

**Sample Contract**  
**Subject to Change for this Project**

**Harris County Emergency Services District**  
**No. 7**

**CONSTRUCTION MANAGER AT RISK**

**Fire Department Logistics/Training/Administration Campus**  
**– PRE- CONSTRUCTION PHASE**

**PROJECT NO. 1001**

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# **Harris County Emergency Services District No. 7, Texas**

## **CONSTRUCTION MANAGER AT RISK**

**[Project Name] – PRE- CONSTRUCTION PHASE**

**PROJECT NO. XXXX**

THIS Agreement (the “Agreement”), made and entered by and between The Harris County Emergency Services District No. 7, a Texas municipal corporation, (hereinafter designated the “District”) and [Firm], a [State] [Firm type] (hereinafter designated the “Construction Manager at Risk” or “CMAR”) is entered into on this day of \_\_\_\_, 2021.

### **RECITALS**

- A. The District Manager of the Harris County Emergency Services District No. 7, Texas, or his authorized designee, is empowered to execute this agreement for professional services.
- B. The District intends to construct [Project name] (hereinafter referred to as the “Project”), as more fully described in Exhibit “B” attached.
- C. To undertake the design of said Project the District has entered into an Agreement with [Architect firm] (hereinafter referred to as the “Design Professional”).
- D. CMAR has represented to the District the ability to provide design phase services and to construct the Project.
- E. Based on this representation, the District intends to enter into an Agreement with CMAR for the design phase services identified in this Agreement. At the end of the design phase, at the District’s discretion, the District may enter into a separate construction agreement with CMAR for construction phase services.

### **AGREEMENT**

**NOW THEREFORE**, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the District and CMAR as follows:

### **ARTICLE 1 – TERMS AND DEFINITIONS**

“Addenda” – Written or graphic instruments issued prior to the submittal of the GMP Proposal(s), which clarify, correct or change the GMP Proposal(s) requirements.

“Agreement” or “Contract” – This written document signed by the District and CMAR

covering the pre-construction phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Agreement.

“Alternate Systems Evaluations” – Alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles which have the potential to reduce construction costs while still delivering a quality and functional Project that meets the District requirements.

“Certificate of Interested Parties” – Disclosure of interested parties that must be submitted to the District if required under section 2252.903 of the Government Code.

“Change Order” – A type of Contract amendment issued after execution of the Contract Documents where unanticipated or unforeseen circumstances in the Work have been encountered. Each Change Order shall be signed by the District and CMAR stating their agreement upon any or all of the following: the addition, deletion or revision in the scope of services or Deliverables; the amount of the adjustment to the Contract Amount; the extent of the adjustment to the Contract Time.

“District (Owner)” – The Harris County Emergency Services District No. 7, with whom CMAR has entered into this Agreement and for whom the services are to be provided pursuant to said Agreement.

“District’s Representative” – The designated District Project Manager.

“District’s Senior Representative” – The Harris County Emergency Services District No. 7’s designated Division/Department Head.

“Conflict of Interest” – A violation of one or more of the laws prohibiting conflict of interest that apply to this Agreement.

“Construction Documents” - Certain plans, specifications and drawings prepared by the Design Professional after correcting for permit review requirements or dated plans and specifications specifically identified as the “Construction Documents” herein or in an Exhibit or Addendum which is attached hereto.

“Construction Fee” – CMAR’s administrative costs, home office overhead, and profit as applicable to this project, whether at CMAR’s principal or branch offices.

“Construction Manager at Risk (CMAR)” – The firm selected by the District to provide the Pre-construction Phase Services as detailed in this Agreement.

“CMAR’s Contingency” – A fund to cover cost growth during the Project used at the discretion of CMAR usually for costs that result from Project circumstances. The amount of CMAR’s Contingency shall be negotiated as a separate line item in each GMP package

Use and management of CMAR's Contingency is described in Section 2.6.

"Owner's Contingency" – A fund to cover cost growth during the Project used at the discretion of the District usually for costs that result from the District-directed changes or unforeseen Site conditions. The amount of the Owner's Contingency shall be set solely by the District and shall be in addition to the project costs included in CMAR's GMP packages. Use and management of the Owner's Contingency is described in Section 2.6.

"Contract Amount" – The cost for services for this Agreement as identified in Article 4.

"Contract Documents" – The following items and documents in descending order of precedence executed by the District and CMAR: (i) all written and fully executed modifications, amendments and Change Orders; (ii) this Agreement, including all exhibits and attachments; (iii) Construction Documents; (iv) GMP Plans and Specifications.

"Cost of the Work" – Direct costs necessarily incurred by CMAR in the proper performance of the Work. The Cost of the Work shall include direct labor costs, sub-agreement costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, permit and license fees, materials testing, and related items. The Cost of the Work shall not include CMAR's Construction Fee, General Conditions Cost, or taxes.

"Critical Path Method" – A scheduling technique used to predict project duration by analyzing which sequence of activities has the least amount of scheduling flexibility thus identifying the path (sequence) of activities which represent the longest time required to complete the project. Delay in completion of the identified activities shall cause a delay in achieving Substantial Completion.

"Deliverables" – The work products prepared by CMAR in performing the scope of work described in this Agreement. Some of the major Deliverables to be prepared and provided by CMAR during the pre-construction phase may include but are not limited to: Construction Management Plan, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Statement of Proposed Minority Business Enterprise/Women's Business Enterprise ("MBE/WBE") Utilization as may be required or appropriate, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, and others as indicated in this Agreement or required by the Project Team and other services set forth in this Agreement or reasonably inferable therefrom.

"Design Professional" – A licensed design professional who furnishes design, construction documents, and/or construction administration services required for the Project.

"Drawings" or "Plans" – Documents which visually represent the scope, extent and character of the Work to be furnished and performed by CMAR during the construction phase, and which have been prepared or approved by the Design Professional and the District. Includes Drawings that have reached a sufficient stage of completion and released by the

Design Professional solely for the purposes of review and/or use in performing constructability or bidability reviews and in preparing cost estimates (e.g. conceptual, schematic, design development, construction documents), but *“not for construction.”* Shop Drawings are not Drawings as so defined.

“Final Completion” – 100% completion of all construction Work noted in or reasonably inferred from the Contract Documents, including but not limited to all Punch List work, all record and close-out documents specified in Owner’s Project Specifications and Owner training/start up activities.

“Float” – Number of calendar days by which an activity can be delayed without lengthening the critical path and extending the Substantial Completion date.

“General Conditions Costs” - Includes but is not limited to the following types of costs for CMAR during the construction phase: (i) payroll costs for Project Manager or CMAR for Work conducted at the Site, (ii) payroll costs for the superintendent and full-time general foremen, (iii) payroll costs for other management personnel resident and working at the Site, (iv) workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), (v) costs of offices and temporary facilities set up solely for this Project including office materials, office supplies, office equipment and minor expenses, (vi) cost of utilities, fuel, sanitary facilities and telephone services at the Site, (vii) costs of liability and other applicable insurance premiums not included in labor burdens for direct labor costs, (viii) costs of bond premiums, (ix) costs of CMARs not in the direct employ of the CMAR or Subcontractors.

“Guaranteed Maximum Price (GMP)” – The sum of the maximum Cost of the Work; the Construction Fee, General Conditions Costs, taxes, and CMAR Contingency.

“GMP Plans and Specifications” – Plans and Specifications upon which the Guaranteed Maximum Price Proposal is based.

“Guaranteed Maximum Price (GMP) Proposal” – The offer or proposal of CMAR submitted on the prescribed form setting forth the GMP prices for the entire Work or portions of the Work to be performed during the construction phase. The GMP Proposal(s) are to be developed pursuant to Article 2 of this Agreement.

“Opening Physical Conditions” – The current physical conditions present on the Site as jointly documented by an inspection of the Site by District and CMAR at the Pre-constructionConference.

“Payment Request” – The form that is accepted by the District and used by CMAR in requesting progress payments or final payment and which shall include such supporting documentation as is required by the Contract Documents and/or the District. {AIA Documents G 702 and 703are acceptable.}

“Pre-construction Conference” – A Conference held between District and CMAR prior to the commencement of any Work, as scheduled by the District’s Representative or designee.

“Project” – Work to be completed in the execution of this Agreement as amended and as described in the Recitals above and in Exhibit “B” attached.

“Project Team” – Pre-construction phase services team consisting of the Design Professional, CMAR, the District’s Representative, the District’s Client Department representatives and other stakeholders who are responsible for making decisions regarding the Project.

“Schedule of Values (SOV)” – A statement furnished by CMAR to the District’s Representative for approval, reflecting the portions of the GMP allotted for the various parts of the Work and used as the basis for evaluating CMAR’s applications for progress payments.

“Shop Drawings” – All drawings, diagrams, schedules and other data specifically prepared for the Work by CMAR or a Subcontractor, Sub-Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

“Site” – Land or premises on which the Project is located.

“Specifications” – The part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship, as applied to the Work and certain administrative details applicable thereto.

“Subcontractor” – An individual or firm having a direct agreement with CMAR or any other individual or firm having an agreement with the aforesaid contractors at any tier, who undertakes to perform a part of the pre-construction phase services or construction phase Work at the Site for which CMAR is responsible.

“Submittals” – Documents and/or things that may be produced or presented by one party for consideration, review or such other actions as may be required by this Agreement by another party, entity or person. Examples of Submittals include, but are not limited to, preliminary or evolving drafts, product data samples, etc.

“Substantial Completion” – The established date when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner may occupy the Work, or designated portion thereof, for the use for which it is intended. This may include, but is not limited to: (i) Approval by the District or State Fire Marshal and/or other state or local authorities having jurisdiction over the Work or a portion thereof (Certificate of Occupancy); (ii) all systems in place, functional, and displayed to, and accepted by, the District or its representative; (iii) District operation and maintenance training complete; (iv) HVAC test and balance completed with reports provided to the Design Professional for review; (v) Operational and Maintenance manuals and final Project Record Documents delivered to the District or Design Professional for review.

“Supplier” – A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct Agreement with CMAR or with any Subcontractor to furnish materials or equipment to be



incorporated in the construction phase Work by CMAR or any Subcontractor.

“Work” – The entire completed construction or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

## **ARTICLE 2 – BASIC PRE-CONSTRUCTION PHASE SERVICES**

### **2.1 GENERAL**

- 2.1.1 CMAR, to further the interests of the District, shall perform the services required by and in accordance with this Agreement to the satisfaction of the District, exercising the degree of care, skill and judgment a professional construction manager performing similar services in Spring, Texas, would exercise at such time, under similar conditions. CMAR shall, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practice.
- 2.1.2 Program Evaluation: As a participating member of the Project Team, CMAR may provide to the District and Design Professional a written evaluation of the District’s Project Program and Project Budget, each in terms of the other, with recommendations as to the appropriateness of each.
- 2.1.3 Project Meetings: CMAR shall attend Project Team meetings which may include, but are not limited to, Project management meetings, Project workshops, special Project meetings, construction document rolling reviews and partnering sessions.
- 2.1.4 CMAR shall provide pre-construction design phase services, described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. CMAR shall promptly notify the District in writing whenever CMAR determines that any Drawings or Specifications are inappropriate for the Project and/or cause changes in the scope of Work requiring an adjustment in the cost estimate, Project Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.
- 2.1.5 CMAR, when requested by the District, shall attend, make presentations and participate as may be appropriate in public agency and or community meetings that are germane to the Project. CMAR shall provide drawings, schedule diagrams, budget charts and other materials describing the Project when their use is required or appropriate in any such public agency meetings.

### **2.2 CONSTRUCTION MANAGEMENT PLAN**

- 2.2.1 CMAR may, and at the written request of the District shall, prepare a Construction Management Plan (“CMP”) which may, and at the written request of the District shall, include CMAR’s professional opinions concerning: (a) Project milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project, (b) investigations, if

any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (c) alternate strategies for fast-tracking and/or phasing the construction, (d) the number of separate subagreements to be awarded to Subcontractors and Suppliers for the Project construction, (e) permitting strategy, (f) safety and training programs, (g) construction quality control, (h) a commissioning program, (i) the cost estimate and basis of the model, and (j) a matrix summarizing each Project Team member's responsibilities and roles.

- 2.2.2 CMAR may, and at the written request of the District shall, add detail to its previous version of the CMP to keep it current throughout the pre-construction design phase so that the CMP is ready for implementation at the start of the construction phase. The update/revisions may, and at the written request of the District shall, take into account (a) revisions in Drawings and Specifications; (b) the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the District, Design Professional or CMAR, (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right-of-way, (d) the fast-tracking, if any, of the construction, or other chosen construction delivery methods, (e) the requisite number of separate bidding documents to be advertised, (f) the status of the procurement of long-lead time equipment (if any) and/or materials, and (g) funding issues identified by the District.

## **2.3 PROJECT MASTER SCHEDULE**

The fundamental purpose of the "Project Master Schedule" is to identify, coordinate and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team to utilize that Deliverable as a basis for managing and monitoring all member's compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Project Master Schedule requirements. CMAR shall develop and maintain the "Project Master Schedule" on behalf of and to be used by the Project Team based on input from the other Project Team members. The Project Master Schedule shall be consistent with the most recent revised/updated CMP. The Project Master Schedule shall use the Critical Path Method (CPM) technique, unless required otherwise, in writing by the District. CMAR shall use scheduling software to develop the Project Master Schedule that is acceptable to the District. The Project Master Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Project Master Schedule shall indicate milestone dates for the phases once determined.

- 2.3.2. The Project Master Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the critical path.
- 2.3.2.1 The CPM diagram schedule shall be in calendar days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for

all activities except critical activities. The CPM diagram shall be presented in a time-scaled graphical format for the Project as a whole.

- 2.3.2.2 The CPM diagram schedule shall indicate all relationships between activities.
- 2.3.2.3 The activities making up the schedule shall be in sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work. Formulation of the Project Master Schedule must also be based on the Opening Physical Conditions of the Site in the event the Work on the Project is delayed for any reason.
- 2.3.2.4 The CPM diagram schedule shall be based upon activities which would coincide with the Schedule of Values and shall include an allowance for submittal review.
- 2.3.2.5 The schedule shall show milestones, including milestones for Owner-furnished information, and shall include activities for Owner-furnished equipment and furniture when those activities are interrelated with CMAR activities.
- 2.3.2.6 The schedule shall include a critical path activity that reflects anticipated weather delay during the performance of this Agreement. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the Site. CMAR shall anticipate in the schedule the following number of weather days each month: January – 3, February – 2, March – 3, April – 2, May – 4, June – 3, July – 3, August – 2, September – 3, October – 3, November – 2, December – 2
- 2.3.3 The Project Schedule shall consider the District's and the tenants' occupancy requirements showing portions of the Project having occupancy priority and Contract Time.
- 2.3.1 Float time shall be as prescribed below:
- 2.3.3.1 The total Float within the overall schedule is not for the exclusive use of either the District or CMAR, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet Agreement milestones and the Project completion date.
- 2.3.3.2 CMAR shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the schedule is jointly owned, no time extensions shall be granted nor delay damages paid until or unless a delay occurs which extends the Work beyond the Substantial Completion date.
- 2.3.4 The Project Schedule shall be updated and maintained by CMAR throughout the pre-construction phase such that it shall not require major changes at the start of the construction phase to incorporate CMAR's plan for the performance of the construction phase Work. CMAR shall provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but no less often than at the monthly Project Team meetings. CMAR shall include with such

Submittals a narrative describing its analysis of the progress achieved to date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions. (See Sections 2.6.6 and 2.6.6.1 of this Agreement.)

- 2.3.5 Project Phasing: If phased construction is deemed appropriate and the District and Design Professional approve, CMAR shall review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work with the objective of reducing the Project Schedule and/or Cost of the Work. CMAR shall take into consideration such factors as natural and practical lines of Work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.

## **2.4 DESIGN DOCUMENT REVIEWS**

- 2.4.1 CMAR shall evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact the cost estimate, GMP Proposals and/or the Project Master Schedule.
- 2.4.2 CMAR shall recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for CMAR to construct the Project. Before initiating construction operations, CMAR may request additional investigations in their GMP Proposal to improve the adequacy and completeness of the Site condition information and data made available with the Construction Documents.

- 2.4.3 CMAR shall meet with the Project Team, as required, to review designs during their development. CMAR shall familiarize itself with the evolving documents through the various design phases. CMAR shall proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and labor and material availability. CMAR shall advise the Project Team on proposed Site improvements, excavation and foundation considerations, as well as concerns that exist with respect to coordination of the Drawings and Specifications. CMAR shall recommend cost effective alternatives.
- 2.4.4 CMAR shall conduct constructability and bidability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team and at a minimum as scheduled and identified by milestones in the Project Master Schedule required in Article 2.3 above. The reviews shall attempt to identify all discrepancies and inconsistencies in the Construction Documents, especially those related to clarity, consistency, and coordination of Work of Subcontractors and Suppliers.
- 2.4.4.1 Constructability Reviews: CMAR shall evaluate whether (a) the Drawings and Specifications are configured to enable efficient construction, (b) design elements are standardized and coordinated, (c) construction efficiency is properly considered in the Drawings and Specifications, (d) module/preassembly design is prepared to facilitate fabrication, transport and installation, (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions, (f) sequences of Work required by or inferable from the Drawings and Specifications are practicable, and (g) the design has taken into consideration efficiency issues concerning access and entrance to the Site, laydown and storage of materials, staging of Site facilities, construction parking, and other similar pertinent issues.
- 2.4.4.2 Bidability Reviews: CMAR shall check cross-references and complementary Drawings and sections within the Specifications, and in general evaluate whether (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well in similar installations, (c) Specifications include alternatives in the event a requirement cannot be met in the field, and (d) in its professional opinion, the Project is likely to be subject to differing Site conditions.
- 2.4.4.3 Results of the reviews shall be provided to the District in formal written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the

Drawings, Specifications and other documents. If requested by the District, CMAR shall meet with the District and Design Professional to discuss any findings and review reports.

2.4.4.4 CMAR's reviews shall be from a contractor's perspective; and though it shall serve to reduce the number of Requests for Information (RFI) and changes during the construction phase, responsibility for the Drawings and Specifications shall remain with the Design Professional and not CMAR.

2.4.5 Notification of Variance or Deficiency: It is CMAR's responsibility to assist the Design Professional in ascertaining that, in CMAR's professional opinion, the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If CMAR recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it shall promptly notify the Design Professional and District in writing, describing the apparent variance or deficiency. However, the Design Professional is ultimately responsible for the compliance with those laws, statutes, ordinances, building codes, rules and regulations.

2.4.6 Alternate Systems Evaluations: The Project Team shall routinely identify and evaluate using value engineering principles any alternate systems, approaches, design changes that have the potential to reduce Project costs while still delivering a quality and functional product. If the Project Team agrees, CMAR, in cooperation with the Design Professional, shall perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. The Project Team shall decide which alternatives will be incorporated into the Project. The Design Professional shall have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. CMAR shall include the cost of the alternatives into the cost estimate and any GMP Proposals.

## **2.5 COST ESTIMATES**

2.5.1 Unless otherwise agreed by both parties, within twenty-one (21) calendar days after receipt of the documents for the various phases of design, CMAR shall provide a detailed cost estimate and a written review of the documents. The Design Professional and CMAR shall reconcile any disagreements on the estimate to arrive at an agreed cost. If no consensus is reached, the District shall make the final determination.

2.5.2 If any estimate submitted to the District exceeds previously accepted estimates or the District's Project budget, CMAR shall make appropriate recommendations on methods and materials to the District and Design Professional that CMAR believes shall bring the Project back into the Project budget.

- 2.5.3 In between these milestone estimates, CMAR shall periodically provide a tracking report which identifies the upward or downward movements of costs due to value engineering or scope changes. It shall be the responsibility of CMAR to keep the District and Design Professional informed as to the major trend changes in costs relative to the District's budget.
- 2.5.4 If requested by the District, CMAR shall prepare a preliminary "cash flow" projection based upon historical records of similar type projects to assist the District in the financing process.

## **2.6 GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS**

- 2.6.1 The proposed GMP for the entire Work (or portions thereof) shall be presented in a format acceptable to the District (see Exhibit "C" attached). The District may request a GMP Proposal for all or any portion of the Project and at any time during the design phase. Any GMP Proposals submitted by CMAR shall be based on and consistent with the current updated/revised cost estimate at the time of the request, the associated estimates for construction costs and include any clarifications or assumptions upon which the GMP Proposal(s) are based. CMAR guarantees to complete the Project at or less than the final approved GMP Proposal amount, plus approved Change Orders, and agrees that it shall be responsible for any increase in the actual cost of the Work above that amount.
- 2.6.2 Guaranteed Maximum Price is comprised of the following not-to-exceed cost reimbursable or lump sum amounts defined below.
- 2.6.2.1 The Cost of the Work is actual costs and is a not-to-exceed, reimbursable amount.
- 2.6.2.2 The General Conditions Costs and the Construction Fee are firm fixed lump sums.
- 2.6.2.3 CMAR's Contingency is an amount CMAR may use under the following conditions: (1) at its discretion for increases in the Cost of the Work, or (2) with written approval of the District for increases in General Condition Costs. CMAR's Contingency is assumed to be a direct Project cost so all applicable markups shall be applied at the time of GMP submission.
- 2.6.3 Owner's Contingency is funds to be used at the sole discretion of the Owner. Owner's Contingency shall be included in the Contract Price, for approval by Council, to cover any increases in Project costs that result from Owner directed changes or unforeseen Site conditions. At the time that Owner's Contingency is used, the appropriate markups shall have already been applied.
- 2.6.4 GMP amendments are cumulative except for CMAR's Contingency. The amount of CMAR's Contingency for each GMP shall be negotiated separately.

2.6.5 CMAR, in preparing any GMP Proposal, shall obtain the most current signed, sealed and dated Plans and Specifications, including all addenda, from which CMAR shall prepare the GMP Proposal in accordance with the District's request.

2.6.5.1 WAGE RATES: Labor in CMAR's GMP for work to be performed under this contract shall be paid the prevailing wage scale in this locality for work of a similar character, and in no event less than the minimums prescribed in the following schedule:

If the construction project involves the expenditure of federal funds in excess of Two Thousand and 00/100 Dollars (\$2,000.00), the minimum wages to be paid various classes of laborers and mechanics will be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on a project of a character similar to the contract work in the Harris County Emergency Services District No. 7 or the rate given above, whichever is higher.

Except for work on legal holidays, the "general prevailing rate of per diem wage" for the various crafts or type of workers or mechanics is the product of  
(a) the number of hours worked per day, except for overtime hours, times  
(b) the above respective Rate Per Hour.

For legal holidays, the "general prevailing rate of per diem wage" for the various crafts or type of workers or mechanics is the product of (a) one and one-half times the above respective Rate Per Hour, times (b) the number of hours worked on the legal holiday.

The "general prevailing rate for overtime work" for the crafts or type of workers or mechanics is one and one-half times the above respective Rate Per Hour.

Under the provisions of V.T.C.A. Government Code Chapter 2258, the CONTRACTOR shall forfeit as a penalty to the entity on whose behalf the contract is made or awarded, Sixty Dollars and NO/100 Dollars (\$60.00) for each laborer, worker or mechanic employed, for each calendar day, or portion thereof, such laborer, worker or mechanic is paid less than the said stipulated rates for any work under the Contract, by Contractor, or by any subcontractor under Contractor.

2.6.6 An updated/revised Project Master Schedule shall be included with any GMP Proposal(s) that reflects the GMP Plans and Specifications. Any such Project Master Schedule updates/revisions shall continue to comply with the requirements of Section 2.3 above.



- 2.6.6.1 The Project Master Schedule required above shall include a preliminary Construction Schedule developed in a Critical Path Method (CPM) with the first requested GMP. If subsequent GMP's are requested, CMAR shall include an updated CPM Construction Schedule with their GMP submittal.
- 2.6.7 GMP savings resulting from a lower actual Project cost than anticipated by CMAR remaining at the end of the project shall revert to the District.
- 2.6.8 GMP Proposal(s) Review and Approval
- 2.6.8.1 The District may request a GMP from CMAR at any time during the Design Phase. It is the District's expectation that the GMP shall not exceed the District-stated Project budget.
- 2.6.8.2 CMAR shall meet with the District and Design Professional to review the GMP Proposal(s) and the written statement of its basis. In the event the District or Design Professional discovers inconsistencies, inaccuracies or confusion in the information presented, CMAR shall make adjustments as necessary to the GMP Proposal, its basis or both.
- 2.6.8.3 CMAR's detailed construction cost estimates and GMP shall be reviewed by the Design Professional and the District for reasonableness and compatibility with the District's Project and the District's budget. CMAR shall provide a response to the Design Professional's and District's questions and an explanation of differences between the District's Project budget and CMAR's construction cost estimate and corresponding GMP. District may require that such responses and explanations be submitted in writing. CMAR, District and Design Professional shall engage in a mutually agreeable process in an effort to achieve a clearly understood mutually acceptable GMP.
- 2.6.8.4 In the event that the GMP exceeds the District's Project budget, the District reserves the right to direct CMAR to (and CMAR shall) work in conjunction with the Design Professional to assist in the redesign of the Project as necessary to meet the agreed upon program and the stated Project budget as follows:

- a) After direction from the District, CMAR shall coordinate and cooperate with the Project Team to assist the Design Professional in altering and re-drafting Construction Documents as necessary to accomplish the required reduction in cost.
- b) CMAR shall develop and provide to the District a GMP in connection with the altered Construction Documents to accomplish the necessary reductions in cost.
- c) CMAR shall analyze the Design Professional's original submittal and as altered and redrafted Construction Documents and make recommendations to the District as to ways and methods to reduce the cost of constructing the Project to a sum which does not exceed the stated Project budget.

CMAR shall perform the work set forth in this Section without additional compensation.

- 2.6.8.5 The District, upon receipt of any GMP proposal from CMAR, may submit the GMP Plans and Specifications to a third party for review and verification.
- 2.6.8.6 If CMAR GMP Proposal is greater than the third party's estimate, the District may require CMAR to reconfirm its GMP Proposal. CMAR shall accept the third party's estimate for the cost of Work as part of its GMP Proposal, or present a report within seven (7) calendar days of a written request by the District for such a report identifying, explaining and substantiating the differences and/or explaining other concerns the District may raise. CMAR may be requested to, or at its own discretion, submit a revised GMP Proposal for consideration by the District.
- 2.6.8.7 If during the review and negotiation of GMP Proposals design changes are required, the District shall authorize and cause the Design Professional to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents shall be furnished to CMAR. CMAR shall promptly notify the Design Professional and District in writing if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.
- 2.6.8.8 After final submission of the GMP Proposal, the District may do any of the following:
  - a) Accept CMAR original or revised GMP Proposal, if within the District's budget, without comment;
  - b) Accept CMAR original or revised GMP Proposal that exceeds the District budget, and indicate in writing to CMAR that the Project Budget has been increased to fund the differences; or

- c) Reject CMAR original or revised GMP Proposal, in which event the District may terminate this Agreement and/or elect to not enter into a separate Agreement with CMAR for the construction phase associated with the scope of Work reflected in the GMP Proposal.

2.6.8.9 Upon acceptance by the District of a GMP Proposal, the District shall prepare and CMAR shall execute the District's specified form of Agreement to reflect the GMP, and the GMP as approved shall become part of the Construction Services Agreement. Within ten (10) calendar days after execution of the Construction Services Agreement, CMAR shall provide to the District a Performance Bond for 115% and a Payment Bond for 100% of the full Agreement price. If the GMP Proposal has not been accepted at the time the Construction Services Agreement is awarded, because the Project is a phased GMP, then a Performance Bond and a Payment Bond must be posted for the amount of the construction budget.

## **2.7 SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS**

2.7.1 CMAR shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or Subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions.

2.7.2 If CMAR desires to self-perform, CMAR shall submit its bid or proposal for those portions of the work in the same manner as all other trade contractors or Subcontractors. The District shall determine whether the CMAR's bid or proposal provides the best value for the District. The District shall approve CMAR self-performance of any part of the Work and the cost therefore prior to accepting any GMP Proposal.

2.7.3 CMAR shall review all trade contractor or Subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the CMAR, architect, engineer or District. All bids or proposals shall be made available to the District on request and to the public after the later of the award of the contract or the seventh calendar day after the date of final selection of bids or proposals. CMAR shall obtain District approval of the selected trade contractor(s) or Subcontractor(s).

2.7.3.1 Within three (3) calendar days of negotiating cost for services from all trade contractors or Subcontractors, CMAR shall then prepare a report for the District's approval identifying the recommended trade contractor or Subcontractor for each category of the Work to be performed. The report shall be in a format approved by the District's Representative and shall include, among other things, the amount of each such cost. CMAR shall, at its discretion or at the request of the District's Representative, request written verification of any costs selected. CMAR shall provide an explanation of the qualifying factors for each selection.

- 2.7.3.2 If the District objects to any nominated trade contractor or Subcontractor or to any nominated self-performed Work for good reason, CMAR shall nominate a substitute Subcontractor. The District shall compensate the CMAR by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the CMAR incurs because of the District's requirement that another bid or proposal be accepted.
- 2.7.4 The selected trade contractors or Subcontractors shall provide a schedule of values, which shall be used to create the overall Project Schedule of Values.
- 2.7.5 CMAR shall employ only trade contractors or Subcontractors who are duly licensed in Texas and qualified to perform the Work per the requirements of the Contract Documents.
- 2.7.6 Regardless of the selection procedure, CMAR is responsible for ensuring that the costs of the trade contractor or Subcontractor's services are reasonable and a prudent use of public funds.
- 2.7.7 Regardless of the selection procedure and in any case, CMAR is solely responsible for the cost and performance of the selected trade contractors or Subcontractors. The District's approvals under this section are not and shall not be construed to be a waiver, in part or in whole, of CMAR's responsibility and obligation to perform as set forth in this Agreement or any subsequent construction agreement or GMP and for the cost, or less than the cost, set forth in any GMP to which the parties agree.
- 2.7.8 If a selected trade contractor or Subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the CMAR may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or Subcontractor to fulfill the contract requirements.

### **ARTICLE 3 – PERIOD OF SERVICES**

- 3.1 The pre-construction phase services described in this Agreement shall be performed by CMAR in accordance with the most current updated/revised Project Master Schedule. Failure on the part of CMAR to adhere to the Project Master Schedule requirements for activities for which it is responsible shall be sufficient grounds for termination of this Agreement by the District.
- 3.2 If the date of performance of any obligation or the last day of any time period provided for herein should fall on a Saturday, Sunday, or holiday for the District, then said obligation shall be due and owing, and said time period shall expire, on the first day thereafter which is not a Saturday, Sunday or legal District holiday. Except as may otherwise be set forth herein, any performance provided for

herein shall be timely made if completed no later than 5:00 p.m. (Plano time) on the day of performance.

## **ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS**

### **4.1 CONTRACT AMOUNT**

- 4.1.1 Based on the design phase services fee proposal submitted by CMAR and accepted by the District (which by reference is made a part of this Agreement); the District shall pay CMAR a fee as follows:

For the basic services described in Article 2, CMAR shall receive a fee not to exceed:

**\$xx,xxx**

Additional services and allowances, as described in Section 4.3:

-0-

Total Contract Amount not to exceed:

**\$xx,xxx**

### **4.2 PAYMENTS**

- 4.2.1 Requests for monthly payments by CMAR for design phase services shall be submitted on the District's "Contract Payment Request" form and shall be accompanied by a progress report, detailed invoices and receipts, if applicable. Any requests for payment shall include, as a minimum, a narrative description of the tasks accomplished during the billing period and a listing of any Deliverables submitted. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of Work completed during the preceding month. Services negotiated as a not-to-exceed fee shall be paid in accordance with the Work effort expended on that service during the preceding month.
- 4.2.2 Fees for CMAR shall not exceed the agreed lump sum amount indicated in Subsection 4.1.1 above.
- 4.2.3 CMAR agrees that no charges or claims for costs or damages of any type shall be made by it for any delays or hindrances beyond the reasonable control of the District during the progress of any portion of the services specified in this Agreement. Such delays or hindrances, if any, shall be solely compensated for by an extension of time for such reasonable period as may be mutually agreed between the parties. It is understood and agreed, however, that permitting CMAR to proceed to complete any services, in whole or in part after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of the District of any of its legal rights herein.
- 4.2.4 No compensation to CMAR shall be allowed contrary to Texas Government Code Section 2269.251 et seq.

- 4.2.5 If any service(s) executed by CMAR is delayed or suspended in whole or in part for a period of more than one hundred eighty (180) calendar days through no fault of CMAR, CMAR shall be paid for the services performed prior to the delay or suspension.

#### **4.3 ADDITIONAL PRE-CONSTRUCTION PHASE SERVICES**

- 4.3.1 CMAR may be required to provide services in excess of those set forth in Article 2. Mark-ups are not authorized and only the reimbursables specifically identified below shall be reimbursed as authorized herein. Any additional services shall be requested by the District, in writing, prior to the delivery of said services. There shall be no payment by the District for any additional services provided prior to or without the written request of the District for said services.

### **ARTICLE 5 - DISTRICT'S RESPONSIBILITIES**

- 5.1 The District, at no cost to CMAR, shall furnish the following information:
  - 5.1.1 One (1) copy of data the District determines pertinent to the Work. However, CMAR shall be responsible for searching the records and requesting information it deems reasonably required for the Project.
  - 5.1.2 All available data and information pertaining to relevant policies, standards, criteria, studies, etc.
  - 5.1.3 The name of the person designated to be the District's representative during the term of this Agreement. The District's Representative has the authority to administer this Agreement and shall monitor CMAR's compliance with all terms and conditions stated herein. All requests for information from or decisions by the District on any aspect of the Work or Deliverables shall be directed to the District's Representative.
- 5.2 The District additionally shall:
  - 5.2.1 Contract separately, with one or more design professionals, to provide architectural and/or engineering design services for the Project. The scope of services for the Design Professional shall be provided to CMAR for its

information. CMAR shall have no right to limit or restrict any changes of such services that are otherwise mutually acceptable to the District and Design Professional.

- 5.2.2 Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by CMAR except for those copies whose cost has been reimbursed by the District.
- 5.2.3 Provide CMAR with adequate information in its possession or control regarding the District's requirements for the Project.
- 5.2.4 Give prompt written notice to CMAR when the District becomes aware of any default or defect in the Project or non-conformance with the Drawings and Specifications, or any of the services required hereunder. Upon notice of failure to perform, the District may provide written notice to CMAR that it intends to terminate this Agreement unless the problem cited is cured, or commenced to be cured, within three (3) calendar days of CMAR's receipt of such notice.
- 5.2.5 Notify CMAR of changes affecting the budget allocations or schedule.
- 5.3 The District's Representative shall have authority to approve the Project Budget and Project Master Schedule, render decisions and furnish information the District's Representative deems appropriate to CMAR.

## **ARTICLE 6 – AGREEMENT CONDITIONS**

### **6.1 PROJECT DOCUMENTS AND COPYRIGHTS**

- 6.1.1 District Ownership of Project Documents: All work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original mylar Drawings, Computer Aided Drafting and Design (CADD) files, and other related documents which are prepared specifically in the performance of this Agreement (collectively referred to as Project Documents) are to be and remain the property of the District and are to be delivered to the District's Representative before the final payment is made to CMAR. Nonetheless, in the event these Projects Documents are altered, modified or adapted without the written consent of CMAR, which consent CMAR shall not unreasonably withhold, the District agrees to hold CMAR harmless to the extent permitted by law from the legal liability arising out of and/or resulting from the District's alteration, modification or adaptation of the Project Documents.
- 6.1.2 CMAR to Retain Copyrights: The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by CMAR during the course of performing this Agreement or arising out of the Project shall belong to CMAR.

- 6.1.3 License to District for Reasonable Use: CMAR hereby grants a license to the District, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Project Documents, works or Deliverables developed or created for the Project and this Agreement. This license shall also include the making of derivative works. In the event that the derivative works require the District to alter or modify the Project Documents, then Subsection 6.1.1 above applies.
- 6.1.4 Documents to Bear Seal: When applicable and required by state law, CMAR shall endorse by a Texas professional seal all plans, works, and Deliverables prepared by them for this Agreement.
- 6.1.5 Records Inspection: The District and its employees, agents, and authorized representatives shall have the right at all reasonable times and during all business hours to inspect and examine CMAR's records related to this Agreement.
- 6.1.6 Record Retention: CMAR shall comply with the District's record retention policy with regard to all records associated with the Project. This record retention requirement shall remain in effect following expiration of the Agreement or termination of the Agreement by either Party.

## **6.2 COMPLETENESS AND ACCURACY OF CMAR'S WORK**

CMAR shall be responsible for the completeness and accuracy of its reviews, reports, supporting data, and other design phase Deliverables prepared or compiled pursuant to its obligations under this Agreement and shall at its sole expense correct its work or Deliverables. Any damage incurred by the District as a result of additional construction cost caused by such willful or negligent errors, omissions or acts shall be chargeable to CMAR to the extent that such willful or negligent errors, omissions and acts fall below the standard of care and skill that a professional CMAR in Spring, Texas, would exercise under similar conditions. The fact that the District has accepted or approved CMAR's work or Deliverables shall in no way relieve CMAR of any of its responsibilities under this Agreement, nor does this requirement to correct the work or Deliverables constitute a waiver of any claims or damages otherwise available by law or Agreement to the District. Correction of errors, omissions and acts discovered on architectural or engineering plans and specifications shall be the responsibility of the Design Professional.

## **6.3 ALTERATION IN CHARACTER OF WORK**

- 6.3.1 In the event an unanticipated or unforeseen alteration or modification in the character of Work or Deliverables results in a substantial change in this Agreement, thereby materially increasing or decreasing the scope of services,



cost of performance, or Project Master Schedule, the Work or Deliverables shall nonetheless be performed as directed by the District. However, before any altered or modified Work begins, a Change Order or Amendment shall be approved and executed by the District and CMAR. Such Change Order or Amendment shall not be effective until approved by the District in writing.

6.3.2 Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to CMAR may accordingly be adjusted by mutual agreement of the contracting parties.

6.3.3 No claim for extra work done or materials furnished by CMAR shall be allowed by District except as provided herein, nor shall CMAR do any work or furnish any material(s) not covered by this Agreement unless such work or material is first authorized in writing. Work or material(s) furnished by CMAR without such prior written authorization shall be at CMAR's sole jeopardy, cost, and expense, and CMAR hereby agrees that without prior written authorization no claim for compensation for such work or materials furnished shall be made.

#### **6.4 DATA CONFIDENTIALITY**

6.4.1 As used in this Agreement, data ("Data") means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by CMAR in the performance of this Agreement.

6.4.2 The parties agree that all Data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to CMAR in connection with CMAR's performance of this Agreement is confidential and proprietary information belonging to the District.

6.4.3 CMAR shall not divulge Data to any third party without prior written consent of the District. CMAR shall not use the Data for any purposes except to perform the services required under this Agreement. These prohibitions shall not apply to the following Data:

6.4.3.1 Data, which was known to CMAR prior to its performance under this Agreement unless such data was acquired in connection with work performed for the District;

6.4.3.2 Data which was acquired by CMAR in its performance under this Agreement and which was disclosed to CMAR by a third party who to the best of CMAR's knowledge and belief had the legal right to make such disclosure and CMAR is not otherwise required to hold such data in confidence; or

6.4.3.3 Data which is required to be disclosed by CMAR by virtue of law, regulation, or

court.

- 6.4.4 In the event CMAR is required or requested to disclose Data to a third party, or any other information to which CMAR became privy as a result of any other Agreement with the District, CMAR shall first notify the District as set forth in this Article of the request or demand for the Data. CMAR shall timely give the District sufficient facts, such that the District can have a meaningful opportunity to either first give its consent or take such action that the District may deem appropriate to protect such Data or other information from disclosure.
- 6.4.5 CMAR, unless prohibited by law, within ten (10) calendar days after completion of services for a third party on real or personal property owned or leased by the District, shall promptly deliver, as set forth in this section, a copy of all Data to the District. All Data shall continue to be subject to the confidentiality agreements of this Agreement.
- 6.4.6 CMAR assumes all liability for maintaining the confidentiality of the Data in its possession and agrees to compensate the District if any of the provisions of this section are violated by CMAR, its employees, or agents. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section shall be deemed to cause irreparable harm that justifies injunctive relief in court.

## **6.5 PROJECT STAFFING**

- 6.5.1 Prior to the start of any work or Deliverables under this Agreement, CMAR shall submit to the District, an organization chart for CMAR staff and detailed resumes of key personnel listed in its response to the District's Request for Qualifications or subsequent fee proposals (or revisions thereto), that shall be involved in performing the services prescribed in this Agreement. Unless otherwise informed, the District hereby acknowledges its acceptance of such personnel to perform such services under this Agreement. In the event CMAR desires to change such key personnel from performing such services under this Agreement, CMAR shall submit the qualifications of the proposed substituted personnel to the District for prior approval. Key personnel shall include, but are not limited to, principal-in-charge, project manager, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.
- 6.5.2 CMAR shall maintain an adequate number of competent and qualified persons, as determined by the District, to ensure acceptable and timely completion of the scope of services described in this Agreement throughout the period of those services. If the District objects, with reasonable cause, to any of CMAR's staff, CMAR shall take prompt corrective action acceptable to the District and, if required, remove such personnel from the Project and replace with new personnel acceptable to the District.

## **6.6 INDEPENDENT CONTRACTOR**

- 6.6.1 CMAR is and shall be an independent contractor and whatever measure of control the District exercises over the work or Deliverables pursuant to this Agreement shall be as to the results of the work only. No provision in this Agreement shall give, or be construed to give, the District the right to direct CMAR as to the details of accomplishing the work or Deliverables. These results shall comply with all applicable laws and ordinances.

## **6.7 [NOT USED]**

## **6.8 TERMINATION**

- 6.8.1 The District and CMAR hereby agree to the full performance of the covenants contained herein, except that the District reserves the right, at its discretion and without cause, to terminate any or all services provided for in this Agreement, or terminate any portion of the Project for which services have been performed by CMAR.
- 6.8.2 In the event the District terminates any or all of the services or any part of the services as herein provided, the District shall so notify CMAR in writing; and CMAR shall immediately, after receiving such notice, discontinue advancing the Work specified under this Agreement and mitigate the expenditure, if any, of costs resulting from such termination.
- 6.8.3 CMAR, upon such termination, shall promptly deliver to the District all reports, estimates and other work or Deliverables entirely or partially completed, together with all unused materials supplied by the District.
- 6.8.4 CMAR shall appraise the work completed and submit an appraisal to the District for evaluation. The District shall have the right to inspect CMAR's Work or Deliverables to appraise the Work completed.
- 6.8.5 CMAR shall receive compensation in full for services satisfactorily performed to the date of such termination and the reasonable direct costs and direct expenses attributable to such termination. The fee shall be paid in accordance with Article 4 of this Agreement, and shall be an amount mutually agreed upon by CMAR and the District. If there is no mutual agreement, the final determination shall be made in accordance with Section 6.9, "Disputes". However, in no event shall the fee exceed that set forth in Article 4 or as amended in accordance with Section 6.3 above, "Alteration in Character of Work". The District shall make the final payment within thirty (30) calendar days after CMAR has delivered the last of the partially or otherwise completed Work items and the final fee has been agreed upon.

## **6.9 DISPUTE AVOIDANCE AND RESOLUTION**

- 6.9.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, CMAR and District each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- 6.9.2 CMAR and the District shall first attempt to resolve disputes or disagreements at the field level through discussions between CMAR's Representative and the District's Representative.
- 6.9.3 If a dispute or disagreement cannot be resolved through CMAR's Representative and the District's Representative, CMAR's Senior Representative and the District's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) calendar days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties shall exchange relevant information that shall assist the parties in resolving their dispute or disagreement.
- 6.9.4 Except as otherwise agreed to by the parties, for any litigation brought by either party against the other to enforce the provisions of this Agreement, the appropriate venue shall be Collin County and Texas law shall apply and control. In the event any action at law or in equity is instituted between the parties in connection with this Agreement, the prevailing party in the action shall be entitled to its costs including reasonable attorneys' fees and court costs from the non-prevailing party.

## **6.10 WITHHOLDING PAYMENT**

- 6.10.1 The District reserves the right to withhold funds from the District's progress payments up to the amount equal to the amount of the bona fide dispute between the District and the CMAR as to the goods delivered or the services performed until such time that a settlement on those claims has been reached.

## **6.11 RECORDS/AUDIT**

- 6.11.1 Records of CMAR's direct personnel payroll, reimbursable expenses pertaining to the Project and records of accounts between the District and CMAR shall be kept on a generally recognized accounting basis and shall be available for up to three (3) years following Final Completion of the Project. The District, its authorized representative, and/or the appropriate federal agency, reserve the right to audit CMAR's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this Agreement and any Change Orders. The District reserves the right to decrease Contract Amount and/or payments made on

this Agreement if, upon audit of CMAR's records, the audit discloses CMAR has provided false, misleading, or inaccurate cost and pricing data.

- 6.11.2 CMAR shall include a provision similar to Subsection 6.11.1 above in all of its agreements with Subcontractors, and Suppliers providing services under this Agreement to ensure the District, its authorized representative, and/or the appropriate federal agency, has access to the, Subcontractors', and Suppliers' records to verify the accuracy of cost and pricing data. The District reserves the right to decrease Contract Amount and/or payments made on this Agreement if the above provision is not included in Subcontractor, and Supplier Agreements, and one or more of those parties do not allow the District to audit their records to verify the accuracy and appropriateness of pricing data.

## **6.12 INDEMNIFICATION**

- 6.12.1 **CMAR AGREES TO DEFEND, INDEMNIFY AND HOLD THE DISTRICT AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CMAR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CMAR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CMAR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE DISTRICT, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE DISTRICT DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

CMAR, AT ITS OWN EXPENSE, IS EXPRESSLY REQUIRED TO DEFEND DISTRICT AGAINST ALL SUCH CLAIMS. DISTRICT RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, DISTRICT IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY DISTRICT IS NOT TO BE CONSTRUED AS A WAIVER OF CMAR'S OBLIGATION TO DEFEND DISTRICT OR AS A WAIVER OF CMAR'S OBLIGATION TO INDEMNIFY DISTRICT PURSUANT TO THIS AGREEMENT. CMAR SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF DISTRICT'S WRITTEN NOTICE THAT DISTRICT IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CMAR FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, DISTRICT SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE DISTRICT.

## 6.13 NOTICES

6.13.1 Any notices or demands required to be given, pursuant to the terms of this Agreement, may be given to the other Party in writing, delivered in person, sent by facsimile transmission, emailed, deposited in the United States mail, postage prepaid, or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph. However, notices of termination, notices of default and any notice regarding warranties shall be sent via registered or certified mail, return receipt requested, at the address set forth below **and** to legal counsel for the party to whom the notice is being given.

Unless instructed otherwise in writing, CMAR agrees that all notices or communications to District permitted or required under this Agreement shall be addressed to District at the following address:

Harris County Emergency Services District No. 7  
[Department name] Department  
[Address]  
Attn: [Point of Contact]  
[Title]

District agrees that all notices or communications to CMAR permitted or required under this Agreement shall be addressed to CMAR at the following address:

[Firm Name]  
[Address]  
Attn: [Point of Contact]  
[Title]

...or to other such place and with such other copies as either party may designate as to itself by written notice to the other party. Rejection, any refusal to accept, or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal, or inability to deliver.

#### **6.14 COMPLIANCE WITH ALL LAWS**

- 6.14.1 CMAR will comply with all applicable Federal, State, County and District laws, regulations and policies. CMAR understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. CMAR agrees to comply with these laws in performing the Contract Documents and to permit the District to verify such compliance.

#### **6.15 CONFLICT OF INTEREST**

- 6.15.1 CMAR shall comply with District's General Terms and Conditions and execute an Affidavit Of No Prohibited Interest.
- 6.15.2 To evaluate and avoid potential conflicts of interest, CMAR shall provide written notice to the District, as set forth in this section, of any work or services performed by CMAR for third parties that may involve or be associated with any real property or personal property owned or leased by the District. Such notice shall be given at least seven (7) business days prior to commencement of the Project by CMAR for a third party, or at least seven (7) business days prior to an adverse action as defined below. Written notice and disclosure shall be sent to the District addressee identified in 6.13.1.
- 6.15.2 Actions considered to be adverse to the District under this Agreement include but are not limited to:
- a) Using Data, as defined in this Agreement, acquired in connection with this Agreement to assist a third party in pursuing administrative or judicial action against the District;
  - b) Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the District; and
  - c) Using Data to produce income for CMAR or its employees independently of performing the services under this Agreement, without the prior written consent of the District.
- 6.15.3 CMAR represents that except for those persons, entities and projects previously identified in writing to the District, the services to be performed by CMAR under this

Agreement are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the District.

- 6.15.4 CMAR's failure to provide a written notice and disclosure of the information as set forth in this section shall constitute a material breach of this Agreement.

#### **6.16 CONTRACTOR'S IDENTIFICATION**

- 6.16.1 Prior to award of this Agreement, CMAR shall provide to the District a W-9 if not already provided.

#### **6.17 SUCCESSORS AND ASSIGNS**

- 6.17.1 The District and CMAR and their partners, successors, assigns, and legal representatives shall each be bound to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Agreement. Neither the District nor CMAR shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other. In no event shall any contractual relationship be created or be construed to be created as between any third party and the District. Notwithstanding the District's consent to assignment, CMAR, as Assignor, and the Assignee shall both remain liable under all rights, obligations, terms, and conditions of this Agreement.

#### **6.18 COVENANT AGAINST CONTINGENT FEES**

- 6.18.1 CMAR warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the District Council, or any employee of the District has any interest, financially, or otherwise, in CMAR. The District shall, in the event of the breach or violation of this warranty, have the right to annul this Agreement without liability or at its discretion to deduct from the Contract Amount or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

#### **6.19 NON-WAIVER PROVISION**

- 6.19.1 The failure of either party to enforce any of the provisions of this Agreement, or to require performance by the other party of any of the provisions hereof, shall not be construed to be a waiver of such provisions, nor shall it affect the validity of this Agreement or any part thereof, or the right of either party to thereafter enforce each and every provision.

#### **6.20 JURISDICTION**

- 6.20.1 This Agreement shall be deemed to be made under, and shall be construed in



accordance with and governed by, the laws of the State of Texas, without regard to the conflicts or choice of law provisions thereof. An action to enforce any provision of this Agreement, or to obtain any remedy with respect hereto, shall be brought to Harris County, and for this purpose each party hereby expressly and irrevocably consents to the venue of such Court.

## **6.21 SURVIVAL**

- 6.21.1 All warranties, representations and indemnifications by CMAR shall survive the completion or termination of this Agreement.

## **6.22 MODIFICATION**

- 6.22.1 No supplement, modification, or amendment of any term of this Agreement shall be deemed binding or effective unless in writing and signed by the parties hereto and in conformation with provisions of this Agreement, except as expressly provided herein to the contrary.

## **6.23 CERTIFICATION**

- 6.23.1 CMAR certifies that it does not and will not boycott Israel during the term of this Contract. CMAR has executed the Certification, attached and incorporated herein as Exhibit "E".

## **6.24 SEVERABILITY**

- 6.24.1 If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

## **6.25 INTEGRATION**

- 6.24.1 This Agreement contains the full agreement of the parties hereto. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded hereby.

## **6.26 TIME IS OF THE ESSENCE**

- 6.26.1 Time of each of the terms, covenants, and conditions of this Agreement is hereby expressly made of the essence.

## **6.27 THIRD PARTY BENEFICIARY**

- 6.27.1 This Agreement shall not be construed to give any rights or benefits in the Agreement to anyone other than the District and CMAR. All duties and responsibilities undertaken pursuant to this Agreement shall be for the sole and exclusive benefit of the District and CMAR and not for the benefit of any other party.

**6.28 COOPERATION AND FURTHER DOCUMENTATION**

- 6.28.1 CMAR agrees to provide the District such other duly executed documents as may be reasonably requested by the District to implement the intent of this Agreement.

**6.28 CONFLICT IN LANGUAGE**

- 6.28.1 All Work or Deliverables performed shall conform to all applicable District codes, ordinances and requirements as outlined in this Agreement. If there is a conflict in interpretation between provisions in this Agreement and any Exhibits, the provisions in this Agreement shall prevail.

**6.29 CANCELLATION FOR CONFLICT OF INTEREST**

- 6.29.1 All parties hereto acknowledge that this Agreement is subject to cancellation for conflict of interest by the District .

**6.30 CONFIDENTIALITY OF PLANS & SPECIFICATIONS**

- 6.30.1 Any plans or specifications received by CMAR regarding the Project are for official use only. CMAR may not share them with others except as required to fulfill Agreement obligations with the District.

## **EXHIBIT A**

### **HARRIS COUNTY EMERGENCY SERVICES DISTRICT NO. 7 GENERAL TERMS AND CONDITIONS**

1. **THESE TERMS AND CONDITIONS APPLY TO ANY PROCUREMENT OF PRODUCTS OR SERVICES BY THE HARRIS COUNTY EMERGENCY SERVICES DISTRICT NO. 7 (DISTRICT).**
2. **ADDITIONAL TERMS:** Notwithstanding acceptance by the District of the goods or services ordered hereby, no additional terms or conditions of vendor, whether contained within vendor's invoice or otherwise, shall be accepted by District, unless agreed upon in writing through a proposal process.
3. **CONFLICTS:** In the event the terms and conditions herein expressed conflict with the terms and conditions of any specifications issued by the District in conjunction with this purchase, the specifications shall supersede these terms and conditions to the extent of the conflict.
4. **AUTHORIZATION:** The Harris County Emergency Services District No. 7 will not accept or pay for articles delivered or services performed without a specific written Purchase Order.
5. **CONFORMITY OF GOODS/SERVICES:** All goods to be delivered or services to be performed shall conform in every respect to the specifications issued by the District in conjunction with its solicitation of bids or proposals. In the event no such specifications were issued, the goods or services shall conform to the proposal submitted by the vendor.
6. **WARRANTY/GUARANTEE LAWS AND REGULATIONS:** By acceptance of this order, in addition to the guarantees and warranties provided by law, contractor expressly guarantees and warrants as follows:
  - A. that the articles to be delivered hereunder will be in full conformity with the specifications or with the approved sample submitted, and agreed that this warranty shall survive acceptance of delivery and payment for the articles and that the contractor will bear the cost of inspecting and/or testing articles rejected.
  - B. that the articles to be delivered hereunder will not infringe on any valid patent, trademark, trade name, or copyright, and that the contractor will, at contractor's own expense, defend any and all actions or suits charging such infringement and will save and hold harmless the District, its officers, employees, agents, and representatives from any and all claims, losses, liabilities and suits arising there from.
  - C. that the articles to be delivered hereunder will be manufactured, sold and/or installed in compliance with the provisions of all applicable federal, state and local laws and regulations.
  - D. that nothing contained herein shall exclude or affect the operation of any implied warranties otherwise arising in favor of the District.
7. **PRICING:** Unit pricing shall be in strict conformity with the bid or proposal submitted by vendor, unless a price increase is authorized by the District.
8. **PRICE ESCALATION:** price escalations may be permitted by the Harris County Emergency Services District No. 7 during the term of the contract. All requests for price escalation shall be in written form and shall demonstrate industry-wide or regional increases in the contractor's costs. Include documents supporting the price escalation, such as manufacturer's direct cost, postage rates, railroad commission rates, federal/state minimum wage laws, federal/state unemployment taxes, FICA, etc. Increases will apply only to the product(s) and/or service(s) affected by an increase in raw material, labor, or another like cost factor. The Harris County Emergency Services District No. 7 reserves the right to accept or reject any/all price escalations.
9. **PRICE REDUCTION:** if during the life of the contract, the contractor's net prices to other customers for the same product(s) and/or service(s) are lower than the Harris County Emergency Services District No. 7's contracted prices, an equitable adjustment shall be made in the contract price.
10. **TAXES:** the Harris County Emergency Services District No. 7 is exempt from federal manufacturer's excise and state sales and use tax. Tax exemption certificates will be executed by the District and furnished upon request.
11. **PACKAGING:** unless otherwise indicated, items will be new, unused, and in first rate condition in containers suitable for damage-free shipment and storage.

12. **F.O.B./DAMAGE**: all orders shall be F.O.B. delivered, designated location, and shall include all delivery and packaging costs. The Harris County Emergency Services District No. 7 assumes no liability for goods delivered in damaged or unacceptable condition. The contractor shall handle all claims with carriers, and in case of damaged goods, shall ship replacement goods immediately upon notification by the District of damage.
13. **DELIVERY TIMES**: deliveries will be acceptable only during normal working hours at the designated location.
14. **DELIVERY PROMISE – PENALTIES**: default in promised delivery without acceptable reasons, or failure to meet specifications, authorizes the purchasing division to purchase goods/services elsewhere, and charge any increase in cost and handling to the defaulting contractor.
15. **INSPECTION, REJECTION, AND EXCESS SHIPMENT**: In addition to other rights provided by law, the District reserves the right (a) to inspect articles delivered and to return those which do not meet specifications or reasonable standards of quality, (b) to reject articles shipped contrary to instructions or in containers which do not meet recognized standards, and (c) to cancel the order if not filled within the time specified. The District may return rejected articles or excess shipment on this order, or may hold the articles subject to the vendor's order and at vendor's risk and expense, and may in either event charge the vendor with the cost of shipping, unpacking, inspecting, repacking, reshipping and other like expenses.
16. **INVOICES**: Unless otherwise indicated in the contract documents, invoices must be submitted by the contractor to the Harris County Emergency Services District No. 7, Accounting Department, P.O. Box 860279, Plano, TX, 75086-0279. The District Purchase Order number **must** appear on all invoices, delivery memoranda, bills of lading, packing and correspondence.
17. **PAYMENT TERMS**: payment terms are net 30 unless otherwise specified by the District. Upon receipt of a properly executed invoice and verification of delivery from the consignee, payment will be processed for items or services delivered.
18. **PATENT RIGHTS**: the contractor agrees to indemnify and hold the District harmless from any claim involving patent right infringement or copyrights on goods supplied.
19. **FUNDING**: the contractor recognizes that any contract shall commence upon the effective date and continue in full force and effect until termination in accordance with its provisions. Contractor and District herein recognize that the continuation of any contract after the close of any given fiscal year of the Harris County Emergency Services District No. 7, which fiscal year ends on September 30th of each year, shall be subject to Plano District Council approval. In the event that the Plano District Council does not approve the appropriation of funds for the contract, the contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.
20. **ASSIGNMENT**: the contractor shall not sell, assign, transfer or convey this contract in whole, or part, without the prior written consent of the purchasing division.
21. **AUDIT**: the Harris County Emergency Services District No. 7 reserves the right to audit the records and performance of contractor during the contract and for three years thereafter.
22. **INSURANCE**: the District requires contractor to carry the minimum insurance as required by state laws and insurance requirements outlined in the bid/proposal documents.
23. **CHANGE ORDERS**: no oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in this contract. All change orders to the contract will be made in writing by the Harris County Emergency Services District No. 7.
24. **INDEMNIFICATION**: contractor agrees to defend, indemnify and hold the District and its respective officers, agents and employees, harmless against any and all claims, lawsuits, judgments, fines, penalties, costs and expenses for personal injury (including death), property damage, intellectual property infringement claims (including patent, copyright and trademark infringement) or other harm or violations for which recovery of damages, fines, or penalties is sought, suffered by any person or persons that may arise out of or be occasioned by contractor's breach of any of the terms or provisions of the contract, violations of law, or by any negligent, grossly negligent, intentional, or strictly liable act or omission of the contractor, its officers, agents, employees, invitees, subcontractors, or sub-subcontractors and their respective officers, agents, or representatives, or any other persons or entities for which the contractor is legally responsible in the performance of the contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of District, and its officers, agents, employees or separate contractors. District does not waive any governmental immunity or other defenses available to it under Texas or federal law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

Contractor, at its own expense, is expressly required to defend District against all such claims. District reserves the right to provide a portion or all of its own defense; however, District is under no obligation to do so. Any such action by District is not to be construed as a waiver of contractor's obligation to defend District or as a waiver of contractor's obligation to indemnify District pursuant to this agreement. Contractor shall retain defense counsel within seven (7) business days of District's written notice that District is invoking its right to indemnification under this agreement. If contractor fails to retain counsel within the required period, District shall have the right to retain defense counsel on its own behalf and contractor shall be liable for all costs incurred by District.

In addition to contractor's intellectual property infringement indemnification and defense requirements herein, if an claim occurs, or in contractor's opinion is likely to occur, contractor shall, at its expense: (a) procure for District the right to continue using the product; (b) replace or modify the product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the product and grant District a reimbursement for the product. Contractor will proceed under subsection (c) above only if subsections (a) and (b) prove to be commercially unreasonable.

The intellectual property infringement indemnification herein applies to all products provided, supplied or sold under this agreement by contractor to District whether manufactured by contractor or a third party. Contractor represents that, to the best of its knowledge, District's use of products that are provided supplied, or sold by contractor to District as part of this agreement does not constitute an infringement of any intellectual property rights and District has the legal right to use said products. District enters into this agreement relying on this representation.

The indemnification herein survives the termination of the contract and/or dissolution of this agreement including any infringement cure provided by the contractor.

25. **TERMINATION**: the District may, at its option, with or without cause, and without penalty or prejudice to any other remedy it may be entitled to at law, or in equity or otherwise under this Contract, terminate further work under this contract, in whole or in part by giving at least thirty (30) days prior written notice thereof to Contractor with the understanding that all services being terminated shall cease upon the date such notice is received unless otherwise indicated in writing by the District.
26. **TERMINATION FOR DEFAULT**: the Harris County Emergency Services District No. 7 reserves the right to enforce the performance of the contract in any manner prescribed by law or deemed to be in the best interest of the District in the event of breach or default of the contract. The District reserves the right to terminate the contract immediately in the event the contractor fails to 1) meet delivery schedules or, 2) otherwise perform in accordance with these specifications. Breach of contract or default authorizes the District to award contract to another contractor, purchase elsewhere and charge the full increase in cost and handling to the defaulting contractor.
27. **REMEDIES**: the contractor and the Harris County Emergency Services District No. 7 agree that each party has rights, duties, and remedies available as stated in the uniform commercial code and any other available remedy, whether in law or equity.
28. **VENUE**: this agreement will be governed and constructed according to the laws of the state of Texas. This agreement is performable in Collin/Denton County, Texas. Exclusive venue shall be in Collin County, Texas.
29. **NO PROHIBITED INTEREST**: contractor acknowledges and represents that they are aware of the laws, District Charter, and District Code of Conduct regarding conflicts of interest. The District charter states that "no officer or employee of the District shall have a financial interest direct or indirect, in any contract with the District, nor shall be financially interested, directly or indirectly, in the sale to the District of any land, or rights or interest in any land, materials, supplies or service...
30. **WORKFORCE**:  
The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

The Contractor, its employees, subcontractors, and subcontractor's employees may not while in the course and scope of delivering goods or services under a Harris County Emergency Services District No. 7 contract on the District's property; use or possess a firearm, including a handgun that is licensed under state law, except as required by the terms of the contract; who hold a license to carry a handgun or who otherwise lawfully possess a firearm and ammunition may keep such items in their locked personal vehicle while parked on District Property; or use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

If the District or the District's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed

or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the District's prior written consent.

The immigration reform and control act of 1986 (IRCA) makes it illegal for employers to knowingly hire or recruit immigrants who do not possess lawful work authorization and requires employers to verify their employees' work eligibility on a U.S. department of justice form I-9.

The contractor warrants that contractor is in compliance with IRCA and will maintain compliance with IRCA during the term of the contract with the District. Contractor warrants that contractor has included or will include a similar provision in all written agreements with any subcontractors engaged to perform services under this contract.

## **EXHIBIT B – PROJECT DESCRIPTION**

The following is a brief description of the Project for which the pre-construction phase services specified in this Agreement are to be performed:

[Brief project description]

SAMPLE

## **EXHIBIT C - SUBMITTAL REQUIREMENTS FOR THE GMP**

GMP proposal(s) Submittals; one (1) electronic copy for review.

Table of Contents:

1. Scope of Work
  2. Summary of the GMP
  3. Schedule of Values – summary spreadsheet and backup documents
  4. List of Plans and Specifications used for GMP Proposal
  5. List of clarification and assumptions
  6. Project Master Schedule
- 
1. Scope of work shall consist of a brief description of the work to be performed by CMAR and major points that CMAR and the District shall be aware of pertaining to the scope.
  2. A summary of the GMP with a total for each of the components of the GMP as listed in its definition in Article 1 as shown in the table below:

The general condition fee includes bond and insurance cost. All costs should be listed individually for future use.

**PROJECT #:**  
**PROJECT NAME:**

**DATE:**

GMP Summary					AMOUNT	
A.	Cost of the Work (Labor, Materials, Equipment, Warranty)				\$	
INDIRECT COSTS					RATE	
B.	CMAR's Contingency				%	\$
C.	Construction Fee				x.xx%	\$
D.	General Conditions				%	\$
	D1	Payment and Performance Bond		\$	%	
	D2	Insurance		\$	%	
E.	Sales Taxes				%	\$
				F. TOTAL GMP		\$
				G. Owner's Contingency		\$

Formulas:

Total GMP:  $A+B+C+D+E = F$

Rates (Percentages) are calculated by dividing each amount by F, such as B/F, D/F, and D1/F

**(Do not acquire bond or insurance until notified by the District's Project Representative.)**



3. Schedule of Values - spreadsheet with the estimated cost organized by subagreement categories, allowances, bid contingency, General Conditions Costs, taxes, bonds, insurances, and CMAR's construction phase fee. The supporting document for the spreadsheet shall be provided in an organized manner that correlates with the Schedule of Values. The backup information shall consist of the request for bids, bids received, and clarification assumptions used for the particular bid item listed on the Schedule of Values, if applicable.
4. A list of the Plans and Specifications with latest issuance date including all addenda used in preparation of the GMP proposal. (Date stamped and signed by Contractor)
5. A list of the clarifications and assumptions made by CMAR in the preparation of the GMP proposal to supplement the information contained in the documents.
6. A Critical Path Method (CPM) diagram construction schedule.

NOTE: The submittal package shall be kept as simple as possible all on 8 ½ x 11 sheets. Color or shading shall be kept to a minimum. If used, make sure the color or shading shall not affect the reproduction of the submittal in black and white.

For questions regarding the submittal requirements, please contact the District's Project Representative at XX-XXX-XXXXX.

## **EXHIBIT D - GENERAL CONTRACTUAL INSURANCE REQUIREMENTS**

Vendors/Contractors performing work on District property for the Harris County Emergency Services District No. 7 shall provide the District a certificate of insurance evidencing the coverages and coverage provisions identified herein. Vendors/Contractors shall provide the District evidence that all Subcontractors performing work on the project have the same types and amounts of insurance as required herein or that the Subcontractors are included under the vendor's/contractor's policy. The District, at its discretion, may require a certified copy of the policies, including all relevant endorsements.

**All insurance companies must be authorized by the Texas Department of Insurance to transact business in the State of Texas, must be acceptable to the Harris County Emergency Services District No. 7 and be placed with an insurer possessing an A-VII A. M. Best rating or better.**

Listed below are the types and amounts of insurance required. The District reserves the right to amend or require additional types and higher limits of coverage or provisions depending on the nature of the work.

1. The following insurance requirements, coverages and limits apply to most minor construction (Non-CIP), renovation, service provider, installation and maintenance services, work on District property and professional service contracts.
2. Purchases of non-hazardous commodities, equipment, materials and products from distributors and retailers do not require any specific insurance.
3. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment or property may require customized insurance requirements in addition to the general requirements listed.

**Commercial General Liability Insurance** - (Required for all minor construction, renovation, service provider contracts involving installation, maintenance or work on District property) Commercial general liability insurance shall be written on an ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-complete operations, personal and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The District, the District Council and its members, the District's agents, officers, directors and employees shall be included as an additional insured under the commercial general liability policy, including coverage for District with respect to liability arising out of the completed operations.

**\$1,000,000** Limit per Occurrence/Aggregate

**\$1,000,000** Limit for Personal/Advertising Injury and Products/Completed Operations

**Pollution Legal Liability Insurance:** If the contract requires hazardous waste removal, clean up or remediation, Pollution Legal Liability Coverage will be required with limits not less than **\$3,000,000.00** per accident and **\$5,000,000.00** per occurrence.

**Commercial Automobile Liability** - (Required for all contracts involving the use of vendor/contractor owned, non-owned or hired automobiles)

Vendor/contractor shall maintain business automobile liability insurance with a limit of not less than **\$1,000,000** each accident or Combined Single Limit. Such automobile liability insurance shall cover liability arising out of any auto (including owned, hired, and non-owned automobiles). Vendor/contractor waives all rights against District and its agents, officers, directors and employees for recovery by the commercial automobile liability obtained by vendor/contractor pursuant to this section or under any applicable automobile

physical damage coverage.

**Workers' Compensation & Employer Liability** - (Required for all vendors/contractors with employees who perform work or contract services on District property)

Vendor/contractor shall maintain workers' compensation insurance in the amounts required by appropriate state workers' compensation statutes. The employer's liability limit shall not be less than **\$1,000,000**.

The District, the District Council and its members, the District's agents, officers, directors and employees shall be included as an additional insured under the workers' compensation policy, including coverage for District under any contracts with any sub-contractors of Vendor/contractor. Vendor/contractor waives all rights against District, the District Council and its members, the District's agents, officers, directors and employees for recovery of damages under vendor's/contractor's workers' compensation and employer's liability. Vendor/contractor must cause a waiver of subrogation to be effected under its workers' compensation coverage.

Sole Proprietors and companies with no employees may be exempt from this requirement.

#### General Requirements Applicable to All Insurance

1. The vendor/contractor shall obtain and maintain the minimum insurance coverage set forth in this section during the entire contract period.
2. The vendor/contractor agrees that the insurance requirements specified herein do not reduce the liability vendor/contractor has assumed in any indemnification/hold harmless section of the contract.
3. Coverage shall be on a primary basis and non-contributory with any other insurance coverage and/or self-insurance carried by District.
4. Vendor/contractor is responsible for providing the District a minimum of 30 days' notice of a material change or voluntary cancellation of insurance coverage required under this contract and notice within ten (10) days of any notice of termination no matter the cause.

#### Evidence of Insurance Required

Prior to commencement of work, and thereafter upon renewal or replacement

of coverage required by this contract, vendor/contractor shall furnish District a Certificate(s) of Insurance (COI) on a form approved by the Texas Department of Insurance and signed by an authorized representative of each insurer.

The COI shall list each insurer's NAIC Number or FEIN and list the Harris County Emergency Services District No. 7, in the Certificate Holder Section.

## **EXHIBIT E**

### **CERTIFICATION REQUIRED BY TEXAS GOVERNMENT CODE SECTION 2270.001**

By signing below, Company hereby certifies the following:

1. Company does not boycott Israel; and
2. Company will not boycott Israel during the term of the contract.

**Company Name:**

---

**SIGNED BY:**

---

**Print Name & Title:**

---

**Date Signed:**

---

The following definitions apply to this state statute:

(1) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli - controlled territory, but does not include an action made for ordinary business purposes; and

(2) "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

**This Certification is required from a Company for contracts of goods or services (which includes contracts formed through purchase orders) over \$50,000.**

## **EXHIBIT E**

### **AFFIDAVIT OF NO PROHIBITED INTEREST**

#### **A. No Prohibited Interest**

**<https://www.ethics.state.tx.us/data/forms/conflict/CIQ.pdf>**

## **EXHIBIT G**

### **Abide by Texas SB 19**

**AN ACT relating to prohibited contracts with companies that discriminate against the firearm or ammunition industries.**