

**POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY
SERVICE CONTRACT**

THIS AGREEMENT is made and entered into this 6th day of November, 2018, by the POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY, hereinafter referred to as "CRA" and Redevelopment Management Associates, LLC, a Florida limited liability company, hereinafter referred to as "Contractor."

WHEREAS, CRA requires services which Contractor is capable of providing, under the terms and conditions hereinafter described or referenced; and

WHEREAS, Contractor is able and prepared to provide such services as CRA does hereinafter require, under those terms and conditions set forth.

NOW, THEREFORE, in consideration of those mutual promises and the terms and conditions set forth hereafter, the parties agree as follows:

1. Contract Documents. The Contract Documents consist of this Agreement; Exhibit "A" – Scope of Work, Exhibit "B" - Insurance Requirements, and all written change orders and modifications issued after execution of this Agreement. These aforementioned items form the Service Contract, and all are as fully a part of the Service Contract as if attached to this Agreement or repeated herein.
2. Purpose. CRA hereby contracts with Contractor to provide Public Private Partnership (P3) Real Estate consulting services upon the terms and conditions herein set forth, more fully described in Exhibit A.
3. Scope of Work. Contractor will provide the services to be rendered as set forth in Exhibit "A" (Scope of Work), attached hereto and by reference incorporated herein and made a part hereof.
4. Term of Contract. This Contract shall be for a term of one (1) year or less beginning with the date this Contract is fully executed by both parties.
5. Renewal. In the event CRA determines the Contractor to be in full compliance with this contract and Contractor's performance to be satisfactory, then CRA shall have the option to renew this contract for an additional period of one (1) year upon the written consent of both the CRA and the Contractor, provided that CRA will provide notification within sixty (60) days of termination date of its intention. The extension may be in the form of an amendment to the initial contract.
6. Maximum Obligation. CRA agrees to pay Contractor in consideration for its services described herein. It is the intention of the parties hereby to ensure that unless otherwise directed by the CRA in writing, Contractor will continue to provide services as specified in Exhibit "A" for the term of the contract.
7. Price Formula. CRA agrees to pay Contractor for performance of the services set forth in this Agreement as follows:

Payment of a not to exceed Fixed Fee of \$ N/A per month or a Not to Exceed Fixed Fee of \$75,000.00.

8. Invoices. Contractor shall submit the invoices to CRA, if requested by CRA, as follows:

Invoices shall be submitted on a monthly basis on or before the beginning of first day of the month following the month of services.

9. Payment. All payments by the CRA shall be made after the service has been provided. All invoices shall be submitted to the CRA for approval and payment will be issued within forty-five (45) days of submittal.

10. Disputes.

A. Any factual disputes between CRA and the Contractor in regard to this Agreement shall be directed to the Executive Director for the CRA, and such decision shall be final.

B. Any action brought against either party to enforce this Agreement will be brought in Broward County, Florida.

11. Communications. All notices hereunder and communications with respect to this Agreement shall be effective upon the mailing thereof to the persons named below.

If to Contractor: Redevelopment Management Associates, LLC
Christopher J. Brown, Member
2302 E. Atlantic Blvd.
Pompano Beach, FL 33062

If to CRA: Pompano Beach CRA
Greg Harrison, Executive Director
P. O. Box 1300
Pompano Beach, Florida 33060

12. Information and Documents. All information, data, reports, as are existing, if any, and necessary for carrying out the work as outlined in Exhibit "A" hereof, shall be furnished to Contractor without charge by CRA, and CRA shall cooperate in the carrying out of the work without undue delay.

13. Termination. This Agreement may be terminated without cause by either party upon thirty (30) days written notice to the other party.

14. If either party claims the other is in default of this Agreement, the parties may, but are not required to, timely schedule a conference or meeting and make every reasonable effort to reach an amicable resolution. Both parties shall be entitled to have representatives present at any such meeting or conference.

15. If there is a default of any covenant or obligation under this Agreement, the defaulting party shall be given ten (10) calendar days to cure said default after written notice from the other.
16. If the party receiving written notice of default provides written notice denying same within ten (10) calendar days of receipt or the alleged default has not been remedied within ten (10) calendar days after receipt of written notice and is continuing either party shall have the right to terminate this Agreement immediately upon delivery of the written notice to the defaulting party of its election to do so.
17. Force Majeure. Contractor shall not be held responsible for losses, delays, failure to perform or excess costs caused by events beyond the control of the Contractor. Such events may include but are not restricted to the following: Acts of God; fire, epidemics, earthquake, flood or other natural disaster; acts of the government; riots, strikes, war or civil disorder; unavailability of fuel.
18. Insurance. Throughout the term of this Agreement, Contractor shall procure and maintain liability insurance in the type and amounts set forth in Exhibit "B" attached hereto. Such insurance shall specify that it is issued on an "occurrence" basis. Contractor shall name CRA as additional insured on said policies and shall provide evidence of such insurance. Such policies shall provide that they may not be canceled without at least thirty (30) days' notice to CRA.
19. Indemnity. The Contractor shall defend, indemnify and hold the CRA, its officials, employees, authorized agents and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the CRA. The parties agree that one percent (1%) of the total compensation paid to Contractor for the work of the contract shall constitute specific consideration to Contractor for the indemnification to be provided under the contract. Nothing in this Agreement shall be construed to affect in any way the rights, privileges and immunities of the CRA and agencies, as set forth in Section 768.28, Florida Statutes.
20. Assignment. Contractor shall not assign all or any portion of this Agreement without the prior written consent of the CRA, and it is agreed that said consent must be sought in writing by Contractor not less than fifteen (15) days prior to the date of any proposed assignment.
21. Performance Under Law. The Contractor, in the performance of duties under the Agreement, agrees to comply with all applicable local, state and/or federal laws and ordinances including, but not limited to, standards of licensing, conduct of business and those relating to criminal activity.
22. Audit and Inspection Records. The Contractor shall permit the authorized representatives of the CRA to inspect and audit all data and records of the Contractor, if any, relating to performance under the contract until the expiration of three years after final payment under this contract. The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that CRA or any of their duly authorized representatives shall, until the expiration of three years

after final payment under the subcontractor, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor, involving transactions related to the subcontractor

23. Adherence to Law. Both parties shall adhere to all applicable laws governing their relationship with their employees including, but not limited to, laws, rules, regulations and policies concerning worker's compensation, unemployment compensation and minimum wage requirements.
24. Independent Contractor. The Contractor shall be deemed an independent Contractor for all purposes, and the employees of the Contractor or any of its contractors, subcontractors and the employees thereof, shall not in any manner be deemed to be employees of CRA. As such, the employees of the Contractor, its Contractors or subcontractors, shall not be subject to any withholding for tax, social security or other purposes by CRA, nor shall such Contractor, subcontractor or employee be entitled to sick leave, pension benefits, vacation, medical benefits, life insurance, workers or unemployment compensation or the like from CRA.
25. Mutual cooperation. The Contractor recognizes that the performance of this contract is essential to the provision of vital public services and the accomplishment of the stated goals and mission of CRA. Therefore, the Contractor shall be responsible to maintain a cooperative and good faith attitude in all relations with CRA and shall actively foster a public image of mutual benefit to both parties. The Contractor shall not make any statements or take any actions detrimental to this effort.
26. Public Records.
 - A. The CRA of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law, as amended. Specifically, the Contractor shall:
 - i. Keep and maintain public records required by the CRA in order to perform the service.
 - ii. Upon request from the CRA's custodian of public records, provide the CRA with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
 - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the CRA.
 - iv. Upon completion of the contract, transfer, at no cost to the CRA, all public records in possession of the Contractor, or keep and maintain public records required by the CRA to perform the service. If the Contractor transfers all public records to the CRA upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all

applicable requirements for retaining public records. All records stored electronically must be provided to the CRA, upon request from the CRA's custodian of public records in a format that is compatible with the information technology systems of the CRA.

- B. Failure of the Contractor to provide the above described public records to the CRA within a reasonable time may subject Contractor to penalties under 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

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

**CRA CLERK
100 W. Atlantic Blvd., Suite 276
Pompano Beach, Florida 33060
(954) 786-5535
kimberly.vazquez@copbfl.com**

27. **Governing Law.** This Agreement has been and shall be construed as having been made and delivered within the State of Florida, and it is agreed by each party hereto that this Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. Any action at law, or in equity, shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.
28. **Waiver.** Any waiver of any breach of the covenants herein contained to be performed by Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the CRA from declaring a forfeiture for any succeeding breach either of the same condition or covenant or otherwise.
29. **Entire Agreement.** 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, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.
30. **Headings.** The headings or titles to sections of this Agreement are not part of the Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.
31. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A photocopy, email or facsimile copy of this Agreement and any signatory hereon shall be considered for all purposes as original.

32. Severability. Should any provision of this Agreement or the applications of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts of provisions of this Agreement shall remain in full force and effect.

The CRA hereby promises and agrees with the Contractor to employ and does employ the Contractor to provide the materials, if any, and to do and cause to do and be done the above-described work and to complete and finish the same according to the attached plans and specifications and the terms and conditions herein contained and hereby contracts to pay for the same according to the attached specifications and the schedule of unit or itemized prices hereto attached, at the time and in the manner and upon the conditions provided for in this contract.

The Contractor for himself and for his heirs, executors, administrators, successors and assigns, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor.

It is further provided that no liability shall be attached to the CRA by reason of entering into this contract, except as expressly provided herein.

THE REMAINDER OF THE PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

CRA OF POMPANO BEACH

Witnesses:

Betty J. Monice

Shelly R. Boudreau

By:

Lamar Fisher
LAMAR FISHER, MAYOR

By:

Gregory P. Harrison
GREGORY P. HARRISON,
EXECUTIVE DIRECTOR

Attest:

Marsha Carmichael

~~KIM VAZQUEZ, CRA CLERK~~
Marsha Carmichael, Secretary
APPROVED AS TO FORM:

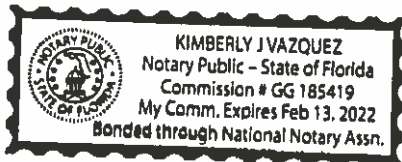
(SEAL)

BY: Claudia M. McKenna
CLAUDIA McKENNA, CRA ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 6th day of November, 2018 by LAMAR FISHER as Chairman, GREGORY P. HARRISON as CRA Executive Director, and KIM VAZQUEZ as CRA Clerk of the CRA of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me. Marsha Carmichael, CRA Secretary

NOTARY'S SEAL:



Kimberly J. Vazquez
NOTARY PUBLIC, STATE OF FLORIDA

(Name of Notary Typed, Printed or Stamped)

GG 185419

Commission Number

"CONTRACTOR":

Witnesses:

[Signature]
Jamie Pennington

Redevelopment Management Associates, LLC
(Type Name of Contractor)

By: Christopher Brown
Print Name

[Signature]
Signature

Principal
Title

Business License No.: 4463954

STATE OF FLORIDA
COUNTY OF BROWARD

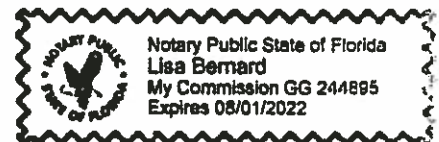
The foregoing instrument was acknowledged before me this 8th day of October, 2018 by Christopher Brown as Member of Redevelopment Management Associates, LLC, a Florida limited liability company, on behalf of the limited liability company. He is personally known to me or who has produced _____ (type of identification) as identification.

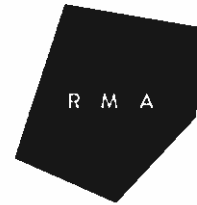
NOTARY'S SEAL:

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

Lisa Bernard
(Name of Notary Typed, Printed or Stamped)

GG 244895
Commission Number





REINVENTING YOUR CITY

Date: _____, 2018

**EXHIBIT A – SCOPE OF WORK FOR SERVICE CONTRACT WITH THE POMPANO BEACH
COMMUNITY REDEVELOPMENT AGENCY FOR REAL ESTATE P3 SERVICES**

City of Pompano Beach CRA ("Client")
C/O Greg Harrison, CRA Executive Director
100 West Atlantic Blvd, 4th Floor
Pompano Beach, FL 33060

and

Redevelopment Management Associates, LLC ("Consultant")
C/O Christopher Brown, Principal
2302 East Atlantic Blvd.
Pompano Beach, FL 33062
Contact: 954-695-0754
Email: chris@rma.us.com

Re: RMA Proposal for Real Estate Public Private Partnership ("P3") Consulting Services for
Pompano Beach CRA Real Estate Assets.

Dear Mr. Harrison,

Redevelopment Management Associates, LLC ("Consultant") is pleased to submit this proposal to provide consulting and guidance regarding development and redevelopment of CRA properties including but not limited to properties within the Pompano Beach Innovation District. Services include land acquisition, procurement of a master developer(s), disposition of individual parcels, assisting with leasing activity, and other general real estate related services.

Background of Redevelopment in the City

RMA has assisted the CRA in aggressively pursuing redevelopment of the beach area, as well as in the northwest and downtown areas. As a result, developers and businesses are building over 200,000 square feet of new retail and commercial space including the Pier Development project, new restaurants on Atlantic Boulevard, new retail on US 1,

redevelopment in Old Pompano and along the MLK Boulevard corridor, Collier City, and the Harbor Village shopping center. Residential development attracted within the CRA boundaries include City Vista on MLK Blvd. and a newly announced ten-story luxury apartment project in Old Pompano. The activity within the CRA has spurred development interest outside the boundaries including the KOI, a mixed-use development on eight acres on East Atlantic Boulevard, and a new luxury high-rise on the ocean called Sabia. As new development takes hold, the impact on the existing underutilized and underdeveloped properties in the city will result in development pressure.

Over the last decade, RMA has already assisted the city and CRA in many facets of real estate consulting including purchasing property, establishing a parking enterprise fund to provide a funding source for parking facilities, assisting in the development and management of the Pier Parking Garage, and oversight of approximately 2,000 parking meters.

The renaissance the city is enjoying is largely due to the foundation laid over the last decade. In coordination with city staff and other stakeholders, RMA helped guide and coordinate the redevelopment activity, therefore we are able to continue to provide this guidance on an as needed basis to ensure redevelopment investment continues. Please review the proposed Scope of Services for content and compliance with your stated objectives. We are available at your convenience to discuss the proposal in further detail.

Scope of Services

- 1.0 Liaison:** Report directly to the Executive Director or his designee and act as a liaison as directed for the CRA on redevelopment matters, including interfacing with the public and with key city departments including the city manager's office, finance, public works, engineering, capital improvements, development services and others. Coordinate with CRA staff in particular with the CRA Director.
- 2.0 P3 Projects:** Assist the CRA and other staff in developing effective redevelopment strategies for the CRA properties to effect redevelopment activity. Services include;
 - 2.1** Land acquisition services for properties in the Innovation District, the US 1 corridor, and other areas as directed by the Executive Director.
 - 2.2** Identify other CRA P3 opportunities, including development of CRA owned sites as a P3 partnership;
 - 2.3** Assist the CRA in securing third party professional appraisals of its properties in the redevelopment area, securing third party professional environmental Phase 1 and Phase 2 reports if required, coordinating

surveys of all individual tracts within a development area, and procuring boundary surveys as needed;

- 2.4** Advise on the need for plat work required on each project; coordinate any plat work for CRA properties acquired or to be acquired;
- 2.5** Advise on the need for a land use amendment, rezoning or any other regulatory condition;
- 2.6** Assist in writing request for proposals, if required, for the selection of a developer(s) in redeveloping a CRA P3 project;
- 2.7** Assist in the evaluation of third party solicited or unsolicited proposals made to the CRA by developers;
- 2.8** Assist in writing a development agreement for the sale or lease of property for development;
- 2.9** Assist in preparing a financial analysis of a proposed development including projecting the economic benefits that the city would receive from such redevelopment;
- 2.10** Assist the CRA with other services pertaining to P3s as directed by the Executive Director.

Exclusions: preparing land use amendments, drafting zoning regulations, providing owner's representation for construction management associated with the development of projects, plat work or providing material of any kind for demonstration or presentation purposes for the exclusions listed above.

3.0 Compensation

The Consultant will be compensated on an hourly basis as described in the rate schedule attached herein as Exhibit A. Billing will occur monthly and will state the number of hours expended and the services provided.

Initial Fee Not to Exceed \$25,000, unless expressly approved in writing by the CRA Executive Director for a maximum of \$75,000.

4.0 Schedule

This Agreement is effective upon execution and may be terminated by either party at any time, with or without cause. All rates, services and fees are based on an annual schedule effective as of the execution date of this agreement and shall be renegotiated on an as-needed basis. The term of the Contract shall commence on the date of execution and shall be for one (1) calendar year. The CRA Executive Director has the authority to extend the contract for (1) one additional year provided funds remain in the purchase order.

We look forward to working with you on this project. Please call me if you have additional questions.

AGREED TO AND ACCEPTED BY:

CLIENT

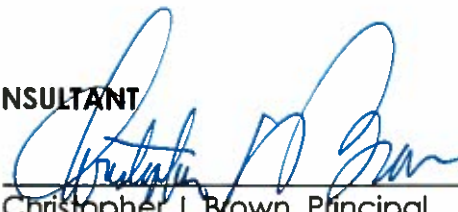
By: 
Lamar Fisher, Chairman
Pompano Beach CRA

Date: 10/25/18

By: 
Greg Harrison, Executive Director
Pompano Beach CRA

Date: 10-25-18

CONSULTANT

By: 
Christopher J. Brown, Principal
Redevelopment Management Associates, LLC

Date: 10/8/2018

TABLE ONE
(Rate Schedule)

<u>TITLE</u>	<u>HOURLY RATE</u>
Principal	\$230
Senior Associate	\$175
Project Manager	\$145
Financial Analyst	\$160
Senior Planner/Urban Designer	\$150
Associate Planner	\$125
Project Coordinator	\$ 95
Administrative Assistant	\$ 80

EXHIBIT B

INSURANCE REQUIREMENTS

CONTRACTOR shall not commence services under the terms of this Agreement until certification or proof of insurance detailing terms and provisions has been received and approved in writing by the CRA's Risk Manager who can be reached by phone (954-786-5555) or email (eddie.beecher@copb.fl.com) should you have any questions regarding the terms and conditions set forth in this Article. Proof of the insurance coverage required hereunder shall be mailed to Risk Management, PO Box 1300, Pompano Beach, FL 33061.

CONTRACTOR is responsible to deliver to the CRA's Risk Manager for its timely review and written approval/disapproval Certificates of Insurance which evidence that all insurance required hereunder is in full force and effect and which name on a primary basis, the CRA as an additional insured on all such coverage.

Throughout the term of this Agreement, CRA, by and through its Risk Manager, reserve the right to review, modify, reject or accept any insurance policies required by this Agreement, including limits, coverages or endorsements. CRA reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

Failure to maintain the required insurance shall be considered an event of default. The requirements herein, as well as CRA's review or acceptance of insurance maintained by CONTRACTOR, are not intended to and shall not in any way limit or qualify the liabilities and obligations assumed by CONTRACTOR under this Agreement.

Throughout the term of this Agreement, CONTRACTOR and all subcontractors or other agents hereunder, shall, at their sole expense, maintain in full force and effect, the following insurance coverages and minimum limits described herein, including endorsements.

A. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440, regardless of the size of the company (number of employees) or the state in which the work is to be performed or of the state in which Contractor is obligated to pay compensation to employees engaged in the performance of the work. Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

B. Liability Insurance.

(1) Naming the Pompano Beach CRA as an additional insured as CRA's interests may appear, on General Liability Insurance only, relative to claims which arise from Contractor's negligent acts or omissions in connection with Contractor's performance under this Agreement.

(2) Such Liability insurance shall include the following checked types of insurance and indicated minimum policy limits.

Type of Insurance**Limits of Liability**

GENERAL LIABILITY: Minimum \$1,000,000 Per Occurrence and \$2,000,000 Per Aggregate

* Policy to be written on a claims incurred basis

XX comprehensive form	bodily injury and property damage
XX premises - operations	bodily injury and property damage
XX explosion & collapse hazard	
underground hazard	
XX products/completed operations hazard	bodily injury and property damage combined
XX contractual insurance	bodily injury and property damage combined
XX broad form property damage	bodily injury and property damage combined
XX independent contractors	personal injury
XX personal injury alcohol sales sexual abuse/molestation	Minimum \$200,000 Per Occurrence and \$300,000 Per Aggregate

AUTOMOBILE LIABILITY: Minimum \$200,000 Per Occurrence and \$300,000 Per Aggregate. Bodily injury (each person) bodily injury (each accident), property damage, bodily injury and property damage combined.

XX comprehensive form
 XX owned
 XX hired
 XX non-owned

REAL & PERSONAL PROPERTY

comprehensive form Agent must show proof they have this coverage.

EXCESS LIABILITY Minimum per Occurrence and Aggregate

XX other than umbrella	bodily injury and property damage combined	\$4,000,000	\$4,000,000
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PROFESSIONAL LIABILITY Per Occurrence Aggregate
 * Policy to be written on a claims made basis \$1,000,000 \$1,000,000

C. Employer's Liability. CONTRACTOR and all subcontractors shall, for the benefit of their employees, provide, carry, maintain and pay for Employer's Liability Insurance in the minimum amount of One Hundred Thousand Dollars (\$100,000.00) per employee, Five Hundred Thousand Dollars (\$500,000) per aggregate.

D. Policies: Whenever, under the provisions of this Agreement, insurance is required of the CONTRACTOR, the CONTRACTOR shall promptly provide the following:

- (1) Certificates of Insurance evidencing the required coverage;
- (2) Names and addresses of companies providing coverage;
- (3) Effective and expiration dates of policies; and
- (4) A provision in all policies affording CRA thirty (30) days written notice by a carrier of any cancellation or material change in any policy.

E. Insurance Cancellation or Modification. Should any of the required insurance policies be canceled before the expiration date, or modified or substantially modified, the issuing company shall provide thirty (30) days written notice to the CRA.

F. Waiver of Subrogation. CONTRACTOR hereby waives any and all right of subrogation against the CRA, its officers, employees and agents for each required policy. When required by the insurer or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy not specifically prohibiting such an endorsement, or voids coverage should CONTRACTOR enter into such an agreement on a pre-loss basis.