

AGREEMENT

Between

City of Fort Lauderdale

and

CIMA Engineering Corp.
PO Box 557397
Miami, FL. 33255

for

CONSTRUCTION MANAGEMENT CONSULTANT SERVICES FOR MUNICIPAL FIRE STATIONS
- CONTINUING CONTRACT

CITY OF FORT LAUDERDALE FIRE STATION #35 and #46

CONTRACT
COPY

AGREEMENT

THIS IS AN AGREEMENT, made and entered into this ____ day of _____ 200__, by and between:

CITY OF FORT LAUDERDALE, a municipal Corporation of the State of Florida, (hereinafter referred to as "CITY")

and

CIMA Engineering Corp., a Florida Corporation organized under the laws of the State of Florida, (hereinafter referred to as "CONSULTANT CONSTRUCTION MANAGER").

WHEREAS, the City Commission of the City of Fort Lauderdale, Florida at its meeting of _____, 2010 authorized the proper officials by motion to execute an Agreement between CONSULTANT CONSTRUCTION MANAGER and CITY authorizing the performance of services in connection with a Continuing Contract for Construction Management Services for Municipal Fire Stations, Project Number _____; and

WHEREAS the two Stations under this contract shall be Fire Station 35 and Fire Station 46; and

WHEREAS, the CONSULTANT CONSTRUCTION MANAGER responded to the City's solicitation #206-10371 and is willing and able to render Construction Management Consultant Services for such project for the compensation and on the terms hereinafter set forth; and

NOW, THEREFORE, in consideration of the mutual covenants, agreements, terms, and conditions contained herein, the parties hereto, do agree as follows:

ARTICLE 1 DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the DEFINITIONS and IDENTIFICATIONS set forth below are assumed to be true and correct and are therefore agreed upon by the parties.

- 1.1 **ADDITIONAL SERVICES:** Services performed by the CONSULTANT CONSTRUCTION MANAGER authorized by Task Order and supplemental to the basic services described in this Agreement and listed in Exhibit "A", Scope of Services.
- 1.2 **AGREEMENT:** Means this document between the CITY and CONSULTANT CONSTRUCTION MANAGER dated _____ 2010, and any duly authorized and executed Amendments to Agreement.
- 1.3 **BASIC SERVICES:** Services performed by the CONSULTANT CONSTRUCTION MANAGER for authorized scope of work for the Project phase described in this Agreement and listed in Exhibit "A", Scope of Services.
- 1.4 **CERTIFICATE FOR PAYMENT:** A statement by CONSULTANT CONSTRUCTION MANAGER, based on observations at the site and on review of documentation submitted by the Contractor that, by its issuance, recommends that CITY pay identified amounts to

the Contractor for services performed by the Contractor at the Project.

- 1.5 **CHANGE ORDER:** A written order to the Contractor, addressing modifications to the contract documents, and establishing the basis of payment and contract time adjustment, if any, for the work affected by such modifications. The CONSULTANT CONSTRUCTION MANAGER shall review and make recommendations to the CITY on any proposed Change Orders, for approval or other appropriate action by the CITY.
- 1.6 **CITY:** The City of Fort Lauderdale, a municipal corporation of the State of Florida.
- 1.7 **COMMISSION:** The City Commission of the City of Fort Lauderdale, Florida, which is the governing body of the CITY government.
- 1.8 **CONSTRUCTION COST LIMIT:** A maximum construction cost limit established by the CITY defining the maximum budget amount to which the final construction documents should be designed so as not to exceed.
- 1.9 **CONSTRUCTION DOCUMENTS:** Those working drawings and specifications and other writings setting forth in detail and prescribing the work to be done, the materials, workmanship and other requirements for construction of the entire Project, including any bidding information.
- 1.10 **CONSULTANT CONSTRUCTION MANAGER:** CIMA Engineering Corp., the CONSULTANT CONSTRUCTION MANAGER selected to perform construction management services pursuant to this Agreement.
- 1.11 **CONTRACT ADMINISTRATOR:** The City Engineer of the City of Fort Lauderdale, or his or her designee. In the administration of this agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator.
- 1.12 **CONTRACTOR:** One or more individuals, firms, corporations or other entities identified as such by a written agreement with CITY ("Contract for Construction") to perform the construction services required to complete the Project.
- 1.13 **DEPARTMENT DIRECTOR:** The director of the Public Works Department for the City of Fort Lauderdale.
- 1.14 **FINAL STATEMENT OF PROBABLE CONSTRUCTION COSTS:** A final cost estimate prepared by CONSULTANT CONSTRUCTION MANAGER during the Final Design Phase of the Project, based upon the final detailed Construction Documents of the Project.
- 1.15 **NOTICE TO PROCEED:** A written Notice to Proceed with the Project issued by the Contract Administrator.
- 1.16 **PLANS AND SPECIFICATIONS:** The documents setting forth the final plans and specifications of the Project, and other essentials as may be appropriate, all as approved by CITY as provided in this Agreement.
- 1.17 **PROJECT:** An agreed scope of work for accomplishing a specific plan or development. The services to be provided by the CONSULTANT CONSTRUCTION MANAGER shall be as defined in this agreement and supplemental Task Orders for individual projects or combinations of projects at the City's discretion.
- 1.18 **RESIDENT PROJECT REPRESENTATIVE:** Individuals or entities selected, employed, compensated by and directed to perform services on behalf of CITY, in monitoring the Construction Phase of the Project to completion.

- 1.19 **SPECIFICATIONS:** The specifications referred to in this agreement are the CONSTRUCTION STANDARDS AND SPECIFICATIONS, Office of the City Engineer, City of Fort Lauderdale, January 1982, including any revisions.
- 1.20 **STATEMENT OF PROBABLE PROJECT COSTS:** A document to be prepared by the CONSULTANT CONSTRUCTION MANAGER that shall reflect a detailed statement of the total probable costs.
- 1.21 **SUBSTANTIAL COMPLETION:** The City will consider the work substantially complete when the Contractor submits 100% complete deliverables (i.e. Drawings, Specifications, Reports, Renderings) as described in this Agreement to the satisfaction of the City.
- 1.22 **TASK ORDER:** A document setting forth a detailed scope of services for additional services to be performed by CONSULTANT CONSTRUCTION MANAGER upon authorization of the CITY. The Task Order shall be considered supplemental to the general description of basic services provided in this Agreement and Exhibit "A."
- 1.23 **TIME OF COMPLETION:** Time in which the entire work shall be completed.

ARTICLE 2 PREAMBLE

In order to establish the background, context and frame of reference for this Agreement and to generally express the objectives and intentions of the respective parties hereto, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions of this Agreement which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

- 2.1 City has budgeted funds for the Project.

This Project is funded with Fire Bond funds.

ARTICLE 3 SCOPE OF SERVICES FOR BASIC SERVICES

- 3.1 CONSULTANT CONSTRUCTION MANAGER shall provide all services set forth in Exhibit "A", Scope of Services, including all necessary, incidental and related activities and services required by the Scope of Services and contemplated in CONSULTANT CONSTRUCTION MANAGER's level of effort.
- 3.2 CITY and CONSULTANT CONSTRUCTION MANAGER acknowledge that the Scope of Services does not delineate every detail and minor work tasks required to be performed by CONSULTANT CONSTRUCTION MANAGER to complete the Project. If, during the course of the performance of the services included in this Agreement, CONSULTANT CONSTRUCTION MANAGER determines that work should be performed to complete the Project which is in the CONSULTANT CONSTRUCTION MANAGER's opinion, outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, CONSULTANT CONSTRUCTION MANAGER shall notify Contract Administrator and obtain written approval by the CITY in a timely manner before proceeding with the work. If CONSULTANT CONSTRUCTION MANAGER proceeds with said work without notifying the Contract Administrator, said work shall be deemed to be within the original level of effort,

whether or not specifically addressed in the Scope of Services. Notice to Contract Administrator does not constitute authorization or approval by CITY to perform the work. Performance of work by CONSULTANT CONSTRUCTION MANAGER outside the originally anticipated level of effort without prior written CITY approval is at CONSULTANT CONSTRUCTION MANAGER's sole risk.

- 3.3 CITY and CONSULTANT CONSTRUCTION MANAGER acknowledge that basic services described in Exhibit "A" are included in the fee agreed upon. The CITY and CONSULTANT CONSTRUCTION MANAGER may negotiate additional scopes of services, compensation, time of performance and other related matters for any necessary additional task or future phases of Project. If CITY and CONSULTANT CONSTRUCTION MANAGER cannot contractually agree, CITY shall have the right to immediately terminate negotiations at no cost to CITY and procure services for additional task or future Project phases from another source.

ARTICLE 4 GENERAL PROVISIONS

- 4.1 CONSULTANT CONSTRUCTION MANAGER shall include CITY's project number as part of the heading on all correspondence, invoices, etc. All correspondence shall be directed specifically to the Contract Administrator.
- 4.2 Negotiations pertaining to the professional design, engineering, architectural and project management services to be performed by the CONSULTANT have been undertaken between CONSULTANT and a committee of CITY representatives pursuant to Section 287.055, Florida Statutes, and this Agreement incorporates the results of such negotiation.

ARTICLE 5 TASK ORDERS FOR ADDITIONAL SERVICES

- 5.1 Task Orders for additional services shall be jointly prepared by the CITY and CONSULTANT CONSTRUCTION MANAGER defining the detailed scope of services to be provided for the Project. Each Task Order shall be separately numbered and approved in accordance with this Agreement (and applicable CITY purchasing code requirements). These Task Orders shall be considered supplemental to the general description of basic services as described in Exhibit "A."
- 5.2 Under all Task Orders and Projects, CITY may require the CONSULTANT CONSTRUCTION MANAGER, by specific written authorization, and for mutually agreed upon additional compensation, to provide or assist in obtaining one or more of the following special services. These services may include, at the discretion of the CITY, the following items:
- 5.2.1 Providing additional copies of reports and documents; and
- 5.2.2 Assisting the City with litigation support services arising from the planning, development, or construction.
- 5.3 Prior to initiating the performance of any services under this Agreement, CONSULTANT CONSTRUCTION MANAGER must receive a written Notice to Proceed from the CITY. The CONSULTANT CONSTRUCTION MANAGER must receive the approval of the Contract Administrator or his designee in writing prior to beginning the performance of

services in any subsequent Task Order under this Agreement.

- 5.4 If, in the opinion of the CITY, the CONSULTANT CONSTRUCTION MANAGER is improperly performing the services under a specific task, or if at any time the CITY shall be of the opinion that said task is being unnecessarily delayed and will not be completed within the agreed upon time, the CITY shall notify the CONSULTANT CONSTRUCTION MANAGER in writing. The CONSULTANT CONSTRUCTION MANAGER has within ten (10) business days thereafter to take such measures as will, in the judgment of the CITY, ensure satisfactory performance and completion of the work. If the CONSULTANT CONSTRUCTION MANAGER fails to cure within the ten (10) business days, the CITY may notify the CONSULTANT CONSTRUCTION MANAGER to discontinue all work under the specified task. The CONSULTANT CONSTRUCTION MANAGER shall immediately respect said notice and stop said work and cease to have any rights in the possession of the work and shall forfeit the task order and any remaining monies. The CITY may then decide, after City Commission approval, to issue a new task order for the uncompleted work to another CONSULTANT CONSTRUCTION MANAGER using the remaining funds. Any excess costs arising therefrom over and above the original task order price shall be charged against you, as the original CONSULTANT CONSTRUCTION MANAGER.

ARTICLE 6 TIME FOR PERFORMANCE; CONTRACTOR DAMAGES

- 6.1 CONSULTANT CONSTRUCTION MANAGER shall perform the basic services described in Exhibit "A" within the time periods specified in a mutually agreed upon project schedule, developed before commencement of work and made a part of this agreement. The Project Schedule, once complete, shall be automatically incorporated into this Agreement; said time periods shall commence from the date of the Notice to Proceed for such services.
- 6.2 Prior to beginning the performance of any services under this Agreement, CONSULTANT CONSTRUCTION MANAGER must receive a Notice to Proceed. CONSULTANT CONSTRUCTION MANAGER must receive written approval from the Contract Administrator prior to beginning the performance of services in any subsequent phases of the Agreement. Prior to granting approval for CONSULTANT CONSTRUCTION MANAGER to proceed to a subsequent phase, the Contract Administrator may, at his or her sole option, require CONSULTANT CONSTRUCTION MANAGER to submit itemized deliverables for the Contract Administrator's review.
- 6.3 In the event CONSULTANT CONSTRUCTION MANAGER is unable to complete the above services because of delays resulting from untimely review by CITY or other governmental authorities having jurisdiction over the Project, and such delays are not the fault of CONSULTANT CONSTRUCTION MANAGER, or because of delays which were caused by factors outside the control of CONSULTANT CONSTRUCTION MANAGER, CITY shall grant a reasonable extension of time for completion of the services and shall provide reasonable compensation, if appropriate. It shall be the responsibility of the CONSULTANT CONSTRUCTION MANAGER to notify CITY promptly in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and to inform CITY of all facts and details related to the delay.
- 6.4 In the event Contractor fails to substantially complete the Project on or before the substantial completion date specified in the project schedule with CITY or if Contractor is granted an extension of time beyond said substantial completion date, and CONSULTANT CONSTRUCTION MANAGER's services are extended beyond the substantial completion date, through no fault of CONSULTANT CONSTRUCTION MANAGER, CONSULTANT

CONSTRUCTION MANAGER shall be compensated in accordance with Article 7 for all services rendered by CONSULTANT CONSTRUCTION MANAGER beyond the substantial completion date.

- 6.5 The time for the performance of services described in Exhibit "A," Scope of Services and supplemental Task Orders shall be negotiated by the CITY and the CONSULTANT CONSTRUCTION MANAGER as the services are requested and authorized by the CITY.
- 6.6 The term of this Agreement shall be limited to the time duration required to complete the basic services of the aforementioned project and any additional project related Task Orders for additional services.

ARTICLE 7 COMPENSATION AND METHOD OF PAYMENT

7.1 AMOUNT AND METHOD OF COMPENSATION

Lump Sum Compensation

CITY agrees to pay CONSULTANT CONSTRUCTION MANAGER as compensation for performance of all services as related to Exhibit "A" required under the terms of this Agreement a Lump Sum amount of **One Hundred and Ninety Eight Thousand, Nine Hundred and Seventy Five Dollars and Fifty Six Cents (\$198,975.56)** for Fire Station #35 and the amount of **One Hundred and Ninty Eight Thousand, Nine Hundred and Seventy Five Dollars and Fifty Six Cents (\$198,975.56)** for Fire Station #46. Totaling **Three Hundred and Ninety Seven Thousand, Nine Hundred and Fifty One Dollars and Twelve cents (\$397,951.12)** for both fire stations. This compensation does not include Reimbursables as described in Section 7.2. It is understood that the method of compensation is that of Lump Sum, which means that CONSULTANT CONSTRUCTION MANAGER shall perform all services, set forth for total compensation in the amount stated above. Cost to be in accordance with the Cost schedule per Exhibit B.

A lump sum proposal shall be accompanied by the CONSULTANT CONSTRUCTION MANAGER's calculations detailing the direct labor costs by categories of employees, work hours, and hourly rate; overhead; direct non-salary expenses; and profit, or as required by individual Task Order.

7.2 REIMBURSABLES

7.2.1 Direct non-salary expenses, entitled Reimbursables, directly attributable to the Project will be charged at actual cost, in the total Not-to-Exceed amount of **\$7,000.00 for each fire station**. Unit prices for some reimbursable expenses are included in this agreement as Exhibit "C". Reimbursable expenses are in addition to the compensation for basic services and include actual expenditures made by the CONSULTANT CONSTRUCTION MANAGER and the CONSULTANT CONSTRUCTION MANAGER'S employees directly attributable to the Project and will be charged at actual cost, without reference to the professional service fees above. CITY shall not withhold retainage from payments for Reimbursable Expenses. CONSULTANT CONSTRUCTION MANAGER shall be compensated for Reimbursables associated with a particular Task Order only up to the amount allocated for such Task Order. Any reimbursable or portion thereof which, when added to the Reimbursables related to a particular Task Order previously billed, exceeds the amount allocated for such Task Order shall be the responsibility of the CONSULTANT CONSTRUCTION MANAGER unless otherwise agreed to in writing by the Contract Administrator. Reimbursables shall include only the following listed expenses unless authorized in writing by the Contract Administrator:

- a) Extra travel and subsistence for the CONSULTANT CONSTRUCTION MANAGER and his staff beyond the Tri-County area (Broward, Dade and Palm Beach Counties), when authorized in advance by the CITY. CONSULTANT CONSTRUCTION MANAGER will make all reasonable efforts to obtain discounted rates to the extent available. Travel related expenses shall be consistent with City of Fort Lauderdale Travel Policy and may include: air fare, hotels, meals, baggage handling, rental car, tolls, parking, airport van/taxi, fuel and other similar expenses. Expenses shall be limited to reasonable amounts as determined by the City Travel Policy, and requires prior approval of Contract Administrator or his designee before expenditures are made. Identifiable per diem, meals and lodgings, taxi fares and miscellaneous travel-connected expenses for CONSULTANT CONSTRUCTION MANAGER personnel are subject to the limitations of Section 112.061 Florida Statutes. Meals for Class C travel inside Broward County will not be reimbursed. Meals and lodging expenses will not be reimbursed for temporarily relocating CONSULTANT CONSTRUCTION MANAGER employees from one of CONSULTANT CONSTRUCTION MANAGER'S offices to another office if the employee is relocated for more than ten (10) consecutive working days.
- b) Identifiable communication expenses approved by Contract Administrator, long distance telephone, courier and express mail between the CONSULTANT CONSTRUCTION MANAGER various permanent offices. The CONSULTANT CONSTRUCTION MANAGER field office at the Project site is not considered a permanent office.
- c) Cost of reproduction, postage and handling of drawings and specifications which are required to deliver services set forth in this Agreement, excluding reproductions for the office use of the CONSULTANT CONSTRUCTION MANAGER. Reimbursable printing and photocopying expenses shall include only those prints or photocopies of original documents which are (i) exchanged among CONSULTANT CONSTRUCTION MANAGER, CITY and other third parties retained or employed by any of them or (ii) submitted to CITY for review, approval or further distribution. Documents, which are reproduced for CONSULTANT CONSTRUCTION MANAGER internal drafts, reviews, or other purposes, are not eligible for reimbursement.
- d) Identifiable testing costs approved by Contract Administrator.
- e) All permit fees paid to regulatory agencies for approvals directly attributable to the Project. These permit fees do not include those permits required for the construction Contractor.
- f) Overnight Delivery/Courier Charges (when CITY requires/requests this service).

7.2.2 It is acknowledged and agreed to by CONSULTANT CONSTRUCTION MANAGER that the dollar limitation set forth in Section 7.2.1 is a limitation upon, and describes the maximum extent of CITY's obligation to reimburse CONSULTANT CONSTRUCTION MANAGER for direct, nonsalary expenses, but does not constitute a limitation, of any sort, upon CONSULTANT CONSTRUCTION MANAGER obligation to incur such expenses in the performance of services hereunder. If CITY or Contract Administrator requests CONSULTANT CONSTRUCTION MANAGER to incur expenses not contemplated in the amount for Reimbursables, CONSULTANT CONSTRUCTION MANAGER shall notify Contract Administrator in writing before incurring such expenses. Any such expenses shall be reviewed and approved by CITY prior to incurring such expenses.

7.3 METHOD OF BILLING

Lump Sum Compensation

CONSULTANT CONSTRUCTION MANAGER shall submit billings that are identified by the specific project number on a monthly basis in a timely manner. These billings shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished. Billings of each phase shall not exceed the amounts allocated to said phase. The statement shall show a summary of fees with accrual of the total and credits for portions paid previously. When requested, CONSULTANT CONSTRUCTION MANAGER shall provide backup for past and current invoices that record hours, salary costs and expense costs on a task basis, so that total hours and costs by task may be determined. CONSULTANT CONSTRUCTION MANAGER shall provide CITY with the percent complete of the Phase or Phase element or Task Order. CITY will review the percent complete of the authorized lump sum elements for reasonableness and approve payment consistent with the level of progress toward the defined lump sum scope element.

7.4 METHOD OF PAYMENT

7.4.1 The CITY will make every effort to pay CONSULTANT CONSTRUCTION MANAGER within thirty (30) calendar days from receipt of CONSULTANT CONSTRUCTION MANAGER's proper statement.

7.4.2 Final payment to the CONSULTANT CONSTRUCTION MANAGER for the Project must be approved by the CITY'S Contract Administrator's Department Director.

7.4.3 CITY will review CONSULTANT CONSTRUCTION MANAGER's invoices and, if inaccuracies or errors are discovered in said invoice, CITY will inform CONSULTANT CONSTRUCTION MANAGER within fifteen (15) business days by fax and by mail of such inaccuracies or errors and request that revised copies of all such documents be re-submitted by CONSULTANT CONSTRUCTION MANAGER to CITY.

7.4.4 Payment will be made to CONSULTANT CONSTRUCTION MANAGER at:

CIMA Engineering Corp.
PO Box 557397
Miami, FL. 33255

ARTICLE 8

ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES

- 8.1 CITY or CONSULTANT CONSTRUCTION MANAGER may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement. Such changes must be contained in a written amendment, executed by the parties hereto, with the same formality and of equal dignity herewith, prior to any deviation from the terms of this Agreement including the initiation of any Additional Services. CITY shall compensate CONSULTANT CONSTRUCTION MANAGER for such Additional Services as provided in Article 7.
- 8.2 In the event a dispute between the Contract Administrator and CONSULTANT CONSTRUCTION MANAGER arise over whether requested services constitute Additional Services and such dispute cannot be resolved by the Contract Administrator and CONSULTANT CONSTRUCTION MANAGER, such dispute shall be promptly presented to the Contract Administrator's Department Director for resolution. The Director's decision

shall be final and binding on the parties. Any resolution in favor of CONSULTANT CONSTRUCTION MANAGER shall be set forth in a written document in accordance with Section 8.1 above. During the pendency of any dispute, CONSULTANT CONSTRUCTION MANAGER shall promptly perform the disputed services.

ARTICLE 9 AMENDMENTS

- 9.1 No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written Amendment prepared with the same formality as this Agreement and executed by the CITY and CONSULTANT CONSTRUCTION MANAGER.

ARTICLE 10 CITY'S RESPONSIBILITIES

- 10.1 CITY shall assist CONSULTANT CONSTRUCTION MANAGER by placing at CONSULTANT CONSTRUCTION MANAGER's disposal all information CITY has available pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- 10.2 CITY shall arrange for access to, and make all provisions for, CONSULTANT CONSTRUCTION MANAGER to enter upon public and private property as required for CONSULTANT CONSTRUCTION MANAGER to perform its services.
- 10.3 CITY shall review the itemized deliverables/documents identified in Exhibit "A" Scope of Services.
- 10.4 CITY shall give prompt written notice to CONSULTANT CONSTRUCTION MANAGER whenever CITY observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT CONSTRUCTION MANAGER's services or any defect in the work of the Contractor.

ARTICLE 11 MISCELLANEOUS

11.1 OWNERSHIP OF DOCUMENTS

All documents prepared or furnished by CONSULTANT CONSTRUCTION MANAGER, its dependent professional associates and employees, pursuant to this Agreement shall be owned by the CITY upon full payment of all fees due the CONSULTANT CONSTRUCTION MANAGER.

Drawings, specifications, designs, models, photographs, reports, surveys and other data prepared in connection with this Agreement are and shall remain the property of the CITY whether the Project for which they are made is executed or not, and are subject to reuse by the CITY in accordance with Section 287.055(10) of the Florida Statutes. They are not intended or represented to be suitable for reuse by the CITY or others on extensions of this Project or on any other project without appropriate verification or adaptation. This shall not limit the City's reuse of preliminary or developmental plans or ideas incorporated therein, should the Project be suspended or terminated prior to completion.

11.2 TERMINATION

11.2.1 It is expressly understood and agreed that the CITY may terminate this Agreement at any time by giving the CONSULTANT CONSTRUCTION MANAGER notice by telephone, or personally to one of the officers of the CONSULTANT CONSTRUCTION MANAGER, confirmed by certified mail, return receipt requested, to the principal office of the CONSULTANT CONSTRUCTION MANAGER. In the event that the Agreement is terminated, the CONSULTANT CONSTRUCTION MANAGER shall be entitled to be compensated for the services rendered from the date of execution of the Agreement up to the time of termination. Such compensation shall be based on the fee as set forth above, wherever possible. For those portions of services rendered to which the applicable fee cannot be applied, payment shall be based upon the appropriate rates for the actual time spent on the project. In the event that the CONSULTANT CONSTRUCTION MANAGER abandons this Agreement or through violation of any of the terms and conditions of this Agreement, causes it to be terminated, CONSULTANT CONSTRUCTION MANAGER shall indemnify the CITY against any loss pertaining to this termination. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by CONSULTANT CONSTRUCTION MANAGER shall become the property of CITY and shall be delivered by CONSULTANT CONSTRUCTION MANAGER to the CITY within five (5) days of CITY's request. Upon payment of such sum by CITY to CONSULTANT CONSTRUCTION MANAGER, CITY shall have no further duties or obligations pursuant to or arising from this Agreement. CONSULTANT CONSTRUCTION MANAGER shall have the right to terminate this Agreement upon the substantial breach by the CITY of its obligations under this Agreement such as unreasonable delay in payment or non-payment of undisputed amounts.

11.2.2 This Agreement may also be terminated by CITY upon such notice as CITY deems appropriate under the circumstances in the event CITY determines that termination is necessary to protect the public health, safety, or welfare of the public.

11.2.3 Notice of termination shall be provided in accordance with Section 11.25, NOTICES, except that Contract Administrator may provide a verbal stop work order if the Contract Administrator deems a stop work order of this Agreement in whole or in part is necessary to protect the public health, safety, or welfare of the public. A verbal stop work order shall be promptly confirmed in writing as set forth in Section 11.25, NOTICES.

11.2.4 In the event this Agreement is terminated for convenience, CONSULTANT CONSTRUCTION MANAGER shall be paid for any services performed to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in Section 11.1 of this Agreement are provided to the CITY. Upon being notified of CITY's election to terminate, CONSULTANT CONSTRUCTION MANAGER shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall CITY make payment for services that have not been performed.

11.3 AUDIT RIGHT AND RETENTION OF RECORDS

CITY shall have the right to audit the books, records, and accounts of CONSULTANT CONSTRUCTION MANAGER that are related to this Project. CONSULTANT CONSTRUCTION MANAGER shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project.

CONSULTANT CONSTRUCTION MANAGER shall preserve and make available, at reasonable times for examination and audit by CITY all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum of three (3) years after termination of this Agreement. If any audit has been initiated and audit

findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to CONSULTANT CONSTRUCTION MANAGER's records, CONSULTANT CONSTRUCTION MANAGER shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONSULTANT CONSTRUCTION MANAGER. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.

11.4 NON DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

CONSULTANT CONSTRUCTION MANAGER shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by CITY, including Titles I and II of the ADA (regarding nondiscrimination or the basis of disability), and all applicable regulations, guidelines, and standards.

CONSULTANT CONSTRUCTION MANAGER's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully or appropriately used as a basis for service delivery.

CONSULTANT CONSTRUCTION MANAGER shall comply with Title I of the ADA regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, CONSULTANT CONSTRUCTION MANAGER shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

CONSULTANT CONSTRUCTION MANAGER shall take affirmative action to ensure that applicants are employed and employees are treated without regard to race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability during employment. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

11.5 MINORITY PARTICIPATION

Historically, the CITY has been able to achieve participation levels of approximately twelve percent (12%) by minority and women business firms in CITY projects, and in the purchase of goods and services. The CONSULTANT CONSTRUCTION MANAGER shall make a good faith effort to help the CITY maintain and encourage Minority Business Enterprise

(MBE) and/or Women Business Enterprise (WBE) participation levels consistent with such historical levels and market conditions. The CONSULTANT CONSTRUCTION MANAGER will be required to document all such efforts and supply the CITY with this documentation at the end of the Project, or in cases where projects are longer than one year, each CITY fiscal year.

11.6 PUBLIC ENTITY CRIMES ACT

CONSULTANT CONSTRUCTION MANAGER represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, CONSULTANT CONSTRUCTION MANAGER or other provider and who has been placed on the convicted vendor list following a conviction for a "public entity crime", as defined by Section 287.133, Florida Statutes, may not submit a bid on a contract to provide any goods or services to CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a contractor, supplier, subconsultant, or CONSULTANT CONSTRUCTION MANAGER under a contract with CITY, and may not transact any business with CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from CITY's competitive procurement activities.

In addition to the foregoing, CONSULTANT CONSTRUCTION MANAGER further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONSULTANT CONSTRUCTION MANAGER has been placed on the convicted vendor list.

11.7 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered without the written consent of the other party, and CONSULTANT CONSTRUCTION MANAGER shall not subcontract any portion of the work required by this Agreement.

CONSULTANT CONSTRUCTION MANAGER represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to CITY's satisfaction for the agreed compensation.

CONSULTANT CONSTRUCTION MANAGER shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CONSULTANT CONSTRUCTION MANAGER's performance and all interim and final product(s) provided to or on behalf of CITY shall be comparable to the best local and national professional standards.

11.8 INDEMNIFICATION OF CITY

11.8.1 CONSULTANT CONSTRUCTION MANAGER shall indemnify and hold harmless CITY, its officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of CONSULTANT CONSTRUCTION

MANAGER, and other persons employed or utilized by CONSULTANT CONSTRUCTION MANAGER in the performance of this Agreement. The provisions of this selection shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by Contract Administrator and City Attorney, any sums due CONSULTANT CONSTRUCTION MANAGER under this Agreement may be retained by CITY until all of CITY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by CITY.

11.8.2 It is specifically understood and agreed that the consideration inuring to the CONSULTANT CONSTRUCTION MANAGER for the execution of this Agreement are the promises, payments, covenants, rights and responsibilities contained herein and the award of this Agreement to the CONSULTANT CONSTRUCTION MANAGER.

11.8.3 The execution of this Agreement by the CONSULTANT CONSTRUCTION MANAGER shall obligate the CONSULTANT CONSTRUCTION MANAGER to comply with the foregoing indemnification provision.

11.9 INSURANCE

11.9.1 CONSULTANT CONSTRUCTION MANAGER shall provide, pay for, and maintain in force at all times during the term of the Agreement, such insurance, including Professional Liability Insurance, Worker's Compensation Insurance, Comprehensive General or Commercial Liability Insurance, Business Automobile Liability Insurance, and Employer's Liability Insurance as stated below. Such policy or policies shall be issued by companies authorized to do business in the State of Florida and having agents upon whom service of process may be made in the State of Florida. In addition, such insurance must include employer's liability coverage with a limit of no less than One Million Dollars (\$1,000,000.00) for each accident or claim. CONSULTANT CONSTRUCTION MANAGER shall specifically protect CITY and the City Commission by naming CITY and the City Commission as additional insureds under the Comprehensive Liability Insurance policy hereinafter described.

- A. Professional liability insurance with minimum limits of liability of \$1 million for any work.
- B. Worker's Compensation Insurance to apply for all employees in compliance with the "Worker's Compensation Law" of the State of Florida and all applicable Federal laws, for the benefit of the CONSULTANT CONSTRUCTION MANAGER's employees.
- C. Comprehensive General Liability Insurance including contractual with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. The CITY is to be included as an "additional insured" with respect to any claims arising out of this Agreement.
- D. The CONSULTANT CONSTRUCTION MANAGER shall provide the Risk Manager of the CITY an original Certificate of Insurance for policies required by Article 11.9. All certificates shall state that the CITY shall be given thirty (30) day notice prior to expiration or cancellation of the policy. Such policies shall: (1) name the insurance company or companies affording coverage acceptable to the CITY, (2) state the effective and expiration dates of the policies, and (3) include special endorsements where necessary. Such policies provided under Section 11.9 shall not be affected by any other policy of insurance, which the CITY may carry in its own name.
- E. CONSULTANT CONSTRUCTION MANAGER shall furnish to City of Fort

Lauderdale, c/o Department of Risk Management Services, 100 N. Andrews Avenue, #619, Fort Lauderdale, FL 33301, Certificate(s) of Insurance prior to contract execution which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

11.9.2. COMMERCIAL GENERAL LIABILITY

- A. Limits of Liability
- | | |
|--|-------------|
| Bodily Injury and Property Combined Single Limit | |
| Each Occurrence | \$1,000,000 |
| General Aggregate Limit | \$2,000,000 |
| Personal Injury | \$1,000,000 |
| Products/Completed Operations | \$1,000,000 |
- B. Endorsements Required
- City of Fort Lauderdale included as an Additional Insured
 - Employees included as insured
 - Contractual Liability
 - Waiver of Subrogation
 - Premises/ Operations

11.9.3. AUTOMOBILE BUSINESS

- A. Limits of Liability
- | | |
|---|-------------|
| Bodily Injury and Property Damage Liability Combined Single Limit Any Auto Including Hired, Borrowed or Non-Owned Autos | |
| Any One Accident | \$1,000,000 |
- B. Endorsements Required
- City of Fort Lauderdale included as an Additional Insured
 - Employees included as insured
 - Waiver of Subrogation

11.9.4 WORKER'S COMPENSATION

- Limits of Liability
- Statutory-State of Florida

11.9.5 PROFESSIONAL LIABILITY/ERRORS AND OMISSIONS COVERAGE

- | | |
|-------------------------------|-------------|
| Combined Single Limit | |
| Each Occurrence | \$1,000,000 |
| General Aggregate Limit | \$1,000,000 |
| Deductible- not to exceed 10% | |

11.9.6 The City is required to be named as additional insured. **BINDERS ARE UNACCEPTABLE.** The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the CONSULTANT CONSTRUCTION MANAGER.

11.9.7 All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The Company must be rated no less than "A" as to management, and no less than "Class X" as to financial strength, by the latest edition of Best's Key Rating Insurance Guide which holds a valid Florida Certificate of Authority issued by the State of Florida, Department of Insurance, and are members of the Florida Guarantee Fund.

Certificates will indicate no modification or change in insurance shall be made without thirty (30) days written advance notice to the certificate holder.

NOTE: CITY PROJECT NUMBER MUST APPEAR ON EACH CERTIFICATE.

Compliance with the foregoing requirements shall not relieve the CONSULTANT CONSTRUCTION MANAGER of his liability and obligation under this section or under any other section of this Agreement.

The CONSULTANT CONSTRUCTION MANAGER shall be responsible for assuring that the insurance certificates required in conjunction with this section remain in force for the duration of the Project. If insurance certificates are scheduled to expire during the contractual period, the CONSULTANT CONSTRUCTION MANAGER shall be responsible for submitting new or renewed insurance certificates to the CITY at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates that cover the contractual period, the CITY shall:

- A) Suspend the Agreement until such time as the new or renewed certificates are received by the CITY.
- B) The CITY may, at its sole discretion, terminate the Agreement for cause and seek damages from the CONSULTANT CONSTRUCTION MANAGER in conjunction with the violation of the terms and conditions of the Agreement.

11.10 REPRESENTATIVE OF CITY AND CONSULTANT CONSTRUCTION MANAGER

11.10.1 Contract Administrator or his or her designee is the CITY's representative regarding this Agreement. The parties, however, recognize that questions in the day-to-day conduct of the Project will arise. The Contract Administrator, upon CONSULTANT CONSTRUCTION MANAGER's request, shall advise CONSULTANT CONSTRUCTION MANAGER in writing of one (1) or more CITY employees to whom all communications pertaining to the day-to-day conduct of the Project shall be addressed.

11.10.2 CONSULTANT CONSTRUCTION MANAGER shall inform the Contract Administrator in writing of CONSULTANT CONSTRUCTION MANAGER's representative to whom matters involving the conduct of the Project shall be addressed.

11.11 ALL PRIOR AGREEMENTS SUPERSEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

11.12 CONSULTANT CONSTRUCTION MANAGER'S STAFF

CONSULTANT CONSTRUCTION MANAGER will provide the key staff identified in their proposal for the Project as long as said key staff are in CONSULTANT CONSTRUCTION MANAGER's employment.

CONSULTANT CONSTRUCTION MANAGER will obtain prior written approval of Contract Administrator to change key staff. CONSULTANT CONSTRUCTION MANAGER shall provide Contract Administrator with such information as necessary to determine the suitability of proposed new key staff. Contractor Administrator will be reasonable in evaluating key staff qualifications.

If Contract Administrator desires to request removal of any of CONSULTANT CONSTRUCTION MANAGER's staff, Contract Administrator shall first meet with CONSULTANT CONSTRUCTION MANAGER and provide reasonable justification for said removal.

11.13 INDEPENDENT CONTRACTOR

CONSULTANT CONSTRUCTION MANAGER is an independent contractor under this Agreement. Services provided by CONSULTANT CONSTRUCTION MANAGER shall be subject to the supervision of CONSULTANT CONSTRUCTION MANAGER. In providing the services, CONSULTANT CONSTRUCTION MANAGER or its agents shall not be acting and shall not be deemed as acting as officers, employees, or agents of the CITY. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of CONSULTANT CONSTRUCTION MANAGER. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

11.14 THIRD PARTY BENEFICIARIES

Neither CONSULTANT CONSTRUCTION MANAGER nor CITY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement, without prior written approval by both parties to this Agreement.

11.15 CONFLICTS

Neither CONSULTANT CONSTRUCTION MANAGER nor its employees shall have or currently hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONSULTANT CONSTRUCTION MANAGER's loyal and conscientious exercise of judgment related to its performance under this Agreement.

CONSULTANT CONSTRUCTION MANAGER agrees that none of its officers or employees shall, during the term of this Agreement, serve as expert witness against CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of CITY or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

In the event CONSULTANT CONSTRUCTION MANAGER is permitted to utilize

subconsultants to perform any services required by this Agreement, CONSULTANT CONSTRUCTION MANAGER agrees to prohibit such subconsultant, by written contract, from having any conflicts as within the meaning of this section.

11.16 CONTINGENCY FEE

CONSULTANT CONSTRUCTION MANAGER warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT CONSTRUCTION MANAGER, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT CONSTRUCTION MANAGER, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, the City Commission shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

11.17 WAIVER OF BREACH AND MATERIALITY

Failure by CITY to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement.

CITY and CONSULTANT CONSTRUCTION MANAGER agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

11.18 COMPLIANCE WITH LAWS

CONSULTANT CONSTRUCTION MANAGER shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement.

11.19 SEVERANCE

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or CONSULTANT CONSTRUCTION MANAGER elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the findings by the court become final.

11.20 JOINT PREPARATION

Preparation of this Agreement has been a joint effort of CITY and CONSULTANT CONSTRUCTION MANAGER and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

11.21 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1-11 of this Agreement shall prevail and be given effect.

11.22 APPLICABLE LAW AND VENUE

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement and for any other legal proceeding shall be in the Seventeenth Judicial Circuit of Broward County, Florida. In the event of a federal proceeding, jurisdiction shall be in the Southern District of Florida.

11.23 EXHIBITS

Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The Exhibits, if not physically attached, should be treated as part of this Agreement, and are incorporated herein by reference.

11.24 THREE ORIGINAL AGREEMENTS

This Agreement shall be executed in three (3), signed Agreements, and with each one treated as an original.

11.25 NOTICES

Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

CITY: City Engineer
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 828-5772

CONSULTANT CONSTRUCTION MANAGER:

CIMA Engineering Corp.
PO Box 557397
Miami, FL. 33255
(305) 835-0262

11.26 ATTORNEY FEES

If CITY or CONSULTANT CONSTRUCTION MANAGER incurs any expense in enforcing the terms of this Agreement through litigation, the prevailing party in that litigation shall be reimbursed for all such costs and expenses, including, but not limited to, court costs and reasonable attorney fees incurred during litigation.

11.27 PERMITS, LICENSES AND TAXES

CONSULTANT CONSTRUCTION MANAGER shall, at its own expense, obtain all necessary permits and licenses, pay all applicable fees, and pay all applicable sales, consumer, use and other taxes required to comply with local ordinances, state and federal

law. CONSULTANT CONSTRUCTION MANAGER is responsible for reviewing the pertinent state statutes regarding state taxes and for complying with all requirements therein. Any change in tax laws after the execution of this Agreement will be subject to further negotiation and CONSULTANT CONSTRUCTION MANAGER shall be responsible for complying with all state tax requirements.

11.28 TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by CONSULTANT CONSTRUCTION MANAGER shall act as the execution of a Truth-in-Negotiation Certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums, by which the CITY determines that contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs.

11.29 EVALUATION

The CITY maintains the right to periodically review the performance of the CONSULTANT CONSTRUCTION MANAGER, the Scope of Services, Phases, Task Orders, the quality of the work performed, the cost to the CITY and the good faith efforts made by the CONSULTANT CONSTRUCTION MANAGER to maintain MBE/WBE participation in CITY projects. Any deficiencies in performance will be described in writing and an opportunity afforded, where practicable, for the CONSULTANT CONSTRUCTION MANAGER to address and/or remedy such deficiencies.

11.30 STATUTORY COMPLIANCE

CONSULTANT CONSTRUCTION MANAGER shall prepare all documents and other materials for the Project in accordance with all applicable rules, laws, ordinances and governmental regulations of the State of Florida, Broward County, the City of Fort Lauderdale, Florida and all governmental agencies having jurisdiction over the services to be provided by CONSULTANT CONSTRUCTION MANAGER under this Agreement or over any aspect or phase of the Project.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGES FOLLOW]

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

CITY

WITNESSES:

CITY OF FORT LAUDERDALE

By _____
Mayor

(Witness print/type name)

By _____
City Manager

(Witness print/type name)

(CORPORATE SEAL)

ATTEST:

City Clerk

Approved as to form:

City Attorney

CONSULTANT

WITNESSES:

CIMA Engineering Corp.

By _____

(Witness type/print name)

ATTEST:

(Witness type/print name)

By _____

(CORPORATE SEAL)

STATE OF _____:
COUNTY OF _____:

The foregoing instrument was acknowledged before me this _____ day of _____, 200__, by _____ as _____ respectively, of CIMA Engineering Corp. He/She is personally known to me or have produced _____ as identification.

(SEAL)

Notary Public, State of Florida
(Signature of Notary taking Acknowledgment)

Name of Notary Typed, Printed or Stamped

My Commission Expires: _____

Commission Number

EXHIBIT "A"

OVERVIEW / INTRODUCTION AND BACKGROUND:

On November 2, 2004, the citizens of the City of Fort Lauderdale approved a \$40 million bond referendum to add one and replace nine fire-rescue station facilities. These facilities will be state-of-the-art buildings equipped with a community room and a medical examination room that can provide meaningful contributions to the community. The facilities will appropriately accommodate female personnel with adequate gender separation and will provide the needed space for personnel and apparatus required to maintain the service levels from these stations.

SCOPE OF SERVICES

The City of Fort Lauderdale is entering into a continuing contract for professional services with the Consultant Construction Management firm to provide **Construction Management Consulting** services under the direction of the City's Construction Management Division during the construction of up to five (5) Municipal Fire Stations within the City of Fort Lauderdale. Work to be accomplished under this contract will include, but not be limited to, managing the construction of one and/or two-story Municipal Fire Stations, of between 10,000 and 12,000 square feet (see attached spreadsheet). The Consultant Construction Management firm will be responsible for working in cooperation with the City Construction Manager, City Architect, City Officials, and the City's consulting Architects and Engineers, to inspect and administer the construction of one (1) to five (5) Municipal Fire Stations. The construction management services will also include management and scheduling of these projects, as well as inspection and special inspection services as needed. The firm will advise the City on the most effective way to implement the overall program in terms of time and cost control, value engineering, inspection, quality control program and safety.

The Consultant Construction Manager, in coordination with City staff, will be responsible for constructability review, bidding and establishment of construction schedules. The Consultant Construction Manager firm will prepare monthly cash draw projections, monitor monthly construction-related expenditures and provide coordination between active construction projects in the same or adjacent areas. The Consultant Construction Manager firm will assist with the overall coordination of the City's projects with the Florida Department of Transportation (FDOT), Broward County, Florida Power and Light, AT&T, Comcast, The City's Public Works, Construction Services and Information Technology Services Departments.

Duties may include, but not necessarily be limited to:

Consultant Construction Manager's Requirements, Responsibilities & Services

- The Consultant Construction Manager will act as the Owners representative and agent relative to the entire Project.
- The Consultant Construction Manager's services will consist of those services performed by the Construction Manager, Construction Manager's employees and Construction Manager's consultants as enumerated in this Exhibit.
- The Consultant Construction Manager shall provide sufficient organization, personnel and management to carry out the requirements of this Agreement in an expeditious and economical manner consistent with the interests of the Owner.
- The Consultant Construction Manager will be required to possess credentials from the State of Florida, certifying that both the firm and the individual are currently in good standing as a licensed

Architect or Engineer. Additionally, the Consultant Construction Manager will be required to demonstrate that the firm and the individual have successfully completed services similar to those specified in this Exhibit.

- There will be five (5) Municipal Fire Station, projects that will be eligible for Consultant Construction Management services within the scope of this Exhibit, when deemed necessary by the Manager of the City's Construction Management Division, due to the shortage of City Staff to adequately manage said construction work.

Pre-Construction Phase

- The Consultant Construction Manager may be required to provide supplementary design and/or drafting services if so requested by the owner. When requested by the owner, this supplementary design and/or drafting service will be in support of the original project.
- The Consultant Construction Manager shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.
- The Consultant Construction Manager shall provide a preliminary evaluation of the Owner's program, including the Project scope and design, as well as the schedule and construction budget requirements, each in terms of the other.
- The Consultant Construction Manager shall expeditiously review construction documents and advise on proposed site use and improvements, selection of materials, building systems and equipment, and methods of Project delivery. The Consultant Construction Manager shall provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, and possible economies.
- The Consultant Construction Manager shall prepare and periodically update a Project Schedule for the Owner's acceptance. In the Project Schedule, the Consultant Construction Manager shall coordinate and integrate the Consultant Construction Manager's services, the Architect's services and the Owner's responsibilities with anticipated construction schedules, highlighting critical and long-lead-time items.
- The Consultant Construction Manager shall advise the Owner and Architect if it appears that the Construction Cost may exceed the latest approved Project budget and make recommendations for corrective action.
- The Consultant Construction Manager shall consult with the Owner and Architect regarding the Construction Documents and make recommendations whenever design details adversely affect constructability, cost or schedules
- The Consultant Construction Manager shall provide recommendations and information to the Owner and Architect regarding the assignment of responsibilities for temporary Project facilities and equipment, materials and services for use of the Contractor. The Consultant Construction Manager shall verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents.
- The Consultant Construction Manager shall provide recommendations and information to the Owner regarding the allocation of responsibilities for safety programs with the Contractor.

- The Consultant Construction Manager shall advise on the division of the Project into individual Contracts for various categories of Work, including the method to be used for selecting Contractor and awarding Contracts. If multiple Contracts are to be awarded, the Consultant Construction Manager shall review the Construction Documents and make recommendations as required to provide that (1) the Work of the Contractor is coordinated, (2) all requirements for the Project have been assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes has been minimized, and (4) proper coordination has been provided for phased construction.
- The Consultant Construction Manager shall prepare a Project construction schedule providing for the components of the Work, including phasing of construction, times of commencement and completion required of Contractor, ordering and delivery of products requiring long lead time, and the occupancy requirements of the Owner.
- The Consultant Construction Manager shall assist the Owner in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Project.
- The Consultant Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The Consultant Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor shortages.
- The Consultant Construction Manager shall assist the Owner in preparing Construction Contracts and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Contractors.
- The Consultant Construction Manager shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the Contractor. The Consultant Construction Manager shall verify that the Owner has paid applicable fees and assessments. The Consultant Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

Construction Phase - Administration of the Construction Contract

- The Construction Phase will commence with the award of the initial Construction Contract or purchase order and, together with the Consultant Construction Manager's obligation to provide Basic Services under this Agreement, will end 60 days after final payment to Contractor is due.
- The Consultant Construction Manager shall provide administration of the Contracts for Construction in cooperation with the Architect as set forth below.
- The Consultant Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Contractor and with those of the Consultant Construction Manager, the Owner and the Architect to endeavor to manage the Project in accordance with the latest approved estimate of Construction Cost, the Project Schedule and the Contract Documents.
- The Consultant Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress and scheduling. The Consultant Construction Manager shall prepare and promptly distribute minutes to the Owner, Architect and Contractor.
- Utilizing the Construction Schedules provided by the Contractor, the Consultant Construction Manager shall update the Project construction schedule incorporating the activities of the Contractor

on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery of products requiring long lead time and procurement. The Project construction schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Consultant Construction Manager shall update and reissue the Project construction schedule as required to show current conditions. If an update indicates that the previously approved Project construction schedule may not be met, the Consultant Construction Manager shall recommend corrective action to the Owner and Architect.

- Consistent with the various bidding documents, and utilizing information from the Contractors, the Consultant Construction Manager shall coordinate the sequence of construction and assignment of space in areas where the Contractor is performing Work.
- The Consultant Construction Manager shall endeavor to obtain satisfactory performance from the Contractor. The Consultant Construction Manager shall recommend courses of action to the Owner when requirements of a Contract are not being fulfilled.
- The Consultant Construction Manager shall monitor the approved estimate of Construction Cost. The Consultant Construction Manager shall show actual costs for activities in progress and estimates for uncompleted tasks by way of comparison with such approved estimate.
- The Consultant Construction Manager shall develop cash flow reports and forecasts for the Project and advise the Owner and Architect as to variances between actual and budgeted or estimated costs.
- The Consultant Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.
- The Consultant Construction Manager shall develop and implement procedures for the review and processing of applications by Contractor for progress and final payments.
- The Consultant Construction Manager shall prepare a Project Application for Payment based on the Contractor Certificates for Payment.
- Based on the Consultant Construction Manager's observations and evaluations of Contractor Application for Payment, the Consultant Construction Manager shall review and certify the amounts due the Contractor.
- The Consultant Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Consultant Construction Manager's determinations at the site, and on the data comprising the Contractors' Applications for Payment, that, to the best of the Consultant Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Consultant Construction Manager. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified.
- The Consultant Construction Manager will monitor the development of "As-Built" documents and confirm that updates are made prior to recommending approval for Contractor's Application for Payment.

- The issuance of a Certificate for Payment shall not be a representation that the Consultant Construction Manager has made continuous on-site inspections to check the quality or quantity of the Work, and reviewed construction means, methods, techniques for the Contractor's own Work, or procedures.
- The Consultant Construction Manager shall determine in general that the Work of the Contractor is being performed in accordance with the requirements of the Contract Documents, endeavoring to guard the Owner against defects and deficiencies in the Work. As appropriate, the Consultant Construction Manager shall have authority, upon written authorization from the Owner, to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. The Consultant Construction Manager, in consultation with the Architect, may reject Work which does not conform to the requirements of the Contract Documents.
- With respect to the Contractor's own Work, the Consultant Construction Manager shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of the Contractor, since these are solely the Contractor's responsibility under the Contract for Construction. The Consultant Construction Manager shall not have control over or charge of acts or omissions of the Contractors, Subcontractors, or their agents or employees, or any other persons performing portions of the Work not directly employed by the Consultant Construction Manager.
- The Consultant Construction Manager shall in a timely manner transmit to the Architect requests for interpretations of the meaning and intent of the Drawings and Specifications, and assist in the resolution of questions that may arise.
- The Consultant Construction Manager shall review request for changes, assist in negotiating Contractor's proposals, submit recommendations to the Architect and Owner, and, if they are accepted, prepare Change Orders and Construction Change Directives which incorporate the Architect's modifications to the Documents.
- The Consultant Construction Manager shall assist the Architect in the review, evaluation and documentation of Claims.
- The Consultant Construction Manager will maintain and distribute all project related documentation including RFI Logs, Action Items, Shop Drawings and Logs, Change Order Logs, and overall Project files, including hard copies of all relative correspondence.
- The Consultant Construction Manager shall receive certificates of insurance from the Contractor and forward them to the Owner with a copy to the Architect.
- In collaboration with the Architect and the Owner, the Consultant Construction Manager shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals. The Consultant Construction Manager shall review all Shop Drawings, Product Data, Samples and other submittals from the Contractor. The Consultant Construction Manager shall coordinate submittals with information contained in related documents and transmit to the Architect those which have been approved by the Consultant Construction Manager. The Consultant Construction Manager's actions shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner or Contractors.
- The Consultant Construction Manager shall record the progress of the Project. The Consultant Construction Manager shall submit written progress reports to the Owner and Architect including information on Contractor's Work, as well as the entire Project, showing percentages of completion. The Consultant Construction Manager shall keep a daily log containing a record of weather, each Contractor's Work on the site, number of workers identification of equipment, Work accomplished,

problems encountered, and other similar relevant data as the Owner may require.

- The Consultant Construction Manager will monitor and ensure that the Contractor obtains all required governmental and regulatory inspections and approvals.
- The Consultant Construction Manager shall maintain at the Project site for the Owner one record copy of all Contracts, Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. The Consultant Construction Manager shall maintain records in duplicate, of principal building layouts lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. The Consultant Construction Manager shall make all such records available to the Architect and upon completion of the Project shall deliver them to the Owner.
- The Consultant Construction Manager shall arrange for the delivery, storage, protection and security of Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Project.
- The Consultant Construction Manager will coordinate, along with the Contractor, the installation of all Owner-purchased materials, systems, and equipment that are part of the project.
- With the Architect and the Owner's maintenance personnel, the Consultant Construction Manager shall observe the Contractor's final testing and start-up of utilities, operational systems and equipment.
- When the Consultant Construction Manager considers Contractor's Work or a designated portion thereof substantially complete, the Consultant Construction Manager shall, jointly with the Contractor, prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for their completion. The Consultant Construction Manager shall assist the Architect in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.
- The Consultant Construction Manager shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Consultant Construction Manager shall evaluate the completion of the Work of the Contractor and make recommendations to the Architect when Work is ready for final inspection. The Consultant Construction Manager shall assist the Architect in conducting final inspections.
- The Consultant Construction Manager shall secure and transmit to the Architect warranties and similar submittals required by the Contract Documents for delivery to the Owner and deliver all keys, manuals, record drawings and maintenance stocks to the Owner. The Consultant Construction Manager shall forward to the Architect a final Project Application for Payment upon compliance with the requirements of the Contract Documents.
- Duties, responsibilities and limitations of authority of the Consultant Construction Manager as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, City Construction Manager, Architect and Contractors. Consent shall not be unreasonably withheld.

Post Construction phase

- The Consultant Construction Manager will secure and transmit all Project related files to the

owner.

- The Consultant Construction Manager, if requested, will assist the Owner with FF&E and other utility installation and move-in coordination.
- The Consultant Construction Manager, will assist the Owner with the submittal of any warranty claims.
- Upon completion of the Project, the Consultant Construction Manager will issue a report identifying any issues, which may need to be corrected on future projects.

-- END OF SECTION --

Exhibit "A"

FUNCTIONAL REQUIREMENTS:

NOTE: ESTIMATED CONSTRUCTION COST FOR STATIONS: \$3 MILLION/EACH. CM Responsibility - Total Oversight of Above Disciplines and Construction Activities, per Scope of Services section of RFQ #206-10371

ITEM	FIRE STATION 35	FIRE STATION 46
Address	1971 East Commercial Fort Lauderdale, FL	1515 NE 19th Street Fort Lauderdale, FL 33308
Facility Use	Full Service Fire Station	Full Service Fire Station
Projected Bid Date	August, 2010	August, 2010
Projected Const.	November, 2010	November, 2010
Project Completion	November, 2011	November, 2011
Type	2-Story 3- Apparatus Bays 11-Bunk Rooms Full Kitchen/Dining Room Day Room Offices Laundry Gymnasium Community Meeting Room	1-Story 3-Apparatus Bays 10-Bunk Rooms Full Kitchen/Dining Room Day Room Offices Laundry Gymnasium Community Meeting Room
Square Footage	12,689 SF	10,487 SF
Construction	Concrete Masonry & Stucco Concrete Slabs 4-Ply Built-up Roof Zoned HVAC Systems Full Interior & Finish Package Millwork Full Electrical Service Full Sprinkler System Parking Lots Full Landscaping Package	Concrete Masonry & Stucco Concrete Slabs 4-Ply Built-up Roof Zoned HVAC Systems Full Interior & Finish Package Millwork Full Electrical Service Full Sprinkler System Parking Lots Full Landscaping Package
	Elevator	No Elevator

Exhibit C

Reimbursable unit prices

Copy – Per Copy

Black & White Copy

8 1/2 x 11 \$0.10

8 1/2 x 14 \$0.14

11 x 17 \$0.20

Color Copy

8 1/2 x 11 \$0.59

11 x 17 \$1.89

Postage – Per Pound

Parcel Post from \$3.67

Express from \$13.05

Certified Mail \$2.70