreement for the duration of the Agreement. CMAR specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth in each Project Specific Agreement shall not be paid for unless CMAR has obtained a written change order from City.

### **4. Payment.**

**Invoices:** CMAR shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 28th of each month. The City shall pay in accordance with the Florida prompt payment act, FS CH 218 Part VII.

With each request for payment, CMAR shall provide City with a partial release of lien (or final release of lien upon final payment) from CMAR and its subcontractors affirming that CMAR has paid all of its subcontractors, suppliers, and laborers for labor, services, and materials for which CMAR has previously been paid.

If the work is being paid for as a lump sum, CMAR will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for allowable payment is being sought, less retainage of 5% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

In reference to vehicle travel, mileage and person-hours spent in travel time, are considered incidental to the work and not an extra compensable expense.

If the work is being paid for on an hourly basis, CMAR will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of allowable expenses for which reimbursement is sought, the total amount sought for services and expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." If CMAR submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify CMAR of the impropriety and indicate in writing what corrective action must be done on the part of the CMAR to make the payment request proper.

Any Single Large Project: The City, in its sole discretion, reserves the right to separately solicit any project that is outside the scope of this solicitation, whether through size, complexity or the dollar value.

This contract does not entitle any firm to exclusive rights to City agreements/contracts. The City reserves the right to perform any and all available required work in-house or by any other means it so desires.

**Disputed Invoices:** In the event that all or a portion of an invoice submitted by the CMAR is disputed, or additional backup documentation is required, the City shall notify the CMAR within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The CMAR shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request CMAR shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the CMAR. CMAR agrees to continue performing notwithstanding any dispute regarding CMAR's pay request(s).

If there is a dispute regarding a payment request, the City's Representative or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The CMAR may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the City's Representative with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the CMAR in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The CMAR has the right to appeal the decision pursuant to

§ 218.76, Fla. Stat. If the City's decision is in favor of the CMAR, the disputed amount of the invoice shall be paid to the CMAR within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment:** In the event that the City becomes credibly informed that any representations of the CMAR are inaccurate, or in the event that the CMAR is not in compliance with any item or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the CMAR until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage:** The City reserves the right to withhold retainage in the amount of five percent (5%) of any payment due until the specific project is completed. Said retainage may be withheld at the sole discretion of the City Manager and as security for the successful

completion of the CMAR's duties and responsibilities under the Project Specific Agreement.

**Final Payment.:** Submission of the CMAR's invoice for final payment and reimbursement shall constitute the CMAR's representation to the City that all obligations of the CMAR to others, including its subcontractors, incurred in connection with the Project, have been paid in full. The CMAR shall deliver to the City all documents requested by the City evidencing payments to any and all subcontractors, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the CMAR.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due CMAR under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and CMAR. CMAR further agrees that any sums due City under any other agreement(s) between City and CMAR may be satisfied in whole or part by City with funds owed CMAR under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against CMAR.

## **5. Staffing**

CMAR shall maintain an adequate and competent CMAR staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the CMAR desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the CMAR shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the CMAR. The CMAR shall be responsible for all payments to any subcontractors

### **A. CMAR's Threshold of Performance**

CMAR is employed to render a professional service only and payments made to the CMAR are compensation solely for such services rendered and recommendations made in carrying out the work. The CMAR shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the CMAR's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, or his authorized designee, the CMAR shall at CMAR's sole expense, immediately correct the work.

## **B. Standards of Conduct - Conflict of Interest**

The CMAR covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. CMAR agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

## **C. Project Records**

Access to Public Records. The CMAR shall comply with the applicable provisions of Chapter 119, Florida Statutes.

All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the CMAR providing services to the City under this Agreement shall be the property of the City. The Records are not intended or represented to be suitable for use, partial use, or reuse by the City or others on extensions of this project or on any other project. Any such use, reuse, or modifications made by the City to any of CMAR's Records will be at City's sole risk and without liability to CMAR, and City shall, to the extent allowable by Florida law, and subject to Section 768.28, Florida Statute, and all monetary limits listed therein, indemnify, defend and hold CMAR harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom.

The "CMAR" as defined by Section 119.0701(1)(a), Florida Statutes, and shall comply with the public records provisions of Chapter 119, Florida Statutes, including the following:

1. Keep and maintain public records required by the City to perform the service.
2. Upon request from the City Clerk, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the CMAR does not transfer the records to the City.
4. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the CMAR or keep and maintain public records required by the City to perform the service. If the CMAR transfers all public records to the City upon completion of the contract, the CMAR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CMAR keeps and maintains public records upon completion of the contract, the CMAR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City Clerk, in a format that is compatible with the information technology systems of the City.

Public Records” is defined in Section 119.011(12), Florida Statutes, and includes all documents, papers, letters, photographs, data processing software, or other material, regardless of physical form, made or received in connection with this Agreement.

Should the CMAR assert any exemption to the requirements of Chapter 119 and related law, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the CMAR.

The CMAR consents to the City’s enforcement of the CMAR’s Chapter 119 requirements by all legal means, including, but not limited to, a mandatory injunction, whereupon the CMAR shall pay all court costs and reasonable attorney’s fees incurred by the City.

The CMAR’s failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by the CMAR shall be grounds for immediate unilateral cancellation of this Agreement by the City.

**IF THE CMAR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CMAR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-743-0033, CITYCLERK@CI.MARATHON.FL.US, OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.**

Inspection and Audit. During the term of this Contract and for five (5) years from the date of final payment, the CMAR shall allow CITY representatives access during reasonable business hours to CMAR’S records related to this Contract for the purposes of inspection or audit of such records. If upon an audit of such records, the CITY determines the CMAR was paid for services not performed, upon receipt of written demand by the CITY, the CMAR shall remit such payments to the CITY.

## **9. Financial Records**

All financial records of labor costs and expenses incurred by CMAR performing work for the City shall be maintained by CMAR and made available upon request of the City at all times for the duration of this Agreement and during the period stated by Florida Records Retention Schedules. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

## **10. Reimbursable Expenses**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the CMAR, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to CMAR.



## **11. Printing Costs**

The CMAR shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the CMAR in conjunction with this Agreement. Failure by the CMAR to provide such records shall be grounds for termination of CMAR's agreement(s) with the City.

## **12. Time of Performance**

Time is of the essence. CMAR agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should CMAR fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the CMAR's own expense.

If the City sends written notice to CMAR that the CMAR has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if CMAR does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and all rights and remedies set forth in this Agreement, and all such measures shall be at the CMAR's expense.

City shall not be liable to CMAR for delay to the CMAR's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by CMAR. CMAR expressly agrees that an extension of time shall constitute CMAR's sole and exclusive remedy should CMAR be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to CMAR for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. CMAR agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the CMAR of such claim to City. CMAR's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of CMAR. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

### **13. Progress Reports**

CMAR shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The CMAR shall provide City oral status reports upon request by the City.

### **14. Insurance**

UPON EXECUTION OF THIS AGREEMENT, CMAR SHALL SUBMIT CERTIFICATE(S) OF INSURANCE TO THE CITY EVIDENCING THE REQUIRED COVERAGES AND SPECIFICALLY PROVIDING THAT CITY IS NAMED AS AN ADDITIONAL INSURED WITH RESPECT TO THE REQUIRED COVERAGES AND THE OPERATIONS.

CMAR shall file Certificates of Insurance with the City, reflecting evidence of all Coverages. All certificates of insurance must clearly identify the Agreement to which they pertain, including a brief description of the subject matter of the Agreement. They shall be filed with the City's Risk Management within fourteen (14) days of the execution of this Agreement by both parties. The certificates of insurance shall contain a provision that coverage afforded under these policies will not be canceled until at least thirty (30) days' prior written notice has been given to the City. Policies for Coverage shall be issued by companies authorized to do business under the laws of the State of Florida and any such companies' financial ratings must be no less than A-VII in the latest edition of the "BEST'S KEY RATING GUIDE", published by A.M. Best Guide.

All coverages shall be in force throughout the life of this Agreement. In the event insurance certificates provided to City indicate that any insurance shall terminate and lapse during the period of this Agreement and any and all amendments or extensions of it, then in that event, CMAR shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like Coverages for the remaining term of the Agreement and any and all extension of it, is in effect.

CMAR shall procure and maintain at its own expense and keep in effect during the full term of the Agreement a policy or policies of insurance which must include the following coverages and minimum limits of liability:

#### **A. General Liability**

General Liability insurance with limits of not less than \$2,000,000 each occurrence combined single limit for Bodily Injury and Property Damage including coverage for contractual liability, personal injury, broad form property damage, products and completed operations. Annual Aggregate shall apply "Per Project/Job". This policy of insurance shall be written in an "occurrence" based format and include a Waiver of Subrogation in favor of the City.

#### **B. Professional Liability / Errors & Omissions**

Any licensed design professional work such as that provided by architects, engineers, etc. shall maintain professional liability or malpractice or errors or omissions insurance with limits of \$2,000,000 per occurrence.

If claims made, retro Date applies prior to contract inception.

Coverage is to be maintained and applicable for a minimum of 3 years following Agreement completion

### **C. Automobile Liability**

Comprehensive or Business Automobile Liability insurance with/ limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage including coverages for owned, hired, and non-owned vehicles, equipment or both as applicable This policy of insurance shall be written in an "occurrence" based format and include a Waiver of Subrogation in favor of the City.

### **D. Workers' Compensation**

Workers Compensation- Statutory Limits (per limits outlined by Chapter 440, Florida Statutes)

Employers Liability Limits:

\$100,000 for bodily injury caused by an accident, each accident

\$100,000 for bodily injury caused by disease, each employee

\$500,000 for bodily injury caused by disease, policy limit

Workers Compensation must be provided for all persons fulfilling this contract, whether employed, contracted, temporary or subcontracted.

CMAR must be in compliance with all applicable State and federal workers' compensation laws, including US Longshore and Harbor Workers Compensation Act, Jones Act (maritime), Federal Employers Liability Act (railroad), etc.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the CMAR becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

### **15. Subcontractors Insurance**

The CMAR will also cause all subcontractors retained by CMAR for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the CMAR shall furnish the City a certificate(s) showing compliance with this paragraph.

### **16. Liquidated Damages**

Liquidated Damages will be negotiated with the awarded CM for inclusion in the Phase 2 GMP amendment to the Agreement/Contract for each individual project.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the CMAR, or if no money is due or the amount due is insufficient to cover the amount charged the CMAR shall be liable for said amount.

### **17. Change Orders**

CMAR may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, CMAR shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, CMAR shall furnish to City a detailed breakdown showing the difference in the schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, CMAR shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

#### **18. Publicly Financed Contracts**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

CMAR will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall CMAR limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. CMAR shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and CMAR further agrees that the provisions of this paragraph shall be incorporated into any Sub agreements which it may enter into (with the consent of City) concerning the performance of the Work.

#### **19. Indemnification**

The successful Respondent shall defend, indemnify and hold the City and the City's elected and appointed officers and employees harmless from and against (i) any claims, actions or causes of action, (ii) any litigation, administrative proceedings, appellate proceedings, or other proceedings relating to any type of injury (including death), loss, damage, fine, penalty or business interruption, and (iii) any costs or expenses that may be asserted against, initiated with respect to, or sustained by, any indemnified party by reason of, or in connection with, (A) any activity of Respondent or any of its employees, agents, contractors or other invitees during the term the Agreement, (B) the negligence or recklessness, intentional wrongful misconduct, errors or omissions, or other wrongful act or omission of Respondent or any of its employees, agents, sub-contractors or other invitees, or (C) Respondent's default in respect of any of the obligations that it undertakes under the terms the Agreement, except to the extent the claims, actions, causes of action, litigation, proceedings, costs or expenses arise from the intentional or sole negligent acts or omissions of the City or any of its employees, agents, contractors or invitees (other than Respondent). The monetary limitation of liability under this contract shall be not less than \$1 million per occurrence pursuant to Section 725.06, Florida Statute. Insofar as the claims, actions, causes of action, litigation, proceedings, costs or expenses relate to events or circumstances that occur during the term of the Agreement, this provision will survive the expiration of the term of the Agreement or any earlier termination of the Agreement.

In the event that the completion of the project (to include the work of others) is delayed or suspended as a result of the Respondent's failure to purchase or maintain the required insurance, the Respondent shall indemnify the City from any and all increased expenses resulting from such delay. Should any claims be asserted against the City by virtue of any deficiency or ambiguity in the plans and specifications provided by the Respondent, the Respondent agrees and warrants that the Respondent shall hold the City harmless and shall indemnify it from all losses occurring thereby and shall further defend any claim or action on the City's behalf. The first ten dollars (\$10.00) of remuneration is to be paid to the successful Respondent for the indemnification provided for the above.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

## **20. Disputes**

CMAR shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from CMAR's discovery of conditions that CMAR believes will or may entitle it to an increase in the Agreement sum or time. If CMAR fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred. CMAR's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which CMAR believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. CMAR shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties. In addition to any other remedies permitted by law, if CMAR fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to CMAR, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and CMAR shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from CMAR the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by CMAR's default.
- C. City may deduct or withhold from payments otherwise due CMAR any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum. If CMAR fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other CMARs; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding

under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

## **21. Termination**

### **21.1 Termination For Convenience**

The City may terminate the Contract in the event:

- a. CMAR fails or refuses to prosecute the Work or any severable part or segment, with the diligence that will insure its completion within the time specified in the Contract;
- b. CMAR fails or refuses to prosecute the Work on any severable part or segment, with the diligence that will insure its completion within the time specified in construction schedules and related milestones issued in conjunction with the Contract;
- c. CMAR fails to complete any phase of the Work within the time specified in the Contract;
- d. CMAR fails to deliver the supplies or perform the services required of the CMAR under the Contract within the time specified in the Contract;
- e. CMAR fails or refuses to provide sufficient properly skilled workmen or tradesmen;
- f. CMAR refused or fails to supply materials, equipment or services meeting the requirements of the Contract;
- g. CMAR fails to make payments for materials, labor or services to subcontractors, sub subcontractors, suppliers or materialmen of any tier in accordance with such agreements that may exist among them;
- h. CMAR violates laws, ordinances, rules, regulations of any governmental authority having jurisdiction; or
- i. CMAR materially breaches any of the provisions of the Contract.

When any single or combination of the above causes exist and such cause(s) have not been cured after seven (7) days written demand by the City, the City may, with full reservation of, and without prejudice to any other right or remedy the City may have, upon giving CMAR and the surety five (5) days written notice, terminate the contract. Thereupon, the City shall immediately be entitled to possession of the worksite and all supplies, materials, equipment thereon and to finish the Work by reasonable means the City shall decide in its discretion. No payments shall be due the CMAR until the Work is fully and finally completed. CMAR and CMAR's surety shall be charged with all costs and expenses of completing the Work (the "Cost to Complete") including without limitation: costs of repairing, replacing or re-mediating improperly performed work; completing portions of the Work left undone on the CMAR's termination; architectural, engineering and other professional fees and costs incurred as a result of CMAR's termination and in connection with completing the Work; liquidated damages at the rate specified in the Contract until Completion is achieved; any other loss, claim or damage incurred by the City by reason of CMAR's default. If the unpaid portion of the CMAR's Bond (the "Unpaid Bond Amount") is greater than the Cost to Complete, the Cost to Complete shall be subtracted from the Unpaid Bond Amount and the difference shall be paid to CMAR within sixty (60) days from completion of the Work. If the Cost to Complete exceeds the Unpaid Bond Amount, the Unpaid Bond Amount shall be subtracted from the cost to complete and CMAR shall be indebted to and shall pay to the City that difference. The rights and remedies reserved to the City in this paragraph are without waiver of and are in addition to any other rights and remedies provided by law or under the contract to the City.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

## **21.2 Termination For Convenience**

A. The City may terminate performance of work under the contract in whole or in part (the "Work Terminated") if the City determines that such termination is in the City's best interest. The City will terminate by delivering to the CMAR a Notice of Termination, specifying the extent of the Work Terminated and the effective date.

B. After receipt of a Notice of Termination, CMAR will immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

1. Stop work as specified in the notice.
2. Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete any portion of the Contract not encompassed in the Work Terminated.
3. Terminate all subcontracts to the extent they relate to the Work Terminated. To the fullest extent practicable, cancel all outstanding purchase orders, contracts and delivery of materials, supplies and equipment related to the Work Terminated.
4. If requested by the City in writing, assign to the City, all right, title and interest of the CMAR under the subcontracts terminated. Such Assignment shall not include assumption of CMAR's obligations or liabilities under a subcontract. The City will have the right (but not the obligation) to assume the CMAR's obligations under any subcontracts assigned. Neither this paragraph or any assignment of subcontracts shall constitute the City's assumption of CMAR's or other obligations under any such subcontract absent a written document executed by the City and the subcontractor in which the City expressly acknowledges an assumption of CMAR's obligations, and then only to the extent specified. In no event will the City assume any obligation of the CMAR under the subcontracts that arise out of or relate to CMAR's default prior to such assignment.
5. With the approval of the Purchasing Agent, settle all outstanding liabilities and settlement proposals arising from the termination of subcontracts.
6. As directed by the City, transfer title and deliver to the City (a) the fabricated or un-fabricated parts, work in process, completed work, supplies, and other materials produced or acquired for the Work Terminated, and (b) the completed or partially completed plans, drawings, information, and other property that, if the Work Terminated had been completed, would be required to be furnished to the City.
7. Complete performance of the work not terminated.
8. Take any action that may be necessary, or that the City may direct, for the protection and preservation of the property related to the contract that is in the possession of the CMAR and in which the City has or may acquire an interest.

C. The Early Termination Claim will be strictly limited to payment for those portions of the Work, including CMAR's reasonable profit therefore, properly performed prior to the City's Termination for Convenience, and for work performed by CMAR under subparagraph B.8 above for protection and preservation of the property described therein. The Early Termination Claim will not include, and CMAR shall not be entitled to claim or recover, CMAR's other direct or indirect costs, losses or damage of whatsoever nature by reason of the Early Termination including, but without limitation:

1. Lost profit for Work not to be performed by CMAR by reason of the City's termination;
2. The cost of the Work not to be performed by CMAR by reason of the City's termination;
3. CMAR's demobilization costs;
4. Home office overhead;
5. Effect on other contracts and subcontracts including without limitation, those with subcontractors, sub subcontractors, suppliers and materialmen of any tier or any claims by them arising out of or relating to the impact of the Termination for Convenience on their contracted relations;
6. Lost opportunities or other actual/prospective contracts;
7. Lower or lost productivity;
8. Costs or damages claimed by subcontractors, sub subcontractors, materialmen or suppliers of any tier arising or in any way related to their respective contracts with CMAR or one another, or arising or related in any manner to the Termination for Convenience.

The City's Termination for Convenience will be without waiver or prejudice to, all of the City's claims, rights and remedies arising out of or related to any default, breach of contract, damages or other claims the City may have against CMAR, or CMAR's subcontractors, materialmen and suppliers of any tier, or any other person or entity at the time of Early Termination, or arising thereafter.

D. After termination, the CMAR shall submit an Early Termination Claim to the City, no later than sixty (60) days from the effective date of termination unless extended in writing by the City. If the CMAR fails to submit the Early Termination Claim within the time allowed, the City may determine, on the basis of information available, the amount, if any, due the CMAR because of the Early Termination and shall pay the amount so determined to CMAR.

E. Subject to Paragraph D. above, the CMAR and the City may agree upon the whole or any part of the amount to be paid because of the Early Termination. However, this amount may not exceed the total price as reduced by the amount of payments previously made and the contract price of work not terminated. The Contract shall be amended accordingly, and the CMAR shall be paid the agreed amount.

F. If the CMAR and the City fail to agree on the payment because of Early Termination of work, the City shall pay the CMAR the amounts, if any, determined by the City to be due the CMAR as a result of the terminated work.



- H. If the termination is partial, the CMAR may file a proposal with the City for an equitable adjustment of the price of the continued portion of the contract.

### **21.3 Termination By The CMAR**

In the event the City has not made a Progress Payment or the Final Payment within the time stated in the Contract Documents, the CMAR may terminate the Contract if the City fails or refuses to make such payment after ten (10) days written notice to the Architect and the City.

### **22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the CMAR's work product shall become the property of the City and the CMAR shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in CMAR's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the CMAR pertaining to this Agreement and/or any Project Specific Agreement.

CMAR hereby assigns to City all rights in CMAR's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement CMAR to use CMAR's work in order to complete the Work. Said assignment shall only become effective if City terminates CMAR under this Agreement prior to the completion of all Work assigned to CMAR. CMAR agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

A termination for cause or for convenience shall have no effect on insurance coverage required by this Agreement.

The foregoing remedies for default by CMAR shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

CMAR shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless CMAR shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to CMAR or any right to terminate the Agreement.

### **23. Attorneys Fees**

City and CMAR hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

#### **24. Waiver of Jury Trial**

In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

#### **25. Pre-Suit Dispute Resolution**

All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and CMAR agree to submit the dispute to pre-suit mediation.

#### **26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages CMAR to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

#### **27. Entire Agreement.**

City and CMAR hereby expressly agree that the entire agreement between the parties is set in the written terms of the RFP, this Agreement plus any Specific Project Agreement executed by both parties. All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none, with the exception of all provisions of the RFP, shall survive the execution of this Agreement with the exception of the representations by CMAR in the CMAR's response to the RFQ which resulted in this Agreement and upon which the City has relied. CMAR acknowledges that all issues, terms, and conditions which CMAR deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

CMAR and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

#### **28. Anti-Collusion**

The CMAR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CMAR, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation,

individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

## **29. Contract Crime**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the CMAR's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the CMAR for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the CMAR to do business with the City upon any such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

## **30. Confidentiality**

Unless otherwise required by law or judicial order, the CMAR agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The CMAR also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the CMAR for "In House" use. Only data generated by CMAR for work under this Agreement shall be the property of the City.

## **31. Truth in Negotiation**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the CMAR must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

### 32. E-Verify

The CMAR shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the CMAR during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term.

### 33. Notices

All notice required by this Agreement must be in writing. Any notice required to be given to City or CMAR may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or CMAR's addresses as listed below. CMAR further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City: George Garrett, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, FL 33050

With a copy to: Steve Williams, City Attorney  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, FL 33050

For The CMAR: Howard Wheeler II  
Chris- Tel Construction  
2534-A Edison Ave.  
Fort Myers, FL 33901

### 34. Miscellaneous

CMAR agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The CMAR shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court or the Southern District of Florida.

The CMAR and its employees, volunteers and agents shall be and remain independent contractor and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undeltaking, enterprise or venture between the parties.

Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be folly enforceable by either party.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

IN WITNESS WHEREOF, the parties have executed this instrument on this 17th day of August, ~~2020~~ 2023.

CMAR:

CITY:

By: \_\_\_\_\_

Howard Wheeler II

By: \_\_\_\_\_

George Garrett

Its: President

Its: City Manager

ATTEST:

Diane Clavier

Diane Clavier, City Clerk

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE CITY OF  
MARATHON, FLORIDA ONLY:**

Steve Williams

Steve Williams, City Attorney

This agreement shall be executed on behalf of CMAR by its President or Vice President. If Executed by a person other than the CMAR's President or Vice President, then attach evidence Of that person's actual authority to bind CMAR to this agreement.

## EXHIBIT A

### CMAR PROJECT SCOPE OF WORK AND SERVICES

#### **2-1. BASIC SERVICES WORK SUMMARY**

The successful CMAR will furnish all work, necessary permits, and construction supervision to fully complete the construction of a Project. The work will also include overhead and underground utility relocation, demolition of existing structures, relocation of key functions not remaining on site, utility upgrades, site restoration, site infrastructure upgrades including but not limited to drainage, storm water management, signage, lighting, paving, parking and landscaping. The CMAR will coordinate the schedule of all work performed by its own forces and all subcontractors as well as by the franchise utilities and regularly monitor and report on project progress and schedules and conduct meetings. The CMAR will oversee the work area including site safety, site access, deliveries and contractor parking to prevent conflicts with the current site operations.

#### **2-2. SCOPE OF WORK**

The CMAR is expected to provide the following work:

- Provide pre-construction services which include, but are not limited, to defining value engineering opportunities, as well as construction methods and materials to minimize project costs and work with City staff and consultants in the pre-construction phase;
- Competitively bid the project to qualified sub-contractors, according to the policies and procedures outlined by the City and develop a cost for future projects;
- Manage the construction work and improvements that constitute the Project;
- Serve as a Lead Member of the project team and coordinate project meetings;
- Provide required records and documentation for the City; and
- Manage and coordinate with all utility owners/operators including but not limited to AT&T and Comcast, Monroe County, Florida Keys Aqueduct Authority (FKAA), Florida Department of Transportation (FDOT), Florida Keys Electrical Co-op.

#### **2-3. PRE-CONSTRUCTION PHASE SERVICES**

During Pre-Construction Phases the CMAR shall be paid a fixed fee for services performed and shall be an integral part of the design team. The set team shall be assorted and established on the project specific agreement in accordance with section 287.055 FS. The CMAR preconstruction services will include, but are not limited to:

- a. Attend all project related meetings and design team meetings and record the meetings.
- b. Review construction drawings and specifications.

- c. Develop and update a master construction phase bar chart schedule incorporating estimated construction phase time.
- d. Periodic review of all design documents for constructability review to identify defects, omissions, and recommendations for alternatives and for compliance with applicable laws, rules, codes, design standards and ordinances.
- e. Provide value engineering recommendations for all phases of a project to optimize the City's capital outlay and operations resources.
- f. Periodically update cost estimates and make recommendations to keep the project within the budget.
- g. Periodically update the project schedule and make recommendations for recovery of lost time and shortening the construction schedule.
- h. Secure and monitor the review and approval process of governing authorities.
- i. Maintain a list of potential bidders and subcontractors and solicit bidders.
- j. Monitor and review all addenda and coordinate code review compliance.
- k. Prepare and issue bid packages, open and evaluate bids, schedule and conduct bid conferences with City's assistance.
- l. Receive and review pre-contract documents as required.
- m. Review the schedule of values for balance of tasks vs. dollars and compliance with the project schedule.
- n. Review contracts and make recommendations to the City.
- o. Provide value engineering during subcontractor bidding phases.
- p. Hold contracts and subcontracts, provide for bonding for projects.
- q. Provide market analysis and proposal for removal or substitution of designated equipment and fixtures.
- r. Provide written constructability analyses of the Project, including items to be addressed with any City consultants (including Design Professional) such as accessibility, construction methods, assembly, installation, materials handling, expandability, phasing and other construction phase related activities.
- s. Provide all deliverables, reports, etc., as required by the awarding agencies as required by all of the grant agreements providing funding for the Project.

#### **2-4. GMP PROJECT COST AND FEES FOR SERVICES**

When the Construction Documents are sufficiently complete to establish the scope of work for the project or any portion thereof, the CMAR will establish and submit in writing to the Owner for its approval a Guaranteed Maximum Price (GMP) guaranteeing the maximum price to the Owner, for the construction cost of the project or designated part thereof. Such GMP will be subject to modification for changes in the project as provided below. Actual price paid for the work by the Owner, however, shall be the actual cost of all work subcontracts, supply contracts, direct labor costs, direct supervision costs and direct job costs, plus the CMAR's fees or the GMP, whichever is less when the work is complete.

Construction Contractor shall provide Owner with a guaranteed maximum price proposal for the total sum of the Construction Management Fee plus the Cost of the Work within 30 days after the Construction Documents in Owner's opinion are sufficiently completed by Design

Professional and approved in writing by Owner. The guaranteed maximum price proposal shall be based upon the previous cost estimates provided by Construction Manager as required hereunder. Further, the GMP proposal shall be broken down into the categories and level of detail required by Owner. Construction Manager agrees that all of its books, records and files, with respect to its development of the guaranteed maximum price proposal, shall be open to Owner for review and copying. Construction Contractor shall provide a detailed breakdown acceptable to Owner of its guaranteed maximum price proposal. For each line item in the GMP, Construction Contractor shall record on the Schedule of Values all variances and deviations between the bid amount originally submitted for that line item and the final line item price incorporated into the GMP.

At the time of submission of a GMP, the CMAR will also provide a guaranteed completion date (F.S. 255.103). The CMAR will also verify the time schedule for activities and work which were adopted and used to determine the CMAR's cost of work. **In addition to the cost of work, a GMP will include an agreed upon sum as the construction contingency which is included for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The CMAR will be required to furnish documentation evidencing expenditures charged to the contingency prior to the release of funds by the Owner.** If bids are received below the applicable line items in the GMP, the surplus will be added to the contingency.

If bids are received above the applicable line item in the GMP, the deficiency will, with written permission of the owner, be taken from the contingency; however, such occurrence shall not be cause to increase the GMP.

If bids are not received for a portion of the work at or below the applicable line item amount in the GMP, the CMAR reserves the right to perform that portion of the work as acknowledged by the Owner or negotiate for its performance for the specified line item lump sum amount or less.

The increase or decrease in the GMP resulting from a change in the Project shall be determined in one or more of the following ways:

1. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect-Engineer and owner.
2. By unit prices stated in the Agreement or subsequently agreed upon.
3. If none of the methods is agreed upon, the CMAR, provided it has received a signed written order by the Owner, shall promptly proceed with the work involved. The cost of such work shall then be determined on the basis of the reasonable expenditures and savings of those performing the work attributed to the change. In the event a Change Order is issued under these conditions, however, the Architect-Engineer will establish an estimated cost of the work and the CMAR shall not perform any work whose cost exceeds that estimate without prior written approval by the Owner. In such case, the CMAR shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Project. The amount of decrease in the



GMP to be allowed by the CMAR to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.

If the CMAR wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

Costs caused by work or construction delays or by improperly timed activities or defective construction shall be borne by the CMAR.

**The CMAR's sole remedy as against the Owner for costs caused by delays or improperly timed activities or defective construction shall be an extension of time on the Contract. The CMAR's sole remedy for unforeseen, concealed or unknown conditions shall be an extension of time on the Contract.**

Pending final resolution of a Claim unless otherwise agreed in writing, the CMAR shall proceed diligently with performance of the Contract without limitation.

It is mutually agreed between the parties hereby that time is of the essence of the contract, and in the event that the work to be performed by the CMAR is not completed within the time stipulated herein, it is then further agreed that the City may deduct from such sums or compensation as may be due to the CMAR, an amount as liquidated damages, as specified in the Agreement.

## **2-5. CONSTRUCTION PHASE – ADMINISTRATION OF THE CONSTRUCTION CONTRACT**

The Construction Phase of the Project shall not begin until (a) approval of contract cost and issuance of a Notice to Proceed by the Owner, and (b) approval of the contract cost and Construction Documents by grant-giving agencies.

Once the Construction Phase of the Project begins, the CMAR will become the sole responsible party for complete and proper performance of the Construction Documents for the City.

In the Construction Phase of the Project the CMAR will function as a typical general contractor in the construction industry providing all necessary services including but not limited to the following:

- a. Prepare a Comprehensive Project Management Plan/Project Manual. (discussed below)
- b. Periodically recommend contracting strategies for the Project to the Owner.
- c. Competitively bid subcontract work, in accordance with the City established purchasing procedures, and share the results with the City and its consultants.

- d. Manage the bidding process with oversight by the City for all construction work, enter into subcontracts and administer such subcontracts with the understanding that the City has the right to review and reject any subcontractor.
- e. Prepare shop drawings, Requests for Information and other documents necessary to accomplish the Contract work.
- f. Manage the construction site and provide for the administration and supervision of the Project.
- g. Establish and maintain the construction schedule including identifying variances, delays or early completion of tasks, and the maintenance of the schedule.
- h. Develop a organized and auditable system for cost control. Prepare final project accounting. On-going and continuous auditing of the project is expected.
- i. Develop and manage the pay application and change order process, including coordination with the design staff and City personnel. Develop and implement procedures to monitor, record, review and approve submittals, shop drawings, change orders, pay requests and field orders for budget and schedule impact and compliance with the contract documents.
- j. Provide the means and methods of construction and make recommendations for correction of nonconforming or substandard work.
- k. Provide jobsite safety, logistics and security. Respond appropriately to any emergency affecting safety of persons or property, the CMAR shall act, at the CMAR's discretion, to prevent potential and threatened damage, injury or loss. Ensure OSHA compliance and proper handling of hazardous and dangerous materials and conditions.
- l. Provide continuous monitoring and inspection of work to determine progress and conformance with design documents documenting same. Coordinate ordering and delivery of Owner supplied equipment and materials.
- m. Schedule and coordinate all required inspections with appropriate departments, entities and agencies including the City Inspectors, and especially with the City of Marathon as the permitting agency for the project; and cooperate with the required independent special inspector as it relates to reporting to the City of Marathon building official.
- n. Maintain daily written project progress records and provide City with written reports of project progress and status at least once a month relating to budget, progress payments, change orders, performance and schedule adherence, and coordinate and conduct biweekly progress meetings.
- o. Guarantee the quality of all construction. Ensure that all as-builts are being kept up to date by CMAR and subcontractors. Provide inspection of all work, materials and test prior to substantial completion and occupancy inspection by appropriate certified inspectors.
- p. Perform or cause to be performed with supervision all required remedial work identified through the inspection process and at direction of the City's appointed project manager.

- q. Participate in regular meetings on the project with City and design staff or public individuals or groups as may be directed by the City's project manager.
- r. Work in cooperation with the City's public outreach professionals and organizations to keep all persons affected by the work informed of construction activities including specific coordination with property owners when work is to occur on private property or when any interruptions in utility service or roadways or access/ingress/egress are anticipated.
- s. Develop plan, coordinate, and assist in the start-up testing and certification of any utility systems and equipment, and commissioning plans for subsystems replaced and/or affected by the construction.
- t. Provide project close out coordination and transfer of the project to the City including delivery of as-builts, warranties, guaranties and operating instructions. Assist Owner in warranty inspection and completion of all required warranty work generated by inspections.
- u. Provide Certificate of Completion and all documents of record to City staff and/or consultants for archiving and assist City in the warranty inspections and completion of all required warranty work generated by inspections.
- v. Coordinate the activities and required field work of the electric, cable, telephone and/or other communications service providers as required to facilitate the Project.
- w. Keep written minutes of all meetings, decisions and discussions pertaining to this project and submit copies of same to the City Project Manager for archiving.
- x. Coordinate the testing, inspection and approvals of project, delivery of instructions for operating all building systems, including training or maintenance staff for the Owner.
- y. If the CMAR desires to self-perform any of the portions of the Work, this intention must be clearly conveyed to the Owner prior to the receipt of any other bids for the same scope of work. The CMAR shall not self-perform more than ten (10%) of the overall Work for the Project. Provide all other services generally provided by CMAR on a project of like magnitude, scope, use, and complexity including, but not limited to, deliverables, reports, etc., as required by the awarding agencies as part of one or more grant agreements.
- z. Provide all deliverables, reports, etc., as required by the awarding agencies as required by all of the grant agreements providing funding for the Project.

## **2-6. SCHEDULED COMPLETION DATE**

A scheduled completion date will be determined at time of the contract cost. The selected CMAR is expected to work with any other contractors working within the vicinity. The CMAR will work around the City of Marathon observed holidays. Schedules must be provided indicating the start/completion dates of the overall construction project.

## **2-7. DESIGN DOCUMENTS**

The CMAR shall be responsible for procuring, reviewing, and maintaining all plans and documents necessary to carry out permitting and construction activities of future projects.

## **2-8. TIME OF COMPLETION AND LIQUIDATED DAMAGES**

The Work to be performed under the projects shall commence on the date of Notice to Proceed with such extensions of time as are provided for in the General Terms and Conditions of the contract. If said work is not substantially completed by the specified date, the CMAR will be liable and hereby agrees to pay to the Owner liquidated damages as specified in the contract.

## **2-9. BOND REQUIREMENTS; PERFORMANCE AND PAYMENT BOND**

In the RFP, Respondents will clearly state and certify present and future bonding capacity available for the proposed project and services, by including:

- The full name of the Bond Surety Company.
- The State in which the Bond Surety Company was chartered.
- The home office address of the Bond Company (city & state).
- Other Bond capabilities.

Within ten (10) business days of the award of the GMP by the City, the CMAR will furnish a Performance and Payment Bond consisting of:

- a. Performance Bond in the form specified by the Owner; and
- b. Labor and Materials Payment Bond in the form specified by the Owner.

**Bond Requirement:** The CMAR will furnish bonds in the amount of One Hundred percent (100%) of the contract amount and shall maintain throughout the duration of the Project until one (1) year after Final Completion and acceptance of the Work as provided in Section 255.05 et. seq., Florida Statutes covering the faithful performance of the Contract and payment of all obligations arising thereunder. Bonds shall be secured by the CMAR from a surety company licensed in the State of Florida with a best rating of A Class V or higher according to the most recent edition of the rating guide published by A.M. Best Company. The required premiums shall be paid for by the successful CMAR and shall be included in the GMP.

**Time of Delivery and Form of Bonds:** The CMAR shall deliver the required bonds to the Owner within ten (10) business days after acceptance of the contract costs by the City.

The Performance Bond and Labor and Materials Payment Bond shall be written in the amount of the contract cost and shall continue in effect for one (1) year after completion and acceptance of the Work. The Bonds shall be dated on or before the Notice to Proceed Date. The CMAR will require the Attorney-In-Fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the Power of Attorney. Pursuant to the requirements of Chapter 255.05 (1)(s), Florida Statutes, CMAR will ensure that the Bond or Bonds referenced above shall be recorded in the public records of Monroe County. Proof of recordation must be submitted to the City prior to issuance of a purchase order. One (1) set of originals is required.

## **2-10. SCHEDULED CONTROL SUBSYSTEM**

A. Master Project Schedule – Upon award of the Contracts, the CMAR shall submit a master project schedule covering the planning and design completion approvals, construction phases, critical work completion due dates, and City acceptance of the Project. This schedule will be the baseline schedule and will serve as the framework for the subsequent development of all detailed schedules. The master project schedule shall be updated monthly throughout each project. The master project schedule shall be maintained throughout the Project and compared to the actual dates achieved on a monthly basis throughout the duration of the Project.

B. Within fourteen (14) days after the date of the City's issuance of a Notice to Proceed, the CMAR shall prepare and submit to the City's Project Manager for initial approval a schedule graphically depicting the activities contemplated to occur as a necessary incident to performance (and electronically) of the work required to complete the project, showing the sequence in which the CMAR proposes for each such activity to occur as necessary incident to performance of the work required to complete the project, showing the sequence in which the CMAR proposes for each such activity to occur and duration (dates of commencement and completion respectively) of each activity. Initial Approval for the purposes of this provision and any other provisions related to the CMAR's responsibility to prepare and submit schedules shall be limited to a determination that the activities, duration and logic are reasonable.

Failure of the CMAR to develop and submit a construction schedule as aforesaid shall be sufficient grounds for the City to find the CMAR in material default and certify to the City that sufficient cause exists to terminate the contract or to withhold any payment.

Following development and submittal of the construction schedule as aforesaid, the CMAR shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the subject project, or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the work performed and the occurrence of all events which have affected the progress of performance of the work already performed or will affect the progress of the performance of the work yet to be performed in contrast with the planned progress of performance of such work, as depicted on the original construction schedule and all updates and/or revisions thereto as reflected in the updated and/or revised construction schedule last submitted prior to submittal of each such monthly update and revision. Each such update and/or revision to the construction schedule shall be submitted to the City in quadruplicate. Failure of the CMAR to update, revise and submit the construction schedule as aforesaid shall be sufficient grounds for the City to find the CMAR in material default and certify that sufficient cause exists to terminate the Contract or to withhold payment to the CMAR until a schedule or schedule update acceptable to the City is submitted.

C. The CMAR shall prepare and incorporate into the schedule data base, at the required intervals, the following schedules:

1. Pre-proposal Schedules (Subnetworks): The CMAR shall prepare a construction schedule for work encompassed in each proposal package. The schedule shall be sufficiently detailed as to be suitable for inclusion in the proposal package as a framework for contract completion by the CMAR. It shall show the interrelationships between the work of the

CMAR and that of other Sub-Contractors, and shall establish milestones keyed to the overall master schedule.

2. Sub-Contractors Schedules (Subnetworks): Upon the award of each sub-contract, the CMAR shall jointly with the Sub-Contractor, develop a schedule which is more detailed than the pre-proposed schedule included in the specifications, taking into account the work schedule of the other Sub-Contractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the Sub-Contractor. The construction schedule shall also show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.
3. Submittal Review Schedule: The CMAR shall indicate appropriate dates by which the Project Manager and/or Architect must notify the CMAR of the outcome of the review and any submittals in order to avoid an extension of the Contract Time, the failure of which will allow at least ten (10) days from receipt to respond to any submittal by CMAR.

#### **2-11. COST CONTROL SUBSYSTEM**

The operation of this subsystem shall provide sufficient timely date and detail to permit the Construction Team to control and adjust the project requirements, needs, materials, equipment and systems and the construction site elements so that construction will be completed at a cost which, together with all other project costs, will not exceed the maximum total project budget. Requirements of this subsystem include the following submissions at the following phases of the project:

- (a) Costs at Completion of less than fifty percent (50%) Construction Documents Phase For Each Item Or Proposal Package – CMAR as part of its bid has furnished or shall furnish its best costs for labor, materials and services required to complete scope of work pursuant to the existing design (with and without value-engineering) and the completed design.
- (b) Costs at Completion of One Hundred percent (100%) Construction Documents Phase For Each Item or Proposal Package.
- (c) Contract Costs – When the Construction Documents are sufficiently complete to establish the scope of work for the project or any portion thereof, CMAR shall prepare and submit a cost on the basis of an overall quantitative labor and material take-off.

#### **2-12. PROJECT ACCOUNTING SUBSYSTEM**

The operation of this subsystem shall enable the Construction Team to plan effectively and to monitor and control the funds available for the project, cash flow, change orders, payments and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, and amounts payable. This subsystem will be produced and updated monthly and includes the following reports which together will serve as a basic accounting tool and an audit trail. This subsystem, includes but is not limited to:

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

(b) A Payment Status Report showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative) the retainage, the amount payable (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.

(c) A Detailed Status Report showing the complete activity history of each item in the project accounting structure. It shall include the budget, estimate and base commitment figures for each contract. It shall give the change order history including change order numbers, description, proposed and approved dates, and the proposed and approved dollar amounts. It shall also show all pending or rejected change orders.

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

(e) A Job Ledger shall be maintained as necessary to supplement the operation of the project accounting subsystem. The job ledger will be used to provide construction costs accountability for general conditions work, on-site reimbursable expenses and costs requiring accounting needs.

## **2-13. PROJECT MANAGEMENT PLAN / PROJECT MANUAL**

I. Upon award of contract, the CMAR shall begin Project Integration Management by documenting the Project Charter, develop a draft Comprehensive Project Management Plan/Project Manual (“Project Management Plan Manual”) and develop a process for project plan updates. These items shall be the basis for a Project Management Plan Manual describing the services set forth in this Contract:

- a. The Project Charter documents the project statement of work and agreements which become the basis of foundational understanding of the project requirements.
- b. The Project Management Plan shall include management plans for communications, cost, resources, procurement, site visits, uniform records of daily work, quality control, risk, schedule, scope, change orders, RFIs, and stakeholder management. The Project Management Plan shall also establish and track deviations from the baseline cost, schedule and scope. Each item listed should be a section within the Project Management Plan Manual.
- c. The Project Management Plan Manual shall be updated as necessary throughout the design, construction and City acceptance. Digital copies of the Project Management Plan Manual, and any updates, shall be submitted to the City and Architect.

Five (5) copies of the Project Management Plan Manual and any updates shall be submitted to the City and Architect, and shall also be provided in electronic format. In developing the Project Management Plan Manual, the CMAR will coordinate with the City and the Architect.

II. Contents of Project Management Plan Manual: The Project Management Plan Manual shall describe in detail the procedures for executing the work and the organizations participating. The Project Management Plan Manual shall include as a minimum the following sections:

**1. Project Charter**

- 1.1. Project Summary & Goals & Delivery Strategy Methods
- 1.2. Assignments of Key Personnel and Organizational Plan
- 1.3. Agreements

**2. Project Management Plan**

- 2.1. Communications and Information Management Plan
- 2.2. Cost Management and Payment Administration Plan
- 2.3. Human Resource Plan
- 2.4. Procurement Management Plan
- 2.5. Quality Control Management Plan
- 2.6. Risk Management Plan
- 2.7. Schedule Management Plan
- 2.8. Scope Management Plan
- 2.9. Stakeholder Management Plan
- 2.10. Cost Baseline
- 2.11. Schedule Baseline
- 2.12. Scope Baseline

**3. Project Management Plan Updates**

- 3.1. Process for updating the Project Management Plan

For further explanation of particular sections and examples of the Project Management Plan Manual, the following is expected:

Section 1.2. - Assignments of Key Personnel and Organizational Plan should include, but not be limited to, a Responsibility Performance Chart: A detailed matrix showing the specific responsibilities and interrelationships of the City, the Architect and CMAR. The Responsibility Performance Chart shall indicate major responsibility, and minor responsibility, for each specific task required to deliver the projects. The CMAR shall develop a similar chart for the personnel within his own organization who are assigned to the Project, and also for the personnel of the City and the Architect from data supplied by each.

Section 2.1 - Communications and Information Management Plan should include, but not be limited to, Written Procedures: The CMAR will provide written procedures for Communications and coordination required between Construction Team members throughout the project.



Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews, submittals, RFI's and other necessary communications.

Section 2.8. - Scope Management Plan should include, but not be limited to, Flow Diagrams: These charts shall display the flow of information and the decision process for the review and approval of shop drawings and submittals, progress and change orders.

Technical Specifications of the project should also be included in the Project Management Plan Manual.

## **2-14. DESIGN REVIEW AND RECOMMENDATIONS**

1. Review and Recommendations for Value Engineering: Immediately after award of the Preconstruction Phase contract, the CMAR will familiarize itself thoroughly with the project documents and specifications and shall participate in the development of remaining design from existing drawings furnished by the Design Professional and the City to Completed Drawings. The CMAR will make recommendations with respect to value engineering of systems and materials, and will furnish cost reducing alternatives to assist the Architect, and City in evaluating alternative comparisons versus long term cost effects. The evaluation will provide for any reasonable steps to allow for expediting of construction and early completion of the project. Pertinent information shall be provided as to the availability of materials and labor that will be required. The CMAR will submit to the City, Design Professional, and Permitting Authority as appropriate, such comments as may be appropriate concerning construction feasibility and practicality. Any apparent defects in the design, drawings and specifications or other documents will be called to the Project Manager and the Architect's attention. The CMAR will prepare an estimate of the construction cost with value-engineering alternates utilizing the unit quantity survey method and making appropriate disclosure for items which may increase construction time but result in lower construction costs.

2. Review Reports and Warranty: Within ten (10) days after receiving the Construction Documents for each of the projects, the CMAR will perform a specific review thereof, focused upon factors of a nature encompassed on factors set out herein. Promptly after completion of the review, the CMAR shall submit to the Project Manager, with copies to the Architect, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as he may deem appropriate, and all actions taken by the Architect with respect to same, any comments he may deem to be appropriate with respect to separating the work into separate contracts, alternative materials, and all comments called for under the Design Review and Recommendations.

3. Long Lead Procurements: The CMAR will review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials, supplies). When each item is identified, the CMAR will notify the Sub-Contractors, the Project Manager and the Architect of the required procurement and schedule. Such information will be included in the Proposal documents and made a part of all affected sub-contracts. As soon as the drawings are sufficiently complete for purposes of establishing the construction cost, the CMAR will prepare invitations for Proposals. The CMAR will keep itself informed of the progress of the respective

Sub-Contractors or suppliers, manufacturing or fabricating such items and advise City Project Manager and Architect of any problems or prospective delay in delivery.

4. Phased Construction Planning: The CMAR will review the design with the Architect and make the recommendations to the City and to the Architect with respect to dividing the work in such manner as will permit the CMAR to take proposals and award separate construction sub-contracts on the current schedule while the design is being completed.

5. Job-Site Facilities: The CMAR will arrange for all job-site facilities necessary to enable the CMAR and the City's representatives and the Architect to perform their respective duties in the management, inspection and supervision of construction. The CMAR is responsible for proper care and maintenance of all equipment while in his control. At the time of transfer to the City, the City may refuse acceptance of the project if the City determines in its sole discretion that any equipment has not been properly cared for by the CMAR or that such acquisition would not otherwise be in the best interest of the City.

6. Weather Protection: The CMAR will ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. He shall submit to the Construction Team his recommendations as to needed requirements of this nature as to the contract or contracts in which they should be included.

## **2-15. PROJECT REQUIREMENTS**

1. The CMAR will provide for each of the following activities as part of its Construction Phase fee:

a. Maintain both a log of daily quality control and a log of daily activities, including manpower records, weather delays, major decisions, work events and incidents. A daily report of these logs will be distributed to the City and the Architect in PDF format.

b. Maintain a roster of companies on the project with names and telephone numbers of key personnel.

c. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.

d. Provide labor relations management for a harmonious, productive project.

e. Provide a safety program for the project to meet OSHA requirements. Monitor for Sub-Contractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.

f. Provide a safety meeting with CMAR staff, subcontractor(s) staff, consultants and sub consultants and Project Manager prior to starting work on existing site.

2. The CMAR shall provide personnel and equipment or will arrange for separate subcontractors to provide each of the following as a direct cost item:
  - a. Schedule the services of independent testing laboratories and provide the necessary testing of materials to ensure conformance to contract requirements.
  - b. The printing and distribution of all required proposal documents and shop drawings, including the sets required by the Permitting Authority's inspectors.

## **2-16. PROJECT ADMINISTRATION**

The CMAR will provide administrative functions during construction to assure proper documentation as part of its Construction Phase fee. The administrative functions shall include but not limited to such things as the following:

A. Job Meetings: Hold weekly progress and coordination meetings to provide for an easy flowing project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing, labor allocation, etc. Review and coordinate each Sub-Contractor's work. Review and implement revisions to the Schedule. Monitor and promote safety requirements. In addition, regular project status meetings will be held between the Architect, City and CMAR either biweekly or monthly, whichever is designated by the Project Manager. Use the job site meeting as a tool for preplanning of work and enforcing schedules and for procedures, responsibilities, and identification of authority for all to clearly understand. Identify party or parties responsible for follow up on any problems, delay items or questions and record course for solution. Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying event known to those present for appropriate attention and resolution.

B. Shop Drawing Submittals/Approvals: Provide staff to check shop drawings and to implement procedure for submittal and transmittal to the Architect of such drawings for action, and closely monitor their submittal and approval process.

C. Material and Equipment Expediting: Provide staff to closely monitor material and equipment deliveries, to the affected Sub-Contractor for fabrication or revision. The CMAR will maintain a suspense control system to promote expeditious handling. He will request the Architect to make interpretations of the drawings or specifications requested of him by the Sub-Contractors and will maintain a suspense control system to promote timely response. He will advise the Project Manager and Architect when timely response is not occurring on any of the above.

D. Payments to Sub-Contractors: Develop and implement a procedure for review, processing and payment of applications by Sub-Contractors for progress and final payments.

E. Document Interpretation: Refer all questions for interpretation of the documents prepared by the Architect to the Architect and Project Manager.

F. Reports and Project Site Documents: Record the progress of the project. Submit written progress reports to the City and the Architect including information on the Sub-Contractors work, and the percentage of completion. Keep a daily log available to the City, the Architect and the Permitting Authority inspectors.

G. Sub-Contractor Progress: Prepare periodic punch lists for Sub-Contractors work including unsatisfactory or incomplete items and schedules for their completion.

H. Substantial Completion: Ascertain when the work or designated portions thereof are ready for substantial completion inspection. From the list of incomplete or unsatisfactory items, prepare a schedule for their completion indicating completion dates for the City's review. If the CMAR wishes the Architect and City to conduct a pre-substantial completion inspection in conjunction with his own forces, the Architect will prepare the pre-substantial punch list from which the CMAR will develop a completion schedule. The Project Manager will issue a certificate of substantial completion when the work on his pre-substantial punch list has been accomplished.

I. Final Completion: Monitor the Sub-Contractor's performance on the completion of the project and provide notice to the City and Architect that the work is ready for final inspection. Secure and transmit to the City, through the Architect, all required guarantees, affidavits releases, bonds and waivers, manuals, record drawings, and maintenance books including the Final Completion form.

J. Start Up: With the City's personnel direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the trade Sub-Contractors.

K. Record Drawings:

(1) During the process of the work, the CMAR will require all Contractors to record on their field sets of drawings the exact locations, as installed, of all conduit, pipe and facilities whether concealed or exposed.

(2) As-Built Drawings shall be required. Upon completion of the work, this data shall be recorded to scale utilizing the computer-aided design and drafting application (CADD). Two (2) sets of disk files will be furnished to the CMAR by the Architect, but cost shall be borne by the CMAR. Each drawing shall be noted "As Built" and shall bear the date and name of the Sub-Contractors that performed the work. Where the work was installed exactly as shown on the contract drawings the sheets shall not be disturbed except as noted above.

(3) The CMAR will review the completed As-Built drawings and ascertain that all data furnished on the drawings are accurate and truly represent the work as actually installed. When manholes, boxes, underground piping and conduits, inverts, transformers, switch cabinets, controllers, pull boxes, etc. are involved as part of the work, the CMAR will furnish true elevations and locations, all properly referenced by using the original bench mark used for the design of this project. The disks shall be submitted to the Project Manager and Architect when completed, together with two (2) sets of blue-line prints for certification, at the time of final completion.

**[Remainder of Page Left Blank]**

**EXHIBIT B**

**PRICE**

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Respondent shall provide a proposed price for the construction phase, expressed as a percentage of the Guaranteed Maximum Price for the project. The Cost associated with the pre-construction phase shall be negotiated on a specific project basis.

Project Budget	Percentage
Projects \$999,999 or less	10%
Projects between \$1,000,000 and \$1,999,999	8%
Projects between \$2,000,000 and \$2,999,999	7%
Projects between \$3,000,000 and 3,499,999	6%
Projects etween \$3,500,000 and \$4,000,000	5.5%

**CITY OF MARATHON**  
**CONTINUING SERVICES AGREEMENT**

THIS CONTINUING CONSTRUCTION MANGER AT RISK (CMAR) S E R VICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 4th day of April, 2024, by and between The City of Marathon, Florida municipal corporation, ("City") and Keystar, Inc., whose address is 506 Fleming St. Key West, FL 33040 ("CMAR").

WHEREAS, following a Request for Proposals process, the City has identified CMAR as qualified to perform construction management at risk services on behalf of the City; and,

WHEREAS the City desires to enter into a continuing services agreement with a CMAR under which CMAR may be assigned specific tasks or projects to be performed by CMAR under the terms and conditions herein.

NOW THEREFORE in consideration of the mutual covenants, terms, and conditions herein, City and CMAR, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with two (2) additional one (1) year extensions exercised at the sole option of the City. In order to exercise the option for the first one-year extension, prior to the end of the initial three-year term the City must provide the CMAR with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one-year extension, prior to the end of the first one-year extension the City must provide the CMAR with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one-year extension.

**2. The Work.**

The City from time to time has the need for CMAR services to be performed on behalf of the City. The agreement, scope of work, and responsibility of the CMAR is more particularly described in Exhibit "A," attached hereto. The specific projects or tasks assigned to CMAR, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given. For each Project Specific Agreement, the CMAR and City will agree upon the project scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement.

The scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work CMAR represents that it is prepared and qualified to perform (with its own employees or subcontractors) include the matters in the scope of

work on Exhibit "A," attached hereto. CMAR anticipates utilizing its own staff and/or subcontractors to perform work as may be assigned under this Agreement and specific tasks as may be assigned under this Agreement. Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall CMAR have an exclusive or sole right to perform the work as described in this Agreement.

### **3. The Agreement Sum.**

The compensation sum for each assignment will be based on the established fixed fee for pre-construction services and percentages of the guaranteed maximum price described in Exhibit "B," attached hereto. City shall pay CMAR in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. CMAR agrees to be bound by the prices set forth in this assessment agreement for the duration of the Agreement. CMAR specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth in each Project Specific Agreement shall not be paid for unless CMAR has obtained a written change order from City.

### **4. Payment.**

**Invoices:** CMAR shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 28th of each month. The City shall pay in accordance with the Florida prompt payment act, FS CH 218 Part VII.

With each request for payment, CMAR shall provide City with a partial release of lien (or final release of lien upon final payment) for prior payment applications from CMAR and its subcontractors affirming that CMAR has paid all of its subcontractors, suppliers, and laborers for labor, services, and materials for which CMAR has previously been paid.

If the work is being paid for as a lump sum, CMAR will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

In reference to vehicle travel, mileage and person-hours spent in travel time, are considered incidental to the work and not an extra compensable expense.

If the work is being paid for on an hourly basis, CMAR will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for



Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." If CMAR submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify CMAR of the impropriety and indicate in writing what corrective action must be done on the part of the CMAR to make the payment request proper.

Any Single Large Project: The City, in its sole discretion, reserves the right to separately solicit any project that is outside the scope of this solicitation, whether through size, complexity or the dollar value.

This contract does not entitle any firm to exclusive rights to City agreements/contracts. The City reserves the right to perform any and all available required work in-house or by any other means it so desires.

**Disputed Invoices:** In the event that all or a portion of an invoice submitted by the CMAR is disputed, or additional backup documentation is required, the City shall notify the CMAR within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The CMAR shall provide the City with additional backup documentation within ten (10) working days of the date of receipt of the City notice. Upon reasonable request from the City, CMAR shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the CMAR. CMAR agrees to continue performing notwithstanding any dispute regarding CMAR's pay request(s).

If there is a dispute regarding a payment request, the City's Representative or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The CMAR may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the City's Representative with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the CMAR in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The CMAR has the right to appeal the decision pursuant to § 218.76, Fla. Stat., including by submitting the dispute de novo to a court of competent jurisdiction. If the City's decision is in favor of the CMAR, the disputed amount of the invoice shall be paid to the CMAR within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment:** In the event that the City becomes credibly informed that any representations of the CMAR are inaccurate, or in the event that the CMAR is not in compliance with any terms or conditions of this Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the CMAR until the inaccuracy, or other non-compliance is corrected to the City's satisfaction. The City's withholding under this section shall be limited to the amount actually related to the representation and/or noncompliance.

**Retainage:** The City reserves the right to withhold retainage in the amount of five percent (5%) of any payment due until the specific project is completed. Said retainage may be withheld at the sole discretion of the City Manager and as security for the successful completion of the CMAR's duties and responsibilities under the Project Specific Agreement.

**Final Payment:** Submission of the CMAR's invoice for final payment and reimbursement shall constitute the CMAR's representation to the City that all obligations of the CMAR to others, including its subcontractors, incurred in connection with the Project, have been paid in full, except such obligations as may be specifically listed on the invoice for final payment. The CMAR shall deliver to the City all documents requested by the City evidencing payments to any and all subcontractors, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the CMAR.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due CMAR under the terms of this Agreement any sums due City by CMAR under the terms of this Agreement or other agreements between City and CMAR. CMAR further agrees that any sums due City by CMAR under any other agreement(s) between City and CMAR may be satisfied in whole or part by City with funds owed CMAR under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against CMAR.

Final payment to CMAR shall also include all retainage withheld by the City.

## **5. Staffing**

CMAR shall maintain an adequate and competent CMAR staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the CMAR desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the CMAR shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the CMAR. The CMAR shall be responsible for all payments to any subcontractors of CMAR. Notwithstanding any language herein to the contrary, CMAR is not acting or holding itself out to be an engineer, architect, or other professional.

### **A. CMAR's Threshold of Performance**

CMAR is employed to render a professional service only and payments made to the CMAR are compensation solely for such services rendered and recommendations made in carrying out the work. The CMAR shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the CMAR's deliverables are incorrect,

defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the CMAR shall at CMARs sole expense, immediately correct the work. applicable time frame in Chapter 95 Fla. Stat., it is determined that the CMAR's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the CMAR shall at CMARs sole expense, immediately correct the work.

## **B. Standards of Conduct – Conflict of Interest**

The CMAR covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. CMAR agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed. The intent of this provision is to ensure the City's compliance with § 112.313 Fla. Stat. CMAR is not subject to the standards of conduct for public officers or employees of public agencies.

## **C. Project Records**

**Access to Public Records.** The CMAR shall comply with the applicable provisions of Chapter 119, Florida Statutes.

All records, books, documents, maps, data, papers and financial information (the "Records") that result from the CMAR providing services to the City under this Agreement shall be the property of the City. The Records are not intended or represented to be suitable for use, partial use, or reuse by the City or others on extensions of this project or on any other project. Any such use, reuse, or modifications made by the City to any of CMAR's Records will be at City's sole risk and without liability to CMAR, and City shall, to the extent allowable by Florida law, and subject to Section 768.28, Florida Statute, and all monetary limits listed therein, indemnify, defend and hold CMAR harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom.

The "CMAR" as defined by Section 119.0701(1)(a), Florida Statutes, and shall comply with the public records provisions of Chapter 119, Florida Statutes, including the following:

1. Keep and maintain public records required by the City to perform the service.
2. Upon request from the City Clerk, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the CMAR does not transfer the records to the City.
4. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the CMAR or keep and maintain public records required by the City to perform the service. If the CMAR transfers all public records to the City upon completion of the

contract, the CMAR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CMAR keeps and maintains requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City Clerk, in a format that is compatible with the information technology systems of the city.

Public Records” is defined in Section 119.011(12), Florida Statutes, and includes all documents, papers, letters, photographs, data processing software, or other material, regardless of physical form, made or received in connection with this Agreement.

Should the CMAR assert any exemption to the requirements of Chapter 119 and related law, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the CMAR.

The CMAR consents to the City’s enforcement of the CMAR’s Chapter 119 requirements by all legal means, including, but not limited to, a mandatory injunction, whereupon the CMAR shall pay all court costs and reasonable attorney’s fees incurred by the City if the City prevails.

The CMAR’s failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by the CMAR shall be grounds for immediate unilateral cancellation of this Agreement by the City.

**IF THE CMAR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CMAR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE**

**CUSTODIAN OF PUBLIC RECORDS AT 305-743-0033,  
CITYCLERK@CI.MARATHON.FL.US, OR 9805 OVERSEAS HIGHWAY,  
MARATHON FLORIDA 33050.**

**6. Inspection and Audit**

During the term of this Contract and for five (5) years from the date of final payment, the CMAR shall allow CITY representatives access during reasonable business hours to CMAR'S records related to this Contract for the purposes of inspection or audit of such records. If upon an audit of such records, the CITY determines the CMAR was paid for services not performed, upon receipt of written demand by the CITY, the CMAR shall remit such payments to the CITY.

7. All financial records of labor costs and expenses incurred by CMAR performing work for the City shall be maintained by CMAR and made available upon request of the City at all times for the duration of this Agreement and during the period stated by Florida Records Retention Schedules. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**8. Reimbursable Expenses**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the CMAR, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to CMAR.

**9. Printing Costs**

The CMAR shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the CMAR in conjunction with this Agreement. Failure by the CMAR to provide such records shall be grounds for termination of CMAR's applicable agreement(s) with the City.

**10. Time of Performance**

Time is of the essence. CMAR agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should CMAR fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the CMAR's own expense, unless such delays are the result of the City and/or the City's agents, officers, employees, and/or other contractors.

## **11. Time of Performance**

Time is of the essence. CMAR agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should CMAR fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the CMAR's own expense, unless such delays are the result of the City and/or the City's agents, officers, employees, and/or other contractors.

If the City sends written notice to CMAR that the CMAR has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if CMAR does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and all rights and remedies set forth in this Agreement, and all such measures shall be at the CMAR's expense, unless the delay is the result of the City and/or the City's agents, officers, employees, and/or other contractors.

City shall not be liable to CMAR for delay to the CMAR's work by the acts, neglect or default by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by CMAR. CMAR expressly agrees that an extension of time shall constitute CMAR's sole and exclusive remedy should CMAR be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to CMAR for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions unless the delay is the result of the City and/or the City's agents, offers, employees, and/or other contractors. CMAR agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the CMAR of such claim to City. CMAR's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of CMAR. The city shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate. CMAR shall be entitled to appeal and/or dispute City's determination of the extension of time appropriate.

If the CMAR is delayed at any time in the commencement or the progress of the Work by (1) an act or neglect of the City or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with this Agreement, or other causes beyond the CMAR's

control; (4) by delay authorized by the City pending dispute resolution; or (5) by other causes that CMAR asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine. CMAR shall be entitled to claim/pursue additional time beyond that granted by the Architect. In the event of delays caused by an act or neglect of the City and/or the Architect, of an employee of either, or a Separate Contractor, CMAR may also be entitled to its extended general conditions related to the delay.

**12. Progress Reports**

CMAR shall provide City with written progress reports in a format acceptable to the City either monthly or at reasonable intervals acceptable to the City. The CMAR shall provide City oral status reports upon request by the City.

**13. Insurance**

The CMAR shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, CMAR shall provide City with an insurance certificate demonstrating CMAR has obtained and is maintaining the minimum coverage listed below. CMAR shall provide a new certificate on an annual basis for the term of this Agreement. The certificate(s) shall provide that no material alteration or cancellation, including expiration and non-renewal, shall be effective until fifteen (15) days after receipt of written notice by the City. Notices of cancellation/non-renewal/material changes must be sent directly to the City by the insurance company.

**All policies and the insurance certificate shall name the City as an 'additional named insured' on a primary and non-contributory basis and provide for waiver of subrogation.**

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the CMAR's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

A. Workers' Compensation Florida Statutory Coverage

B. Employer's Liability

\$100,000 -each accident

\$100,000 -each employee (a \$500,000 policy limit for injury by disease)

- C. Comprehensive General Liability
  - \$1,000,000 - -bodily injury each occurrence
  - \$1,000,000--- bodily injury aggregate
  - \$1,000,000---- property damage of each occurrence
  - \$1,000,000----property damage aggregate

Products -Completed Operations \$1,000,000- each occurrence

- A. Business Auto Liability
  - \$1,000,000 (All autos--  
owned, hired or used)
- B. Professional Liability \$1,000,000
- C. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harbor workers' Act (USL&H) for all employees covered by USL&H. All subcontractors shall similarly provide USL&I-1 insurance for all of the latter's employees, unless such employees are covered by the protection afforded by CMAR.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the CMAR becomes uninsured for any liabilities specified, such default shall be regarded as material breach of this Agreement.

**14. Subcontractors Insurance**

The CMAR will also cause all subcontractors retained by CMAR for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the CMAR shall furnish the City a certificate(s) showing compliance with this paragraph.

**15. Liquidated Damages**

Liquidated Damages will be negotiated with the awarded CM for inclusion in the Phase 2 GMP amendment to the Agreement/Contract for each individual project.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due to the CMAR, or if no money is due or the amount due is insufficient to cover the amount charged, the CMAR shall be liable for said amount.

**16. Change Orders**

CMAR may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time shall be equitably adjusted accordingly. Prior to the commencement of such changed or revised work, or within such time as may otherwise be mutually agreed, CMAR shall submit



promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, or within such time as may be mutually agreed, CMAR shall furnish to City a detailed breakdown showing the difference in the schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, CMAR shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**17. Publicly Financed Contracts**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

CMAR will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall CMAR limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. CMAR shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and CMAR further agrees that the provisions of this paragraph shall be incorporated into any Sub agreements which it may enter into (with the consent of City) concerning the performance of the Work.

**18. Indemnification**

The successful Respondent shall defend, indemnify and hold the City and the City's elected and appointed officers and employees harmless from and against (i) any claims, actions or causes of action, (ii) any litigation, administrative proceedings, appellate proceedings, or other proceedings relating to any type of injury (including death), loss, damage, fine, penalty or business interruption, and (iii) any costs or expenses that may be asserted against, initiated with respect to, or sustained by, any indemnified party by reason of, or in connection with, (A) any activity of Respondent or any of its employees, agents, contractors or other invitees during the term the Agreement related to this Agreement, (B) the negligence or recklessness, intentional wrongful misconduct, errors or omissions, or other wrongful act or

omission of Respondent or any of its employees, agents, sub-contractors or other invitees related to this Agreement, or (C) Respondent's default in respect of any of the obligations that it undertakes under the terms the Agreement, except to the extent the claims, actions, causes of action, litigation, proceedings, costs or expenses arise from the intentional or negligent acts or omissions of the City or any of its employees, agents, contractors or invitees (other than Respondent). The monetary limitation of liability under this provision shall be \$1 million per occurrence pursuant to Section 725.06, Florida Statute. Insofar as the claims, actions, causes of action, litigation, proceedings, costs or expenses relate to events or circumstances that occur during the term of the Agreement, this provision will survive the expiration of the term of the Agreement or any earlier termination of the Agreement.

In the event that the completion of the project (to include the work of others) is delayed or suspended as a result of the Respondent's failure to purchase or maintain the required insurance, the Respondent shall indemnify the City from any and all increased expenses resulting from such delay. Should any claims be asserted against the City by virtue of any deficiency or ambiguity in the plans and specifications provided by the Respondent, if any, the Respondent agrees and warrants that the Respondent shall hold the City harmless and shall indemnify it from all losses occurring thereby and shall further defend any claim or action on the City's behalf. The first ten dollars (\$10.00) of remuneration is to be paid to the successful Respondent for the indemnification provided for the above.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

In the event that the completion of the project (to include the work of others) is delayed or suspended as a result of the Respondent's failure to purchase or maintain the required insurance, the Respondent shall indemnify the City from any and all increased expenses resulting from such delay. Should any claims be asserted against the City by virtue of any deficiency or ambiguity in the plans and specifications provided by the Respondent, if any, the Respondent agrees and warrants that the Respondent shall hold the City harmless and shall indemnify it from all losses occurring thereby and shall further defend any claim or action on the City's behalf. The first ten dollars (\$10.00) of remuneration is to be paid to the successful Respondent for the indemnification provided for the above.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

To the extent permitted by applicable law, City shall defend, indemnify, and hold harmless the CMAR from and against any and all claims, causes of action, liabilities, and/or damages, including reasonable attorney's fees, arising out of and/or related to City's negligence, omissions, wrongful acts, and/or breach related

to the agreement, to the extent the fault of City and/or City's employees, officers, agents, and/or contractors.

## 19. Disputes

CMAR shall provide timely written notice to City of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from CMAR's actual discovery of conditions that CMAR believes will or may entitle it to an increase in the Agreement sum or time. If CMAR fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred. CMAR's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which CMAR believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed, if known. CMAR shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties, or unless City has otherwise directed CMAR to proceed in writing. In addition to any other remedies permitted by law, if CMAR fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to CMAR, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and CMAR shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and

City may recover from CMAR the amount of any loss or damages suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, occasioned by CMAR's default.

- B. City may deduct or withhold from payments otherwise due CMAR any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum. If CMAR fails to commence or prosecute the Work in accordance with the terms of this Agreement; or causes stoppage, delay or interference with the work of City or other CMARs; or becomes insolvent; commits any act of bankruptcy; voluntarily or involuntarily engages in a reorganization or arrangement proceeding under the bankruptcy laws; breaches any other term, covenant or condition of this Agreement; or fails to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

## 20. Termination

### 20.1 Termination For Convenience

The City may terminate a contract pursuant to this Agreement in the event:

- a. CMAR fails or refuses to prosecute the Work or any severable part or segment, with the diligence that will ensure its completion within the time specified in the Contract;
- b. CMAR fails or refuses to prosecute the Work on any severable part or segment, with the diligence that will ensure its completion within the time specified in construction schedules and related milestones issued in conjunction with the Contract;
- c. CMAR fails to complete any phase of the Work within the time specified in the Contract;
- d. CMAR fails to deliver the supplies or perform the services required of the CMAR under the Contract within the time specified in the Contract;
- e. CMAR fails or refuses to provide sufficient properly skilled workmen or tradesmen;
- f. CMAR refuses or fails to supply materials, equipment or services meeting the requirements of the Contract;
- g. CMAR fails to make payments for materials, labor or services to subcontractors, sub subcontractors, suppliers or materialmen of any tier in accordance with such agreements that may exist among them;
- h. CMAR violates laws, ordinances, rules, regulations of any governmental authority having jurisdiction; or
- i. CMAR materially breaches any of the provisions of the Agreement.

When any single or combination of the above causes exist and such cause(s) have not been cured after seven (7) days written demand by the City, the City may, with full reservation of, and without prejudice to any other right or remedy the City may have, upon giving CMAR and any applicable surety an additional five (5) days written notice, terminate the contract. Thereupon, the City shall immediately be entitled to possession of the worksite and all supplies, materials, equipment thereon and to finish the Work by reasonable means the City shall decide in its discretion. No payments shall be due to the CMAR until the Work is fully and finally completed. CMAR and CMAR's surety shall be charged with all costs and expenses of completing the Work (the "Cost to Complete") including without limitation: costs of repairing, replacing or re- mediating improperly performed work; completing portions of the Work left undone on the CMAR's termination; architectural, engineering and other professional fees and costs incurred as a result of CMAR's termination and in connection with completing the Work; liquidated damages at the rate specified in the Contract until Completion is achieved; any other loss, claim or damage incurred by the City by reason of CMAR's default, to the extent the remaining contract balance is insufficient to cover such costs. If the unpaid portion of the CMAR's Bond (the "Unpaid Bond Amount") and/or the Agreement Sum, as applicable, is greater than the Cost to Complete, the Cost to Complete shall be subtracted from the Unpaid Bond Amount and/or Agreement Sum, as applicable, and the difference shall be paid to CMAR within sixty (60) days from completion of

the Work. If the Cost to Complete exceeds the Unpaid Bond Amount and/or Agreement Sum, the Unpaid Bond Amount and/or Agreement Sum shall be subtracted from the cost to complete and CMAR shall be indebted to and shall pay to the City that difference. The rights and remedies reserved to the City in this paragraph are without waiver of and are in addition to any other rights and remedies provided by law or under the contract to the City.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

## **20.2 Termination For Convenience**

A. The City may terminate performance of work under the contract in whole or in

part (the "Work Terminated") if the City determines that such termination is in the City's best interest. The City will terminate by delivering to the CMAR a Notice of Termination, specifying the extent of the Work Terminated and the effective date.

B. After receipt of a Notice of Termination, CMAR will immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

1. Stop work as specified in the notice.
2. Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete any portion of the Contract not encompassed in the Work Terminated.
3. Terminate all subcontracts to the extent they relate to the Work Terminated. To the fullest extent practicable, cancel all outstanding purchase orders, contracts and delivery of materials, supplies and equipment related to the Work Terminated.
4. If requested by the City in writing, assign to the City all rights, title and interest of the CMAR under the subcontracts terminated. Such Assignment shall not include assumption of CMAR's obligations or liabilities under a subcontract. The City will have the right (but not the obligation) to assume the CMAR's obligations under any subcontracts assigned. Neither this paragraph or any assignment of subcontracts shall constitute the City's assumption of CMAR's or other obligations under any such subcontract absent a written document executed by the City and the subcontractor in which the City expressly acknowledges an assumption of CMAR's obligations, and then only to the extent specified. In no event will the City assume any obligation of the CMAR under the subcontracts that arise out of or relate to CMAR's default prior to such assignment.
5. With the approval of the Purchasing Agent, settle all outstanding liabilities and settlement proposals arising from the termination of subcontracts.
6. As directed by the City, transfer title and deliver to the City (a) the fabricated or un-fabricated parts, work in process, completed work, supplies, and other materials produced or acquired for the Work Terminated, and (b) the completed or partially completed plans,

drawings, information, and other property that, if the Work Terminated had been completed, would be required to be furnished to the City.

7. Complete performance of the work not terminated.

8. Take any action that may be necessary, or that the City may direct, for the protection and preservation of the property related to the contract that is in the possession of the CMAR and in which the City has or may acquire an interest.

C. The Early Termination Claim will be strictly limited to payment for those portions of the Work, including CMAR's reasonable profit therefore, properly performed prior to the City's Termination for Convenience, and for work performed by CMAR under subparagraph B.8 above for protection and preservation of the property described therein. The Early Termination Claim will not include, and CMAR shall not be entitled to claim or recover, CMAR's other direct or indirect costs, losses or damage of whatsoever nature by reason of the Early Termination including, but without limitation:

1. Lost profit for Work not to be performed by CMAR by reason of the City's termination.

2. The cost of the Work not to be performed by CMAR by reason of the City's termination.

3. CMAR's demobilization costs.

4. Home office overhead.

5. Effect on other contracts and subcontracts including without limitation, those with subcontractors, sub subcontractors, suppliers and materialmen of any tier or any claims by them arising out of or relating to the impact of the Termination for Convenience on their contracted relations.

6. Lost opportunities or other actual/prospective contracts.

7. Lower or lost productivity.

8. Costs or damages claimed by subcontractors, sub subcontractors, materialmen or suppliers of any tier arising or in any way related to their respective contracts with CMAR or one another or arising or related in any manner to the Termination for Convenience.

The City's Termination for Convenience will be without waiver or prejudice to, all of the City's claims, rights and remedies arising out of or related to any default, breach of contract, damages or other claims the City may have against CMAR, or CMAR's subcontractors, materialmen and suppliers of any tier, or any other person or entity at the time of Early Termination, or arising thereafter.

D. After termination, the CMAR shall submit an Early Termination Claim to the City, no later than sixty (60) days from the effective date of termination unless extended in writing by the City. If the CMAR fails to submit the Early Termination Claim within the time allowed, the City may determine, on the basis of information available, the

amount, if any, due the CMAR because of the Early Termination and shall pay the amount so determined to CMAR.

- E. Subject to Paragraph D. above, the CMAR and the City may agree upon the whole or any part of the amount to be paid because of the Early Termination. However, this amount may not exceed the total price as reduced by the amount of payments previously made and the contract price of work not terminated. The Contract shall be amended accordingly, and the CMAR shall be paid the agreed amount.
- F. If the CMAR and the City fail to agree on the payment because of Early Termination of work, the City shall pay the CMAR the amounts, if any, determined by the City to be due to the CMAR as a result of the terminated work. CMAR shall be entitled to pursue any additional amounts believed owed to CMAR in a court of competent jurisdiction.
- H. If the termination is partial, the CMAR may file a proposal with the City for an equitable adjustment of the price and/or schedule of the continued portion of the contract.

### **20.3 Termination By The CMAR**

In the event the City has not made a Progress Payment or the Final Payment within the time stated in the Contract Documents, or the City has otherwise breached this Agreement, the CMAR may terminate the Contract if the City fails or refuses to make such payment after ten (10) days written notice to the Architect and the City. In the event of termination, City shall pay to CMAR all unpaid amounts for work performed by CMAR.

### **21. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the CMAR's deliverable work product shall become the property of the City and the CMAR shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in CMAR's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the CMAR pertaining to this Agreement and/or any Project Specific Agreement.

CMAR hereby assigns to City all rights in CMAR's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement CMAR to use CMAR's work in order to complete the Work. Said assignment shall only become effective if City terminates CMAR under this Agreement prior to the completion of all Work assigned to CMAR, and City has paid CMAR in full pursuant to the terms of the Agreement. CMAR agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

A termination for cause or for convenience shall have no effect on insurance coverage required by this Agreement.

The foregoing remedies for default by CMAR shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

CMAR shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless CMAR shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to CMAR or any right to terminate the Agreement.

**22. Attorney's Fees**

City and CMAR hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court costs, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**23. Waiver of Jury Trial**

In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

**24. Pre-Suit Dispute Resolution**

All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties, which may be held remotely. If the dispute cannot be resolved to the satisfaction of the parties, then City and CMAR agree to submit the dispute to pre-suit mediation. Failure to engage in pre-suit mediation and/or meet and confer sessions shall not operate as a defense. In the event a party fails to engage in pre-suit mediation and/or meet and confer sessions prior to filing suit, the opposing party may, at its option, move to stay the court proceedings until such mediation and/or meet and confer session occurs.

**25. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages CMAR to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**26. Entire Agreement.**

City and CMAR hereby expressly agree that the entire agreement between the parties is set in the written terms of the RFP, this Agreement plus any Specific Project Agreement executed by both parties. All prior quotes, bid proposals,



quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none, with the exception of all provisions of the RFP, shall survive the execution of this Agreement with the exception of the representations by CMAR in the CMAR's response to the RFQ which resulted in this Agreement and upon which the City has relied. CMAR acknowledges that all issues, terms, and conditions which CMAR deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

The Parties do hereby further agree that either Parties' failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of that Party's right to enforce said right or right under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

**27. Anti-Collusion**

The CMAR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CMAR, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**28. Contract Crime**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the CMAR's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in

conjunction with any work being performed by the CMAR for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the CMAR to do business with the City upon any such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**29. Confidentiality**

Unless otherwise required by law or judicial order, the CMAR agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The CMAR also agrees that it shall not publish copyright or patent any of the site-specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the CMAR for "In House" use. Only data generated by CMAR for work under this Agreement shall be the property of the City.

**30. Truth in Negotiation**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the CMAR must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum, and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**31. E-Verify**

The CMAR shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the CMAR during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term.

**32. Notices**

All notice required by this Agreement must be in writing. Any notice required to be given to City or CMAR may be delivered by any means to include, but not be limited to, facsimile, hand-delivery,

U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or CMAR's addresses as listed below. CMAR further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City: George Garrett, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, FL 33050

With a copy to: Steve Williams, City Attorney  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, FL 33050

For The CMAR: Charles Spottswood  
Keystar, Inc.  
5450 Macdonald Avenue, Suite 3  
Key West, FL 33040

**Miscellaneous**

1. CMAR agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.
2. This Agreement is not intended to benefit any third parties.
3. The CMAR shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.
4. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court or the Southern District of Florida.
5. The CMAR and its employees, volunteers and agents shall be and remain independent contractor and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.
6. Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.
7. The City and CMAR waive all rights against (1) each other and any of their subcontractors, sub- subcontractors, agents, and employees, each of the other; (2) the Architect and the Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub- subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The City or CMAR, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.
8. The CMAR and City waive claims against each other for consequential damages arising out of or related to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with this Agreement. This waiver does not apply to


liquidated damages otherwise allowed by this Agreement. This mutual waiver includes:

1. Damages incurred by the City for rental expenses, losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such person; and
  2. Damages incurred by the Contractor 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.
9. If the CMAR encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the CMAR shall promptly provide notice to the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the CMAR's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit/pursue a claim.
10. The CMAR shall maintain, at its expense, builder's risk insurance sufficient to cover the Project. In the event of a loss due to weather, fire, or other casualty which necessitates repairs to the Work and/or redoing the Work by CMAR, CMAR shall be entitled to payment from its insurance company for such repairs and/or Work.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

IN WITNESS WHEREOF, the parties have executed this instrument on this 4<sup>th</sup> day of April, 2024.

CMAR:

By: 

Its: President

CITY:

By:   
George Garrett

Its: City Manager

ATTEST:

  
for Diane Clavier, City Clerk Deputy Clerk

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE CITY OF  
MARATHON, FLORIDA ONLY:**



Steve Williams, City Attorney

This agreement shall be executed on behalf of CMAR by its President or Vice President. If Executed by a person other than the CMAR's President or Vice President, then attach evidence of that person's actual authority to bind CMAR to this agreement.

**CMAR's Hourly and Expense Rates**

<b>Position</b>	<b>Hourly Rate</b>
Project Executive	\$ 189.00
Senior Project Manager	\$ 166.00
Project Manager	\$ 142.00
Project Engineer	\$ 89.00
Superintendent	\$ 173.00
Assistant Superintendent	\$ 142.00
Estimator	\$ 164.00
Project Coordinator	\$ 74.00
Project Accountant	\$ 110.00
Carpenter Foreman	\$ 98.00
Carpenter Journeyman	\$ 94.00
Drywall Foreman	\$ 90.00
Drywall Journeyman	\$ 85.00
Laborer Foreman	\$ 91.00
Laborer Journeyman	\$ 86.00

**Price**

Keystar's CMAR fee varies between 5% and 20% depending on the value, complexity, and duration of any specific project. This CMAR fee does not include General Conditions related cost.







# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/30/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Baldwin Krystyn Sherman Partners LLC 4211 W Boy Scout Blvd Suite 800 Tampa FL 33607  License#: L002281	<b>CONTACT NAME:</b> Certificate Team <b>PHONE (A/C, No, Ext):</b> 813-984-3200 <b>FAX (A/C, No):</b> <b>E-MAIL ADDRESS:</b> certificates@bks-partners.com													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Evanston Insurance Company</td> <td>35378</td> </tr> <tr> <td>INSURER B : Upland Specialty Insurance Co</td> <td>16988</td> </tr> <tr> <td>INSURER C : Palomar Excess &amp; Surplus Insur</td> <td>16754</td> </tr> <tr> <td>INSURER D : Trisura Specialty Insurance Co</td> <td>16188</td> </tr> <tr> <td>INSURER E : Starr Indemnity &amp; Liability Co</td> <td>38318</td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Evanston Insurance Company	35378	INSURER B : Upland Specialty Insurance Co	16988	INSURER C : Palomar Excess & Surplus Insur	16754	INSURER D : Trisura Specialty Insurance Co	16188	INSURER E : Starr Indemnity & Liability Co	38318	INSURER F :
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INSURER F :														
<b>INSURED</b> Keystar, Inc. 506 Fleming Street Key West FL 33040  KEYSINC-01														

### COVERAGES

CERTIFICATE NUMBER: 1903461081

REVISION NUMBER:


THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			USPCL0112723	12/1/2023	12/1/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 0 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Deductible \$ 5,000
	<b>AUTOMOBILE LIABILITY</b> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B C D	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			USXCL0038423 PES-XS-01-0636 TXS0002162-00	12/1/2023 12/1/2023 12/1/2023	12/1/2024 12/1/2024 12/1/2024	EACH OCCURRENCE \$ 11,000,000 AGGREGATE \$ 11,000,000 \$
E	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	1000003972	12/1/2023	12/1/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Pollution Liability			CPLMOL116962	5/2/2023	8/2/2024	Each Occurrence/Agg \$ 5,000,000 Pollution Deductible 10,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Excess Liability policy follows form over General Liability subject to terms, conditions, and exclusions of the policy.

### CERTIFICATE HOLDER

### CANCELLATION

City of Marathon 9805 Overseas Highway Marathon FL 33050	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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## EXHIBIT A

### CMAR PROJECT SCOPE OF WORK AND SERVICES

#### **2-1. BASIC SERVICES WORK SUMMARY**

The successful CMAR will furnish all work, necessary permits, and construction supervision to fully complete the construction of a Project. The work will also include overhead and underground utility relocation, demolition of existing structures, relocation of key functions not remaining on site, utility upgrades, site restoration, site infrastructure upgrades including but not limited to drainage, storm water management, signage, lighting, paving, parking and landscaping. The CMAR will coordinate the schedule of all work performed by its own forces and all subcontractors as well as by the franchise utilities and regularly monitor and report on project progress and schedules and conduct meetings. The CMAR will oversee the work area including site safety, site access, deliveries and contractor parking to prevent conflicts with the current site operations.

#### **2-2. SCOPE OF WORK**

The CMAR is expected to provide the following work:

- Provide pre-construction services which include, but are not limited, to defining value engineering opportunities, as well as construction methods and materials to minimize project costs and work with City staff and consultants in the pre-construction phase;
- Competitively bid the project to qualified sub-contractors, according to the policies and procedures outlined by the City and develop a cost for future projects;
- Manage the construction work and improvements that constitute the Project;
- Serve as a Lead Member of the project team and coordinate project meetings;
- Provide required records and documentation for the City; and
- Manage and coordinate with all utility owners/operators including but not limited to AT&T and Comcast, Monroe County, Florida Keys Aqueduct Authority (FKAA), Florida Department of Transportation (FDOT), Florida Keys Electrical Co-op.

#### **2-3. PRE-CONSTRUCTION PHASE SERVICES**

During Pre-Construction Phases the CMAR shall be paid a fixed fee for services performed and shall be an integral part of the design team. Notwithstanding anything herein to the contrary, CMAR is not acting as or holding itself out to be an engineer or architect. The set team shall be assorted and established on the project specific agreement in accordance with section 287.055 FS. The CMAR preconstruction services will include, but are not limited to:

- a. Attend all project related meetings and design team meetings and record the meetings.
- b. Review construction drawings and specifications.
- c. Develop and update a master construction phase bar chart schedule incorporating

- estimated construction phase time.
- d. Periodic review of all design documents for constructability review to identify defects, omissions, and recommendations for alternatives and for compliance with applicable laws, rules, codes, design standards and ordinances. CMAR's review of design documents shall not render CMAR responsible in any way for errors and/or omissions in the design documents. CMAR is entitled to rely on the accuracy of all design documents, surveys, and/or plans/drawings provided by the City and/or the City's consultants.
  - e. Provide value engineering recommendations for all phases of a project to optimize the City's capital outlay and operations resources.
  - f. Periodically update cost estimates and make recommendations to keep the project within the budget.
  - g. Periodically update the project schedule and make recommendations for recovery of lost time and shortening the construction schedule.
  - h. Secure and monitor the review and approval process of governing authorities.
  - i. Maintain a list of potential bidders and subcontractors and solicit bidders.
  - j. Monitor and review all addenda and coordinate code review compliance.
  - k. Prepare and issue bid packages, open and evaluate bids, schedule and conduct bid conferences with City's assistance.
  - l. Receive and review pre-contract documents as required.
  - m. Review the schedule of values for balance of tasks vs. dollars and compliance with the project schedule.
  - n. Review contracts and make recommendations to the City.
  - o. Provide value engineering during subcontractor bidding phases.
  - p. Hold contracts and subcontracts, provide for bonding for projects.
  - q. Provide market analysis and proposal for removal or substitution of designated equipment and fixtures.
  - r. Provide written constructability analyses of the Project, including items to be addressed with any City consultants (including Design Professional) such as accessibility, construction methods, assembly, installation, materials handling, expandability, phasing and other construction phase related activities.
  - s. Provide all deliverables, reports, etc., as required by the awarding agencies as required by all of the grant agreements providing funding for the Project.

## **2-4. GMP PROJECT COST AND FEES FOR SERVICES**

When the Construction Documents are sufficiently complete to establish the scope of work for the project or any portion thereof, the CMAR will establish and submit in writing to the Owner for its approval a Guaranteed Maximum Price (GMP) guaranteeing the maximum price to the Owner, for the construction cost of the project or designated part thereof. Such GMP will be subject to modification for changes in the project as provided below. Actual price paid for the work by the Owner, however, shall be the actual cost of all work subcontracts, supply contracts, direct labor costs, direct supervision costs and direct job costs, plus the CMAR's fees, or the GMP, whichever is less when the work is complete.

Construction Contractor shall provide Owner with a guaranteed maximum price proposal for the total sum of the Construction Management Fee plus the Cost of the Work within 30 days after the Construction Documents in Owner's reasonable opinion are sufficiently completed by Design.

Professional and approved in writing by Owner. The guaranteed maximum price proposal shall be based upon the previous cost estimates provided by the Construction Manager as required hereunder. Further, the GMP proposal shall be broken down into categories and level of detail required by Owner. Construction Manager agrees that all of its books, records and files, with respect to its development of the guaranteed maximum price proposal, shall be open to CITY for review and copying. Construction Contractor shall provide a detailed breakdown acceptable to CITY of its guaranteed maximum price proposal. For each line item in the GMP, Construction Contractor shall record on the Schedule of Values all variances and deviations between the bid amount originally submitted for that line item and the final line item price incorporated into the GMP. CMAR shall be entitled to adjustments in the contract sum, GMP, and/or Contract Schedule for any and all further revisions and changes to the drawings.

At the time of submission of a GMP, the CMAR will also provide a guaranteed completion date (F.S. 255.103). The CMAR will also verify the time schedule for activities and work which were adopted and used to determine the CMAR's cost of work. **In addition to the cost of work, a GMP will include an agreed upon sum as the construction contingency which is included for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The CMAR will be required to furnish documentation evidencing expenditures charged to the contingency prior to the release of funds by the Owner.** If bids are received below the applicable line items in the GMP, the surplus will be added to the contingency.

If bids are received above the applicable line item in the GMP, the deficiency will, with written permission of the owner, be taken from the contingency; however, such occurrence shall not be cause to increase the GMP.

If bids are not received for a portion of the work at or below the applicable line-item amount in the GMP, the CMAR reserves the right to perform that portion of the work as acknowledged by the Owner or negotiate for its performance for the specified line-item lump sum amount

or less.

The increase or decrease in the GMP resulting from a change in the Project shall be determined in one or more of the following ways:

1. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect-Engineer and/or owner.
2. By unit prices stated in the Agreement or subsequently agreed upon.

If none of the methods is agreed upon, the CMAR, provided it has received a signed written order by the Owner, shall promptly proceed with the work involved. The cost of such work shall then be determined on the basis of the reasonable expenditures and savings of those performing the work attributed to the change. In the event a Change Order is issued under these conditions, however, the Architect-Engineer will establish an estimated cost of the work and the CMAR shall not perform any work whose cost exceeds that estimate without prior written approval by the Owner. In such case, the CMAR shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Project. The amount of decrease in the GMP to be allowed by the CMAR to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.

If the CMAR wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

Costs caused by work or construction delays caused by CMAR, its subcontractors, or suppliers or by improperly timed activities or defective construction by CMAR, its subcontractors, or suppliers shall be borne by CMAR.

**The CMAR's sole remedy as against the CITY for costs caused by delays or improperly timed activities or defective construction shall be an extension of time on the Contract unless such delay is the result of the Owner and/or Owner's agents, employees, and/or contractors. If delay is the result of the Owner and/or Owner's agents, employees, officers, and/or contractors, CMAR may be entitled to its extended general conditions.**

Pending final resolution of a Claim unless otherwise agreed in writing, the CMAR shall proceed diligently with performance of the Contract without limitation.

It is mutually agreed between the parties hereby that time is of the essence of the contract, and in the event that the work to be performed by the CMAR is not completed within the time stipulated herein, it is then further agreed that the City may deduct from such sums or compensation as may be due to the CMAR, an amount as liquidated damages, as specified in the Agreement. The City waives any and all claims for delay damages other than its claim for liquidated damages.

## **2-5. CONSTRUCTION PHASE – ADMINISTRATION OF THE CONSTRUCTION CONTRACT**

The Construction Phase of the Project shall not begin until (a) approval of contract cost and issuance of a Notice to Proceed by the Owner, and (b) approval of the contract cost and Construction Documents by grant-giving agencies.

Once the Construction Phase of the Project begins, the CMAR will become the sole responsible party for complete and proper performance of the Construction Documents for the City.

In the Construction Phase of the Project the CMAR will function as a typical general contractor in the construction industry providing all necessary services including but not limited to the following:

- a. Prepare a Comprehensive Project Management Plan/Project Manual. (discussed below)
- b. Periodically recommend contracting strategies for the Project to the Owner.
- c. Competitively bid subcontract work, in accordance with the City established purchasing procedures, and share the results with the City and its consultants.
- d. Manage the bidding process with oversight by the City for all construction work, enter into subcontracts and administer such subcontracts with the understanding that the City has the right to review and reject any subcontractor. Ensure all applicable permits are submitted and processed by any and all agencies and departments, including all waived building permits, as customary by a general contractor.
- e. Prepare shop drawings, Requests for Information and other documents necessary to accomplish the Contract work.
- f. Manage the construction site and provide for the administration and supervision of the Project.
- g. Establish and maintain the construction schedule including identifying variances, delays or early completion of tasks, and the maintenance of the schedule.
- h. Develop an organized and auditable system for cost control. Prepare final project accounting. On-going and continuous auditing of the project is expected.
- i. Develop and manage the pay application and change order process, including coordination with the design staff and City personnel. Develop and implement procedures to monitor, record, review and approve submittals, shop drawings, change orders, pay requests and field orders for budget and schedule impact and compliance with the contract documents.
- j. Provide the means and methods of construction and make recommendations for correction of nonconforming or substandard work.
- k. Provide jobsite safety, logistics and security. Respond appropriately to any emergency affecting safety of persons or property, the CMAR shall act, at the CMAR's discretion, to prevent potential and threatened damage, injury or loss. Ensure OSHA compliance and proper handling of hazardous and dangerous materials and conditions.
- l. Provide continuous monitoring and inspection of work to determine progress and conformance with design documents documenting same. Coordinate ordering and delivery of Owner supplied equipment and materials. Owner shall be responsible for delays,

damages, and/or losses resulting from Owner-supplied equipment and/or materials.

m. Schedule and coordinate all required inspections with appropriate departments, entities and agencies including the City Inspectors, and especially with the City of Marathon as the permitting agency for the project; and cooperate with the required independent special inspector as it relates to reporting to the City of Marathon building official.

n. Maintain daily written project progress records and provide City with written reports of project progress and status at least once a month relating to budget, progress payments, change orders, performance and schedule adherence, and coordinate and conduct biweekly progress meetings.

o. Guarantee the quality of all construction performed by CMAR and/or its subcontractors for a period of 1 year from the date of substantial completion unless otherwise agreed. Ensure that all as-builts are being kept up to date by CMAR and subcontractors. Provide inspection of all work, materials and tests prior to substantial completion and occupancy inspection by appropriate certified inspectors.

p. Perform or cause to be performed with supervision all required remedial work identified through the inspection process and at direction of the City's appointed project manager (the "Project Manager").

q. Participate in regular meetings on the project with City and design staff or public individuals or groups as may be directed by the City's project manager.

r. Work in cooperation with the City's public outreach professionals and organizations to keep all persons affected by the work informed of construction activities including specific coordination with property owners when work is to occur on private property or when any interruptions in utility service or roadways or access/ingress/egress are anticipated.

s. Develop plan, coordinate, and assist in the start-up testing and certification of any utility systems and equipment, and commissioning plans for subsystems replaced and/or affected by the construction.

t. Provide project close out coordination and transfer of the project to the City including delivery of as-builts, warranties, guaranties and operating instructions. Assist Owner in warranty inspection and completion of all required warranty work generated by inspections.

u. Provide Certificate of Completion and all documents of record to City staff and/or consultants for archiving and assist City in the warranty inspections and completion of all required warranty work generated by inspections.

v. Coordinate the activities and required fieldwork of the electric, cable, telephone and/or other communications service providers as required to facilitate the Project.

w. Keep written minutes of all meetings, decisions and discussions pertaining to this project and submit copies of same to the City Project Manager for archiving.

x. Coordinate the testing, inspection and approvals of project, delivery of instructions for operating all building systems, including training or maintenance staff for the Owner.

y. If the CMAR desires to self-perform any of the portions of the Work, this intention must be clearly conveyed to the Owner prior to the receipt of any other bids for the same scope of work. The CMAR shall not self-perform more than ten (10%) of the overall Work for the

Project. Provide all other services generally provided by CMAR on a project of like magnitude, scope, use, and complexity including, but not limited to, deliverables, reports, etc., as required by the awarding agencies as part of one or more grant agreements.

z. Provide all deliverables, reports, etc., as required by the awarding agencies as required by all of the grant agreements providing funding for the Project.

## **2-6. SCHEDULED COMPLETION DATE**

A scheduled completion date will be determined at the time of the contract cost. The selected CMAR is expected to work with any other contractors working within the vicinity. The CMAR will work around the City of Marathon observed holidays. Schedules must be provided indicating the start/completion dates of the overall construction project.

## **2-7. DESIGN DOCUMENTS**

The CMAR shall be responsible for procuring, reviewing, and maintaining all plans and documents necessary to carry out permitting and construction activities of future projects.

## **2-8. TIME OF COMPLETION AND LIQUIDATED DAMAGES**

The Work to be performed under the projects shall commence on the date of Notice to Proceed, provided all necessary approvals set forth in 2-5 above are provided, with such extensions of time as are provided for in the General Terms and Conditions of the contract. If said work is not substantially completed by the specified date, plus any applicable extensions under the contract, the CMAR will be liable and hereby agrees to pay to the Owner liquidated damages as specified in the contract.

## **2-9. BOND REQUIREMENTS; PERFORMANCE AND PAYMENT BOND**

In the RFP, Respondents will clearly state and certify present and future bonding capacity available for the proposed project and services, by including:

- The full name of the Bond Surety Company.
- The State in which the Bond Surety Company was chartered.
- The home office address of the Bond Company (city & state).
- Other Bond capabilities.

Within ten (10) business days of the award of the GMP by the City, the CMAR will furnish a Performance and Payment Bond consisting of:

- a. Performance Bond in the form specified by the Owner; and
- b. Labor and Materials Payment Bond in the form specified by the Owner.

Bond Requirement: The CMAR will furnish bonds in the amount of One Hundred percent (100%) of the contract amount and shall maintain throughout the duration of the Project until one (1) year after Final Completion and acceptance of the Work as provided in Section 255.05 et. seq., Florida Statutes covering the faithful performance of the Contract and payment of all obligations arising thereunder. Bonds shall be secured by the CMAR from a surety company licensed in the State of Florida with a best rating of A Class V or higher according to the most recent edition of the rating guide published by A.M. Best Company.



The required premiums shall be paid for by the successful CMAR and shall be included in the GMP.

Time of Delivery and Form of Bonds: The CMAR shall deliver the required bonds to the Owner within ten (10) business days after acceptance of the contract costs by the City.

The Performance Bond and Labor and Materials Payment Bond shall be written in the amount of the contract cost and shall continue in effect for one (1) year after completion and acceptance of the Work. The Bonds shall be dated on or before the Notice to Proceed Date. The CMAR will require the Attorney-In-Fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the Power of Attorney. Pursuant to the requirements of Chapter 255.05 (1)(s), Florida Statutes, CMAR will ensure that the Bond or Bonds referenced above shall be recorded in the public records of Monroe County. Proof of recordation must be submitted to the City prior to issuance of a purchase order. One (1) set of originals is required.

A. Master Project Schedule – Upon award of the Contracts, the CMAR shall submit a master project schedule covering the planning and design completion approvals, construction phases, critical work completion due dates, and City acceptance of the Project. This schedule will be the baseline schedule and will serve as the framework for the subsequent development of all detailed schedules. The master project schedule shall be updated monthly throughout each project. The master project schedule shall be maintained throughout the Project and compared to the actual dates achieved on a monthly basis throughout the duration of the Project.

Within fourteen (14) days after the date of the City's issuance of a Notice to Proceed, the CMAR shall prepare and submit to the City's Project Manager for initial approval a schedule graphically depicting the activities contemplated to occur as a necessary incident to performance (and electronically) of the work required to complete the project, showing the sequence in which the CMAR proposes for each such activity to occur as necessary incident to performance of the work required to complete the project, showing the sequence in which the CMAR proposes for each such activity to occur and duration (dates of commencement and completion respectively) of each activity. Initial Approval for the purposes of this provision and any other provisions related to the CMAR's responsibility to prepare and submit schedules shall be limited to a determination that the activities, duration and logic are reasonable.

Failure of the CMAR to develop and submit a construction schedule as aforesaid shall be sufficient grounds for the City to find the CMAR in material default and certify to the City that sufficient cause exists to terminate the contract or to withhold payment.

Following development and submittal of the construction schedule as aforesaid, the CMAR shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the subject project, or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the work performed and the occurrence of all events which have affected the progress of performance of the work already performed or will affect the progress of the performance of the work yet to be performed in contrast with the planned progress of performance of such work, as depicted on the original construction schedule and all updates and/or revisions thereto as reflected in the updated and/or revised construction schedule last submitted prior to submittal of each such monthly update and revision. Each such update and/or revision to

the construction schedule shall be submitted to the City in quadruplicate. Failure of the CMAR to update, revise and submit the construction schedule as aforesaid shall be sufficient grounds for the City to find the CMAR in material default and certify that sufficient cause exists to terminate the Contract or to withhold payment to the CMAR until a schedule or schedule update compliant with the contract documents is submitted.

The CMAR shall prepare and incorporate into the schedule data base, at the required intervals, the following schedules:

1. Pre-proposal Schedules (Subnetworks): The CMAR shall prepare a construction schedule for work encompassed in each proposal package. The schedule shall be sufficiently detailed as to be suitable for inclusion in the proposal package as a framework for contract completion by the CMAR. It shall show the interrelationships between the work of the

CMAR and that of other Sub-Contractors and shall establish milestones keyed to the overall master schedule.

1. Sub-Contractors Schedules (Subnetworks): Upon the award of each sub-contract, the CMAR shall jointly with the Sub-Contractor, develop a schedule which is more detailed than the pre-proposed schedule included in the specifications, taking into account the work schedule of the other Sub-Contractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the Sub-Contractor. The construction schedule shall also show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.

2. Submittal Review Schedule: The CMAR shall indicate appropriate dates by which the Project Manager and/or Architect must notify the CMAR of the outcome of the review and any submittals in order to avoid an extension of the Contract Time, the failure of which will allow at least ten (10) days from receipt to respond to any submittal by CMAR.

## **2-11. COST CONTROL SUBSYSTEM**

The operation of this subsystem shall provide sufficient timely date and detail to permit the Construction Team to control and adjust the project requirements, needs, materials, equipment and systems and the construction site elements so that construction will be completed at a cost which, together with all other project costs, will not exceed the maximum total project budget. Requirements of this subsystem include the following submissions at the following phases of the project:

- (a) Costs at Completion of less than fifty percent (50%) Construction Documents Phase For Each Item Or Proposal Package – CMAR as part of its bid has furnished or shall furnish its best costs for labor, materials and services required to complete scope of work pursuant to the existing design (with and without value-engineering) and the completed design.
- (b) Costs at Completion of One Hundred percent (100%) Construction Documents Phase For Each Item or Proposal Package.
- (c) Contract Costs – When the Construction Documents are sufficiently complete to establish the scope of work for the project or any portion thereof, CMAR shall prepare and submit a

cost on the basis of an overall quantitative labor and material take-off.

## **2-12. PROJECT ACCOUNTING SUBSYSTEM**

The operation of this subsystem shall enable the Construction Team to plan effectively and to monitor and control the funds available for the project, cash flow, change orders, payments and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, and amounts payable. This subsystem will be produced and updated monthly and includes the following reports which together will serve as a basic accounting tool and an audit trail. This subsystem, includes but is not limited to:

- (a) Costs Status Report presenting the budget, estimate and base commitment (awarded contracts and purchase orders) for any given contract or budget line item. It shall show approved change orders for each contract which when added to the base commitment will become the total commitment. Pending change orders will also be shown to produce the total estimated probable cost to complete the work.
- (b) A Payment Status Report showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative) the retainage, the amount payable (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.
- (c) A Detailed Status Report showing the complete activity history of each item in the project accounting structure. It shall include the budget, estimate and base commitment figures for each contract. It shall give the change order history including change order numbers, description, proposed and approved dates, and the proposed and approved dollar amounts. It shall also show all pending or rejected change orders.
- (d) A Cash Flow Diagram showing the projected accumulation of cash payments against the project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.
- (e) A Job Ledger shall be maintained as necessary to supplement the operation of the project accounting subsystem. The job ledger will be used to provide construction costs accountability for general conditions work, on-site reimbursable expenses and costs requiring accounting needs.

## **2-13. PROJECT MANAGEMENT PLAN / PROJECT MANUAL**

I. Upon award of contract, the CMAR shall begin Project Integration Management by documenting the Project Charter, develop a draft Comprehensive Project Management Plan/Project Manual ("Project Management Plan Manual") and develop a process for project plan updates. These items shall be the basis for a Project Management Plan Manual describing the services set forth in this Contract:

- a. The Project Charter documents the project statement of work and agreements which become the basis of foundational understanding of the project requirements.
- b. The Project Management Plan shall include management plans for communications, cost, resources, procurement, site visits, uniform records of daily work, quality control, risk, schedule, scope, change orders, RFIs, and stakeholder management. The Project Management Plan shall also establish and track

deviations from the baseline cost, schedule and scope. Each item listed should be a section within the Project Management Plan Manual.

- c. The Project Management Plan Manual shall be updated as necessary throughout the design, construction and City acceptance. Digital copies of the Project Management Plan Manual, and any updates, shall be submitted to the City and Architect.

Five (5) copies of the Project Management Plan Manual and any updates shall be submitted to the City and Architect and shall also be provided in electronic format. In developing the Project Management Plan Manual, the CMAR will coordinate with the City and the Architect.

11. Contents of Project Management Plan Manual: The Project Management Plan Manual shall describe in detail the procedures for executing the work and the organizations participating. The Project Management Plan Manual shall include as a minimum the following sections:

**1. Project Charter**

- 1.1. Project Summary & Goals & Delivery Strategy Methods
- 1.2. Assignments of Key Personnel and Organizational Plan
- 1.3. Agreements

**2. Project Management Plan**

- 2.1. Communications and Information Management Plan
- 2.2. Cost Management and Payment Administration Plan
- 2.3. Human Resource Plan
- 2.4. Procurement Management Plan
- 2.5. Quality Control Management Plan
- 2.6. Risk Management Plan
- 2.7. Schedule Management Plan
- 2.8. Scope Management Plan
- 2.9. Stakeholder Management Plan
  - 2.10. Cost Baseline
  - 2.11. Schedule Baseline
  - 2.12. Scope Baseline

**3. Project Management Plan Updates**

- 3.1. Process for updating the Project Management Plan

For further explanation of particular sections and examples of the Project Management Plan Manual, the following is expected:

Section 1.2. - Assignments of Key Personnel and Organizational Plan should include, but not be limited to, a Responsibility Performance Chart: A detailed matrix showing the specific responsibilities and interrelationships of the City, the Architect and CMAR. The Responsibility Performance Chart shall indicate major responsibility, and minor responsibility, for each specific task required to deliver the projects. The CMAR shall develop a similar chart for the personnel within his own organization who are assigned to the Project, and also for the personnel of the City and the Architect from data supplied by

each.

Section 2.1 - Communications and Information Management Plan should include, but not be limited to, Written Procedures: The CMAR will provide written procedures for Communications and coordination required between Construction Team members throughout the project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews, submittals, RFI's and other necessary communications.

Section 2.8. - The Scope Management Plan should include, but not be limited to, Flow Diagrams: These charts shall display the flow of information and the decision process for the review and approval of shop drawings and submittals, progress and change orders.

Technical Specifications of the project should also be included in the Project Management Plan Manual.

## **2-14. DESIGN REVIEW AND RECOMMENDATIONS**

1. Review and Recommendations for Value Engineering: Immediately after award of the Preconstruction Phase contract, the CMAR will familiarize itself thoroughly with the project documents and specifications and shall participate in the development of remaining design from existing drawings furnished by the Design Professional and the City to Completed Drawings. The CMAR will make recommendations with respect to value engineering of systems and materials and will furnish cost-reducing alternatives to assist the Architect and City in evaluating alternative comparisons versus long term cost effects. The evaluation will provide for any reasonable steps to allow for expediting of construction and early completion of the project. Pertinent information shall be provided as to the availability of materials and labor that will be required. The CMAR will submit to the City, Design Professional, and Permitting Authority as appropriate, such comments as may be appropriate concerning construction feasibility and practicality. Any apparent defects in the design, drawings and specifications or other documents will be called to the Project Manager and the Architect's attention. The CMAR will prepare an estimate of the construction cost with value-engineering alternates utilizing the unit quantity survey method and making appropriate disclosure for items which may increase construction time but result in lower construction costs. Notwithstanding anything herein to the contrary, CMAR is not performing and is not holding itself out to be an architect or engineer. CMAR shall not be responsible for any errors and/or omissions in the design documents. Any Architect or Engineer hired by CMAR to work associated with this agreement shall carry.

2. Review Reports and Warranty: Within ten (10) days after receiving the Construction Documents for each of the projects, the CMAR will perform a specific review thereof, focused upon factors of a nature encompassed on factors set out herein. Promptly after completion of the review, the CMAR shall submit to the Project Manager, with copies to the Architect, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as he may deem appropriate, and all actions taken by the Architect with respect to same, any comments he may deem to be appropriate with respect to separating the work into separate contracts, alternative materials, and all comments called for under the Design Review and Recommendations. CMAR shall not be responsible for errors and/or omissions in the design documents. CMAR shall be entitled to rely on the accuracy of reports and/or information provided to

CMAR by the City.

3. Long Lead Procurements: The CMAR will review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials, supplies). When each item is identified, the CMAR will notify the Sub-Contractors, the Project Manager and the Architect of the required procurement and schedule. Such information will be included in the Proposal documents and made a part of all affected sub-contracts. As soon as the drawings are sufficiently complete for the purposes of establishing the construction cost, the CMAR will prepare invitations for Proposals. The CMAR will keep itself informed of the progress of the respective Sub-Contractors or suppliers, manufacturing or fabricating such items and advise City Project Manager and Architect of any problems or prospective delay in delivery.

4. Phased Construction Planning: The CMAR will review the design with the Architect and make the recommendations to the City and to the Architect with respect to dividing the work in such manner as will permit the CMAR to take proposals and award separate construction sub- contracts on the current schedule while the design is being completed.

5. Job-Site Facilities: The CMAR will arrange for all job-site facilities necessary to enable the CMAR and the City's representatives and the Architect to perform their respective duties in the management, inspection and supervision of construction. The CMAR is responsible for proper care and maintenance of all equipment while in his control. At the time of transfer to the City, the City may refuse acceptance of the project if the City determines in its sole discretion that any equipment has not been properly cared for by the CMAR or that such acquisition would not otherwise be in the best interest of the City.

6. Weather Protection: The CMAR will ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. He shall submit to the Construction Team his recommendations as to needed requirements of this nature as to the contract or contracts in which they should be included.

## **2-15. PROJECT REQUIREMENTS**

1. The CMAR will provide for each of the following activities as part of its Construction Phase fee:
  - a. Maintain both a log of daily quality control and a log of daily activities, including manpower records, weather delays, major decisions, work events and incidents. A daily report of these logs will be distributed to the City and the Architect in PDF format.
  - b. Maintain a roster of companies on the project with names and telephone numbers of key personnel.
  - c. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
  - d. Provide labor relations management for a harmonious, productive project.

- e. Provide a safety program for the project to meet OSHA requirements. Monitor for Sub-Contractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
  - f. Provide a safety meeting with CMAR staff, subcontractor(s) staff, consultants and subconsultants and project manager prior to starting work on existing site.
2. The CMAR shall provide personnel and equipment or will arrange for separate subcontractors to provide each of the following as a direct cost item:
- a. Schedule the services of independent testing laboratories and provide the necessary testing of materials to ensure conformance to contract requirements.
  - b. The printing and distribution of all required proposal documents and shop drawings, including the sets required by the Permitting Authority's inspectors.

## **2-16. PROJECT ADMINISTRATION**

The CMAR will provide administrative functions during construction to assure proper documentation as part of its Construction Phase fee. The administrative functions shall include but not limited to such things as the following:

**A. Job Meetings:** Hold weekly progress and coordination meetings to provide for an easy flowing project. Implement procedures and ensure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing, labor allocation, etc. Review and coordinate each Sub-Contractor's work. Review and implement revisions to the Schedule. Monitor and promote safety requirements. In addition, regular project status meetings will be held between the Architect, City and CMAR either biweekly or monthly, whichever is designated by the Project Manager. Use the job site meeting as a tool for preplanning of work and enforcing schedules and for procedures, responsibilities, and identification of authority for all to clearly understand. Identify party or parties responsible for follow up on any problems, delay items or questions and record course for solution. Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying event known to those present for appropriate attention and resolution.

**B. Shop Drawing Submittals/Approvals:** Provide staff to check shop drawings and to implement procedure for submittal and transmittal to the Architect of such drawings for action, and closely monitor their submittal and approval process.

**C. Material and Equipment Expediting:** Provide staff to closely monitor material and equipment deliveries, to the affected Sub-Contractor for fabrication or revision. The CMAR will maintain a suspense control system to promote expeditious handling. He will request the Architect to make interpretations of the drawings or specifications requested of him by the Sub-Contractors and will maintain a suspense control system to promote timely response. He will advise the Project Manager and Architect when timely response is not occurring on any of the above.

D. Payments to Sub-Contractors: Develop and implement a procedure for review, processing and payment of applications by Sub-Contractors for progress and final payments.

E. Document Interpretation: Refer all questions for interpretation of the documents prepared by the Architect to the Architect and Project Manager.

F. Reports and Project Site Documents: Record the progress of the project. Submit written progress reports to the City and the Architect including information on the Sub-Contractors' work, and the percentage of completion. Keep a daily log available to the City, the Architect and the Permitting Authority inspectors.

G. Sub-Contractor Progress: Prepare periodic punch lists for Sub-Contractors' work including unsatisfactory or incomplete items and schedules for their completion.

H. Substantial Completion: Ascertain when the work or designated portions thereof are ready for substantial completion inspection. From the list of incomplete or unsatisfactory items, prepare a schedule for their completion indicating completion dates for the City's review. If the CMAR wishes the Architect and City to conduct a pre-substantial completion inspection in conjunction with his own forces, the Architect will prepare the pre-substantial punch list from which the CMAR will develop a completion schedule. The Project Manager will issue a certificate of substantial completion when the work on his pre-substantial punch list has been accomplished.

I. Final Completion: Monitor the Sub-Contractor's performance on the completion of the project and provide notice to the City and Architect that the work is ready for final inspection. Secure and transmit to the City, through the Architect, all required guarantees, affidavits releases, bonds and waivers, manuals, record drawings, and maintenance books including the Final Completion form.

J. Start Up: With the City's personnel direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the trade Sub-Contractors.

K. Record Drawings:

(1) During the process of the work, the CMAR will require all Contractors to record on their field sets of drawings the exact locations, as installed, of all conduits, pipe and facilities whether concealed or exposed.

(2) As-Built Drawings shall be required. Upon completion of the work, this data shall be recorded to scale utilizing the computer-aided design and drafting application (CADD). Two (2) sets of disk files will be furnished to the CMAR by the Architect, but the cost shall be borne by the CMAR. Each drawing shall be noted "As Built" and shall bear the date and name of the Sub- Contractors that performed the work. Where the work was installed exactly as shown on the contract drawings the sheets shall not be disturbed except as noted above.

(3) The CMAR will review the completed As-Built drawings and ascertain that all data furnished on the drawings are accurate and truly represent the work as actually installed.



When manholes, boxes, underground piping and conduits, inverts, transformers, switch cabinets, controllers, pull boxes, etc. are involved as part of the work, the CMAR will furnish true elevations and locations, all properly referenced by using the original benchmark used for the design of this project. The disks shall be submitted to the Project Manager and Architect when completed, together with two (2) sets of blue line prints for certification, at the time of final completion.