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## **REQUEST FOR PROPOSAL**

RFP F26-06-034

**CMAR SERVICES FOR WTRF SECONDARY CLARIFIER  
UPGRADES**

for

**Water & Sewer Department**

**June 22<sup>nd</sup>, 2026**

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**REQUEST FOR PROPOSAL  
RFP F26-06-034**

Procurement Contact: Dan Nelson  
Email Address: [Purchasing@greeleygov.com](mailto:Purchasing@greeleygov.com)  
Telephone Number: 970-336-4141

**Proposals must be received no later than the date indicated in the Schedule of Events below.**

*Proposals received after this date and time will not be considered for award.*

**ONLY ELECTRONIC RFP RESPONSES WILL BE ACCEPTED.**

Email your RFP Response to [purchasing@greeleygov.com](mailto:purchasing@greeleygov.com). Only emails sent to [purchasing@greeleygov.com](mailto:purchasing@greeleygov.com) will be considered as responsive to the request for proposals. **DO NOT** submit your RFP Response to multiple email addresses. Emails sent to other City emails may be considered non-responsive and may not be reviewed.

Proposals shall be submitted in a single Microsoft Word or PDF file under 20MB. The Proposal must not exceed 20 total pages, excluding cover letter, index or table of contents, front and back covers, and title pages/separation tabs. Pages shall be 8 ½ x 11 inches except for up to four (4) pages of 11 x 17 inches. Eleven-point font or larger must be used for the proposal and appendices. Resumes included as an appendix are not considered part of the 20 pages.

The RFP number and Project name must be noted in the subject line, otherwise the proposal may be considered as non-responsive to the RFP.

Electronic submittals will be held, un-opened, until the time and date noted in the RFP documents or posted addenda.

<b>Schedule of Events (subject to change)</b>	<b>All times are MST</b>
RFP Issued	06/22/26
Mandatory Pre-Proposal Conference: <b>Greeley Wastewater Treatment and Reclamation Facility</b> 300 E 8 <sup>th</sup> Street, Greeley, CO 80631 (See Exhibit 8) <b>PPE REQUIRED (HARD HAT, BOOTS, VEST, SAFETY GLASSES)</b> <b>MAXIMUM 2 REPRESENTATIVES PER COMPANY</b>	07/08/26 2:00 PM
Inquiry Deadline	07/13/26 5:00 PM
Final Addendum Issued	07/17/26 5:00 PM
Proposal Due Date	07/24/26 2:00 PM
Interviews (tentative)	Week of 08/03/26 Tuesday 08/04 - 1:00-1:45 PM, 2:30-3:15 PM Wednesday 08/05 - 1:00-1:45 PM, 2:30-3:15 PM Thursday 08/06 - 1:30-2:15 PM
Notice of Award (tentative)	08/21/26



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## **EXHIBITS**

<b>Exhibit</b>	<b>Title</b>
1	Proposal Acknowledgement
2	Sample Contract
3	Insurance
4	Debarment Form
5	Scope of CMAR Services
6	Project Background Documents*  <b>*Exhibit 6 will only be provided to those who attend the mandatory in-person pre-proposal conference</b>
7	Fee and Rate Proposal Form
8	WTRF Site Access Map



## **SECTION I. BACKGROUND, OVERVIEW, AND GOALS**

### **A. Background**

The City of Greeley (City) Water and Sewer Department's WTRF Secondary Clarifier Upgrades project (Project) has been initiated with the purpose of designing and constructing new secondary clarifier mechanisms, piping, and electrical and instrumentation and controls (I&C) equipment to replace those currently operating at the Wastewater Treatment and Reclamation Facility (WTRF). The City's intent is to execute the project using the Construction Manager at Risk (CMAR) delivery method. The City is inviting qualified candidates to submit proposals for pre-construction CMAR services, as detailed in Section II of this RFP, but generally including coordination with the Owner and Engineer to identify opportunities to improve constructability, reduce costs, accelerate schedule, and establish a Guaranteed Maximum Price (GMP) for, and complete, construction.

This RFP is subject to revision after the date of issuance via written addenda. Any such addenda will be transmitted by the City to the potential Proposers. It is each Proposer's responsibility, however, to ensure they have received all RFP addenda prior to submitting the Proposal.

### **B. Overview**

The City (Owner) owns and operates the WTRF, which currently has the capacity to accept and treat 14.7 million gallons per day (MGD) of wastewater at an organic loading rate of 45,000 pounds per day of biochemical oxygen demand (BOD).

The secondary clarifiers currently operated by the WTRF are essential components of the treatment process that have begun to reach the end of their useful life. Originally constructed around 1964, secondary clarifiers 1 and 2 are 85 feet in diameter and had their mechanisms replaced as part of the 1983 WTRF upgrades. Secondary clarifier 3 was constructed as part of the same 1983 project and is 120 feet in diameter. Clarifiers 1, 2, and 3 share similar sludge suction (draft tube) style mechanisms. Secondary clarifier 4 was added as part of the 1994 WTRF upgrades, is 120 feet in diameter, and employs a different style of mechanism which includes a suction header and inboard launder.

Due to the aging components in the system, and maintenance issues that have adversely affected plant operations, the WTRF has decided to proceed with replacement of the clarifier mechanisms, along with improvements to other portions of the system outlined below. The design Scope of Work for this project will include (but is not necessarily limited to):

- Replacement of secondary clarifier mechanisms (pier, drive, bridge, weirs, launders, etc.)
- Rehab of concrete and structural elements in clarifier basins
- Replacement of clarifier drain yard piping and valves
- Replacement and potential relocation of MCC-A, which supplies electrical power to all four clarifiers and several other pieces of equipment
- Upgrades to remote I/O (RIO) cabinet A, to bring it up to current City of Greeley Water & Sewer Department I&C standards

The City has elected to use the CMAR delivery method for the Project, in part because construction funding is split between two years (2027 and 2028). Due to the long-lead nature of several critical pieces of equipment that will be replaced as part of the project, and phased construction funding, the City recognizes the benefits of early input and collaboration with the contractor. It is the City's expectation that the selected CMAR contractor will effectively collaborate with the Owner and Engineer to enhance constructability, identify value engineering (VE) opportunities, assist with construction sequence planning in accordance with the City's 2027 and 2028 budgets, and take advantage of early procurement opportunities to ultimately achieve the project goals set forth in this RFP.



In addition to this project, the CMAR will be responsible for tracking the project cost, or estimated cost, to provide confirmation that the project is completed within the City's budget. The complete CMAR scope of services is described in greater detail in Section II, as well as Exhibit 5 (Scope of CMAR Services).

The City of Greeley may choose to utilize the CMAR that is awarded this contract to also provide services for the construction phase of the Project. This determination will be made by the City following performance of this contract. All awards, extensions, and additional services are subject to annual appropriation and availability of funds. The provisions of the foregoing paragraphs with respect to extensions and additional services of the terms of the contract shall be null and void if the contract has been terminated or revoked during the initial term or any extension thereof. All decisions to extend or to provide additional services are at the sole option of the City.

### C. Goals

The Owner's objectives for delivery of the Project are as follows (in alphabetical order):

- **Bidding of Qualified Local Subcontractors and Equipment Suppliers:** To have the ability to select Subcontractors and Equipment Vendors' bids based on best-value provisions.
- **Collaboration with Design Elements:** Review and participate with Owner and Designer on the selection of design elements with the purpose of enhancing constructability and minimizing future operational or maintenance concerns.
- **Flexibility in construction scheduling:** To accommodate the operational requirements of the WTRF.
- **Guaranteed Project Cost:** Construction of the project within the City's project budget and minimizing life-cycle costs. This includes development of a cost model and evaluation throughout the design phase to provide feedback on cost implications of design alternatives.
- **Minimize Risk for Change Orders:** Achieve an optimal balance of risk allocation between the Owner and other parties and reduce the likelihood of change orders.
- **Plant Operability during Construction:** Proposed construction sequencing and best management practices to ensure the execution of the Project will not interfere with WTRF operations or the WTRF's compliance with its discharge permit, or any other relevant regulations.
- **Project Schedule:** Respondent's ability to meet and/or accelerate the project schedule.
- **Quality Design and Construction:** Delivery of a complete and functional system that conforms with the design, can be maintained, and reliably operates to effectively treat wastewater to an acceptable standard, meeting all regulatory constraints the WTRF is currently subject to.
- **Safety:** Implement an effective safety program incorporating best industry practices to provide safe working conditions for the team during construction as well as long term operations.
- **Selection of a Qualified CMAR Firm with available local staff:** Selection of an experienced CMAR firm that understands the Owner's objectives, has experience with the project delivery method, and can construct the project at or under budget.

By selecting the Construction Management-at Risk delivery method for the Project, the Owner is committed to working with the CMAR to achieve the Project objectives and to obtain a mutually agreeable GMP for the delivery of the project at the WTRF.



D. Project Budget & Funding

The total cost for preconstruction services and construction services for this Project is currently budgeted at a maximum of **\$12,880,000**.

**\$180,000** will be available in 2026 for preconstruction services. There is **\$7,000,000** budgeted for construction in 2027, with the remaining **\$5,700,000** budgeted in 2028. This budget does not include the Owner’s other project costs, such as engineering and design services or permitting. The Owner intends to self-fund the project.

The City of Greeley is exempt from all federal excise taxes and all Colorado State and local governmental sales and use taxes. Where applicable, contractor will be responsible for payment of use taxes.

E. Project Schedule

It is anticipated that the Construction Manager-At-Risk Contract will be executed in September 2026. Key Project milestones include:

Phase 1: Pre-construction	
30% Design & Preliminary Engineering Report (PER)	08/2026
CMAR Kickoff	09/2026
60% Design	10/2026
90% Design	12/2026
100% Design	03/2027

Phase 2: Construction (after GMP approval)



## **SECTION II. STATEMENT OF WORK**

### **A. Scope of Services**

As noted in Section I and more fully described in Exhibit 5 (Scope of CMAR Services), the CMAR will provide services in two distinct phases.

Phase 1 (preconstruction) services generally consist of input to the design team through value engineering (VE), constructability reviews, cost estimating, schedule development and management, and risk management planning as well as preparation, in close collaboration with the Owner, of one GMP proposal. The Guaranteed Maximum Price (GMP) proposal shall be based on the Project design documents and is anticipated to be established when the design has reached at least 90% completion, consistent with the Owner's project schedule, and shall include appropriate supporting documentation.

Phase 2 (construction) services generally encompass completing the Project's construction, startup and commissioning, and warranty. See general descriptions provided below for scope of services included in Phase 1 and Phase 2:

#### **Phase 1 Services**

- Develop a preliminary project management plan and project schedule.
- Provide best-value added and constructability reviews of the project design.
- Establish a value engineering (VE) process. Continuously identify and propose VE opportunities over the course of the design process.
- Develop and update a critical path method (CPM) schedule to meet project restrictions.
- Prepare and maintain a project cost model and submit detailed cost estimates as the design alternatives are advanced (30%, 60%, 90%). The first cost estimate will be expected within 20 working days of CMAR kickoff, or upon submittal of the 30% design deliverable, whichever is later. Subsequent cost estimates are expected within 20 working days of the submittal of the 60% and 90% design deliverables.
- Prepare, implement and maintain a project risk management plan.
- Prepare risk register at 60% design level and collaborate with Owner and Engineer to minimize risks.
- Update risk register at the 90% design level and coordinate correct project contingency with Owner.
- Develop, submit, and negotiate a GMP proposal to complete Phase 2 services.
- Participate in and contribute to design workshops.
- Develop Construction Management Plan for Phase 2, including a subcontracting and procurement plan.
- Identify Project construction permitting requirements and when certain construction permitting activities should be initiated.
- CMAR should propose Early Work Amendments in order to phase the project in accordance with Owner's budget.
- The CMAR may be requested to pre-purchase materials or equipment or perform Early Work Amendments prior to the 90% GMP
- Provide additional site investigations including potholing of existing utilities.
- Provide preconstruction services as defined in Exhibit 5.

#### **Phase 2 Services**

- Continue the value engineering process established in Phase 1 to identify and realize cost savings opportunities.
- Procure equipment and subcontractors.
- Secure necessary construction related permits.
- Construct the Project.
- Identify, manage, and mitigate project risks.



- Conduct startup, commissioning, and performance testing.
- Provide operator training.
- Provide warranty coverage.

### **Roles and Responsibilities**

**Owner:** The Owner will cooperate with the CMAR and will fulfill its responsibilities in a timely manner to facilitate the CMAR's timely and efficient performance of services. Owner responsibilities include:

- Review Phase 1 deliverables and submissions, providing comments to CMAR within 15 business days.
- Furnish existing studies and provide complete, accurate and reliable data and information regarding the Project, including record drawings, preliminary studies, etc.
- Provide information and provide (or engage CMAR to perform) additional studies that may be necessary to complete the Project.
- Provide adequate funding.
- Provide access to the Project site and any necessary easements.
- Obtain the governmental approvals and permits Owner is responsible for including approval of the design by CDPHE
- Assist CMAR in obtaining governmental approvals and permits CMAR is responsible for obtaining.
- Provide necessary data and inputs.
- Provide any necessary licensed personnel for start-up services including the oversight of a licensed operator (Colorado Wastewater Treatment Class A or equivalent).
- Participation in design review workshops and construction progress meetings.

**CMAR:** The CMAR will cooperate with the Owner and Design Engineer and will provide, in a timely manner, the Phase 1 and Phase 2 services necessary to complete the Project scope specified in this RFP. CMAR responsibilities include:

- Collaborate with Owner and Design Engineer as required to meet project objectives.
- Participation in Design Review Workshops and construction progress meetings.
- Prepare construction package and distribute construction package to subcontractors and suppliers.
- Supervise subcontractors and CMAR personnel.
- Obtain certain governmental approvals and permits for construction purposes only.
- Maintain site security and safety.
- Conduct performance and acceptance testing.
- Implement quality-management procedures.
- Implement project health and safety practices.
- Warranty guarantees and insurance.
- Perform risk management and mitigation activities.
- Establish and maintain Change Order Management Plan.

The roles and responsibilities of the Owner and the CMAR are more fully described in Exhibit 2 (Sample Contract).

**Engineering Firm:** The Designer will cooperate with the Owner and CMAR and will fulfill its responsibilities in a timely manner to facilitate the CMAR's timely and efficient performance of services. The Design Engineer's responsibilities include:

- Preparation of all design documents.
- Participation in Design Review Workshops.
- Assist the Owner in obtaining governmental approvals and permits.
- Provide services during construction that will ensure that the project as constructed conforms to the design intent and Owner's objectives.
- Collaborate with CMAR on risk register.



B. Period of Award

The effective date of providing the required Phase 1 (preconstruction) services shall be May 28<sup>th</sup>, 2027. The effective date of providing the required Phase 2 (construction) services shall be determined based upon the mutually agreed upon schedule developed during Phase 1.

If the City desires to extend the contract, no later than thirty (30) days prior to expiration, the City's Purchasing Contact may send a notice in writing to the vendor requesting firm pricing for the next twelve-month period. After the City evaluates the firm pricing proposal from the vendor, it will determine whether to extend the contract. All awards and extensions are subject to annual appropriation of funds. The provisions of the foregoing paragraphs with respect to extensions of the terms of the contract shall be null and void if the contract has been terminated or revoked during the initial term or any extension thereof. All decisions to extend the contract are at the option of the City.

C. Minimum Mandatory Qualifications of Offeror

To be considered qualified for this Project, the following requirements must be met by the Offeror:

1. The CMAR Project Manager must have ten (10) or more years of professional project management, construction management, and/or engineering experience.
2. The CMAR Project Manager must have experience working on a project that involved clarifier construction or replacement.
3. The CMAR firm must have completed a clarifier construction (or clarifier replacement) project within the last seven (7) years.



### SECTION III. ADMINISTRATIVE INFORMATION

#### A. Issuing Office

The City's contact name listed herein is to be the sole point of contact concerning this RFP. Offerors shall not directly contact other personnel regarding matters concerning this RFP or to arrange meetings related to such.

#### B. Official Means of Communication

All official communication from the City to offerors will be via postings on an electronic solicitation notification system, the Rocky Mountain e-purchasing system ([www.bidnetdirect.com](http://www.bidnetdirect.com)). The Purchasing Contact will post notices that will include, but not be limited to, proposal document, addenda, award announcement, etc. It is incumbent upon offerors to carefully and regularly monitor the Rocky Mountain e-purchasing system for any such postings.

#### C. Inquiries

Prospective offerors may make written inquiries by e-mail before the written inquiry deadline concerning this RFP to obtain clarification of requirements. There will be opportunity to make inquiries during the pre-proposal conference, if any. No inquiries will be accepted after the deadline. Inquiries regarding this RFP (be sure to reference RFP number) should be referred to:

E-Mail: [Purchasing@greeleygov.com](mailto:Purchasing@greeleygov.com)  
Subject Line: RFP F26-06-034

Response to offerors' inquiries will be published as addenda on the Rocky Mountain e-purchasing system in a timely manner. Offerors cannot rely on any other statements that clarify or alter any specification or other term or condition of the RFP.

Should any interested offeror, sales representative, or manufacturer find any part of the listed specifications, terms and conditions to be discrepant, incomplete, or otherwise questionable in any respect, it shall be the responsibility of the concerned party to notify the Purchasing Contact of such matters immediately upon discovery.

#### D. Insurance

The successful contractor will be required to provide a Certificate of Insurance (Exhibit 3) or other proof of insurance naming the City of Greeley as "additional insured". Coverage must include COMMERCIAL GENERAL LIABILITY coverage with minimum limits of \$2,000,000, and WORKER'S COMPENSATION coverage with limits in accordance with State of Colorado requirements.

COMPREHENSIVE AUTOMOBILE LIABILITY with minimum limits for bodily injury and property damage coverage of at least \$1,000,000, plus an additional amount adequate to pay related attorneys' fees and defense costs, for each of Consultant's owned, hired or non-owned vehicles assigned to or used in performance of this Agreement.

The City shall be named as additional Insured for General and Auto Liability Insurance.

#### E. Modification or Withdrawal of Proposals

Proposals may be modified or withdrawn by the offeror prior to the established due date and time.



F. Minor Informalities

Minor informalities are matters of form rather than substance evident from the response or insignificant mistakes that can be waived or corrected without prejudice to other vendors. The Purchasing Manager may waive such informalities or allow the vendor to correct them depending on which is in the best interest of the City.

G. Responsibility Determination

The City will make awards only to responsible vendors. The City reserves the right to assess offeror responsibility at any time in this RFP process and may not make a responsibility determination for every offeror.

H. Acceptance of RFP Terms

A proposal submitted in response to this RFP shall constitute a binding offer and acknowledges acceptance by the offeror of all terms and conditions as set forth herein. The autographic signature of a person who is legally authorized to execute contractual obligations on behalf of the offeror shall indicate acknowledgment of this condition attached as Exhibit 1.

I. Protested Solicitations and Awards

Right to protest. Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract must protest in writing to the City Manager as a prerequisite to seeking judicial relief. Protestors are urged to seek informal resolution of their complaints initially with the Purchasing Manager. A protest shall be submitted within ten (10) calendar days after such aggrieved person knows or should have known of the facts giving rise thereto. A protest with respect to an invitation for bids or request for proposals shall be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to such protests prior to bid opening or the closing date for proposals.

Stay of procurement during protests. In the event of a timely protest under Subsection (A) of this Section, the Purchasing Manager shall not proceed further with the solicitation or award of the contract until all administrative and judicial remedies have been exhausted or until the City Manager makes a written determination on the record that the award of a contract without delay is necessary to protect substantial interest of the City. (Ord. 75, 1984 §2 (part))

J. Confidential/Proprietary Information

All proposals will be confidential until a contract is awarded and fully executed. At that time, all proposals and documents pertaining to the proposals will be open for public inspection, except for the material that is proprietary or confidential. However, requests for confidentiality can be submitted to the Purchasing Contact provided that the submission is in accordance with the following procedures. This remains the *sole responsibility* of the offeror. The Purchasing Contact will make no attempt to cure any information that is found to be at a variance with this procedure. The offeror may not be given an opportunity to cure any variances after proposal opening. Neither a proposal in its entirety, nor proposal price information will be considered confidential/proprietary. Questions regarding the application of this procedure must be directed to the Purchasing Contact listed in this RFP.



K. Acceptance of Proposal Content

The contents of the proposal (including persons specified to implement the project) of the successful contractor shall become contractual obligations into the contract award. Failure of the successful offeror to perform in accordance with these obligations may result in cancellation of the award and such offeror may be removed from future solicitations.

L. RFP Cancellation

The City reserves the right to cancel this RFP at any time, without penalty.

M. Negotiation of Award

In the event only one (1) responsive proposal is received by the City, the City reserves the right to negotiate the award for the services with the offeror submitting the proposal in lieu of accepting the proposal as is.

N. Contract

A copy of the awarded contract the City will use for the services specified in this RFP is attached as Exhibit 2. The attached contract is not to be completed at this time.

O. RFP Response/Material Ownership

All material submitted regarding this RFP becomes the property of the City of Greeley, unless otherwise noted in the RFP.

P. Incurring Costs

The City is not liable for any cost incurred prior to issuance of a legally executed contract and/or a purchase order.

Q. Utilization of Award by Other Agencies

The City of Greeley reserves the right to allow other State and local governmental agencies, political subdivisions, and/or school districts to utilize the resulting award under all terms and conditions specified and upon agreement by all parties. Usage by any other entity shall not have a negative impact on the City of Greeley in the current term or in any future terms.

R. Non-Discrimination

The offeror shall comply with all applicable state and federal laws, rules and regulations involving non-discrimination on the basis of race, color, religion, national origin, age or sex.

S. News Releases

Neither the City, nor the offeror, shall make news releases pertaining to this RFP prior to execution of the contract without prior written approval of the other party. Written consent on the City's behalf is provided by the Public Information Office.



T. Certification of Independent Price Determination

1. By submission of this proposal each offeror certifies, and in the case of a joint proposal each party, thereto certifies as to its own organization, that in connection with this procurement:
  - a) The prices in this proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor;
  - b) Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening, directly or indirectly to any other offeror or to any competitor; and
  - c) No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
2. Each person signing the Request for Proposal form of this proposal certifies that:
  - a) He/she is the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to (1.a) through (1.c) above; or
  - b) He/she is not the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein but that he/she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (1.a) through (1.c) above, and as their agent does hereby so certify; and he/she has not participated, and will not participate, in any action contrary to (1.a) through (1.c) above.
3. A proposal will not be considered for award where (1.a), (1.c), or (2.) above has been deleted or modified. Where (1.b) above has been deleted or modified, the proposal will not be considered for award unless the offeror furnishes with the proposal a signed statement which sets forth in detail the circumstances of the disclosure and the City's Purchasing Manager, or designee, determines that such disclosure was not made for the purpose of restricting competition.
4. The Contract Documents may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. The Contract Documents, including all component parts set forth above, may be executed and delivered by electronic signature by any of the parties and all parties consent to the use of electronic signatures.

U. Taxes

The City of Greeley is exempt from all federal excise taxes and all Colorado State and local government sales and use taxes. Where applicable, contractor will be responsible for payment of use taxes.

V. Assignment and Delegation

Neither party to any resulting contract may assign or delegate any portion of the agreement without the prior written consent of the other party.



#### W. Availability of Funds

Financial obligations of the City of Greeley payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. In the event funds are not appropriated, any resulting contract will become null and void without penalty to the City.

#### X. Standard of Conduct

The successful firm shall be responsible for maintaining satisfactory standards of employees' competency, conduct, courtesy, appearance, honesty, and integrity, and shall be responsible for taking such disciplinary action with respect to any employee as may be necessary.

The City may request the successful firm to immediately remove from this assignment any employee found unfit to perform duties due to one or more of the following reasons:

1. Neglect of duty.
2. Disorderly conduct, use of abusive or offensive language, quarreling, intimidation by words or actions or fighting.
3. Theft, vandalism, immoral conduct or any other criminal action.
4. Selling, consuming, possessing, or being under the influence of intoxicants, including alcohol, or illegal substances while on assignment for the City.

Agents and employees of Contractor or Consultant working in City facilities shall present a clean and neat appearance. Prior to performing any work for the City, the Contractor or Consultant shall require each of their employees to wear ID badges or uniforms identifying: the Contractor or Consultant by name, the first name of their employee and a photograph of their employee if using an ID badge. Their employee shall wear or attach the ID badge to the outer garments at all times.

#### Y. Damages for Breach of Contract

In addition to any other legal or equitable remedy the City may be entitled to for a breach of this Contract, if the City terminates this Contract, in whole or in part, due to Contractor's breach of any provision of this Contract, Contractor shall be liable for actual and consequential damages to the City.

#### Z. Other Statutes

1. The signatory hereto avers that he/she is familiar with Colorado Revised Statutes, 18-8-301, et seq. (Bribery and Corrupt Influence) and 18-8-401, et seq. (Abuse of Public Office) as amended, and that no violation such provisions is present.
2. The signatory hereto avers that to his/her knowledge, no City of Greeley employee has any personal or beneficial interest whatsoever in the service or property described herein. See CRS 24-18-201 and CRS 24-50-507.
3. Public Viewing Copy: The City is a governmental entity subject to the Colorado Open Records Act, C.R.S. §§ 24-72-200.1 et seq. ("CORA"). Any proposals submitted hereunder are subject to public disclosure by the City pursuant to CORA and City ordinances. Vendors may submit one (1) additional complete proposal clearly marked "FOR PUBLIC VIEWING." In this version of the proposal, the Vendor may redact text and/or data that it deems confidential or proprietary pursuant to CORA. Such statement does not necessarily exempt such documentation from public disclosure if required by CORA, by order of a court of appropriate jurisdiction, or other applicable



law. Generally, under CORA trade secrets, confidential commercial and financial data information is not required to be disclosed by the City. Proposals may not be marked "Confidential" or 'Proprietary' in their entirety. All provisions of any contract resulting from this request for proposal will be public information.

4. Accessibility and ADA Website Compliance:

- a. Compliance: The Contractor shall comply with, and the Work and Work Product provided under this Agreement shall be in compliance with, all applicable provisions of §§ 24-85-101, *et seq.*, C.R.S., and the Accessibility Standards for Individuals with a Disability, as established pursuant to Section § 24-85-103 (2.5), C.R.S (collectively, the "Guidelines"). The Contractor shall also comply with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.
- b. Testing: The City may require the Contractor's compliance to be determined by a third party selected by the City to attest that the Contractor's has performed all obligations under this Agreement in compliance with §§ 24-85-101, *et seq.*, C.R.S., and the Accessibility Standards for Individuals with a Disability as established pursuant to Section § 24-85-103 (2.5), C.R.S.
- c. Validation and Remediation: The Contractor agrees to promptly respond to and resolve any instance of noncompliance regarding accessibility in a timely manner and shall remedy any noncompliant Work Product, Service, or Deliverable at no additional cost to the City. If the City reasonably determines accessibility issues exist, the Contractor shall provide a "roadmap" for remedying those deficiencies on a reasonable timeline to be approved by the City. Resolution of reported accessibility issue(s) that may arise shall be addressed as high priority, and failure to make satisfactory progress towards compliance with the Guidelines, as agreed to in the roadmap, shall constitute a breach of contract and be grounds for termination or non-renewal of this Agreement.

AA. Cooperative Purchasing Statement

The City of Greeley encourages and participates in cooperative purchasing endeavors undertaken by or on behalf of other governmental jurisdictions. To the extent, other governmental jurisdictions are legally able to participate in cooperative purchasing endeavors; the City of Greeley supports such cooperative activities. Further, it is a specific requirement of this proposal or Request for Proposal that pricing offered herein to the City of Greeley may be offered by the vendor to any other governmental jurisdiction purchasing the same products. The vendor(s) must deal directly with any governmental agency concerning the placement of purchase orders, contractual disputes, invoicing, and payment. The City of Greeley shall not be liable for any costs or damages incurred by any other entity.



## SECTION IV. PROPOSAL SUBMISSION

Following are the response requirements for this RFP. All specific response items represent the minimum information to be submitted. Deletions or incomplete responses in terms of content or aberrations in form may, at the City's discretion, render the proposal non-responsive.

RFP responses must be emailed to [purchasing@greeleygov.com](mailto:purchasing@greeleygov.com). Only emails sent to [purchasing@greeleygov.com](mailto:purchasing@greeleygov.com) will be considered as responsive to the request for proposals. Do not submit your proposal to multiple email addresses. Emails sent to other City emails will be considered as non-responsive and will not be reviewed.

Proposals shall be submitted in a single Microsoft Word or PDF file under 20MB. The Proposal must not exceed 20 total pages, excluding cover letter, index or table of contents, front and back covers, and title pages/separation tabs. Pages shall be 8 ½ x 11 inches except for up to four (4) pages of 11 x 17 inches. Eleven-point font or larger must be used for the proposal and appendices. Resumes included as an appendix are not considered part of the 20 pages.

The RFP number and Project name must be noted in the subject line, otherwise the proposal may be considered as non-responsive to the RFP.

Electronic submittals will be held, un-opened, until the time and date noted in the RFP documents or Posted addenda.

To facilitate the evaluation, offeror shall submit and organize all responses in the same order as listed in Section V. Proposals that are determined to be at a variance with this requirement may not be accepted.

Late proposals will not be accepted. It is the responsibility of the offeror to ensure that the proposal is received at the City of Greeley's Purchasing Division on or before the proposal due date and time.



## **SECTION V. RESPONSE FORMAT**

The following items are to be included in your proposal, in the order listed. Deviation from this may render your proposal non-responsive.

### **A. Cover Letter**

Include a cover letter introducing your company, summarizing your qualifications, and detailing any exceptions to this RFP (please note that significant exceptions may make your proposal non-responsive). This letter should also provide principal contact information for this RFP, including address, telephone number, fax number, e-mail, and website (if applicable).

### **B. Use of Subcontractors/Partners**

List all subcontractors/partners you plan to hire for this project, their area(s) of expertise, and include all other applicable information herein requested for each subcontractor/partner. Also include the amount of work anticipated to be self-performed versus sub-contracted. Please keep in mind that the City will contract solely with your company, therefore subcontractors/partners remain your sole responsibility.

### **C. Minimum Mandatory Qualifications**

Include an itemized description of how your company meets each of the minimum mandatory qualifications outlined in Section II, C. Failure to meet or exceed these requirements will disqualify your response.

### **D. Company Information**

1. Provide the following information as listed: Company Name, Address, Phone Number, and Names of Principals.
2. Identify the year in which your company was established and began providing services.
3. Describe any pending plans to sell or merge your company.
4. Provide a comprehensive list of all the services you provide.

### **E. Evaluation Criteria**

#### **Evaluation Criterion #1 - Company Qualifications and Representative Project Experience**

1. Provide a description of your firm's experience delivering wastewater treatment construction projects of similar size and complexity using the CMAR delivery method.
2. Provide information from at least three representative projects of similar scope and complexity. Include, at a minimum, the following information:
  - a. Owner name and contact info for reference
  - b. Construction contract value
  - c. Substantial completion date or current status
  - d. Brief description of project scope. Identify what scope was self-performed and what was sub-contracted.
  - e. Key staff (from proposed Project team) involved with the project



The City reserves the right to contact the references provided in your proposal as well as other references without prior notification to you.

3. Provide the names and resumes of the key personnel that will be performing the proposed services, including the primary project manager and superintendent. It is the City's expectation that key personnel in the proposed project team will stay consistent from Phase 1 to Phase 2. Proposer must indicate if any key personnel changes are anticipated during project. During the project, key project team changes must be approved by City.

## **Evaluation Criterion #2 – Project Approach**

1. Provide a conceptual description of the CMAR's approach for managing and performing its services during Phase 1 and Phase 2 of the Project. The following items should be addressed:
  - a. Discuss how a collaborative relationship with the Owner and Design Engineer would be established during Phase 1 preconstruction services including design development, scheduling, cost estimating and GMP development.
  - b. Provide an approach specific to this project that develops the cost and schedule models throughout the pre-construction process as described in the scope of work.
    - Include a high-level anticipated schedule of the project based on the current design schedule provided in the RFP.
  - c. Discuss how the design and construction processes will interface (including how constructability issues, construction document packaging, value engineering and risk issues will be addressed).
  - d. Describe your firm's approach to construction sequencing for this project.
    - If early work packages could be utilized in the process, define the potential packages, the benefits to the City to approve such packages, and impacts on project schedule.
  - e. Identify the work components critical to the Project's success and how these components would be achieved.
  - f. Discuss your company's ability to self-perform construction activities and define what activities you anticipate self-performing on this project. An ability to self-perform a minimum of 30% of the construction is preferred.
  - g. Describe the process that will be used to procure sub-contractors and equipment that will ensure best value to the City.
  - h. Discuss how your firm will aid in the development of the final project scope of construction at and after the 30% design milestone.
  - i. Identify key project risks your firm has identified, and your plan to mitigate those risks across all phases of the project.
    - Specifically, describe your experience with similar construction in an operational facility, such as the use of Methods of Procedure (MOPs), or similar work planning processes used to identify and mitigate risk for tie-ins and process coordination.
    - Specifically, describe your plan to mitigate the risk associated with high ground water levels at the site.



- j. Describe the process for developing the GMP proposal at the 90% design milestone (defined by the Owner and including the approach to establishing contingency) and for developing early-out equipment and/or construction package GMP if proposed.
- k. Provide a narrative on the approach to project safety.
- l. Provide a narrative on the approach to quality of construction.

### **Evaluation Criterion #3 – Construction Manager-at-Risk Contract Markup**

1. The Proposal must include in Appendix A (Construction Manager-At-Risk Contract Markup) a detailed markup of the Draft Construction Manager-At-Risk Contract provided as Exhibit 2 (including its attachments), setting forth any and all revisions requested by the Proposer. Although the Owner will undertake negotiations of the Construction Manager-At-Risk Contract, the Construction Manager-At-Risk Contract Markup will be treated as a de facto offer that the Owner can accept as is, resulting in a binding contract between the CMAR and Owner without further negotiations or revision.

The Proposal must describe the significant revisions included in Proposal Appendix A (Construction Manager-At-Risk Contract Markup) and explain the rationale for such revisions and the associated benefits to the Owner. Proposers are encouraged to suggest revisions that would more efficiently allocate risk, improve the parties' understanding of risk allocation, and improve clarity of any terms of the Draft Construction Manager-At-Risk Contract where ambiguities or uncertainties may arise in their application or interpretation.

If any of the Proposer's markups to the Draft Construction Manager-At-Risk Contract could impact the fee and rate submission provided as part of this Proposal, the Proposer must provide a description of the change with an estimate of the potential impacts to the fee if the revisions are not approved by the Owner. For example, if a contract change reduces Proposer's risk during the second phase of the contract, which allows for a reduction in overhead fees for the project, this must be described in detail in this section.

The Owner is not obligated to accept any of the requested exceptions, modifications, additions, etc. submitted by the Proposer in the Construction Manager-At-Risk Contract Markup when negotiating and finalizing the Construction Manager-At-Risk Contract. Furthermore, the Owner may request additional revisions during negotiations and before finalizing the Construction Manager-At-Risk Contract.

Proposers are encouraged to carefully review Exhibit 2 (Sample Contract) and to submit written questions and comments by the deadline specified in the Schedule of Events. Based on its assessment of the comments submitted, the Owner (at its sole discretion) may modify the Draft Construction Manager-At-Risk Contract via addenda. The Owner expects that this review and comment process will substantially reduce the need for extensive post-selection negotiation.

### **Evaluation Criterion #4 – Fee and Rate Proposal**

1. The Proposer must complete RFP Exhibit 7 (Fee and Rate Proposal Form) – with all required pricing information – and include it as Proposal Appendix B (Fee and Rate Proposal). The scope of CMAR services for which pricing is required is defined in RFP Exhibit 5 (Scope of CMAR Services), which shall correspond to the fee provided for Phase 1: Pre-Construction Services. The Proposal should describe the basis for the fee and rate proposal and discuss its viability from the CMAR's perspective. Please be advised that scoring will consider overhead and profit rates as indicated on the Fee and Rate Proposal Form. It is the City's expectation that these rates are to be held constant through both phases of the Project.



2. Please be advised that the Owner is not interested in proposed fees or rates that provide excessive discounts from the CMAR's anticipated actual costs for the requested services. If Owner determines (at its sole discretion) that the fees and rates included in a Proposal are unacceptably below industry norms or that a Proposer's fees and rates are substantially or unacceptably below other Proposals, the Owner may (at its sole discretion) either declare that Proposal to be non-responsive or seek additional detailed information from that Proposer concerning the cost basis for its fee and rate proposal, prior to rendering a decision on the Proposal's responsiveness.

#### **Evaluation Criterion #5 – Office Location & Proximity to Greeley**

1. Provide office and project team location.

##### **F. Proposal Acknowledgement**

Include this form as provided in Exhibit 1.

##### **G. Certificate of Insurance**

A sample Certificate of Insurance is provided in Exhibit 3.

##### **H. Debarment Form**

Include this form as provided in Exhibit 4.

##### **I. Appendix A - Construction Manager-At-Risk Contract Markup**

Include a copy of the Sample Contract provided in Exhibit 2 with any proposed revisions, as described above under Evaluation Criteria #3.

##### **J. Appendix B - Fee and Rate Proposal**

Complete the form provided in Exhibit 7, as described above under Evaluation Criteria #4.



## SECTION VI. EVALUATION AND AWARD

### A. Proposal Evaluation

All proposals submitted in response to this RFP will be evaluated by a committee in accordance with the criteria described below. Total scores will be tabulated, and the highest ranked firm will enter into negotiations.

If the City requests presentations by short-listed offerors, committee members may revise their initial scores based upon additional information and clarification received in this phase. Please note that presentations have been tentatively scheduled per the Schedule of Events on the first page of this RFP. If your company is invited to give a presentation to the committee, these dates may not be flexible.

In preparing responses, offerors should describe in great detail how they propose to meet the specifications as detailed in the previous sections. Specific factors will be applied to proposal information to assist the City in selecting the most qualified offeror for this contract. Following is the evaluation criteria that will be used. Criteria will be assigned a points value.

#### Evaluation Criteria Scoring:

1.	Company Qualifications & Representative Project Experience_____	30 Points
2.	Project Approach _____	25 Points
3.	CMAR Contract Markup_____	10 Points
4.	Fee and Rate Proposal_____	25 Points
5.	Office Location & Proximity to Greeley_____	10 Points

A presentation and/or demonstration may be requested by short-listed offerors prior to award. However, a presentation/demonstration may not be required, and therefore, complete information should be submitted with your proposal.

### B. Determination of Responsibility of the Offeror

The City of Greeley awards contracts to responsible vendors only. The City reserves the right to make its offeror responsibility determination at any time in this RFP process and may not make a responsibility determination for every offeror.

The City of Greeley's Municipal Code defines a "Responsible Offeror" as one who has "the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance." The City reserves the right to request information as it deems necessary to determine an offeror's responsibility. If the offeror fails to supply the requested information, the City shall base the determination of responsibility upon any available information or may find the offeror non-responsible if such failure is unreasonable.



**EXHIBIT 1**  
**PROPOSAL ACKNOWLEDGEMENT**

The offeror hereby acknowledges receipt of addenda numbers \_\_\_\_\_ through \_\_\_\_\_. ☐ N/A

Falsifying this information is cause to deem your proposal nonresponsive and therefore ineligible for consideration. In addition, falsification of this information is cause to cancel a contract awarded based on one or both of the above preferences.

By signing below, you agree to all terms & conditions in this RFP.

\_\_\_\_\_  
Original Signature by Authorized Officer/Agent

\_\_\_\_\_  
Type or printed name of person signing

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Vendor Mailing Address

\_\_\_\_\_  
Website Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Proposal Valid Until (at least for 90 days)

\_\_\_\_\_  
E-Mail Address

**Project Manager:**

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Vendor Mailing Address

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
City, State, Zip



## EXHIBIT 2.1 CMAR Agreement

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### OWNER AND CONSTRUCTION MANAGER AT RISK AGREEMENT

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#### AGREEMENT

RFP FL#XX-XX-XXX

WTRF Secondary Clarifier Upgrades

Made this XX day of Date BETWEEN the Owner: City of Greeley, Colorado with an address of 1100 10<sup>th</sup> Street, Suite 300, Greeley, Colorado 80631

and the Construction Manager at Risk (hereinafter referred to as the "CMAR"): CMAR Contractor

For services in connection with the Project known as: WTRF Secondary Clarifier Upgrades  
As further described in Article 2:

Notice to the Parties shall be given at the above addresses.

The Owner and CMAR, in consideration of their mutual covenants herein, agree as set forth below.

SAMPLE CONTRACT



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SAMPLE CONTRACT



## ARTICLE 1: RELATIONSHIP OF THE PARTIES

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**1.1 Owner and CMAR:** The CMAR and the Owner shall perform as stated in this Agreement and each accepts the relationship between them that is established by this Agreement. This document is to be used in connection with the Standard General Conditions of the Contract between Owner and Construction Manager at Risk attached hereto as Attachment D ("General Conditions").

**1.2 Standard of Care:** The CMAR covenants with the Owner to furnish its skill and judgment with due care in accordance with applicable federal, state, and local laws and regulations that are in effect on the date of this Agreement first written above.

**1.3 Owner and Engineer:** The Owner shall contract separately with one or more Engineers to provide architectural and engineering design for the Project, agreement(s) to which the CMAR is not a party. The Project is defined in Article 2 of this Agreement. This Agreement shall not give the Engineer any claim or right of action against the CMAR and this Agreement shall not create a contractual relationship between any parties except the Owner and the CMAR.

**1.4 Owner and Contractors:** The Owner will require the CMAR to contract directly with Subcontractors as may be necessary for construction or supply of the Project. All such contracts shall be issued consistent with the applicable provisions of this Agreement.

**1.5 Relationship of the CMAR to the Engineer and Other Project Participants:** In providing construction management services described in this Agreement, the CMAR shall endeavor to maintain a working relationship with the Engineer. Notwithstanding the foregoing, the Engineer shall be solely responsible for the Project design and shall perform in accordance with the Engineer agreement with the Owner and nothing in this Agreement shall be construed to mean that the CMAR is responsible for the design of the Project or that the CMAR assumes any of the contractual or customary duties of the Engineer or any other persons or parties not specified by this Agreement.

## ARTICLE 2: PROJECT DEFINITION

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**2.1 Definitions:** The term "Project" when used in the Agreement shall mean the total construction (preconstruction and construction) to be performed under this Agreement. The term "Work" required for the "Project" used in this Agreement shall mean the various parts of total construction to be performed under this Agreement.

## ARTICLE 3: CMAR BASIC SERVICES

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**3.1 CMAR Basic Services:** The CMAR shall perform the Basic Services described herein. It is not required that the Basic Services be performed in the sequence in which they are described in this form agreement.

**3.1.1 All CMAR services shall be split into two phases, Preconstruction and Construction.** For use in this agreement and the general conditions the preconstruction phase shall include the following activities: General Preconstruction Administration Phase, Design Phase, and Procurement Phase.

**3.1.1.1 All preconstruction activities shall comply with the detailed scope of services in Attachment A "CMAR Scope of Services".**

### **3.2 General Preconstruction Administration Phase**

#### **3.2.1 Project Management**

**3.2.1.1 Construction Management Plan:** The CMAR shall prepare a Construction Management Plan for the Project as more specifically outlined in Attachment A "CMAR Scope of Services". In preparing the Construction Management Plan, the CMAR shall consider the Owner's schedule, budget, and design requirements for the Project as provided in the RFQ and other written documentation delivered by Owner to CMAR. The CMAR shall then develop various alternatives for the sequencing and management of the Project and shall make recommendations to the Owner. The Construction Management Plan shall be presented to the Owner for acceptance.

**3.2.1.2 Master Schedule:** In accordance with the Construction Management Plan, the CMAR shall prepare a Master Schedule of Contract Times for the Project for review by Engineer, if applicable, and Owner and acceptance by the Owner. The Master Schedule shall specify the proposed Contract Times,



which include the start and finish dates for each project activity and the dates by which certain construction activities must be complete. The CMAR shall submit the Master Schedule to the Owner for acceptance in accordance with the General Conditions.

**3.2.1.3 Design Phase Milestone Schedule:** The Master Schedule shall include a Milestone Schedule for the Design Phase. The Design Milestone Phase Schedule may be used in the contract for the Engineer and shall be a method for judging progress during the Design Phase.

**3.2.1.4 Construction Phase Milestone Schedule:** In connection with establishing the Master Schedule, the CMAR shall prepare a Milestone Schedule for the Construction Phase, which Schedule shall be used in connection with soliciting bids from Subcontractors.

### **3.2.2 Cost Management**

**3.2.2.1 Construction Market Survey:** The CMAR shall conduct a Construction Market Survey at design milestones set forth in the Special Provisions, to provide current information regarding the general availability of local construction services, labor, materials and equipment cost and other economic factors related to the Project. A report of the Construction Market Survey shall be provided to the Owner and the Engineer.

**3.2.2.2 Project and Construction Budget:** Based on the Construction Management Plan and the Construction Market Survey, the CMAR shall prepare a Project and Construction Budget based on separate divisions of the Work required for the Project. The CMAR shall submit the Project and Construction Budget to the Owner for acceptance. The Project and Construction Budget shall be revised as directed by the Owner.

**3.2.2.3 Cost Analysis:** The CMAR shall analyze and report to the Owner the cost of various design and construction alternatives. As a part of the cost analysis, the CMAR shall consider costs relating to efficiency, usable life, maintenance, energy, and operation.

### **3.2.3 Management Information System (MIS)**

**3.2.3.1 Establishing the Project MIS:** The CMAR shall develop the project MIS to establish communication

with the Owner, Engineer, Contractors, and other parties on the Project.

**3.2.3.2 Design Phase Procedures:** As part of the MIS, the CMAR shall establish procedures for reporting, communication, and administration during the Design Phase.

## **3.3 Design Phase**

### **3.3.1 Project Management**

**3.3.1.1 Revisions to the Construction Management Plan:** During the Preconstruction Phase, the CMAR shall make the recommendations to the Owner regarding revisions to the Construction Management Plan. Revisions approved by the Owner shall be incorporated into the Construction Management Plan.

### **3.3.2 Project Partnering Meetings:**

**3.3.2.1** At the start of the Design Phase, the CMAR shall participate in a project meeting attended by the Engineer, the Owner and others as necessary. CMAR shall insure that its key personnel, including the project manager, superintendent(s), quality manager, lead scheduler, safety officer, lead estimator, and/or procurement specialist are in attendance at this meeting. During the Project Conference, the CMAR shall review the Design Phase Milestone Schedule and the Project and Construction Budget. The CMAR shall initiate the Construction Management Plan, the Master Schedule, and the MIS prior to the Project Conference and shall be updated and maintained for the entirety of the project.

**3.3.2.2** A second partnering session may be required following a specific percent completion of the design as noted in the CMAR Scope of Services.

**3.3.2.3 Progress Meetings:** The CMAR shall attend progress meetings as required by the Owner or Engineer. Such meetings shall serve as a forum for the exchange of information concerning the Project and the review of design progress. The Engineer shall prepare and distribute minutes of these meetings to the Owner, CMAR and others.

**3.3.3 Review of Design Documents:** The CMAR shall review the design documents at the design milestones set forth in the Special Provisions for clarity, consistency, constructability and coordination among



the Contractors. The results of the reviews shall be provided in writing as notations on the documents no later than **three weeks** following CMAR's receipt of the design documents. Notwithstanding the foregoing, the CMAR shall not be responsible for providing, nor does the CMAR control, the Project design and contents of the design documents. By performing the reviews described herein, the CMAR is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the Project design and design documents. The CMAR's actions in reviewing the Project design and design documents and in making recommendations as provided herein are only advisory to the Owner.

**3.3.3.1 Design Recommendations:** The CMAR shall make recommendations to the Owner and Engineer with respect to constructability, construction cost, sequence of construction, construction duration, time for construction, and separation of the Project contracts for various categories of work. CMAR shall provide written recommendations to Owner and Engineer within 5 working days of receiving the design updates, unless a different time period is agreed to by the parties. In addition, the CMAR shall give to the Engineer all data of which it or the Owner is aware concerning patents or copyrights for inclusion in Contract Documents.

**3.3.3.2 Design Review Meetings:** The CMAR's team including the Project Manager, Estimator, Scheduler and Superintendent along with any other necessary personnel shall attend design review workshops at the engineering design review milestones as necessary and as set forth in the Special Provisions.

**3.3.4 Project Funding:** The CMAR shall perform an independent detailed construction cost estimate as more specifically addressed in Attachment A "CMAR Scope of Services". This estimate shall be performed at the design review milestones set forth in the Special Provisions to assist the Owner in preparing documents concerning the Project and Construction Budget and for use in obtaining or reporting on project funding. The cost estimate or cost models shall be updated throughout the preconstruction phase as specified in the CMAR Scope of Services.

### **3.3.5 Time Management**

**3.3.5.1 Revisions to Master Schedule:** While performing the services provided in Paragraphs 3.3.1,

and 3.3.2 as necessary throughout the Preconstruction Phase, the CMAR shall recommend revisions to the Master Schedule in accordance with the General Conditions.

**3.3.5.2 Monitoring the Design Phase Milestone Schedule:** While performing the services provided in Paragraphs 3.3.2.3 and 3.3.3, the CMAR shall monitor compliance with the Design Phase Milestone Schedule.

### **3.3.6 Cost Management**

**3.3.6.1 Project and Construction Budget Revision:** The CMAR shall make recommendations to the Owner concerning the design changes that may result in revisions to the Project and Construction Budget and divisions of the Work required for the Project.

**3.3.6.2 Cost Control:** The CMAR shall prepare an estimate of the construction cost for each submittal of design drawings and specifications from the Engineer. The estimate for each submittal shall be accompanied by a report to the Owner and Engineer identifying variances from the Project and Construction Budget. The CMAR shall within 5 working days of such estimate, coordinate and expedite the activities of the Owner and Engineer when changes to the design are required to remain within the Project and Construction Budget.

**3.3.6.3 Value Engineering Studies:** The CMAR shall provide value engineering recommendations to the Owner and Engineer for major construction components, including cost evaluations of alternative materials and systems.

### **3.3.7 Management Information System (MIS)**

**3.3.7.1 Project Cost Reports:** The CMAR shall prepare and distribute project cost reports that indicate estimated costs compared to the Project and Construction Budget and make recommendations to the Owner for corrective action.

**3.3.7.2 Cash Flow Report:** The CMAR shall prepare and distribute a cash flow report at durations specified in the Contract Documents.

## **3.4 Procurement Phase**



3.4.1 Procurement Plan: CMAR shall develop and implement a Project Procurement Plan which identifies the work packages to be used to facilitate bids, quotes and proposals for the major elements of the Work. The Procurement Plan shall include that information set forth on the CMAR Scope of Services.

3.4.1.1 Procurement Workshop: The CMAR shall conduct a Procurement Workshop to review the Procurement Plan with the team and advise the Owner and the Engineer of ways to gain efficiency in project deliver and work packages.

3.4.2 Prequalification: CMAR shall recommend Subcontractors, subconsultants, Manufacturers and Vendors to prequalify to the Owner for acceptance, who herein are referred to as Bidders. The CMAR shall develop lists of possible Bidders and prequalifying Bidders for subcontracts. This service shall include the following: preparation and transmission of questionnaires; receiving and analyzing completed questionnaires; interviewing possible Bidders, bonding agents, and financial institutions; and preparing summary reports regarding this activity to the Owner. The CMAR shall also prepare a Bidders list for each bid package that identifies work packages the CMAR intends to self-perform.

#### 3.4.3 Time Management.

3.4.3.2 Contractor's Construction Schedule: The CMAR shall provide a copy of the Master Schedule to the Bidders. As part of the Notice of Award, the CMAR shall inform each Bidder of the requirements for the preparation of a construction schedule. The Bidder shall prepare its own construction schedule in accordance with the requirements of the Contract Documents.

#### 3.4.4 Cost Management

3.4.4.1 Estimates for Addenda: The CMAR shall prepare an estimate of costs for all addenda provided by Engineer to Owner, and shall submit the estimates to the Owner for approval. After approval by the Owner, the addenda shall be transmitted to Bidders. The Guaranteed Maximum Price shall be adjusted to reflect the addenda items and the CMAR's compensation shall be adjusted as provided in this Agreement.

3.4.4.2 Analyzing Bids: Upon receipt of price proposals, the CMAR shall evaluate the price proposals, including alternate prices and unit prices.

#### 3.4.5 Management Information System (MIS)

3.4.6 Schedule Maintenance Reports: The CMAR shall prepare and distribute schedule maintenance reports during the Procurement Phase. The reports shall compare the actual price proposals and award dates to scheduled bid and award dates and shall summarize the progress of the Project.

3.4.7 Project Cost Reports: The CMAR shall prepare and distribute the project cost reports during the Procurement Phase. The reports shall specify the actual award prices and construction costs for the Project, compared to the Project and Construction Budget.

3.4.8 Cash Flow Reports: The CMAR shall prepare and distribute cash flow reports during the Procurement Phase. The reports shall be based on actual award prices and construction costs for the Project and the reports shall specify the actual cash flow compared to the projected cash flow.

### 3.5 Construction Phase

3.5.1 Payments to Subcontractors: CMAR shall make all payments due to Subcontractors. Receipt of payment from the Owner is a condition precedent to payment to the Subcontractors.

#### 3.5.2 Time Management

3.5.2.1 Master Schedule: The CMAR shall adjust and update the Master Schedule and distribute copies to the Owner and Engineer. All adjustments to the Master Schedule shall be made for the benefit of the Project, and in accordance with the General Conditions.

3.5.2.2 Subcontractors' Construction Schedules: The CMAR shall review each Subcontractor's Construction Schedule and shall verify that the schedule is prepared in accordance with the requirements of the Contract Documents and that it establishes completion dates that comply with the requirements of the Master Schedule.



3.5.2.3 Construction Schedule Report: The CMAR shall review the progress of construction of each Subcontractor on a monthly basis, shall evaluate the percentage complete of each construction activity as indicated in each Subcontractor's Construction Schedule and shall review such percentages with the Subcontractor. This evaluation shall serve as data for input to each periodic Construction Schedule report that shall be prepared and distributed to each Subcontractor, the Owner and Engineer. The report shall indicate the actual progress compared to scheduled progress and shall serve as the basis for the progress payment to each Subcontractor. The CMAR shall determine and implement alternative courses of action that may be necessary to achieve contract compliance by each Subcontractor.

3.5.2.4 Recovery Schedules: If the CMAR determines that any specific subcontractors are delaying the Schedule, the CMAR Contractors to prepare and submit a recovery schedule as specified in the Contract Documents.

### 3.5.3 Cost Management

3.5.3.1 Schedule of Values (Each Subcontract): The CMAR shall determine a Schedule of Values for the Work in accordance with the General Conditions. The Schedule of Values shall be the basis for the allocation of the contract price to the activities shown on each Subcontractor's Construction Schedule.

3.5.3.2 Allocation of Costs to Construction Schedule: The CMAR's Construction Schedule shall have its total Contract Price allocated among each scheduled activity so that each of the CMAR's activities shall be allocated a price and the sum of the prices of the activities shall equal the total Contract Price. The CMAR shall review the Contract Price allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents.

3.5.3.3 Cost Records: In instances where a lump sum or unit price is not determined prior to performing work the CMAR shall provide records of the cost of payroll, materials and equipment and the amount of payments to subcontractors incurred by the CMAR in performing the Work.

3.5.3.4 Trade-Off Studies: The CMAR shall provide trade-off studies for various minor construction components. The results of the trade-off studies shall

be in report form and distributed to the Owner and Engineer. The CMAR shall submit three printed copies and one electronic copy (PDF format) of the Trade-Off studies to Owner, as well as two printed copies and one electronic copy (PDF format) to Engineer.

### 3.5.4 Management Information System (MIS)

3.5.4.1 Schedule Maintenance Reports: The CMAR shall prepare and distribute schedule maintenance reports during the Construction Phase. The reports shall compare the actual construction dates to scheduled construction dates of each separate subcontract and to the Master Schedule for the Project.

3.5.4.2 Project Cost Reports: The CMAR shall prepare and distribute project cost reports during the Construction Phase. The reports shall specify actual project and construction costs compared to the Project and Construction Budget.

3.5.4.3 Project and Construction Budget Revisions: The CMAR shall make recommendations to the Owner concerning construction changes that may result in revisions to the Project and Construction Budget or Guaranteed Maximum Price.

3.5.4.4 Cash Flow Reports: The CMAR shall prepare and distribute cash flow reports during the Construction Phase. The reports shall specify actual cash flow as compared to projected cash flow.

3.5.4.5 Change Order Reports: The CMAR shall periodically prepare and distribute change order reports during the Construction Phase. The report shall list all Owner-approved change orders by number, a brief description of the change order work, the cost established in the change order and percent of completion of the change order work. The report shall also include similar information for potential change orders of which the CMAR may be aware.

3.5.4.6 Progress Payment Reports (Each Contract): The CMAR shall prepare and distribute progress payment reports. The reports shall state the total construction contract price, payment to date, current payment requested, retainage and actual amounts owed this period. A portion of this report shall be a certificate of payment that shall be signed by the CMAR and delivered to the Owner for use by the Owner in making payments to the CMAR.



3.5.4.7 Contractor's Safety Program Report: The CMAR shall review the safety programs of each Subcontractor as required by the Contract Documents and coordinate the safety programs for the Project.

### 3.5.5 Construction Phase Services

3.5.5.1 Long-Lead Items and Early Work: The CMAR shall recommend to the Owner and Engineer a schedule for procurement of Long-Lead Items or any other Early work related to critical components of the Project which will constitute part of the Work as required for the Project, which shall be procured by the CMAR upon execution of either a Guaranteed Maximum Price Amendment or Early Work Amendment covering such procurement, and approval of such schedule by the Owner. Such Guaranteed Maximum Price Amendments and Early Work Amendments shall be incorporated into the Contract Documents upon full execution.

3.5.5.1.1 The CMAR shall recommend a schedule for Long-Lead Item times after coordination with the Engineer and owner regarding the schedule for preparation of construction documents, and expedite and coordinate delivery of Long-Lead Item time purchases to facilitate their delivery by the required dates.

3.5.5.1.2 CMAR may be required to procure Long-Lead Items by the Owner, in the Owner's sole discretion.

3.5.5.1.3 When directed by the Owner to purchase Long-Lead Items:

3.5.5.1.3.1 The CMAR shall pre-qualify several potential Suppliers, for Owner's approval.

3.5.5.1.3.2 The CMAR shall submit requests for bids including bid documents prepared by the Engineer for the Owner's approval before bids are solicited and shall make such modifications thereto as the Owner deems advisable.

3.5.5.1.3.3 The CMAR shall analyze bids and make recommendations for the award.

3.5.5.1.4 In the alternative, Long-Lead Items may be procured by the Owner, in the Owner's sole discretion.

3.5.5.1.4.1 If such Long-Lead Items are procured by Owner, they shall be procured on terms and conditions reasonably acceptable to the CMAR.

3.5.5.1.4.2 Upon the Owner's acceptance of the CMAR's Guaranteed Maximum Price Proposal, all contracts for such items shall be assigned by the Owner to the CMAR, who shall accept responsibility for such items as if procured by the CMAR.

3.5.5.2 Upon execution of an Early Work Amendment, the CMAR shall provide Construction Phase Services, including without limitation providing and paying for all materials, tools, equipment, labor and professional and non-professional services, and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work, as required by the Contract Documents.

3.5.5.2.1 The parties may execute one or more Early Work Amendments identifying specific Construction Phase Services that must be performed in advance of submission by the CMAR of the Guaranteed Maximum Price Proposal. CMAR shall be obligated to perform the Early Work only to the extent that the Cost of Work therefore, together with the CMAR fee, does not exceed the Early Work set forth in the Early Work Amendment price; however if CMAR performs Early Work with a cost in excess of the Early Work price, the CMAR shall pay such excess cost without reimbursement. If one or more Early Work Amendments are executed, the CMAR shall diligently continue to work toward development of a Guaranteed Maximum Price Proposal acceptable to Owner, which shall incorporate the Early Work Amendments.

3.5.5.2.2 Prior to commencement of any Construction, CMAR shall provide to Owner a performance bond and a payment bond as required by the Contract Documents in amounts equal to the value of the Early Work Amendment(s). If any Early Work Amendment is executed, CMAR shall provide such bond in the amount of the Early Work price under the Early Work Amendment. CMAR shall provide to Owner additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or submission of the Guaranteed Maximum Price Proposal, in each case prior to execution of the Early Work Amendment and the supplying of any labor or materials for the prosecution of the Work covered by the Amendment, and in each case in a sufficient amount so that the



total bonded sum equals or exceeds the total Early Work Price or the Guaranteed Maximum Price, as the case may be.

### **3.6 Post Construction Phase**

#### **3.6.1 Project Management**

**3.6.1.1 Record Documents:** The CMAR shall coordinate and expedite submittals of information from the Subcontractors for preparation of record drawings and specifications, and shall coordinate and expedite the transmittal of such record documents to the Owner.

**3.6.1.2 Organize and Index Operations and Maintenance Materials:** Prior to Final Completion of the Project the CMAR shall compile manufacturers' operations and maintenance manuals, warranties and guarantees and bind such documents in an organized manner.

**3.6.2 Occupancy Permit:** The CMAR shall assist the Owner in obtaining an occupancy permit by accompanying governmental officials during inspections of the Project, preparing and submitting documentation to governmental agencies and coordinating final testing and other activities.

#### **3.6.3 Management Information System (MIS)**

**3.6.3.1 Closeout Reports:** At the conclusion of the Project, the CMAR shall prepare final project accounting and closeout reports.

**3.6.3.2 MIS Reports for Move-in, Project Turn over and Occupancy:** The CMAR shall prepare and distribute reports associated with the Project Turn Over and Occupancy Plan.

#### **3.6.4 Additional Services**

**3.6.4.1** At the request of the Owner, the CMAR shall perform the additional services identified in an amendment to this agreement and shall be compensated for the same as provided in Article 5 of this Agreement. The CMAR shall perform the additional services only after the Owner and CMAR have executed a written amendment to this agreement providing for such services.

## **ARTICLE 4: DURATION OF THE CMAR SERVICES**

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**4.1 CMAR's Basic Services:** The duration of the CMAR Basic Services under this Agreement for Preconstruction Phase services (Sections 3.1, 3.1.1, and attachment A "CMAR Scope of Services") shall be a set number of consecutive calendar days from the commencement date as identified in the Special Provisions. The duration of the Construction Phase services (Paragraph 3.4.8 and the approved Guaranteed Maximum Price Proposal) shall be determined upon the Owner's approval of the Guaranteed Maximum Price Proposal.

**4.1.1** The CMAR's Basic Services shall be performed for the periods of time indicated in this Agreement. If portions of design and construction occur simultaneously, some of the phase durations may overlap.

**4.1.2** The CMAR's Basic Services during the Construction Phase shall be performed for a period defined in the CMAR's Guaranteed Maximum Price Proposal approved by the Owner, specified in Attachments B "Guaranteed Maximum Price Proposal" and C "all related design documents".

## **ARTICLE 5: COMPENSATION FOR CMAR SERVICES AND PAYMENT**

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**5.1 Compensation for Preconstruction Phase Basic Services:** The CMAR shall receive compensation for its Preconstruction phase services in accordance with Section 5.2.

**5.2 Time and Materials not to Exceed:** The Owner shall compensate to the CMAR for services satisfactorily performed, based on the time and materials not to exceed, which includes all direct charges, indirect charges, and reimbursable expenses stated in the CMAR Scope of Services under the terms and conditions of this Agreement as follows:

**5.2.1** The CMAR will bill the Owner on a monthly basis or as otherwise provided for services rendered toward the completion of the Scope of Work.

**5.2.2** The amounts billed by the CMAR shall represent the sum of billable time (including overhead and profit) for labor hours expended plus any other



allowable costs and expenses for services stated in the attached document.

5.2.3 The CMAR shall track expenditures and inform the Owner of any possible cost overrun prior to completing work that would overrun the maximum contract sum.

5.2.4 The Owner may choose to increase the budget for the work using a mutually acceptable contract amendment or it may choose not to increase the budget and terminate the work accordingly.

### **5.3 Compensation for Construction Phase Basic**

**Services:** The CMAR shall be compensated for performing the Basic Services in the Construction Phase of the project as described in Paragraphs 5.8.1 and 5.8.1.1, subject to the Guaranteed Maximum Price provisions of Paragraphs 5.8.2 and 5.8.3.1.1.

### **5.4 Cost Plus Fixed Fee not to exceed the Guaranteed**

**Maximum Price:** The Owner shall compensate the CMAR on the basis of the CMAR's cost plus fixed fee and in accordance with the terms and conditions of this Agreement, which is subject to the terms of the Guaranteed Maximum Price Proposal. The Guaranteed Maximum Price Proposal shall be subject to the following:

5.4.1 The cost of employees working on the Project, other than principals, in an amount, which equals the multiples as established in Paragraphs 5.4.2, 5.4.3, 5.4.4, multiplied by the personnel expense for each such employee. Personnel expense for an employee shall be included in the Guaranteed Maximum Price proposal as a percentage of the base hourly wage. Personnel expense includes the base hourly wage, payroll taxes, employee benefits, and Worker's Compensation insurance. The cost of the CMAR's principals shall be paid to the rate as specified in Paragraph 5.5. The specified multiples and rates shall remain constant for a twelve month period following the date of this Agreement. Thereafter, the multiples established in the referenced paragraphs shall be adjusted by the CMAR if the CMAR's personnel expense changes.

5.4.2 Employees assigned to the Project and working at the construction site or employees for which the CMAR provides all office facilities and services, excluding the project manager and assistant project

managers, a multiple as identified in the Guaranteed Maximum Price proposal.

5.4.3 Employees assigned to the Project and working in the CMAR's administrative office, including the project manager and assistant project managers, a multiple as identified in the Guaranteed Maximum Price Proposal.

5.4.4 Construction and craft labor personnel stationed at the construction site, a multiple as identified in the Guaranteed Maximum Price Proposal.

**5.5 Principals:** The principals or project executives of the CMAR who participate in the Project, a fixed rate identified in the Guaranteed Maximum Price Proposal. The Principals to be compensated according to these terms shall be identified in the Special Provisions.

5.5.1 Independent engineers, architects and other consultants employed by the CMAR and performing services related to the Project, a multiple no greater than 5%, over the amount of the invoice for such services.

### **5.6 Direct Expenses**

5.6.1 Direct Expenses shall be included in the Overhead cost proposed in the Guaranteed Maximum Price proposal.

5.6.2 In addition to the compensation for Basic and Additional Services stated herein, the CMAR shall be reimbursed for direct expenses for performing its Basic and Additional Services. Direct expenses are those actual expenditures made by the CMAR, its principals, employees, independent engineers, architects, and other consultants in the interest of the Project, including, without limitation:

5.6.3 Gross receipts taxes, sales or use taxes, services taxes and other similar taxes required to be paid as a result of this Agreement;

5.6.4 The CMAR shall be compensated as indicated in the Guaranteed Maximum Price Proposal for its administrative expenses for the cost of materials, equipment, supplies and Subcontractors related to General Conditions work that is provided by the CMAR at the request of the Owner. Any direct labor provided by the CMAR related to General Conditions work shall



be paid to the CMAR in accordance with Paragraph 5.3 and 5.4.

## **5.7 Reserved**

## **5.8 CMAR Accounting Records**

5.8.1 Progress Payments: Payments to the CMAR shall be made as set forth in the General Conditions.

5.8.1.1 Compensation for Additional Services: The CMAR shall be compensated and payments shall be made for performing Additional Services in the same amount and manner as provided in Article 5 for Basic Services. There shall be an increase in the Fixed Fee set out in Section 12.05.D of the General Conditions in an amount that is mutually agreeable between the Owner and CMAR.

### **5.8.2 Guaranteed Maximum Price**

5.8.2.1 The Guaranteed Maximum Price shall be independently determined and managed as follows:

5.8.2.1.1 During the Preconstruction Phase, but not earlier than the design milestone set forth in the Special Provisions has been achieved, the Owner, at its sole option, may request the CMAR to establish the Guaranteed Maximum Price for the Project. The Guaranteed Maximum Price shall be documented by the CMAR as defined in Article 8 and, once established, the Guaranteed Maximum Price(s) shall be subject to modification only as defined in the Agreement.

5.8.2.2 The Guaranteed Maximum Price shall be submitted to the Owner not more than thirty (30) days after receipt by the CMAR of the Owner's request for the Guaranteed Maximum Price for the Project. The Owner shall accept the proposed Guaranteed Maximum Price Proposal for the Project within fifteen (15) days of the date of the receipt unless such time is mutually agreed to be extended. If the Owner does not accept the Guaranteed Maximum Price Proposal within the time period herein provided, such price shall be presumed to be rejected by the Owner.

5.8.2.3 In the event the Owner does not accept the CMAR's Guaranteed Maximum Price Proposal and elects not to go forward with the Project, the CMAR shall be reimbursed in accordance with the

requirements for termination as defined in this Agreement, including the General Conditions.

5.8.2.4 In the event the Owner does not request the CMAR to establish the Guaranteed Maximum Price or does not accept the CMAR's Guaranteed Maximum Price Proposal, but chooses to proceed with the Project, then all provisions of this Agreement regarding the Guaranteed Maximum Price and adjustments thereto shall become null and void. All other provisions of this Agreement shall remain in full force and effect, with all Project costs being reimbursed to the CMAR by the Owner in accordance with this Agreement.

5.8.2.5 In the event that the Guaranteed Maximum Price Proposal is accepted by the Owner within the time stipulated herein, the applicable sections of Article 8 of this Agreement shall be completed and initialed by both parties to this Agreement and the CMAR shall become responsible for the means, methods, sequences, and procedures used in the construction of the Project and shall proceed with the CMAR's Basic Services.

5.8.2.6 Construction contracts for the Work required for the Project shall be between the CMAR and selected Bidders. The CMAR shall request and receive price proposals for each contract and shall make a recommendation to the Owner with respect to award of a contract to the best value price proposal provided by a bidder whom has been deemed to be responsive and responsible. The CMAR shall enter into a contract with that bidder within five (5) days after receipt of approval of award from the Owner.

5.8.2.7 The CMAR shall be eligible to perform work of specific trades on the Project. Should the CMAR elect to do so, it shall be required to offer a price proposal for such parts of the Project. The CMAR's price proposal shall be due on the date established for receipt of the other separate bidder's price proposals. In the event that the CMAR is determined to provide the best value price proposal and has been deemed a responsive and responsible bidder, the Owner shall approve award to the CMAR. The CMAR shall include the price for this work in their Guaranteed Maximum Price Proposal.

5.8.2.8 The Guaranteed Maximum Price is the total cost of the Project, as defined herein plus the CMAR's fee for Construction Phase Basic Services. The



Guaranteed Maximum Price includes the cost of labor, equipment, supplies, materials, services and allowances to complete the Project, including the Early Work Price of each completed Early Work Amendment. The cost data shall be directly correlated to the specific design drawings and specifications in existence at the time the Guaranteed Maximum Price, or the applicable Early Work Amendment, is prepared. The assumptions used in the preparation of the Guaranteed Maximum Price shall be identified by the CMAR as part of the Guaranteed Maximum Price documentation, in accordance with Paragraph 8.1.3.

5.8.2.9 The Guaranteed Maximum Price shall include those taxes applicable to the Project that are legally enacted at the time the Guaranteed Maximum Price is established. Any increase or decrease in taxes that affect the Guaranteed Maximum Price and that are enacted after the Guaranteed Maximum Price is submitted shall be incorporated into that price by change order.

5.8.2.10 The Owner may change the scope of the Project or a part thereof and the Guaranteed Maximum Price shall then be adjusted as provided in Paragraph 5.2.4.

5.8.3 Cost of the Project The term "cost of the Project" shall include all amounts paid by the Owner to the CMAR for payment to all separate subcontractors, suppliers and equipment lessors for all work, material, and equipment supplied to the Project including general conditions items, plus the CMAR's Fee.

5.8.3.1 The cost of the Project shall not include the following:

5.8.3.1.1 All professional fees paid by the Owner to the Engineer or other consultants retained directly by the Owner;

5.8.3.1.2 All costs paid directly by the Owner to contractors or suppliers retained directly by the Owner and outside the scope of the Guaranteed Maximum Price;

5.8.3.1.3 All Additional Services costs as defined herein; or

5.8.3.1.4 All other costs not within the control of the CMAR or identified as being not within the Guaranteed Maximum Price.

5.8.3.2 The cost of the Project may be further defined in the documentation required by Paragraph 8.1.2 of this Agreement. If the requirements of this Paragraph and the documentation required by Paragraph 8.1.2 differ, then the CMAR shall identify and explain the difference, but the documentation provided in accordance with Paragraph 8.1.2 shall be the basis for determining the scope of the Guaranteed Maximum Price.

5.8.4 Adjustments to the Guaranteed Maximum Prices: The CMAR understands, confirms and agrees that its responsibility hereunder is to construct the Project in accordance with the drawings and specifications. It is recognized that the Guaranteed Maximum Price may be determined based upon incomplete design documents and in those instances in which the drawings and specifications are not complete at the time the Guaranteed Maximum Price is established, the CMAR shall exercise reasonable care and judgment to determine the intent of the design and shall calculate the Guaranteed Maximum Price on the basis of the quality of construction, materials, and finishes that can be reasonably inferred from the design documents or other specified sources. The CMAR shall determine unit process and the cost of the Project and shall make those assumptions regarding the Project scope and the quality of the intended construction as may be necessary to fully document the Guaranteed Maximum Price. The Owner and CMAR shall use the documentation specified in Paragraph 8.1.2 in determining whether or not the scope of the Project or a part thereof has been changed and in determining entitlement to an adjustment to the Guaranteed Maximum Price. A determination regarding all requests for adjustment to the Guaranteed Maximum Price shall be made in writing within thirty (30) days from the date of a written request for an adjustment.

5.8.4.1 The amount of adjustment to increase or decrease the Guaranteed Maximum Price resulting from a change in the Project shall be determined in one or more of the following ways:

5.8.4.1.1 By mutual acceptance of a lump sum, properly itemized and supported by cost data; or

5.8.4.1.2 By unit prices defined and listed in Attachment B "Guaranteed Maximum Price Proposal"; or



5.8.4.1.3 If neither of the methods set forth in 5.8.4.1.1 or 5.8.4.1.2 is agreed upon by the Owner, the CMAR, provided it receives a written order signed by the Owner, shall promptly proceed with the work involved. The cost of such work shall then be determined on the basis of the cost records for the changed work. Choice of this method shall not restrict the Owner or the CMAR from submitting the matter to dispute resolution as set forth in the General Conditions as to the justification or right of the CMAR to an increase in the Guaranteed Maximum Price due to such work. In such case, the CMAR shall keep and present in such form as may be agreeable to the Owner an itemized accounting together with appropriate supporting data of the actual cost of the Project.

5.8.4.2 If the unit prices are stated and if the quantities originally contemplated by the CMAR are so changed in a proposed change order or as a result of several change orders that application of the agreed unit prices to the quantities or work proposed cause substantial inequity to the Owner or the CMAR, the applicable unit prices and Guaranteed Maximum Price shall be adjusted.

5.8.4.3 Should concealed or unknown physical conditions be encountered that differ materially from those identified in the drawings or specifications, the affected Guaranteed Maximum Price and its associated completion date shall be adjusted upon claim made by either party to this Agreement within ten (10) calendar days after the first observance of the conditions.

5.8.4.4 The Engineer shall have the authority to order minor changes in the Project consistent with the intent of the drawings and specifications and not involving an adjustment in the Guaranteed Maximum Price or change of the construction completion date. Such changes may be affected by written order only and shall be signed by the Owner and the CMAR prior to the work being performed. The CMAR shall have the right to dispute whether an Engineer-ordered change is minor in character or instead requires the issuance of a change order.

5.8.5 Adjustments to the CMAR's Compensation:  
The CMAR shall promptly notify the Owner when changes to the scope of the Project or a part thereof or when delays caused in whole or in part by the

Owner or Engineer increase or extend the scope or duration of the CMAR's Basic Services. The CMAR shall be entitled to receive additional compensation and an increase in the duration of this Agreement pursuant to the provision of Article 4 and consistent with the provisions of Article 4 of this Agreement.

#### 5.8.6 Contingency.

5.8.6.1 The Guaranteed Maximum Price shall include two contingency amounts, as specified in the approved Guaranteed Maximum Price Proposal. The two contingencies include a CMAR Contingency, in which the CMAR's has exclusive access to use the CMAR Contingency amount for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents.

5.8.6.1.1 CMAR may use the CMAR Contingency for any purpose relating to the Project, including, but not limited to:

5.8.6.1.1.3 Scope gap;

5.8.6.1.1.4 Subcontractor bid errors;

5.8.6.1.1.5 Delay;

5.8.6.1.1.6 Material or equipment price changes;

5.8.6.1.1.7 CMAR shall not use contingency funds to pay any legal fees or costs related to any claims arising from or related to this Agreement.

5.8.6.1.1.8 CMAR shall provide notice to the Owner of any charges against the CMAR contingency in each Project billing.

5.8.6.1.1.9 To the extent of the CMAR Contingency amount, CMAR may charge and recover costs without regard to fault.

5.8.6.1.2 The CMAR's Contingency is not available for use by or for the benefit of the Owner or any other party, and shall not be used to cover:

5.8.6.1.2.1 Changes to the Work;

5.8.6.1.2.2 Design revisions, errors, or omissions;

5.8.6.1.2.3 Interference of the Owner or third parties for which CMAR is not responsible;



5.8.6.1.2.4 Unknown conditions;

5.8.6.1.2.5 Allowance adjustments;

5.8.6.1.2.6 Items for which CMAR is not responsible.

5.8.6.1.3 The CMAR's Contingency shall be managed by the CMAR.

5.8.6.1.3.1 At an agreed upon construction milestone if the CMAR'S Contingency has not been used the CMAR and the Owner agree that the CMAR'S contingency shall be placed into the Project budget.

5.8.6.1.4 The Owner holds no right to the CMAR Contingency until mutually agreed upon milestones. The CMAR shall include milestones of the Work within the Guaranteed Maximum Price Proposal at which time the remaining funds in the CMAR Contingency will be refunded to the Owner.

5.8.6.1.5 The other contingency is the Project Contingency, which will be managed through the basis of Change Orders under the Contract Documents.

5.8.6.1.6.1 Costs that could be incurred under the Project Contingency include, but are not limited to:

5.8.6.1.6.1.1 Schedule escalation;

5.8.6.1.6.1.2 Additional work.

5.8.6.1.6.2 The Owner holds full rights to the Project Contingency and will be refunded any remaining funds in the Project Contingency upon Final Completion.

5.8.6.2 CMAR shall provide Owner notice of all anticipated charges against the Contingencies, and shall provide Owner as part of the monthly status report required in the General Conditions of this Contract an accounting of each Contingency, including all reasonably foreseen uses or potential uses of any Contingency in the upcoming three (3) months.

5.8.6.3 Each contingency will be developed and established in an open-book format with the Owner.

5.8.6.4 CMAR agrees that with respect to any expenditure from any Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, CMAR will in

good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company.

5.8.6.4.1 CMAR agrees that if CMAR is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

## ARTICLE 6: INSURANCE

**6.1 Insurance and Indemnity Requirements:** In addition to those insurance and indemnity requirements required by the General Conditions, CMAR shall provide the Insurance set forth herein.

**6.2 CMAR Insurance:** The CMAR shall purchase and maintain such insurance that shall protect the CMAR from the claims set forth below that may arise out of or result from the CMAR's performance of services pursuant to this Agreement:

6.2.1 Claims under Workers' Compensation, disability benefits and other similar employee benefits acts that are applicable to the Work performed;

6.2.2 Claims for damages because of bodily injury, occupational sickness or disease or death of CMAR's employees under applicable employer's liability law;

6.2.3 Claims for damages because of bodily injury or death of any person other than CMAR's employees;

6.2.4 Claims for damages insured by usual personal injury liability coverage that are sustained by any person as a result of an offense directly related to the employment of such person by the CMAR or by any other person.

6.2.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use there from; or

6.2.6 Claims for damages because of bodily injury or death of any person or property damage arising out of ownership, maintenance or use of any motor vehicle.

**6.3** The CMAR's commercial general motor vehicle, and pollution liability insurance, as required, shall be written for not less than the following limits of liability:

a. Commercial General Liability



1. Personal Injury:
  - 1,000,000.00 Each Occurrence
  - 2,000,000.00 Aggregate
2. Property Damage:
  - 2,000,000.00 Each Occurrence
  - 5,000,000.00 Aggregate
- b. Commercial Motor Vehicle Liability
  1. Bodily Injury:
    - 1,000,000.00 Combined Single Limit
- c. Pollution Liability:
  - 2,000,000.00 Each Occurrence
  - 2,000,000.00 Aggregate
- d. Umbrella Liability insurance in excess of the liability coverages listed herein in the amount of \$5,000,000.00.

**6.4** Commercial general liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an excess or umbrella liability policy.

#### **6.5 Builder's Risk Insurance**

6.5.1 The CMAR shall be responsible for purchasing and maintaining insurance to protect the Project from perils of physical loss. The insurance shall provide for the full cost of replacement for the entire Project at the time of any loss resulting from a covered peril as described in the General Conditions.

#### **6.6 Property Insurance**

6.6.1 The CMAR shall be named as an additional named insured in any insurance policy for the Project that may be obtained by the Owner and Engineer.

### **ARTICLE 7: ADDITIONAL PROVISIONS**

**7.1 Confidentiality:** The CMAR will keep all information concerning the Project confidential, except for communications incident to completion of the Project between the CMAR, Engineer, and Contractor, and their independent professional engineers, architects and other consultants and Subcontractors, and accountants and attorneys, and except for publicity approved by the Owner and communications in connection with filings with

governmental bodies having jurisdiction over the design or construction of the Project.

#### **7.2 Limitation and Assignment**

7.2.1 The Owner and the CMAR each bind itself, its successors, assigns and legal representatives to the terms of this Agreement.

7.2.2 Neither the Owner nor the CMAR shall assign or transfer its interest in this Agreement without the written consent of the other, except that the CMAR may assign accounts receivable to a commercial bank for securing loans without approval of the Owner. However, nothing contained in this paragraph can prevent the CMAR from employing such consultants, associates or Subcontractors as the CMAR may deem appropriate to assist in performance of the services hereunder.

#### **7.3 Governing Law**

7.3.1 Unless otherwise provided, this Agreement shall be governed by the law of the State of Colorado.

#### **7.4 Extent of Agreement**

7.4.1 This Agreement represents the entire and integrated agreement between the Owner and the CMAR and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and the CMAR. Nothing contained in this Agreement is intended to benefit any third party. The subcontractors and Engineer are not intended third party beneficiaries of this Agreement.

#### **7.5 Severability**

7.5.1 If any provision of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provision.

#### **7.6 Meaning of Terms**

7.6.1 References made in the singular shall include the plural and the masculine shall include the feminine or neuter.



7.6.2 The meaning of terms used herein shall be consistent with the definitions expressed in the General Conditions.

## **7.7 Electronic Signatures**

7.7.1 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. This Agreement, including all component parts set forth above, may be executed and delivered by electronic signature by any of the parties and all parties consent to the use of electronic signatures.

## **ARTICLE 8: SPECIAL GUARANTEED MAXIMUM PRICE PROVISIONS**

### **8.1 Additional Guaranteed Maximum Price**

8.1.2 Documentation of the Guaranteed Maximum Price shall be developed by the CMAR from the design drawings and specifications and such other documents as may be specified as follows:

8.1.2.1 The documentation (collectively the "Guaranteed Maximum Price Documentation"), which shall be attached hereto as Attachments B "Guaranteed Maximum Price Proposal" and C "all related design documents" and made a part hereof by reference, shall include budgeted amounts for each of the separately priced divisions of the Work required for the Project and designated amounts of the CMAR Contingency, and the Project Contingency. The Guaranteed Maximum Price is for the total cost of the Project, including any Early Work Amendments, and not the cost for each or any division of the Project, unless otherwise specified.

8.1.2.2 The Guaranteed Maximum Price Documentation shall be prepared by the CMAR and

submitted to the Owner with the Guaranteed Maximum Price Proposal. The Guaranteed Maximum Price Documentation may include drawings, sketches, specifications, calculations, bids, quotes, or other data used to identify the basis of the Guaranteed Maximum Price. The Guaranteed Maximum Price Documentation shall also include a scope of work required to complete the Project, a summary of schedule and price components of the work associated with the construction and post construction activities, the Project Contingency and the CMAR Contingency. The Master Schedule which shall be included in the Guaranteed Maximum Price Documentation, shall identify construction milestones such as the start of construction phase work, Substantial Completion, demonstration period, Final Completion, and the end of the warranty. The documents shall clearly define any and all exclusions and assumptions.

8.1.3 To be initialed upon Owner's acceptance of the Guaranteed Maximum Price Proposal: The Guaranteed Maximum Price established for the Project and is for the work described in the documentation attached as Attachments B "Guaranteed Maximum Price Proposal" and Attachment C "all related design documents" that includes all related design documents.

8.1.4 In the event that the cost of the Project exceeds the Guaranteed Maximum Price and any adjustments therein as may be due pursuant to the terms hereof, the CMAR shall continue to perform at no additional cost to the Owner until the Project, has achieved Final Completion. The CMAR shall be responsible for paying all costs, in accordance with the terms of this Agreement that may be necessary to complete the Project, even if such amounts are in aggregate in excess of the Guaranteed Maximum Price.

(Remainder of the page is intentionally left blank.)



Whereas, this Agreement is executed the day and year first written above.

**OWNER:**  
**CITY OF GREELEY, COLORADO**

**CONSTRUCTION MANAGER AT RISK:**  
**CMAR Contractor**

APPROVED AS TO SUBSTANCE:

Title: **Individual Designated to Sign**

By: \_\_\_\_\_  
City Manager

Attest: \_\_\_\_\_

AVAILABILITY OF FUNDS:

By: \_\_\_\_\_  
Director of Finance

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
City Attorney

SAMPLE CONTRACT



## EXHIBIT 2.2 CMAR GENERAL CONDITIONS

### SECTION 00510 CITY OF GREELEY, COLORADO

#### STANDARD GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND CONSTRUCTION MANAGER AT RISK

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**SECTION 00510  
ATTACHMENT D  
CITY OF GREELEY, COLORADO**

**STANDARD GENERAL CONDITIONS OF THE  
CONTRACT BETWEEN OWNER AND CONSTRUCTION MANAGER AT RISK**

**ARTICLE 1 – DEFINITIONS AND TERMINOLOGY**

**1.01 *Defined Terms***

- A. Wherever used in the Contract Documents and printed with initial capital letters, the following terms have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*: Written or graphic instruments issued by Owner prior to the opening of Proposals which clarify, correct, or change the Request for Qualifications, Request for Proposals, or the proposed Contract Documents, including the Conceptual Documents.
  2. *Agreement*: The written instrument referred to as the “Owner and Construction Manager At Risk Agreement”, executed by Owner and Construction Manager at Risk, that sets forth the Contract Price and Contract Times, identifies the parties, and, in coordination with these general conditions, designates the specific items that are Contract Documents.
  3. *Application for Payment*: The form which is to be used by Construction Manager at Risk during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Authorized Representative*: The individual designated by a party to represent it with respect to this Contract, as indicated in the Contract Documents.
  5. *Change Order*: A document which is signed by Construction Manager at Risk and Owner and authorizes an addition, deletion, or revision in the Work, or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
  6. *Claim*: A demand or assertion by Owner or Construction Manager at Risk seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A request or proposal for a Change Order is not a Claim.
  7. *Conceptual Documents*: The documents prepared by or for the Owner to describe the Work to be performed, issued to Proposers during the Construction Manager at Risk selection process, and expressly identified in the Agreement.
  8. *Constituent of Concern*: Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to



(a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other Laws or Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

9. *Construction*: The part of the Work that consists generally of making physical improvements at the Site, and is the result of performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work (including any correction of defective Construction), and the furnishing of services and documents, all as required by the Contract Documents and Construction Drawings and Construction Specifications, as duly modified.
10. *Construction Drawings*: Documents prepared by Engineer for CMAR, and approved by Owner for purposes of allowing CMAR to proceed with the Construction or specific portions of the Construction, and consisting of drawings, diagrams, illustrations, schedules, and other data that graphically show the scope, extent, and character of the Construction (or specific portions of the Construction) to be performed by or for CMAR. Construction Drawings are not Contract Documents.
11. *Construction Phase*: The portion of the work upon that begins on the acceptance of the Guaranteed Maximum Price through to Final Completion.
12. *Construction Manager at Risk ("CMAR")*: The individual or entity with which Owner has contracted for performance of the Work, as designated in the Agreement.
13. *Construction Specifications*: Documents prepared by Engineer for the CMAR, and approved by Owner for purposes of allowing CMAR to proceed with the Construction or a specific portion of the Construction, and consisting of written requirements for materials, equipment, systems, standards, workmanship, and administrative procedures as applied to the Construction (or a specific portion of the Construction). Construction Specifications are not Contract Documents.
14. *Construction Subcontract*: A written agreement between CMAR and a Construction Subcontractor for provision of all or a portion of the Construction.
15. *Construction Subcontractor*: An individual or entity (other than a Supplier) having a direct contract with CMAR or with any other Construction Subcontractor for the performance of a part of the Construction, and any delegated Design Professional Services.
16. *Contract*: The entire and integrated written agreement between Owner and CMAR concerning the Work.
17. *Contract Documents*: Those items so designated in Article 3 hereof, and which together comprise the Contract.
18. *Contract Price*: The money that Owner has agreed to pay CMAR for completion of the Work in accordance with the Contract Documents.



19. *Contract Times*: The numbers of days or the dates stated in the master schedule developed under the Agreement to (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) achieve final acceptance.
20. *Drawings*: That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by CMAR. Shop Drawings and other CMAR submittals are not Drawings as so defined.
21. *Early Work*: Early Work shall mean Construction Phase Services authorized by and Early Work Amendment that the parties agree should be performed in advance of establishment of the Guaranteed Maximum Price. Permissible Early Work shall require written Owner authorization and be limited to: early procurement of materials and supplies; early release of bid or proposal packages for site development and related activities; and any other advance work related to critical components of the Project for which performance prior to establishment of the Guaranteed Maximum Price will materially affect the critical path schedule of the Project.
22. *Early Work Amendment*: Early Work Amendment shall mean an Amendment to the Contract Documents executed by and between the parties to authorize Early Work.
23. *Effective Date of the Contract*: The date indicated in the Agreement on which the Contract becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
24. *Engineer*: The Project Design Professional identified as Engineer in the Agreement, and engaged by Owner to provide engineering and related professional services under a separate agreement between Owner and Engineer.
25. *Final Completion*: The time at which the Construction is at a point to where it has been verified and demonstrated to be fully complete and operational in accordance with the Contract Documents by the Owner and/or Engineer and is ready for final payment.
26. *General Conditions*: The General Conditions of the Contract are those terms and conditions contained in this document entitled the "Standard General Conditions of the Contract between Owner and Construction Manager At Risk."
27. *GMP (Guaranteed Maximum Price)*: An agreed upon price and schedule for a specified portion of work to be completed by the CMAR as defined in the Contract Documents.
28. *GMP Documentation*: The documentation to be included with the Guaranteed Maximum Price Proposal to be attached to the Agreement as Attachments B "Guaranteed Maximum Price Proposal" and C "all related design documents" upon Owner's acceptance of the Guaranteed Maximum Price Proposal, as specified in Article 8 of the Agreement.
29. *Guaranteed Maximum Price Proposal*: A document prepared by the CMAR and submitted to the Owner providing the CMAR's proposed Guaranteed Maximum Price as outlined in Section 5.8.2 of the Agreement.
30. *Hazardous Environmental Condition*: The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled



and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.

31. *Laws and Regulations; Laws or Regulations:* Any and all applicable laws, statutes, rules, regulations, ordinances, binding resolutions, codes, decrees, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
32. *Liens:* Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
33. *Long-Lead Items:* The identification given to material and equipment having an extended delivery time and which may be considered for early procurement and purchase. Items which would be delivered too late for timely installation if their procurement or purchase were included as part of the procurement for the entire contract or project.
34. *Long-Lead Time:* The time interval between purchase and delivery of Long-Lead Items.
35. *Master Schedule:* The master schedule for the Project developed by CMAR and approved by Owner as provided in the Agreement, as such schedule is amended from time to time in accordance with the Contract Documents.
36. *Milestone:* A principal event in the performance of the Work that the Contract requires CMAR to achieve by an intermediate completion date or by a time prior to Substantial Completion, or final acceptance of Construction, as identified in the Master Schedule for the Project.
37. *Notice of Award:* The written notice by Owner to a Proposer stating that Owner will enter into the contract with the Proposer.
38. *Notice to Proceed:* A written notice by Owner to CMAR fixing the date on which the Contract Times will commence to run and on which CMAR shall start to perform the Work.
39. *Owner:* The City of Greeley, Colorado and its divisions, including the Water and Sewer Department, whom CMAR has contracted with regarding the Work, and which has agreed to pay CMAR for the performance of the Work, pursuant to the terms of the Contract.
40. *Owner's Consultant:* An individual or entity with which the Owner has contracted to furnish services to Owner with respect to the Project, and which is identified as such in writing delivered to CMAR.
41. *Owner's Site Representative:* A representative of Owner at the Site, as indicated in Paragraph 10.05.
42. *Preconstruction Phase:* The portion of the work prior to the acceptance of the Guaranteed Maximum Price.
43. *Project:* The total undertaking to be accomplished for Owner by engineers, consultants, CMAR, subcontractors, and others, including planning, study, design, construction, testing, start-up, and commissioning, and of which the Work to be performed under the Contract Documents is a part.
44. *Project Design Professionals:* The Engineer and any other independent entities or individuals, engaged by Owner to provide professional design services with respect to the Work.



45. *Proposal*: The documents submitted by CMAR in response to the Request for Proposals, setting forth technical concepts, proposed prices, and other conditions for the Work to be performed, and stating any proposed revisions, modifications, clarifications, exceptions, or supplements to the proposed Contract Documents.
46. *Proposal Amendment*: A Contract Document that is prepared after submittal of CMAR's Proposal; identifies mutually agreed revisions, modifications, exceptions, supplements, and clarifications to the Proposal or proposed Contract Documents; and is executed by Owner and CMAR.
47. *Proposer*: An entity that submits a Statement of Qualifications or Proposal to Owner.
48. *Record Documents*: The record copy of all Construction Drawings, Construction Specifications, Addenda, Change Orders, Work Change Directives, and approved Submittals maintained by CMAR at the Site, including any annotations to such documents made by CMAR during Construction.
49. *Record Drawings and Record Specifications*: Documents depicting the completed Project, or a specific portion of the completed Project, based on or comprised of the Record Documents delivered to Owner by CMAR at the completion of the Construction.
50. *Request for Proposals*: The document prepared by or for Owner specifying and describing Owner's objectives, the procedures to be followed in preparing and submitting a Proposal, and the process for evaluating Proposals and awarding a contract.
51. *Request for Qualifications*: The document prepared by or for Owner requesting that Proposers submit a Statement of Qualifications with respect to their candidacy for selection as CMAR.
52. *Schedule of Values*: A schedule, prepared and maintained by CMAR, allocating portions of the Contract Price to various portions of the Work, and used as the basis for reviewing CMAR's Applications for Payment.
53. *Site*: Lands or areas indicated in the Contract Documents as being furnished by Owner upon which Construction is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for use of CMAR.
54. *Special Provisions (Section 00620)*: The part of the Contract Documents which amends or supplements these General Conditions. The Special Provisions shall include the Section 00620-1 which shall be the General Special Provisions and the Section 00620-2 which shall be the Construction Special Provisions.
55. *Statement of Qualifications*: The document submitted by a Proposer in response to the Request for Qualifications, including any completed forms, attachments, and exhibits.
56. *Submittal*: A written or graphic document, prepared by or for CMAR, which the Contract Documents require the CMAR to submit to the Owner. Submittals may include reports, , cost estimates, progress schedules, cash flow projections, Schedules of Values, shop drawings, product data, samples, delegated designs, certifications, proposed modifications to the Construction Drawings and Construction Specifications, results of tests and evaluations, results of source quality control testing and inspections, results of field or Site quality control testing and evaluations, sustainable design information, information on special procedures, operations and maintenance data, sustainable design



closeout information, record documents, records of spare parts and extra stock materials, and other such documents required by the Contract Documents. Submittals, whether approved or accepted by Owner or not, are not Contract Documents. Claims, notices, Change Orders, Applications for Payment, and requests for information/interpretation are not Submittals.

57. *Substantial Completion*: The time at which the Construction (or a specified part thereof) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Construction (or the specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Construction refer to Substantial Completion thereof.
58. *Supplier*: A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with CMAR or with any Construction Subcontractor to furnish materials or equipment to be incorporated in the Work by CMAR or a Construction Subcontractor, and any lessor of rental equipment used by CMAR or a Construction Subcontractor during Construction at the Site.
59. *Technical Data*: Data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding (a) subsurface conditions at the Site, (b) physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), or (c) environmental conditions at the Site, that are set forth in any geotechnical or environmental report prepared for the Project and relied upon by CMAR in agreeing to a price (either stipulated, or a Guaranteed Maximum Price) that includes Construction.
60. *Underground Facilities*: All underground lines, pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems, including but not limited to those that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, fire or police signal systems, or traffic or other control systems, and any encasements containing such facilities or systems.
61. *Underground Facilities Data*: Information and data shown or indicated in the Contract Documents or otherwise provided to CMAR by Owner with respect to existing Underground Facilities at or adjacent to the Site.
62. *Unit Price Work*: Work to be paid for on the basis of unit prices.
63. *Work*: The entire construction or the various separately identifiable parts thereof required to be performed or furnished by CMAR under the Contract Documents. Work includes work performed under Early Work Amendments. Work includes and is the result of performing or furnishing Construction required by the Contract Documents and all labor, services, and documentation necessary to produce such Construction; furnishing, installing, and incorporating all materials and equipment into such Construction; and related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
64. *Work Change Directive*: A written directive to CMAR, issued on or after the Effective Date of the Contract, signed by Owner, ordering an addition, deletion or revision in the Work.



## 1.02 Terminology

- A. The words and terms discussed in Paragraph 1.02.B are not defined terms that require initial capital letters, but when used in the Contract Documents have the indicated meanings.
- B. *Intent of Certain Terms or Adjectives:*
  - 1. The word “day” shall constitute a calendar day of 24 hours measured from midnight to the next midnight.
  - 2. The word “defective,” when modifying the word “Construction” refers to Construction that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Owner’s final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion) provided that the defect was not caused by Owner.
  - 3. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  - 4. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials or equipment or equipment complete and ready for intended use.
  - 5. The words “perform” or “provide” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
  - 6. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of CMAR, “provide” is implied.
  - 7. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with that meaning.

## ARTICLE 2 – PRELIMINARY MATTERS

### 2.01 *Delivery of Bonds and Evidence of Insurance*

- A. *Bonds:* When CMAR delivers the executed Agreements to Owner, CMAR shall also deliver to Owner such Bonds as CMAR may be required to furnish in accordance with Paragraph 6.01.A.
- B. *Evidence of Insurance:* Before any Work is started, CMAR and Owner shall each deliver to the other those certificates of insurance that CMAR and Owner respectively are required to purchase and maintain in accordance with Article 6.

### 2.02 *Copies of Documents*

- A. Owner shall furnish to CMAR two printed copies of the Contract. Additional printed or electronic copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract. Owner shall make such original printed record version of the Contract available to CMAR for review upon request.



## 2.03 *Conceptual Documents*

### A. *CMAR's Review of Conceptual Documents:*

1. CMAR acknowledges that the Conceptual Documents furnished by Owner are preliminary and incomplete, and subject to stated limitations and reservations.
  2. CMAR shall carefully review, analyze, and verify the contents and suitability of the Conceptual Documents before proceeding with the Work including but not limited to verifying pertinent figures there and all applicable filed measurements.
  3. CMAR shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy that CMAR may discover in the Conceptual Documents, whether during such review or at any later point.
  4. Upon receipt of a report from CMAR that there is a conflict, error, ambiguity, or discrepancy in the Conceptual Documents, Owner shall either provide a written interpretation, clarification, or correction to CMAR, or authorize CMAR to correct or resolve the issue under a Change Order providing an equitable adjustment in Contract Times or Contract Price, or both.
  5. CMAR shall not proceed with any Work affected by a reported conflict, error, ambiguity, or discrepancy in the Conceptual Documents until the issue is resolved.
- B. Owner shall not be responsible for any deficiency in the Conceptual Documents that CMAR does not discover or report to Owner.

## 2.04 *Before Starting the Work*

- A. *Preliminary Master Schedules:* After commencement of the Contract Times, CMAR shall submit the following to Owner for timely review by Owner and Engineer:
1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
  2. A preliminary schedule of Submittals (including Design Submittals) which will list each required Submittal and the times for submitting, reviewing, and processing each Submittal;
  3. A preliminary Schedule of Values for all of the Work which will include quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work; and
  4. A preliminary cash flow projection estimating that portion of the Contract Price to be due during each month of performance.

## 2.05 *Authorized Representatives*

- A. The Authorized Representative for each party has been designated in the Contract Documents. A party may change its Authorized Representative at any time by giving notice to the other party of the name, mailing and delivery addresses, e-mail address, and telephone numbers of the new Authorized Representative.



## 2.06 *Initial Conference*

- A. Before any Work at the Site is started, CMAR will arrange a project kick-off conference attended by Owner, Engineer, CMAR, and others as appropriate to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.04.A, procedures for handling Shop Drawings and other Submittals, processing Applications for Payment, maintaining required records, and other matters.

## 2.07 *Review of Schedules*

- A. Not less than 10 days before submission of the first Application for Payment (unless otherwise provided in the Contract Documents), CMAR will arrange a conference attended by CMAR, Owner, Engineer, and others as appropriate to review and discuss the schedules submitted in accordance with Paragraph 2.04.A. CMAR shall have an additional 10 days after the conference to make corrections and adjustments and to complete and resubmit the schedules for Owner's acceptance. No progress payment shall be made to CMAR until CMAR submits schedules acceptable to Owner and Engineer that comply with the following requirements:
  - 1. CMAR's progress schedule shall provide an orderly progression of the Work to completion within any specified Milestones and the Contract Times.
  - 2. CMAR's schedule of Submittals shall provide a workable arrangement for submitting, reviewing, and processing Submittals in accordance with Article 8.
  - 3. CMAR's Schedule of Values shall provide a reasonable allocation of the Contract Price to component parts of the Work.

## 2.08 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer and CMAR may transmit, and shall accept, Project-related correspondence, data, documents, drawings, information, and graphics, including but not limited to Submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner and CMAR shall jointly develop such protocols.
- C. Unless expressly stated otherwise elsewhere in this Contract, CMAR shall not be obligated to furnish documents (including but not limited to Construction Drawings, Construction Specifications, or Record Drawings and Record Specifications) to Owner in any executable, native-file format.
- D. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

# ARTICLE 3 – DOCUMENTS: INTENT, AMENDING, REUSE

## 3.01 *Contract Documents*

- A. The Contract Documents consist of the following:
  - 1. Drawings;



2. Specifications;
  3. Standard General Conditions of the Contract between Owner and Construction Manager At Risk ("General Conditions")(Section 00510);
  4. Owner and Construction Manager At Risk Agreement including all attachments;
  5. General Special Provisions (Section 00620-1);
  6. Construction Special Provisions (Section 00620-2);
  7. The Request for Proposal;
  8. Any Addenda;
  9. The Request for Qualifications;
  10. Section 00150 House Bill Form (Certification Concerning Contracting with Illegal Aliens);
  11. Section 00320 Performance Bond;
  12. Section 00330 Payment Bond;
  13. Section 00350 Lien Waiver Release form;
  14. Section 00360 Debarment Form;
  15. Section 00410 Notice to Proceed;
  16. Section 00420 Project Manager Notification;
  17. Section 00430 Certificate of Substantial Completion;
  18. Section 00440 Certificate of Final Acceptance.
- B. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- C. It is the intent of the Contract Documents to require the construction of a functionally complete Project (or part thereof).
- D. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
- E. CMAR will furnish or perform all labor, documentation, services (including professional services), materials, and equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called, for at no additional cost to Owner.

### 3.02 *Reference Standards*

- A. *Standards, Specifications, Codes, Laws or Regulations:*
1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect on the Effective Date, except as may be otherwise specifically stated in the Contract Documents.



2. No provision of any such standard, specification, manual, or code, or instruction of a Supplier, shall be effective to change the duties and responsibilities of Owner, CMAR, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Owner or its officers, directors, members, partners, employees, agents, consultants, or subcontractors any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 *Resolving Discrepancies*

- A. In the event of a discrepancy between Drawings or Specifications and the Conceptual Documents, the Drawings will control. The order of control of the documents shall be the order listed in Section 3.01.A, such that an item higher in the list controls over an item lower in the list in the case of a discrepancy.
- B. Except as otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
  1. The provisions of any such standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
  2. The provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

### 3.04 *Ownership and Reuse of Documents*

- A. All documents prepared for or furnished to Owner by CMAR pursuant to this Contract shall become the property of the Owner upon Substantial Completion and/or their acceptance by the Owner and/or upon termination of the services of the CMAR.
- B. CMAR and any Subcontractor or Supplier shall not:
  1. Have or acquire any title to or ownership rights in any of the Drawings, Specification, or other documents (or copies of any therefor) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
  2. Reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.
- C. The prohibitions of this Paragraph 3.04 will survive final payment, or termination of the Contract. Nothing herein shall preclude CMAR from retaining copies of the Contract Documents for record purposes.
- D. Any use or reuse by Owner or others on Owner's behalf will be at Owner's sole risk, and without liability or legal exposure to CMAR, the Project Design Professionals, or their subconsultants.



## ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

### 4.01 *Commencement of Contract Times*

#### A. The Preconstruction Phase Contract Work

1. Times will commence to run on the Effective Date of the Notice to Proceed.
2. Times for each Early Work Amendment will commence to run on the Effective Date of the Notice to Proceed for that Early Work Amendment. A separate Notice to Proceed shall be issued for each Early Work Amendment.

#### B. The Construction Phase Contract Work

1. Times will commence to run on the Effective Date as indicated in the approved Guaranteed Maximum Price Proposal.

### 4.02 *Starting the Work*

- #### A.
- CMAR shall start to perform the Work as of the Effective Date of the Contract. No Construction shall be done at the Site prior to the Effective Date of the Contract unless the parties have executed an Early Work Amendment.

### 4.03 *Progress Schedule*

- #### A.
- Owner may rely on the progress schedule established in accordance with Paragraph 2.04, as duly adjusted, in planning and conducting ongoing operations and other work at the Site.
- #### B.
- CMAR shall adhere to the progress schedule established in accordance with Paragraph 2.04 as it may be adjusted from time to time, as provided below:
1. CMAR shall submit to Owner proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect. Owner shall accept such adjustments provided that Owner, in planning and conducting ongoing operations and other work at the Site, has not reasonably relied on the schedule element that is proposed to be adjusted. If Owner has so relied, then Owner and CMAR shall promptly meet and seek a resolution that addresses the objectives of both parties, or adjust the Contract Price.
  2. CMAR shall submit proposed adjustments in the progress schedule that will change the Contract Times (including Milestones) in accordance with the requirements of Paragraph 4.04. Such adjustments may only be made by a Change Order.
- #### C. *Continuing the Work:*
- CMAR shall continue the Work and adhere to the progress schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as CMAR and Owner may otherwise agree in writing.

### 4.04 *Delays in CMAR's Progress*

- #### A.
- If Owner or anyone for whom Owner is responsible delays, disrupts, or interferes with the performance or progress of the Work, then CMAR shall be entitled to an equitable adjustment in the Contract Times and Contract Price. CMAR's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to CMAR's ability to complete the Work within the Contract Times.



- B. CMAR shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference within the control of CMAR. Delay, disruption, and interference attributable to and within the control of a Construction Subcontractor, or Supplier shall be deemed to be delays within the control of CMAR.
- C. If CMAR's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, CMAR, and those for which they are responsible, then CMAR shall be entitled to an equitable adjustment in Contract Times. CMAR's entitlement to such an adjustment of the Contract Times is conditioned on such adjustment being essential to CMAR's ability to complete the Work within the Contract Times. Such an adjustment shall be CMAR's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  2. Abnormal weather conditions;
  3. Acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 9); and
  4. Acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 9.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. CMAR shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of CMAR.
- G. If CMAR seeks an adjustment in Contract Price or Contract Times under this paragraph, CMAR shall submit a request for a Change Order to Owner within 30 days of the commencement of the delaying, disrupting, or interfering event.

## **ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.01 *Availability of Lands***

- A. Owner shall furnish the Site. Owner shall notify CMAR of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CMAR will have to comply in performing the Work. Unless otherwise provided in the Contract Documents, Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If CMAR and Owner are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the



Contract Times as a result of any delay in Owner's furnishing the Site, CMAR may make a Claim therefor as provided in Article 17.

- B. Upon reasonable written request, Owner shall furnish CMAR with a current statement of record legal title and legal description of the lands upon which the Construction is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws or Regulations.
- C. CMAR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

## 5.02 *Use of Site and Other Areas*

### A. *Limitation on Use of Site and Other Areas:*

- 1. CMAR shall confine construction equipment, the storage of materials and equipment, and the operations of construction workers to the Site and other areas permitted by Laws or Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. CMAR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas, resulting from the performance of the Work to the extent caused by or based upon CMAR's negligent performance of the Construction, or the negligent performance of CMAR's subcontractors and assigns.
- 2. Should any claim be made by any such owner or occupant because of the performance of Work, CMAR shall promptly settle with such other party by negotiation, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law.
- 3. To the fullest extent permitted by Laws or Regulations, CMAR shall indemnify and hold harmless Owner, Owner's consultants, and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages arising out of or resulting from any claim brought by any such owner or occupant against Owner, or any other party indemnified hereunder to the extent caused by or based upon CMAR's negligent performance of the Construction.

B. *Removal of Debris:* During the performance of the Construction, CMAR shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the Construction. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws or Regulations.

C. *Cleaning:* Prior to Substantial Completion, CMAR shall clean the Site and make it ready for utilization by Owner. At completion of Construction, CMAR shall remove all tools, appliances, construction equipment, temporary construction and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

## 5.03 *Reference Points*

- A. CMAR shall be responsible for laying out the Work and shall protect and preserve reference points and property monuments established by Owner and/or Engineer, and shall make no



changes or relocations of such reference points or monuments without the prior written approval of Owner. CMAR shall report to Owner whenever any reference point or property monument is lost or destroyed, or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

5.04 *Differing Site Conditions*

- A. CMAR shall promptly, and before the conditions are disturbed, give a written notice to Owner of (i) subsurface or latent physical conditions at the Site (whether discovered during investigation of the Site or during Construction) which differ materially from those indicated in the Contract Documents, or in any Technical Data, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character called for by the Contract Documents.
- B. Owner will investigate the Site conditions promptly after receiving the notice. CMAR shall supplement the notice by promptly submitting to Owner any additional information regarding schedule and cost impacts, and a specific request for a Change Order. Owner shall then make a determination regarding the site condition and the impact, if any, on Contract Price and Contract Times. If the conditions do materially so differ and cause an increase or decrease in the CMAR's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 12.
- C. No request by CMAR for an equitable adjustment under this Paragraph 5.04 shall be allowed unless CMAR has given the written notice required.
- D. The provisions of this Paragraph 5.04 are not intended to apply to a Hazardous Environmental Condition or Underground Facility uncovered or revealed at the Site.

5.05 *Underground Facilities*

- A. *Procedure for Identifying Underground Facilities:* Promptly after the Effective Date of the Contract, CMAR shall review the Underground Facilities Data furnished by Owner, if any, and use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as a basis for establishing a procedure ("Underground Facilities Procedure") for the further identification, investigation, and mapping of Underground Facilities at or adjacent to the Site. CMAR shall establish and use the Underground Facilities Procedure to aid in the performance of Construction, and to reduce and manage risks associated with Underground Facilities. Such Underground Facilities Procedure shall take into account the Site and the nature of the Project.
  - 1. The Underground Facilities Procedure shall include a plan to keep Underground Facilities information current as CMAR proceeds with the work, and to add new or relocated Underground Facilities information to the base utility or Site drawings.
  - 2. To manage the potential impact of design changes on Underground Facilities, CMAR shall modify or reapply the Underground Facilities Procedure as the design progresses and changes.



- B. *CMAR's Responsibilities:* Unless otherwise expressly provided in the Contract, CMAR shall have full responsibility for the following; and, subject to the provisions of Paragraphs 5.05.C, D, and E, the cost of all of the following will be included in the Contract Price:
1. Establishing and executing the Underground Facilities Procedure referred to in Paragraph 5.05.A, including updating, modification, and reapplication duties;
  2. Coordinating the Work with the owners (including Owner) of such Underground Facilities, during the provision of Construction;
  3. Verifying the actual location of specific Underground Facilities through exposure, as needed for the Work;
  4. Complying with applicable state and local utility damage prevention Laws and Regulations during Construction; and
  5. The safety and protection of all existing Underground Facilities at the Site, and repairing any damage to such Underground Facilities resulting from the Construction, subject to the provisions of Paragraph 5.05.D.
- C. *Results of CMAR's Execution of Underground Facilities Procedure:* If, during the execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, the CMAR identifies an Underground Facility that was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, causing an increase or decrease in the CMAR's cost of, or the time required for, performing the Construction, then CMAR shall submit to Owner a request for a Change Order seeking an equitable adjustment to the Contract Price or Times under this clause. Such request shall be made within 30 days of the identification of the Underground Facility in question.
- D. *Underground Facility Found During Construction:* If CMAR believes that an Underground Facility that is uncovered, exposed, or revealed at the Site during Construction was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, and also that such Underground Facility was not identified or mapped with reasonable accuracy despite CMAR's adequate establishment and execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, then CMAR shall promptly give written notice to Owner, and supplement the notice by submitting to Owner a request for a Change Order seeking an equitable adjustment to the Contract Price or Times under this clause. Such request shall be made within 30 days of the uncovering or revealing of the Underground Facility in question.
1. *Owner's Review:* Owner will investigate the Underground Facility found during Construction promptly after receiving the notice. If Owner concurs with CMAR that the Underground Facility that is uncovered, exposed, or revealed at the Site was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, and further was not identified or mapped with reasonable accuracy despite CMAR's adequate establishment and execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, causing an increase or decrease in the CMAR's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the actual location, then an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 12. If Owner does not concur with CMAR, then Owner shall so indicate in writing, with a specific explanation of the reason for non-concurrence.



2. No request by CMAR for an equitable adjustment under Paragraph 5.05.D shall be allowed unless CMAR has given the written notice required.
- E. *Inadequate Establishment or Execution of Underground Facilities Procedure:* If CMAR does not establish an Underground Facilities Procedure that is (1) adequate for the Site and the nature of the Project and (2) consistent with the guidelines set forth in ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," or CMAR does not adequately execute a duly established Underground Facilities Procedure, then CMAR shall bear all costs associated with the presence of an Underground Facility that was not identified or located with reasonable accuracy, including but not limited to delay, redesign, relocation, and increased Construction costs, if such Underground Facility would have been identified and located with reasonable accuracy by an adequate and properly executed Underground Facilities Procedure that was consistent with ASCE 38.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reliance by CMAR on Technical Data Authorized:* CMAR may rely on the accuracy of the Technical Data with respect to environmental conditions at the Site but such Technical Data are not Contract Documents.
- B. CMAR shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- C. CMAR shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by CMAR, Project Design Professionals, Construction Subcontractors, Suppliers, or anyone else for whom CMAR is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- D. If CMAR encounters, uncovers, or reveals a Hazardous Environmental Condition (whether during Site investigation or during Construction) whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if CMAR or anyone for whom CMAR is responsible creates a Hazardous Environmental Condition, then CMAR shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.16); and (3) notify Owner (and promptly thereafter confirm such notice in writing); (4) CMAR shall relocate work activities to non-impacted area's within 72 hours of notifying owner of Hazardous Environmental Conditions. Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take corrective action, if any, and take such actions as are necessary to permit Owner to timely obtain required permits and provide CMAR the written notice required by Paragraph 5.06.E. If CMAR or anyone for whom CMAR is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- E. CMAR shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to CMAR either (1) specifying that such condition and any affected



area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.

- F. If after receipt of such written notice CMAR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then the portion of the Work that is in the area affected by such condition shall be deleted from the Work, following the contractual change procedures in Article 12. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 9.
- G. In the event work at any given location must cease due to a suspected Hazardous Environmental Condition, CMAR shall continue work in another area deemed by Owner to be a safe distance away from the hazardous site at the direction of Owner. CMAR shall continue work in this other location within 72 hours of uncovering the suspected or verified Hazardous Environmental Condition.
- H. To the fullest extent permitted by Laws and Regulations, CMAR shall indemnify and hold harmless Owner and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the CMAR's failure to control, contain, or remove a Constituent of Concern brought to the Site by CMAR or by anyone for whom CMAR is responsible, or to a Hazardous Environmental Condition created by CMAR or by anyone for whom CMAR is responsible. Nothing in this Paragraph 5.06.H shall obligate CMAR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

## **ARTICLE 6 – BONDS AND INSURANCE**

### **6.01 *Performance, Payment, and Other Bonds***

- A. CMAR shall furnish a performance bond and a payment bond for the Preconstruction Phase of the Project, each Early Work Amendment, and for the Construction Phase of the Project. All bonds shall be in an amount at least equal to the Contract Price or applicable Early Work Price, as security for the faithful performance and payment of CMAR's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due, or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Special Provisions, or other specific provisions of the Contract. CMAR shall also furnish such other bonds as are required by the Special Provisions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.



- C. CMAR shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by CMAR is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then CMAR shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If CMAR has failed to obtain a required bond, Owner may exclude the CMAR from the Site and exercise Owner's termination rights under Article 16.
- F. Upon request to either Owner or CMAR from any Construction Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, the recipient of the request shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

- A. Owner and CMAR shall obtain and maintain insurance as required in this Article and in the Special Provisions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or CMAR shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Special Provisions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. All insurance required by the Contract to be purchased and maintained by CMAR shall be primary and without contribution by insurance maintained by Owner.
- D. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract, unless expressly permitted in the Special Provisions.
- E. CMAR shall require (a) its Construction Subcontractors (and any other Project Design Professional that is an independent individual or entity) to purchase and maintain commercial general liability, automobile liability, workers' compensation, employer's liability, professional liability (as applicable), and umbrella or excess liability insurance, and (b) its Construction Subcontractors to purchase and maintain CMAR's pollution liability insurance. All such required insurance shall meet the same requirements for the applicable category of insurance established in this Contract for CMAR, unless otherwise indicated in the Special Provisions.
- F. CMAR shall deliver to Owner, with copies to each additional insured (as identified in this Article, in the Special Provisions, or elsewhere in the Contract), certificates of insurance establishing that CMAR has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, CMAR shall also furnish other evidence of such required insurance, including but not limited to



copies of policies and endorsements, documentation of applicable self-insured retentions (if permitted) and deductibles, and evidence of insurance required to be purchased and maintained by CMAR's Construction Subcontractors, and any other Project Design Professional that is an independent individual or entity. CMAR may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

- G. Failure of Owner to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- H. If CMAR does not purchase or maintain all of the insurance required by the Contract, CMAR shall notify Owner in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- I. If CMAR has failed to obtain and maintain required insurance, Owner may exclude the CMAR from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- J. Without prejudice to any other right or remedy, if CMAR has failed to obtain required insurance, Owner may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- K. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect CMAR or CMAR's interests.
- L. The insurance and insurance limits required herein shall not be deemed as a limitation on CMAR's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

#### 6.03 CMAR's Insurance

- A. *Workers' Compensation and Employer's Liability:* CMAR shall purchase and maintain workers' compensation and employer's liability insurance for:
  - 1. Claims under workers' compensation, disability benefits, and other similar employee benefit acts.
  - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
  - 3. Claims for damages because of bodily injury, occupational sickness or disease, or death of CMAR's employees (by stop-gap endorsement in monopolist worker's compensation states).
  - 4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* CMAR shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of CMAR, on an occurrence basis, against:
  - 1. Claims for damages because of bodily injury, sickness or disease, or death of any person other than CMAR's employees.



2. Claims for damages insured by reasonably available personal injury liability coverage.
  3. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* CMAR's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
    - a. Such insurance shall be maintained for three years after final payment.
    - b. CMAR shall furnish Owner and each other additional insured (as identified in the Special Provisions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
  2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of CMAR's contractual indemnity obligations in Paragraph 7.19.
  3. Broad form property damage coverage.
  4. Severability of interests and no insured-versus-insured or cross-liability exclusions.
  5. Underground, explosion, and collapse coverage.
  6. Personal injury coverage.
  7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If CMAR demonstrates to Owner that the specified ISO endorsements are not commercially available, then CMAR may satisfy this requirement by providing equivalent endorsements.
  8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, shall not include any of the following:
1. Any modification of the standard definition of "insured contract."
  2. Any exclusion for water intrusion or water damage.
  3. Any provisions resulting in the erosion of insurance limits by defense costs.
  4. Any exclusion of coverage relating to earth movement.
  5. Any exclusion for the insured's vicarious liability, strict liability, or statutory liability.
  6. Any limitation or exclusion based on the nature of CMAR's work.
  7. Any professional liability exclusion broader in effect than ISO form CG 22 79 07 98.
- E. *Automobile liability:* CMAR shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising



out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.

- F. *Umbrella or excess liability:* CMAR shall purchase and maintain umbrella or excess liability insurance in the amount designated in the Special Provisions and which shall be written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall be procured on a "follow the form" basis as to each and every one of the underlying policies. CMAR may meet the combined limits of insurance (underlying policy plus applicable umbrella or excess) specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policies and an umbrella or excess liability policy that follows the form of the underlying policy, as specified herein.
- G. *CMAR's pollution liability insurance:* CMAR shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from CMAR's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.
- H. *Additional insureds:* The CMAR's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include, and list as additional insureds, Owner and any individuals or entities identified as required additional insureds in the Special Provisions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. CMAR shall obtain all necessary endorsements to support these requirements.
- I. *Professional liability insurance:*
  - 1. If in the performance of this Contract any Design Professional Services, or other professional engineering or similar services, are to be performed by an independent design professional, under direct contract to CMAR or at any lower contractual tier, then CMAR shall be responsible for assuring that such independent design professional purchases and maintains professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the independent design professional is legally liable.
  - 2. If a Construction Subcontractor at any tier will provide or furnish design, engineering, or other similar professional services under this Contract, as the result of a delegation of professional design responsibilities or otherwise, then CMAR shall assure that such Construction Subcontractor purchases and maintains applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable.
  - 3. Any professional liability insurance required under this Contract shall be maintained throughout the duration of the Contract and for a minimum of three years after Substantial Completion. For each claims-made professional liability policy furnished and



maintained to satisfy the requirements of this Paragraph 6.03.I, the retroactive date on the policy shall pre-date the commencement of furnishing services on the Project.

J. *General provisions:* The policies of insurance required by this Paragraph 6.03 shall:

1. Include at least the specific coverages provided in this Article.
2. Be written for not less than the limits of coverage provided in the Owner and CMAR Agreement, and as may be modified by the Special Provisions, or required by Laws or Regulations, whichever is greater.
3. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.03 will contain a provision or endorsement that the insurance company or its designee must give the Owner and the purchasing policyholder written notice transmitted in paper or electronic format at least 30 days' before coverage is non-renewed by the insurance company and within 10 business days after cancellation of coverage by the insurance company. Within 3 days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to the Owner.
4. Remain in effect at least until final payment and CMAR's departure from the Site (and longer if expressly required elsewhere in this Contract), and at all times thereafter when CMAR may be correcting, removing, or replacing defective Construction as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
5. Provide applicable protection from claims that may arise out of or result from the performance of the Work, whether such performance is by CMAR, a Project Design Professional, any Construction Subcontractor or Supplier, or anyone directly or indirectly retained by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

6.04 *Owner's Liability Insurance*

- A. In addition to the liability insurance required to be provided by CMAR, the Owner, at Owner's option and expense, may purchase and maintain Owner's own liability insurance to protect Owner against claims which may arise with respect to the Project.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by CMAR, and CMAR cannot rely upon Owner's liability policies for any of CMAR's obligations to the Owner or third parties.
- C. CMAR's Liability Insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be approved by Owner.

6.05 *Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Special Provisions, CMAR shall purchase and maintain builder's risk insurance upon the Construction on a completed value basis; in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Special Provisions or required by Laws and Regulations). This insurance shall:



1. Include the Owner, CMAR, and the Engineer as named insureds, and all Construction Subcontractors, and any individuals or entities required by the Special Provisions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Special Provisions, the parties required to be insured shall collectively be referred to as "insureds."
2. Be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Construction, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Special Provisions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and CMAR.
3. Cover, as insured property, at least the following: (a) the Construction (including but not limited to all buildings, structures, foundations, excavations, underground property, pilings, underground pipes, flues, drains, wiring, cables, and the like) and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into the Construction, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent Construction but which are intended to provide working access to the Site, or to the Construction, or which are intended to provide temporary support for the Construction, including scaffolding, form work, fences, shoring, lighting, cribbing, falsework, and temporary structures.
4. Cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).
5. Extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
6. Allow for partial occupation or use of the Construction by Owner, such that those portions of the Construction that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
7. Provide for the waiver of claims and waiver of the insurer's subrogation rights, as set forth in Paragraph 6.06.
8. Provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
9. Not include a co-insurance clause.



10. Include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
  11. Include performance/hot testing and start-up.
  12. Be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Construction by Owner, until the Construction is complete.
- B. CMAR's Property Insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be approved by Owner. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the insurance company or its designee must give the Owner and the purchasing policyholder written notice transmitted in paper or electronic format at least 30 days' before coverage is non-renewed by the insurance company and within 10 business days after cancellation of coverage by the insurance company. Within 3 days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to the Owner.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Construction prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner through CMAR will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Construction that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Construction not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If CMAR elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at CMAR's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by CMAR, a Construction Subcontractor, or an employee of CMAR or a Construction Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so, in what amount.
- G. *Loss of Use and Delay in Start-up:* Unless otherwise expressly stated elsewhere in this Contract, the Owner is responsible, at its option, for purchase and maintenance of insurance to protect Owner against the loss of use or delays in start-up caused by property damage.

#### 6.06 Waiver of Rights

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against any Project Design Professional or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and CMAR



- waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Construction; and, in addition, waive all such rights against the Engineer, their consultants, all Construction Subcontractors, all individuals or entities identified in the Special Provisions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or CMAR as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any insurance policy maintained by Owner covering any loss, damage, or consequential loss shall contain provisions to the effect that the insured is allowed to waive the insurer's rights of subrogation against CMAR, Project Design Professionals, Construction Subcontractors, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, in a written contract executed prior to the loss, damage, or consequential loss.
  - C. CMAR shall be responsible for assuring that each Construction Subcontract contains provisions whereby the Construction Subcontractor waives all rights against Owner, CMAR, all individuals or entities identified in the Special Provisions as insureds, the Project Design Professionals, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Project.

6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall maintain such funds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Construction shall be repaired or replaced, the money so received applied on account thereof, and the Construction and the cost thereof covered by Change Order, if needed.



## **ARTICLE 7 – CMAR'S RESPONSIBILITIES**

### **7.01 *Pre-Construction Phase and Construction***

- A. CMAR shall perform and furnish the Pre-Construction Phase Services and Construction pursuant to the Contract Documents, the Construction Drawings, and the Construction Specifications, as duly modified.
- B. CMAR shall keep Owner advised as to the progress of the Construction.

### **7.02 *Supervision and Superintendence of Construction***

- A. CMAR shall supervise, inspect, and direct the Construction competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the Construction in accordance with the Contract Documents. CMAR shall be solely responsible for the means, methods, techniques, sequences, and procedures of Construction.
- B. At all times during the progress of Construction, the CMAR shall assign a competent resident superintendent who shall not be replaced without written request and approval by the Owner.

### **7.03 *Labor; Working Hours***

- A. CMAR shall provide competent, suitably qualified personnel to perform the Work as required by the Contract Documents. CMAR shall at all times maintain good discipline and order at the Site.
- B. CMAR shall coordinate with Owner for site access.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, and in the absence of any Laws or Regulations to the contrary, CMAR may perform the Construction on legal holidays, during any or all hours of the day, and on any or all days of the week, upon the Owner's approval.

### **7.04 *Services, Materials, and Equipment***

- A. Unless otherwise specified in the Contract Documents, CMAR shall furnish or cause to be furnished and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified by Owner or in the Construction Drawings or Construction Specifications, and unless specified otherwise shall be new and of good quality. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of Owner. If required by Owner, CMAR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.



#### 7.05 *"Or Equals" and Substitutions*

- A. If an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, then during the preparation of the proposed Construction Drawings and Construction Specifications, the CMAR may request that Owner authorize the use of other items of material or equipment, or items from other proposed suppliers. CMAR must specifically include any and all substitutes in the Guaranteed Maximum Price proposal, and include notice to Owner that the proposal contains a variation from the Contract Documents. Owner in its sole discretion may approve the use of the item if Owner determines that the item is functionally equal to that named and sufficiently similar so that no change in related Work will be required, taking into consideration whether the item:
  - 1. Is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
  - 2. Will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
  - 3. Has a proven record of performance and availability of responsive service; and
  - 4. Is not objectionable.
- B. *Effect of Owner's Determination:* The denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- C. *Substitutes:* During the preparation of the Guaranteed Maximum Price proposal, the CMAR may propose a substitute to an item of material or equipment that is required to be furnished by the Contract Documents. Any such proposal shall be made in the Guaranteed Maximum Price proposal with notice to Owner that the proposal contains a variation from the Contract Documents. The proposal shall describe the advantages, disadvantages, and changes in Contract Price or Contract Time associated with the proposed substitute. Approval of the proposed substitute shall be at Owner's sole discretion. If approved, the substitute item shall be incorporated in the Construction Drawings and Construction Specifications.
- D. *Construction Drawings and Construction Specifications:* "Or equal" or substitute proposals with respect to items of material or equipment that are required in the Construction Drawings and Construction Specifications shall be considered proposed modifications of the Construction Drawings and Construction Specifications, and shall be governed by the provisions of Paragraph 8.01.

#### 7.06 *Concerning Construction Subcontractors, Suppliers, and Others*

- A. CMAR may retain Construction Subcontractors, and Suppliers for the performance of parts of the Work. Such Construction Subcontractors, and Suppliers must be acceptable to Owner.
- B. Prior to entry into any binding Construction Subcontract, or purchase order, CMAR shall submit to Owner the identity of the proposed Construction Subcontractor, or Supplier (unless Owner has already deemed such proposed contractual party acceptable, during the bidding process, Guaranteed Maximum Price development process or otherwise). Such proposed contractual party shall be deemed acceptable to Owner unless Owner raises an objection within 10 days.



- C. Owner may require the replacement of any Construction Subcontractor, Supplier, or other entity retained by CMAR to perform any part of the Work solely on the basis of objection after due investigation. CMAR shall submit an acceptable replacement for the rejected Construction Subcontractor, Supplier, or other entity. Should owner require the replacement of a subcontractor or supplier and the costs associated result in an increase to the Guaranteed Maximum Price, the CMAR will be compensated accordingly.
- D. No acceptance by Owner of Engineer or of any Construction Subcontractor, Supplier, or other entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- E. CMAR shall be fully responsible to Owner for all acts and omissions of the Construction Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work, just as CMAR is responsible for CMAR's own acts and omissions.
- F. CMAR shall be solely responsible for scheduling and coordinating the services and work of the Construction Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- G. CMAR shall restrict all Construction Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating directly with Owner or Engineer, except in case of an emergency or a matter involving public health, safety, or welfare, or as otherwise expressly allowed herein.
- H. Owner may furnish to any Construction Subcontractor, or Supplier, to the extent practicable, information about amounts paid to CMAR on account of Work performed for CMAR by the requesting party.
- I. Nothing in the Contract Documents:
  - 1. Shall create for the benefit of any Construction Subcontractor, Supplier, or other third-party individual or entity any contractual relationship between Owner and such third-party individual or entity; nor
  - 2. Shall create any obligation on the part of Owner to pay or to see to the payment of any money due any Construction Subcontractor, Supplier, or other third-party individual or entity except as may otherwise be required by Laws and Regulations.

#### 7.07 *Patent Fees and Royalties*

- A. CMAR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Conceptual Documents or other Contract Documents for use in the performance of the Construction, and if to the actual knowledge of Owner its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, then Owner has disclosed the existence of such rights to CMAR in the Conceptual Documents or other Contract Documents.
- B. To the fullest extent permitted by Laws or Regulations, CMAR shall indemnify and hold harmless Owner and Owner's Consultant, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects,



attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the specification or incorporation in the Work of any invention, design, process, product or device, except those required by the Contract Documents.

**7.08**    *Permits and Utility Charges*

- A. The Contract Documents allocate responsibility for obtaining and paying for specified permits, licenses, certificates of occupancy, and approvals of governmental authorities having jurisdiction over the Work. Each party shall assist the other, when necessary, in obtaining such permits, licenses, certificates, and approvals.
- B. CMAR shall pay all charges of utility owners for temporary service to the Work. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work, and for capital costs related thereto.

**7.09**    *Taxes*

- A. CMAR shall pay all sales, consumer, use, and other similar taxes required to be paid by CMAR in accordance with the Laws or Regulations of the place of the Project which are applicable during the performance of the Work. This project is exempt from payment of City of Greeley Sales and Use taxes.

**7.10**    *Laws and Regulations*

- A. CMAR shall give all notices required by and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring CMAR's compliance with any Laws or Regulations.
- B. If CMAR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CMAR shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.
- C. Changes in Laws or Regulations that occur after the date on which the CMAR committed to the Contract Price (whether by negotiation or making an offer or proposal) and affect the cost or time of performance shall be the subject of an equitable change in Contract Price or Contract Times.

**7.11**    *Record Documents*

- A. CMAR shall maintain the Record Documents in good order, in a safe place at the Site. CMAR shall annotate the Record Documents to show all changes and clarifications made (whether in the field or otherwise) during performance of Construction. The Record Documents, as annotated, will be available to Owner and Engineer for reference. Upon completion of the Construction, CMAR shall deliver the Record Documents, as annotated, to Owner.
- B. After receipt and review of the Record Documents from CMAR upon completion of Construction, the Owner may comment on any possible inaccuracies. After Owner and CMAR collaboratively address any such comments, the Record Documents shall be deemed to be Record Drawings and Record Specifications.



- C. The Record Drawings and Record Specifications are Contract Documents, and are binding upon CMAR with respect to its obligations to comply with the Contract Documents, including but not limited to correction period responsibilities and warranty obligations.

#### 7.12 *Safety and Protection*

- A. CMAR shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Construction Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. CMAR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. All persons on the Site or who may be affected by the Work;
  - 2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation, or replacement in the course of Construction.
- B. CMAR shall comply with applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CMAR shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- C. CMAR shall comply with the applicable requirements of Owner's safety programs, if any. The Special Provisions identify any Owner's safety programs that are applicable to the Work.
- D. CMAR shall inform Owner of the specific requirements of CMAR's safety program with which Owner, Engineer and their employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by CMAR, any Construction Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CMAR.
- F. CMAR's duties and responsibilities for safety and for protection of the Construction shall continue until such time as all the Work is completed, Owner has issued a notice to CMAR in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion), and CMAR has left the Site.
- G. CMAR's duties and responsibilities for safety and protection shall resume whenever CMAR or any Construction Subcontractor, Supplier, or other representative returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.



7.13 *Safety Representative*

- A. CMAR shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

7.14 *Hazard Communication Programs*

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

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, CMAR is obligated to act to prevent threatened damage, injury or loss. CMAR shall give Owner prompt written notice if CMAR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If a change in the Contract Documents is required because of the action taken by CMAR in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.16 *Post-Construction Phase*

- A. CMAR shall:
  - 1. Provide assistance in connection with the start-up and testing of any equipment or system.
  - 2. Assist Owner in training staff to operate and maintain the Work.
  - 3. Assist Owner in developing systems and procedures for control of the operation and maintenance of and record keeping for the Work.

7.17 *CMAR's General Warranty and Guarantee*

- A. CMAR warrants and guarantees to Owner that CMAR will perform and complete the Construction as required by the Contract Documents, and that all Construction will be in accordance with the Contract Documents, the Construction Drawings, and the Construction Specifications (as duly modified in accordance with the Contract), and will not be defective.
- B. CMAR's warranty and guarantee hereunder excludes defects or damage caused by:
  - 1. Abuse, modification or improper maintenance or operation by persons other than CMAR, Construction Subcontractors, or Suppliers or any other individual for whom CMAR is responsible; or
  - 2. Normal wear and tear under normal usage.
- C. CMAR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance by Owner of Work that is not in accordance with the Contract Documents or a release of CMAR's obligation to perform the Work in accordance with the Contract Documents, unless expressly stated otherwise in writing:
  - 1. Observations by Owner or Engineer;



2. Recommendation by Engineer or the making of any progress or final payment;
3. The issuance of a certificate of Substantial Completion;
4. Use or occupancy of the Work or any part thereof by Owner;
5. Any review and approval of a Submittal;
6. Any inspection, test, or approval by others; or
7. Any correction of defective Construction by Owner.

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, CMAR shall indemnify and hold harmless Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, and subcontractors, from losses, damages, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of CMAR, any Construction Subcontractor, any Supplier, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors.
- B. In any and all claims or actions against Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of CMAR, any Construction Subcontractor, any Supplier, any individual or entity directly or indirectly employed or retained by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CMAR, or any Construction Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of CMAR under Paragraph 7.18.A shall not extend to the liability of Engineer, other consultants or design professionals of Owner, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, designs, or specifications.

7.19 *Delegation of Professional Design Services*

- A. CMAR will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out CMAR's responsibilities for construction means, methods, techniques, sequences and procedures. CMAR shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of CMAR by the Contract Documents, Owner



and Engineer will specify all performance and design criteria that such services must satisfy. CMAR shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to CMAR all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 7.19, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 8.01.D.1.
- E. CMAR shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

## **ARTICLE 8 – SUBMITTALS**

### **8.01 CMAR's Preparation of Submittals**

- A. CMAR shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.
  - 1. Shop Drawings:
    - a. Submit number of copies specified in the General Requirements.
    - b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment CMAR proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 8.01.D.
  - 2. Samples:
    - a. Submit number of Samples specified in the Specifications.
    - b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 8.01.D.
- B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of CMAR.
- C. Submittal Procedures:



1. Before submitting each Shop Drawing or Sample, CMAR shall have:
    - a. Reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
    - b. Determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
    - c. Determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
    - d. Determined and verified all information relative to CMAR's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
  2. Each submittal shall bear a stamp or specific written certification that CMAR has satisfied CMAR's obligations under the Contract Documents with respect to CMAR's review and approval of that submittal.
  3. With each submittal, CMAR shall give Owner and Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Owner and Engineer for review and approval of each such variation.
- D. Engineer's Review:
1. Engineer will provide timely review of Shop Drawings as specified in the Contract Documents and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
  2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
  3. Engineer's review and approval shall not relieve CMAR from responsibility for any variation from the requirements of the Contract Documents unless CMAR has complied with the requirements of Paragraph 7.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve CMAR from responsibility for complying with the requirements of Paragraph 8.01.C.1.
- E. Resubmittal Procedures:



1. CMAR shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. CMAR shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

## **ARTICLE 9 – OTHER CONSTRUCTION**

### **9.01 Other Work**

- A. In addition to and apart from the Work to be performed and furnished by CMAR under the Contract Documents, the Owner may perform other construction work at or adjacent to the Site during the course of the Project. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give CMAR written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work at or adjacent to the Site, Owner shall provide such information to CMAR.
- C. CMAR shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and to Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. CMAR shall do all cutting, fitting, and patching of the Construction that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CMAR shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that CMAR may cut or alter others' work with the written consent of Owner and the others whose work will be affected.
- D. If the proper execution or results of any part of the Construction depends upon work performed by others under this Article 9, CMAR shall inspect such other work and promptly report to Owner in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of the Construction. CMAR's failure to so report will constitute an acceptance of such other work as fit and proper for integration with the Construction, except for latent defects and deficiencies in such other work.

### **9.02 Coordination**

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Special Provisions or provided to CMAR prior to the start of any such other work:
  1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
  2. An itemization of the specific matters to be covered by such authority and responsibility; and



3. The extent of such authority and responsibilities.
- B. If the Special Provisions do not identify the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors, Owner shall have sole authority and responsibility for such coordination.

#### 9.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Construction or to the property of CMAR or the Construction Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Construction, through actions or inaction, then CMAR shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to CMAR in the Contract Documents, and any provisions in Laws or Regulations concerning utility action or inaction, or related remedies. When applicable, any such equitable adjustment in Contract Price shall be conditioned on CMAR assigning to Owner all CMAR's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. CMAR's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to CMAR's ability to complete the Work within the Contract Times.
- B. CMAR shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If CMAR fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to CMAR, and assign to such other contractor or utility owner the Owner's contractual rights against CMAR with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, CMAR shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of CMAR's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to CMAR.
- D. If CMAR damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through CMAR's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of CMAR's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against CMAR or Owner, then CMAR shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and its officers, directors, members, partners, employees, agents, consultants and subcontractors from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals



and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

## **ARTICLE 10 – OWNER’S RESPONSIBILITIES**

### **10.01 *Communications to CMAR***

- A. Except as otherwise provided in the Contract Documents, Owner shall issue all communications to CMAR through either Owner’s Consultant, if any, Owner’s Site Representative, or Engineer as specified in the Contract Documents.
- B. In case of termination of the employment of Owner’s Consultant or Engineer, Owner shall appoint an Owner’s Consultant or Engineer to whom CMAR makes no reasonable objection, whose status under the Contract Documents shall be that of the former Owner’s Consultant or Engineer.

### **10.02 *General***

- A. Owner shall do the following in a timely manner so as not to delay the services of CMAR:
  - 1. If requested in writing by CMAR, furnish reasonable evidence satisfactory to CMAR that sufficient funds are available and committed for the entire cost of the Project. Unless such reasonable evidence is furnished, CMAR is not required to commence or continue any Work, or may, if such evidence is not presented within a reasonable time, stop Work upon 15 days’ notice to the Owner;
  - 2. Make payments to CMAR promptly when they are due, as provided in Paragraph 15.01 and 15.06;
  - 3. Furnish the Site as set forth in Paragraph 5.01; arrange for safe access to and make all provisions for CMAR to enter upon public and private property as may reasonably be required for CMAR to perform Work under the Contract.
  - 4. Furnish to CMAR, as required for performance of the Work, the following information if in the possession of Owner, all of which CMAR may use and rely upon in performing services under this Agreement:
    - a. Property, boundary, easement, right-of-way, and other special engineering surveys or data if any;
    - b. Property descriptions if any;
    - c. Zoning, deed, and other land use restrictions if any;
    - d. Explorations and tests of subsurface conditions at or adjacent to the Site if any; geotechnical reports and investigations if any;
    - e. Assistance to CMAR in filing documents required to obtain necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Project; and
  - 5. Provide information if currently known to Owner relating to the presence of materials and substances at the Site that could create a Hazardous Environmental Condition.
- B. If an obligation ascribed to Owner in Paragraph 10.01.A is expressly assigned to CMAR, in the description of the Work or elsewhere in the Contract Documents, then such express assignment to CMAR shall supersede the provision in Paragraph 10.01.A.



- C. Examine all studies, reports, alternate solutions, sketches, drawings, specifications, proposals, Submittals and other documents presented by CMAR, and if a decision is required with respect to any such document, render such decision in writing pursuant to any specific schedule, or if no specific schedule pertains, within a reasonable time after receipt of the document.

#### 10.03 *Limitations on Owner's Responsibilities*

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

#### 10.04 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility with respect to undisclosed Hazardous Environmental Conditions uncovered or revealed at the Site is set forth in Paragraph 5.06.

#### 10.05 *Owner's Site Representative*

- A. Owner may furnish an Owner's Site Representative to observe the performance of Construction. The duties, responsibilities and limitations of authority of any such Owner's Site Representative and assistants will be as provided in the Special Provisions.

#### 10.06 *Owner's Consultants and Managers*

- A. All Owner's Consultants, including the Engineer are identified in the Contract Documents.
- B. Owner shall advise CMAR of the identity and scope of services of any other independent consultants or managers retained by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, constructability review, program management, project management, or contract administration.
- C. Neither Engineer, Owner's Site Representative, nor any other consultant or manager retained by Owner has any duties, responsibilities, or authorities with respect to CMAR, unless expressly provided in the Contract Documents. Engineer and such other consultants and managers shall not supervise, direct, or have control or authority over, nor be responsible for, CMAR's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of CMAR to comply with Laws or Regulations applicable to the furnishing or performance of the Work; and will not be responsible for CMAR's failure to perform the Work in accordance with the Contract Documents.

#### 10.07 *Safety Programs*

- A. While at the Site, Engineer, Owner and their employees and representatives shall comply with the specific applicable requirements of CMAR's safety programs of which Owner has been informed pursuant to Paragraph 7.12.D.
- B. Owner shall inform CMAR of any specific requirements of safety or security programs that are applicable to CMAR while at the Site.



10.08 *Permits and Approvals*

- A. Owner shall obtain reviews, approvals, certificates, and permits from governmental authorities having jurisdiction over the Project as indicated in the Contract Documents.

**ARTICLE 11 – ENGINEER’S STATUS DURING CONSTRUCTION**

11.01 *Owner’s Representative*

- A. Engineer will be Owner’s representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner’s representative during construction are set forth in the Contract Documents.

11.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CMAR’s executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer’s efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer’s visits and observations are subject to all the limitations on Engineer’s authority and responsibility set forth in Paragraph 11.08. Particularly, but without limitation, during or as a result of Engineer’s visits or observations of CMAR’s Work, Engineer will not supervise, direct, control, or have authority over or be responsible for CMAR’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CMAR to comply with Laws and Regulations applicable to the performance of the Work.

11.03 *Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Special Provisions, and limitations on the responsibilities thereof will be as provided in Paragraph 11.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer’s consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Special Provisions.

11.04 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on CMAR, who shall perform the Work involved promptly. If



Owner or CMAR believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefore as provided in Article 17.

**11.05 *Rejecting Defective Work***

- A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 14.02, whether or not the Work is fabricated, installed, or completed.

**11.06 *Shop Drawings, Change Orders and Payments***

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 8.01.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 7.19.
- C. In connection with Engineer's authority as to Change Orders, see Article 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 15

**11.07 *Determinations for Unit Price Work***

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by CMAR. Engineer will review with CMAR the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and CMAR, subject to the provisions of Article 17.

**11.08 *Limitations on Engineer's Authority and Responsibilities***

- A. Neither Engineer's authority or responsibility under this Article 11 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to CMAR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for CMAR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CMAR to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for CMAR's failure to perform the Work in accordance with the Contract Documents.



- C. Engineer will not be responsible for the acts or omissions of CMAR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06 will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 11.08 shall also apply to the Resident Project Representative, if any, and assistants, if any.

**11.09 Compliance with Safety Program**

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of CMAR's safety programs of which Engineer has been informed pursuant to Paragraph 7.12.

**ARTICLE 12 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK**

**12.01 Amending and Supplementing Contract Documents**

- A. The Contract Documents may be amended or supplemented by a Change Order or a Work Change Directive as provided in this Article and in the Special Provisions.
- B. *Change Orders:* If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
- C. *Work Change Directives:* The Work modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order. When a Work Change Directive is issued, the parties will promptly meet to attempt to negotiate the Work Change Directive's effect, if any, on the Contract Times and Contract Price. The effect, if any, on Contract Times and Contract Price, together with the Work Change Directive's addition, deletion, or revision to the Work, will be set forth in a subsequently issued Change Order.
- D. Either Owner or CMAR may propose or request a Change Order. With respect to certain events, this Contract may indicate specific times in which such requests or proposals must be submitted to the other party. With respect to all other events, the request or proposal shall be submitted to the other party within 30 days of the event giving rise to the request or proposal.

**12.02 Authorized Changes in the Work**

- A. Without invalidating the Contract and without notice to any surety, and notwithstanding any other provision of the Contract, Owner may, at any time or from time to time, order or authorize additions, deletions, or revisions in the Work within the general scope of the Contract. Such changes may be accomplished by a Change Order, if Owner and CMAR have agreed as to the effect, if any, of the changes on Contract Times; or by a Work Change Directive. Upon receipt of any such document, CMAR shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with



respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate CMAR to undertake work that CMAR reasonably concludes cannot be performed in a manner consistent with CMAR's safety or professional obligations under the Contract Documents or Laws and Regulations.

**12.03 *Unauthorized Changes in the Work***

- A. CMAR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents, as duly amended, except in the case of an emergency as provided in Paragraph 7.15, or in the case of uncovering Construction as provided in Paragraph 14.03.A.3.

**12.04 *Changes Involving the Design***

- A. To the extent a change, whether proposed by CMAR or Owner, ordered by Owner, or set forth in a proposed Change Order or in a Work Change Directive, involves the design (as set forth in the Construction Drawings, Construction Specifications, or otherwise) or other engineering or technical matters, such changes must be reviewed and approved by the Engineer.

**12.05 *Change of Contract Price***

- A. The Contract Price may only be changed by a Change Order. Any Claim regarding an adjustment in the Contract Price shall be presented to the Engineer and the other party in accordance with Paragraph 17.01.
- B. If the Contract Price is based on Cost of the Work, then the provisions in the Agreement regarding Cost of the Work and changes in the CMAR's fee, Contract Price, Guaranteed Maximum Price, and Guaranteed Maximum Fee, apply.
- C. The value of any Work covered by a Change Order or of any adjustment in the Contract Price will be determined as follows:
  - 1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.02; or
  - 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.05.D); or
  - 3. Where the Work involved is not covered by unit prices contained in the Contract Documents, and agreement to a lump sum is not reached under Paragraph 12.05.C.2, then on the basis of the Cost of the Work for price adjustments (determined as provided in the Cost of the Work provisions in the Agreement, if applicable, or in Paragraph 12.01), plus a CMAR's Fee for overhead and profit (determined as provided in Paragraph 12.05.D).
- D. *CMAR's Fee:* The CMAR's fee for overhead and profit on Change Orders shall be determined as follows:
  - 1. A mutually acceptable fixed fee; or
  - 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:



- a. For costs incurred under Paragraphs 13.01.B. and 13.01.B.2, the CMAR's fee shall be 15 percent;
- b. For costs incurred under Paragraph 13.01.B.3, 13.01.B.4, and 13.01.B.5, the CMAR'S fee shall be 5 percent;
- c. With respect to Construction Subcontracts, where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of this Contract is that the CMAR's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraph 13.01 by the subcontractor that actually performs the Work, at whatever tier, and (2) with respect to CMAR's itself, and to any Construction Subcontractors of a tier higher than that of the Construction Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Construction Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Construction Subcontractor that actually performs the Work;
- d. No fee will be payable on the basis of costs itemized in Paragraph 13.01.C;
- e. The amount of credit to be allowed by CMAR to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CMAR's fee by an amount equal to 5 percent of such net decrease; and
- f. When both additions and credits are involved in any one change, the adjustment in CMAR's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.05.D.2.a through 12.05.D.2.e, inclusive.

#### 12.06 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim regarding an adjustment of the Contract Times shall be presented by written notice to the other party pursuant to Paragraph 17.01.
- B. CMAR's entitlement to an adjustment of the Contract Times under this Contract is conditioned on such adjustment being essential to CMAR's ability to complete the Work within the Contract Times.

#### 12.07 *Execution of Change Orders*

- A. Owner and CMAR shall execute appropriate Change Orders recommended by Engineer covering:
  - 1. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 12.02, (b) required because of Owner's correction of defective Work under Paragraph 14.05 or Owner's acceptance of defective Work under Paragraph 14.07, or (c) agreed to by the parties (all subject to the need for review and approval by the applicable Engineer pursuant to Paragraph 12.04); and



3. Changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Article 12 and Article 17.
4. If Owner or CMAR refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 12.07, it shall be deemed to be of full force and effect, as if fully executed.

#### 12.08 *Notice to Sureties*

- A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CMAR's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

### **ARTICLE 13 – COST OF THE WORK ADJUSTMENTS; UNIT PRICE WORK**

#### 13.01 *Cost of the Work*

- A. *Costs of the Work Adjustment:* When the price of Work covered by a Change Order or an adjustment in Contract Price is to be determined on the basis of Cost of the Work, the Cost of the Work adjustment means the sum of all costs necessarily incurred and paid by CMAR in the proper performance of the specific portion of the Work. The costs to be reimbursed to CMAR will be only those additional or incremental costs required because of the change of the Work or because of the event giving rise to the adjustment. If the Agreement contains Cost of the Work provisions, such provisions shall govern in determining the Cost of the Work for Change Order or adjustment purposes. If the Agreement does not contain Cost of the Work provisions, then the provisions in Paragraph 13.01 shall apply.
- B. *Costs Included:* The Cost of the Work adjustment does not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items with respect to the subject Work:
  1. Payroll costs for employees in the direct employ of CMAR in the performance of the subject Work, under schedules of job classifications agreed upon by Owner and CMAR in advance of such performance.
    - a. Such employees shall include without limitation superintendents, foremen, and other personnel employed full-time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the subject Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation, and holiday pay applicable thereto. The expenses of performing the subject Work outside the hours or days permitted by this Contract shall be included in the above to the extent such performance of Work is authorized by Owner.
  2. Cost of all materials and equipment furnished and incorporated in the subject Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CMAR unless Owner deposits funds with CMAR with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of



surplus materials and equipment shall accrue to Owner, and CMAR shall make provisions so that they may be obtained.

3. Cost of permits obtained by CMAR.
4. Payments made by CMAR to Construction Subcontractors for subject Work performed or furnished by such Construction Subcontractors. If any subcontract provides that the Construction Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Construction Subcontractor's Cost of the Work and fee shall be determined in the same manner as CMAR's Cost of the Work and fee.
5. Costs of special consultants (not including Project Design Professionals), including but not limited to testing laboratories, attorneys, and accountants, retained for services specifically related to the subject Work.
6. Supplemental costs including the following items:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of CMAR's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed that remain the property of CMAR.
  - c. Rentals of all construction equipment and machinery, and their parts, whether rented from CMAR or from others in accordance with rental agreements approved by Owner, and the costs of transportation, loading, unloading, installation, dismantling and removal of such equipment, machinery, and parts. All such costs shall be in accordance with the terms of such rental agreements. The rental of any such equipment, machinery, or parts shall cease when its use is no longer necessary for the Work.
  - d. Sales, consumer, use, and other similar taxes related to the subject Work, and for which CMAR is liable, imposed by Laws or Regulations.
  - e. Deposits lost for causes other than negligence of CMAR, any Construction Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - f. Losses, damages, and related expenses caused by damage to the subject Work not compensated by insurance or otherwise, sustained by CMAR in connection with the furnishing and performance of the Work provided they have resulted from causes other than the negligence of CMAR, any Construction Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CMAR's fee.
  - g. The cost of utilities, fuel, and sanitary facilities at the Site, as applicable to the subject Work.



- h. Minor expenses such as long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
  - i. Cost of premiums for all Bonds and insurance CMAR is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
  - 1. Payroll costs and other compensation of CMAR's officers, executives, principals (of partnerships and sole proprietorships), general managers, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by CMAR whether at the Site or in CMAR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B., all of which are to be considered administrative costs covered by the CMAR's fee.
  - 2. Expenses of CMAR's principal and branch offices other than CMAR's office at the Site.
  - 3. Any part of CMAR's capital expenses, including interest on CMAR's capital employed for the subject Work and charges against CMAR for delinquent payments.
  - 4. Costs due to the negligence of CMAR, any Construction Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
  - 5. Other overhead or general expense costs of any kind, and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *CMAR's Fee:* When the value of the Work covered by a Change Order is determined on the basis of Cost of the Work, CMAR's fee shall be determined as set forth in Paragraph 12.05.D.
- E. *Documentation:* Whenever the cost of any Work is to be determined pursuant to Paragraph 12.01.B and 12.01.C, CMAR will establish and maintain cost records in accordance with generally accepted accounting practices and submit in a form acceptable to Owner an itemized cost breakdown together with supporting data.

#### 13.02 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all of Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CMAR will be made by Engineer.
- B. If CMAR's compensation is based on Cost of the Work, this Contract will not include compensation under unit prices unless expressly stated otherwise.
- C. Each unit price will be deemed to include an amount considered by CMAR to be adequate to cover CMAR's overhead and profit for each separately identified item.



- D. CMAR or Owner may seek an adjustment in the Contract Price if:
1. The quantity of any item of Unit Price Work performed by CMAR differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
  2. Such an adjustment would not duplicate, and is coordinated with, any other related adjustments of Contract Price; and
  3. CMAR has incurred additional expense, or less expense, as a result of the variation in quantity.

## **ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE CONSTRUCTION**

### **14.01 Access to Construction**

- A. Owner, Engineer, Owner's Consultant, Owner's Site Representative, and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Construction at reasonable times approved by the Owner for their observation, inspecting, and testing. CMAR shall provide them proper and safe conditions for such access and advise them of CMAR's Site safety procedures and programs so that they may comply therewith as applicable.

### **14.02 Tests, Inspections, and Approvals**

- A. CMAR shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
1. By the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  2. By Laws and Regulations, unless the Contract Documents or Laws and Regulations expressly allocate responsibility for a specific inspection or test to Owner;
  3. To attain Owner's acceptance of materials or equipment to be incorporated in the Construction;
  4. By manufacturers of equipment furnished under the Contract Documents;
  5. To meet the requirements of the Construction Drawings and Construction Specifications;
  6. For testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Construction; and
  7. For acceptance of materials, mix designs, or equipment submitted for approval prior to CMAR's purchase thereof for incorporation in the Construction.

### **14.03 Uncovering Construction**

- A. If Owner considers it necessary or advisable that covered Construction be observed by Owner or inspected or tested by others, then CMAR, at Owner's request, shall uncover, expose or otherwise make available for observation, inspection, or testing, as Owner may require, that portion of the Construction in question, furnishing all necessary labor, material, and equipment.



1. If the Construction had been covered contrary to the written request of Owner or Engineer; or contrary to a requirement of the Contract Documents, then uncovering it for Owner's observation and re-covering it shall be at CMAR's expense, regardless of whether it is defective.
2. If it is found that the covered Construction is defective, CMAR shall pay all costs and damages caused by or resulting from such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement, re-covering, or reconstruction (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price.
3. If the covered Construction is not found to be defective, CMAR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, re-covering, and reconstruction, subject to the provisions of Paragraph 12.05.C.

#### 14.04 *Defective Construction*

- A. It is CMAR's obligation to assure that the Construction is not defective.
- B. Owner shall give CMAR prompt written notice of all defective Construction of which Owner has actual knowledge. Owner may reject, accept, or correct defective Construction.
- C. Promptly after receipt of written notice of defective Construction, unless Owner expressly indicates that it will accept the defective Construction, CMAR shall correct all such defective Construction, whether or not fabricated, installed, or completed; or, if Owner has rejected the defective Construction, remove it from the Project and replace it with Construction that is not defective.
- D. When correcting defective Construction, CMAR shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Construction.

#### 14.05 *Owner May Correct Defective Construction*

- A. If CMAR fails within a reasonable time after written notice from Owner to correct defective Construction or to remove and replace rejected Construction, or if CMAR fails to perform the Construction in accordance with the Contract Documents, or if CMAR fails to comply with any other provision of the Contract Documents, Owner may, after 10 days' written notice to CMAR, correct and remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.04, Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude CMAR from all or part of the Site, take possession of all or part of the Construction, and suspend CMAR's services related thereto, and incorporate in the Construction all materials and equipment stored at the Site or for which Owner has paid CMAR but which are stored elsewhere. CMAR shall allow Owner, Owner's Consultant, Owner's Site Representative, and Owner's other representatives, agents, employees, and contractors, access to the Site to enable Owner to exercise the rights and remedies under this paragraph.



#### 14.06 *Costs*

- A. CMAR shall bear all costs arising out of or relating to the correction, removal, or replacement of defective Construction, including but not limited to repair of adjacent Work or property; delay costs and impacts; fees and charges of engineers, and architects.
- B. All costs, losses, and damages (included but not limited to fees and charges of engineers and architects, and all costs of repair or replacement of work of others) incurred or sustained by Owner in exercising its rights and remedies arising from defective Construction under this Article will be charged against CMAR, by set-off against payment or otherwise.
- C. CMAR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to defective Construction.

#### 14.07 *Owner's Acceptance of Defective Construction*

- A. If, instead of requiring correction or removal and replacement of defective Construction, Owner prefers to accept it, Owner may do so. If such acceptance is proposed prior to final payment, it shall be subject to confirmation by the applicable Engineer that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety. CMAR shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Construction. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price reflecting the diminished value of the Construction so accepted.

#### 14.08 *Owner May Stop Construction*

- A. If Construction is defective, or CMAR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform Construction in such a way that the completed Construction will conform to the Contract Documents, Owner may order CMAR to stop Construction or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop Construction will not give rise to any duty on the part of Owner to exercise this right for the benefit of CMAR or any other party.

### **ARTICLE 15 – PAYMENTS TO CMAR; COMPLETION**

#### 15.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Paragraph 2.04 will serve as the basis for progress payments. Progress payments on account of Unit Price Work will be based on the number of units completed.
- B. *Application for Progress Payment:* On or about the date established in the Agreement for submission of each application for progress payment (but not more often than once a month), CMAR shall submit to Engineer for review an Application for Payment filled out and signed by CMAR covering the Work completed as of the date indicated on the Application and accompanied by supporting documentation as required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other



documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which will be satisfactory to Owner.

C. *Payment of Obligations:*

1. Beginning with the second Application for Payment, each Application shall include an affidavit of CMAR stating that all previous progress payments received on account of the Work have been applied on account to discharge CMAR's legitimate obligations associated with prior Applications for Payment.
2. If CMAR contends that it has withheld payment of underlying obligations for good cause, then CMAR shall inform Owner of the identity of the entity from which CMAR has withheld payment, the amount of the withholding, and the reason for the withholding.

D. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

E. *Review of Applications:*

1. Engineer will, within 10 days of receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to CMAR indicating in writing its reasons for refusing to accept the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. The Work has progressed to the point indicated;
  - b. The quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
  - c. The conditions precedent to CMAR's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. Inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or



- b. There may not be other matters or issues between the parties that might entitle CMAR to be paid additionally by Owner or entitle Owner to withhold payment to CMAR.
- 4. Neither Engineer's review of CMAR's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
  - a. To supervise, direct, or control the Work, or
  - b. For the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
  - c. For CMAR's failure to comply with Laws and Regulations applicable to CMAR's performance of the Work, or
  - d. To make any examination to ascertain how or for what purposes CMAR has used the money paid on account of the Contract Price, or
  - e. To determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
- 5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.E.2.
- 6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
  - a. The Work is defective, requiring correction or replacement;
  - b. The Contract Price has been reduced by Change Orders;
  - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which CMAR is responsible; or
  - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by CMAR and therefore justify termination for cause under the Contract Documents.
- 7. Payment will be made by Owner within 15 days after each Application for Payment is approved by the Project Manager and Department Head. If Owner should fail to pay CMAR at the time the payment is due, then CMAR may, at any time thereafter, upon serving written notice that he will stop the Work within 7 days after receipt of the notice by Owner, and after such 7-day period, stop the Work until payment of the amount owing has been received. Written notice shall be given as provided in Paragraph 19.01.
- 8. In making such Progress Payments, five percent of the estimated amount will be retained until Final Acceptance of the Contract work; in addition, the Owner shall retain from all Progress Payments an amount equal to all statutory claims filed against the CMAR. Also, whenever the work is substantially complete, the Owner if it considers the amount



retained to be in excess of the amount adequate for its protection may release to the CMAR all or a portion of such excess amount.

9. No Progress Payment nor any partial or entire use or occupancy of the Project by Owner shall constitute an acceptance of any Work not in accordance with the Contract Documents.

F. *Reduction in or Refusal to Make Payment:*

1. Owner may impose a set-off against the whole or any part of any such payment, or nullify any previous payment because of subsequently discovered evidence or the results of subsequent inspections or tests, to the extent that is reasonably necessary to protect Owner from loss because:
  - a. Claims have been made against Owner on account of CMAR's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of CMAR's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from breach of warranty, workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
  - b. CMAR has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - c. CMAR has failed to provide and maintain required bonds or insurance;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which CMAR is responsible;
  - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - f. The Construction is defective, requiring correction or replacement;
  - g. Owner has been required to correct defective Construction in accordance with Paragraph 14.05, or has accepted defective Construction pursuant to Paragraph 14.07;
  - h. The Contract Price has been reduced by Change Orders;
  - i. An event that would constitute a default by CMAR and therefore justify a termination for cause has occurred;
  - j. Liquidated damages, special damages, or performance damages have accrued under the Contract Documents as a result of CMAR's failure to achieve Milestones, Substantial Completion, final completion of the Work, or performance requirements, as applicable;
  - k. Liens have been filed in connection with the Work, except where CMAR has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such liens; or
  - l. There are other items entitling Owner to a set off against the amount recommended.



2. If Owner imposes any set-off against payment, Owner will give CMAR immediate written notice stating the reasons for such action and the specific amount of the reduction, and promptly pay CMAR any amount remaining after deduction of the amount so withheld. Owner shall promptly pay CMAR the amount so withheld, or any adjustment thereto agreed to by Owner and CMAR, if CMAR remedies the reasons for such action. The reduction imposed shall be binding on CMAR unless it duly presents a written notice of Claim contesting the reduction.

#### 15.02 *CMAR's Warranty of Title*

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

#### 15.03 *Substantial Completion*

- A. When CMAR considers the entire Work ready for its intended use, CMAR shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. CMAR shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after CMAR's notification, Owner, CMAR, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify CMAR in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have fourteen days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within twenty days after submission of the preliminary certificate to Owner, notify CMAR in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said twenty days, execute and deliver to Owner and CMAR a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and CMAR will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and CMAR agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work,



property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

- E. After Substantial Completion the CMAR shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases CMAR may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude CMAR from the Site after the date of Substantial Completion subject to allowing CMAR reasonable access to remove its property and complete or correct items on the punch list.

#### 15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Construction which (1) has specifically been identified in the Contract Documents, or (2) Owner and CMAR agree constitute a separately functioning and usable part of the Construction that can be used by Owner for its intended purpose without significant interference with CMAR's performance of the remainder of the Construction, subject to the following:
  - 1. Owner at any time may request CMAR in writing to permit Owner to use or occupy any such part of the Construction that Owner believes to be ready for its intended use and substantially complete. If CMAR agrees that such part of the Work is substantially complete, CMAR and Owner will follow the procedures of Paragraph 15.03 for that part of the Construction.
  - 2. CMAR at any time may notify Owner in writing that CMAR considers any such part of the Work ready for its intended use and substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work.
  - 3. Within a reasonable time after either such request, Owner and CMAR shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner will notify CMAR in writing giving the reasons therefor. If Owner considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

#### 15.05 *Final Inspection*

- A. Upon written notice from CMAR that the entire Work or an agreed portion thereof is complete, Owner and/or Engineer will make a final inspection with CMAR and will notify CMAR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CMAR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 15.06 *Final Payment*

- A. *Application for Payment:*
  - 1. After CMAR has completed all such corrections to the satisfaction of Owner and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of



inspection, and Record Documents, CMAR may make application for Final Acceptance and final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (unless previously delivered) by:
    - a. All documentation called for in the Contract Documents;
    - b. Consent of the surety, if any, to final payment;
    - c. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment;
    - d. A list of all disputes that CMAR believes are unsettled; and
    - e. Complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
  3. In lieu of such releases or waivers of Liens specified in Paragraph 15.06.A.2, and as approved by Owner, CMAR may furnish receipts or releases in full and an affidavit of CMAR that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed, and (b) all payrolls, material and equipment bills and other indebtedness connected with the Work for which Owner might in any way be responsible, or which in any way might result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Project Design Professional, Construction Subcontractor, or Supplier fails to furnish such a release or receipt in full, CMAR may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.
- B. *Final Payment and Acceptance:* If Owner is satisfied that the Work has been completed and CMAR's other obligations under the Contract Documents have been fulfilled, Owner will, within 14 days after receipt of the final Application for Payment, give written notice to CMAR that the Work is acceptable and issue the Final Acceptance form. Otherwise, Owner will return the Application to CMAR, indicating in writing the reasons for refusing to process final payment, in which case CMAR shall make the necessary corrections and resubmit the Application.
- C. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment.
1. After the Work has been accepted by the Owner, a final payment due the CMAR under this Contract shall be paid upon the presentation of properly executed voucher and after the CMAR shall have furnished the Owner with a release of all claims against the Owner arising by virtue of this Contract, other than claims in stated amounts as may be specifically excepted by the CMAR from the operation of the release. If the CMAR's claim to amounts payable under the contract has been assigned under the assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), a release may also be required of the assignee.
  2. If any mechanic's or material man's lien or notice of claim of such lien is filed or recorded against the project for labor, materials, supplies or equipment claimed to have been furnished to or incorporated into the Work, or for other alleged contribution thereto, the Owner will have the right to retain from payments otherwise due the CMAR, in addition



to other amounts properly withheld under this Article or under other provisions of the Contract, an amount equal to such lien or liens claimed.

3. Further, the Owner will have the right to retain from final payment an amount equal to all liquidated damages claimed by the Owner.
4. Retainages held by the Owner for any state or federal statutory claim arising out of the project will be held by the Owner in addition to all retainages held under the provisions of the Contract.

#### 15.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against CMAR. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from CMAR's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from unresolved disputes or Claims presented by Owner, or from CMAR's continuing obligations under the Contract.
- B. The acceptance of final payment by CMAR will constitute a waiver by CMAR of all claims and rights against Owner other than those pending matters that have been duly submitted to dispute resolution under the provisions of Article 17.

#### 15.08 *Correction Period*

- A. If within two years after the date of Final Acceptance of the entire Work or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Construction is found to be defective, CMAR shall promptly, without cost to Owner and in accordance with Owner's written instructions, (1) correct such defective Construction, or, if it has been rejected by Owner, remove it from the Site and replace it with Construction that is not defective, and (2) satisfactorily correct or remove and replace any damage to other Construction or the work of others resulting therefrom. If CMAR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Construction corrected or the rejected Construction removed and replaced, and all costs, losses, and damages caused by or resulting from such removal and replacement (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) will be paid by CMAR.
- B. In special circumstances where a particular item of equipment is placed in continuous service before Final Acceptance of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Contract Documents, and written approval from the Owner.
- C. Where defective Construction (and damage to other Construction resulting therefrom) has been corrected, or removed or replaced, under this Paragraph 15.08, the correction period hereunder with respect to such Construction will be extended for an additional period equal to that of the original warranty duration after such correction or removal and replacement has been satisfactorily completed.



## ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

### 16.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 days by notice in writing to CMAR, which will fix the date on which Work will be resumed. CMAR shall resume the Work on the date so fixed. CMAR shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CMAR makes a claim therefore as provided in Paragraph 17.

### 16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events justifies termination for cause:
  - 1. CMAR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the progress schedule as duly adjusted).
  - 2. CMAR's disregard of Laws or Regulations of any public body having jurisdiction.
  - 3. CMAR's violation in any substantial way of provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, Owner may, after giving CMAR (and the surety, if any) 7 days' written notice, terminate the services of CMAR, take possession of any completed Submittals prepared by or for CMAR, exclude CMAR from the Site, take possession of the Work, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid CMAR but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case CMAR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all costs, losses and damages sustained by Owner arising out of or resulting from completing the Work (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) such excess will be paid to CMAR. If such costs, losses and damages exceed such unpaid balance, CMAR shall pay the difference to Owner. Such costs, losses and damages incurred by Owner will be incorporated in a Change Order. When exercising any rights or remedies under this paragraph Owner shall not be required to obtain the lowest price for the Work performed.
- C. Notwithstanding Paragraph 16.02.B, CMAR's services will not be terminated if CMAR begins, within 7 days of receipt of notice of intent to terminate, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- D. Where CMAR's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against CMAR then existing or which may thereafter accrue. Any retention or payment of moneys due CMAR by Owner will not release CMAR from liability.
- E. If and to the extent that CMAR has provided a performance bond under the provisions of this Agreement, the termination procedures of that bond shall supersede the provisions of Paragraphs 16.02.B and 16.02.C.



16.03 *Failure to Accept the Guaranteed Maximum Price Proposal.*

- A. Unless the Owner accepts the Guaranteed Maximum Price Proposal in writing on or before the date specified in the Guaranteed Maximum Price Proposal for such acceptance and so notifies the Construction Manager, the Guaranteed Maximum Price Proposal shall not be effective.
- B. If the Owner fails to accept the Guaranteed Maximum Price Proposal, or rejects the Guaranteed Maximum Price Proposal, the Owner shall have the right to:
  - 1. Suggest modifications to the Guaranteed Maximum Price Proposal.

Direct the Construction Manager to proceed on the basis of reimbursement as provided in Paragraph 5.5.29 of the Agreement without a Guaranteed Maximum Price, in which case all references in this Contract to the Guaranteed Maximum Price shall not be applicable and in such case the parties may establish a date of substantial completion and a date of final completion.
  - 3. Terminate the Contract for convenience in accordance with section 16.04.

16.04 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to CMAR, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract. In such case, CMAR shall be paid (without duplication of any items) for:
  - 1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
  - 3. Amounts paid in settlement of terminated contracts with Project Design Professionals, Construction Subcontractors, Suppliers and others (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs incurred in connection with such terminated contracts); and
  - 4. Reasonable expenses directly attributable to termination.
- B. CMAR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

16.05 *CMAR May Stop Work or Terminate*

- A. If, through no act or fault of CMAR, the Work is suspended for a period of more than 90 days by Owner or under an order of court or other public authority, Owner fails to act on any Application for Payment within 30 days after it is submitted, or Owner fails for 30 days to pay CMAR any sum finally determined to be due, then CMAR may, upon 7 days' written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.A. In lieu of terminating the Contract and without prejudice to any other



right or remedy, if Owner has failed for 30 days to pay CMAR any sum finally determined to be due, CMAR may upon 7 days' written notice to Owner stop the Work until payment is made of all such amounts due CMAR, including interest thereon. The provisions of this paragraph are not intended to preclude CMAR from obtaining an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CMAR's stopping Work as permitted by this paragraph.

## **ARTICLE 17 – DISPUTES**

### **17.01 General**

Notwithstanding any other provisions of this Contract, disputes and disagreements by and between the Owner and the CMAR shall be resolved through progressive, sequential process of negotiation, mediation, and in certain cases, arbitration. For contracts which are for \$250,000 or less, amounts in dispute which are less than \$10,000 shall not progress beyond negotiation and shall ultimately be decided by the Owner if not by mutual agreement. For contracts which are for more than \$250,000, amounts in dispute which are less than \$25,000 should not progress beyond negotiation. For all contracts, amounts in dispute greater than those amounts set forth above, but less than \$100,000 shall be resolved through a sequential process of negotiation, mediation, and binding arbitration. Amounts in dispute which are \$100,000 or more shall be resolved through a sequential process of negotiation, mediation, and thence either arbitration or litigation.

### **17.02 Notice of Claim**

If Owner and CMAR are not in agreement regarding a proposed or requested Change Order, other proposed adjustment of Contract Price or Contract Times, a Work Change Directive issued by Owner, or any other relief proposed or requested under the Contract, then either party may provide written notice of a Claim to the other party. Such notice of Claim shall be given within 90 days of: the proposal or request for a Change Order; such other proposed adjustment of Contract Price or Contract Times; the issuance of the Work Change Directive; or the proposal or request for other relief under the Contract. The notice of Claim shall be given within the 90 days regardless of whether the other party has responded to such proposal, request, or issuance, and regardless of whether discussions or negotiations are in progress; provided, however, that the parties may extend the time to give such notice of Claim by mutual written agreement. The notice of Claim shall include a statement of position, specification of the remedy sought, and supporting documentation.

### **17.03 Response**

Within 30 days of the date of notice of Claim, the receiving party shall respond with a written statement of position and any supporting documentation.

### **17.04 Direct Negotiations**

Owner and CMAR agree to directly negotiate all Claims between them in good faith for a period of 60 days from the date of the Response to the Notice of Claim.

- A. The representatives of the parties shall meet promptly in recognition of mutual interests and in a good faith effort to resolve the dispute. Either the CMAR or the City shall arrange for this meeting at a time and place within the City of Greeley, mutually acceptable to both parties, within fifteen (15) days of the date of the Response to the Notice of Claim. Seven (7) days prior to the meeting, the initiating party shall deliver to the other party, a written and complete summary of the evidence and arguments substantiating its claim.



- B. If the parties do not reach a solution after the 60 day period of Direct Negotiation, then upon notice of either party to the other, the dispute, claim, question, or difference, may be referred to a mediator. The parties can extend the negotiation period by mutual written agreement.

17.05 Mediation

If the dispute, claim, question, or difference is not resolved by negotiation within thirty (30) days after the initial meeting between the parties or within the extended period agreed upon, the parties agree to next request that the American Arbitration Association provide a mediator to assist the Owner and CMAR in resolving the dispute, claim, question, or difference. The rules of mediation shall be the Construction Industry Mediation Rules of the American Arbitration Association. A different mediation/dispute resolution agency may be selected for mediation upon the mutual written agreement between the parties. The dispute resolution agency shall select a qualified mediator who shall have a background in construction. The selected mediator may be rejected by the parties only for bias. The mediator shall have thirty (30) days from the time of appointment to meet with the parties and sixty (60) days from the time of the appointment to resolve the dispute unless the parties mutually consent to an extension of the sixty day deadline. All reasonable fees, costs, and expenses of the mediator, the mediator's association and the mediation agency, shall be borne equally by the parties. Each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of proofs at mediation.

17.06 No Delay

The CMAR shall not cause a delay of work during mediation proceedings except by mutual agreement. All mediation proceedings shall be conducted in the City of Greeley, unless an alternate location is agreed upon in writing by the Owner and the CMAR.

17.07 Minor Amounts

Amounts in dispute which are less than \$10,000 shall not progress beyond mediation.

17.08 Litigation prerequisites

The procedures enumerated in Sections 17.04 and 17.05 shall be a prerequisite to the filing of any litigation between the parties to the Contract. Failure of the CMAR to follow the provisions of Section 17.04 and Section 17.05 shall be a complete defense, and grounds for immediate dismissal of any litigation filed prior to CMAR engaging in negotiation and mediation with the City of Greeley as provided above. Litigation may be filed only if the amount in dispute is \$100,000 or more. In the event litigation is filed by and between the parties after mediation, venue and jurisdiction of any and all suits and causes of action in connection with this Contract shall lie exclusively in Weld County, Colorado.

17.09 Arbitration

After mediation, instead of litigation, any remaining unresolved controversy or claim arising out of or relating to this Contract or the performance or breach thereof, may be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. For amounts in dispute which are \$100,000 or more, arbitration shall be engaged only upon mutual written agreement by the Owner and the CMAR, and the written agreement shall specify whether the arbitration shall be binding or nonbinding; however, amounts in dispute which are less than \$100,000 shall necessarily be settled by binding arbitration. The sole arbitrator shall be appointed by the Arbitration Association, unless a different arbitrator or dispute resolution agency is mutually agreed upon. The award of the arbitrator shall be



accompanied by a reasoned opinion, and shall include findings of fact and conclusions. All fees and expenses of the arbitration, including the expense of each party's counsel, experts, witnesses, and preparation and presentation of proofs, shall be borne by the party against whom arbitration judgment is made.

17.10 Litigation

Each party shall bear its own litigation fees and expenses, including the expense of its counsel, experts, witnesses, and preparation and presentation of proofs, regardless of the prevailing party.

**ARTICLE 18 – LIQUIDATED DAMAGES**

18.01 The CMAR acknowledges that the Owner will sustain damages as a result of the CMAR's failure to complete Work within the Interim and Contract Times. Time is of the essence with regarding to this Project. Each Early Work Amendment shall establish a completion date for the Work covered by the Early Work Amendment, and may establish interim completion dates for that Work. The Guaranteed maximum Price Proposal shall establish a Substantial and Final Completion Date. As described herein, liquidated damages shall be applied to each of the established Early Work, Substantial and Final Completion dates and shall be determined by the Owner based on the value of the Early Work Amendment and/or the Guaranteed Maximum Price, as applicable.

18.02 Recovery of lost time

The Owner and the CMAR agree that timely completion of the Work is essential to the success of the Project, and that approval for time extension shall be granted only as a last resort. The CMAR agrees to make every effort to recover "lost" time.

18.03 Liquidated Damages

In the event the CMAR fails to achieve Substantial Completion of the Work within the Contract Time, after due allowance for any extension or extensions of time made in accordance with the Contract Documents, the CMAR shall pay to the Owner as fixed, agreed and liquidated damages the sum of \$500.00 for each calendar day of delay unless otherwise stated in the Special Provisions. Such liquidated damages shall be assessed for each and every day that the CMAR shall be in default. The Owner shall have the right to deduct said liquidated damages from any amount due or that may become due the CMAR, or to collect such liquidated damages from the CMAR or its surety.

18.04 Additional Damages and Costs

Liquidated damages in the amount stipulated do not include any sums of money to reimburse the City for actual damages which may be incurred between Substantial Completion and Final Completion because of the CMAR's failure to achieve Final Completion within the Contract Time. For such failure to reach Final Completion, the CMAR shall reimburse the City, as a mitigation of City damages and not as a penalty, those administrative costs incurred by the City as a result of such failure.

Liquidated damages in the amounts stipulated do not include any sums of money to reimburse the City for extra costs which the City may become obligated to pay on other contracts which were delayed or extended because of the CMAR's failure to complete the Work within the Contract Time. Should the City incur additional costs because of delays or extensions to other contracts resulting from the CMAR's failure of timely performance, the City will assess these extra



costs against the CMAR, and these assessments will be in addition to the stipulated liquidated damages.

#### 18.05 Reservation of Rights

The City reserves all of its rights to actual damages from the CMAR for injury or loss suffered by the City from actions or omissions of the CMAR, including but not limited to any other breach or default of the Contract, outside of the scope of the above sections.

### ARTICLE 19 – MISCELLANEOUS

#### 19.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice to the other party to this Contract, it will be deemed to have been validly given if delivered to the Authorized Representative of the other party as identified in the Contract Documents:
  - 1. In person, by a commercial courier service or otherwise; or
  - 2. By registered or certified mail, postage prepaid; or
  - 3. By e-mail, with the words "Formal Notice" or similar in the e-mail's subject line.

#### 19.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

#### 19.03 *Cumulative Remedies*

- A. Unless expressly stated otherwise in this Contract, the duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, or waiver of, any rights and remedies available to any or all of them which are otherwise imposed or available by:
  - 1. Laws or Regulations; or
  - 2. Any special warranty or guarantee; or
  - 3. Other provisions of the Contract.
- B. The provisions of Paragraph 19.03.A will be as effective as if repeated specifically in the Contract in connection with each particular duty, obligation, right and remedy to which they apply.

#### 19.04 *Limitation of Damages*

- A. With respect to this Contract and any and all Claims and other matters at issue, Owner shall not be liable to CMAR for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by CMAR on or in connection with any other project or anticipated project.



19.05 *No Waiver*

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

19.06 *Survival of Obligations*

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

19.07 *Controlling Law*

- A. The Contract Documents will be construed in accordance with the law of Colorado. Jurisdiction shall lie in Weld County, Colorado.

19.08 *Colorado Labor*

- A. In accordance with C.R.S. §8-17-101, all parties contracting with the City of Greeley on public works projects shall employ Colorado labor to perform the work to the extent of not less than eighty percent (80%) of each type or class of labor in the several classifications of skilled and common labor employed on this project.

19.09 *Counterparts and Electronic Signatures*

- A. The Contract Documents may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document.
- B. The Contract Documents, including all component parts set forth above, may be executed and delivered by electronic signature by any of the parties and all parties consent to the use of electronic signatures.

19.10 *Headings*

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

19.11 *Obligation to Keep Project Team Intact*

- A. CMAR shall not remove or replace any members of the team set forth in this agreement for the duration of this contract without written approval of the Owner. In the event of a team member's discontinued service or replacement, the CMAR shall submit a written statement providing good cause for such action. Further, if any member is to be replaced the CMAR shall promptly submit a qualified individual as a replacement. All replacements must be approved by the Owner in writing. All team member removals or replacements shall be subject to a \$25,000 deduction in the contract fee.

19.12 *Agreement Subject to Appropriation*

- A. Pursuant to law, this Agreement is subject to adequate appropriation in any given fiscal year of the City of Greeley. Should adequate funds not be appropriated in any fiscal year to maintain payments under the terms and conditions of this Agreement, the parties agree that the contract shall immediately terminate. It is expressly understood and agreed by and between the parties hereto that the only expenditures to be made by the City are those expenditures specifically provided for herein.



SECTION 00620-1

GENERAL SPECIAL PROVISIONS

**STANDARD GENERAL CONDITIONS OF THE  
CONTRACT BETWEEN OWNER AND CONSTRUCTION MANAGER AT RISK**

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Definitions*

24. Engineer: The Project Design Professional identified as Engineer in the Agreement, and engaged by Owner to provide engineering and related professional services under a Design Agreement. The Engineer on this project is:

Dewberry Engineers, Inc.  
990 South Broadway  
Suite 400  
Denver, CO 80209

40. Owner's Consultant: An individual or entity with which the Owner has contracted to furnish services (typically including planning, preparation of Conceptual Documents, and advisory services) to Owner with respect to the Project, and which is identified as such in the Agreement. The Owner's Consultant on this project is:

To be determined. Notification of Authorized Representative will be provided after selection.

ARTICLE 2 – PRELIMINARY MATTERS

2.02 *Copies of Documents*

- A. Owner shall furnish all CMAR Contract documents in electronic format. Up to two printed copies will be furnished up request. Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard the original electronic version of the Contract. An electronic copy of the Contract will be available to the CMAR upon request.

2.05 B. The Authorized Representative for each party is as follows:

For the City of Greeley:  
Zeke Havard  
Civil Engineer I  
1001 11<sup>th</sup> Ave, 2<sup>nd</sup> Floor



For CMAR:

Authorized Representative to be determined

- 2.09 Work days shall be Monday through Friday, 7:00 a.m. to 5:00 p.m. The contractor will be restricted to working on normal City of Greeley business days unless prior approval has been obtained from the Project Manager. Any request to work outside of normal City of Greeley working days shall be requested at least 48 hours in advance.
- 2.10 All construction shall conform to any and all applicable codes or standards. It is the Contractor's responsibility to give sufficient notification and acquire approval from all agencies of jurisdiction for deviations from original plans/procedures.
- 2.11 All dimensions on the drawings shall be checked against actual field conditions by the Contractor. Any discrepancies shall be brought to the attention of the Owner and resolved prior to commencing any work on the affected portion of the project.
- 2.12 The construction documents and specifications will designate an area at the site for the contractor's use to stage activities and store material and equipment.
- 2.13 Contractor shall maintain the work site in a neat and orderly fashion.

## ARTICLE 6 – BONDS AND INSURANCE

### 6.02 *Insurance – General Provisions*

- E.1 CMAR's Subcontractor shall not be required to obtain insurance in the same amounts as that required of CMAR. CMAR shall require its subcontractors to obtain insurance in sufficient amounts given the nature of the subcontractors work on the Project.

## ARTICLE 7 – CMAR'S RESPONSIBILITIES

### 7.17 *CMAR's General Warranty and Guarantee*

- A.1 Except where longer periods of warranty are indicated for certain items, the Contractor warrants work under the Contract to be free from faulty materials and workmanship for a period of not less than two years from date of Final Completion of system as designated in the Design Documents, which two year period shall be covered by the Performance Bond and Payment Bond as specified in this Contract. The Contractor shall immediately remedy, repair, or replace, without cost to the Owner and to the entire satisfaction of the Owner, defects, damages, or imperfections due to faulty materials or workmanship appearing in said work within said period of not less than two years. Remedied work shall carry the same warranty



as the original work starting with the date of acceptance of the replacement or repair. Payment to the Contractor will not relieve him of any obligation under this Contract.

- A.2 The Contractor, at no additional expense to the Owner, shall also remedy damage to equipment, the site, or the building or the contents thereof which is the result of any failure or defect in the Work, and restore any work damaged in fulfilling the requirements of the Contract. Should the Contractor fail to remedy any such failure or defect within a reasonable time but no longer than ten (10) days after receipt of notice thereof, the Owner will have the right to replace, repair, or otherwise remedy such failure or defect at the Contractor's expense.
- A.3 Subcontractors', manufacturers', and suppliers' warranties and guarantees, expressed or implied, respecting any part of the Work and any material used therein shall be deemed obtained and shall be enforced by the Contractor for the Benefit of the Owner without the necessity of separate transfer or assignment thereof.
- A.4 The rights and remedies of the Owner provided in this Article are in addition to and do not limit any rights and remedies afforded by the Contract or by law.

## ARTICLE 8 – SUBMITTALS

### 8.01 *CMAR's Preparation of Submittals*

#### D. Engineer's Review

- 4. For scheduling purposes, CMAR may assume a period of fifteen working days are necessary for Engineer's Review of Shop Drawings and submittals.



## **OWNER AND CONSTRUCTION MANAGER AT RISK AGREEMENT**

### **ARTICLE 3: CMAR BASIC SERVICES**

3.3.3 Review of Design Documents: The CMAR shall review the design documents at the 30%, 60%, and 90% design milestones for clarity, consistency, constructability and coordination among the Contractors.

3.3.3.2 Design Review Meetings: The CMAR's team including the Project Manager, Estimator, Scheduler and Superintendent along with any other necessary personnel shall attend design review workshops at the 30%, 60% and 90% engineering design review milestones.

3.3.4 Project Funding: The independent detailed construction cost estimate shall be performed at the 30%, 60%, and 90% design review milestones.

### **ARTICLE 4: DURATION OF THE CMAR SERVICES**

4.1 The duration of the CMAR's Basic Services under this Agreement for Preconstruction Phase services (Articles 3.1, 3.1.1, and attachment A) shall be 270 calendar days from the commencement date that will correspond to the Notice to Proceed.

### **ARTICLE 5: COMPENSATION FOR CMAR SERVICES AND PAYMENT**

5.5 The Principals of CMAR who will be compensated at a fixed rate as identified in the Guaranteed Maximum Price Proposal are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5.8.2.1.1 During the Preconstruction Phase, but not later than the 90% design milestone has been achieved or earlier at the sole option of the Owner, may request the CMAR to establish the Guaranteed Maximum Price(s) for the Project.

5.8.2.7 Strike 5.8.2.7 in its entirety. The CMAR shall be eligible to perform work of specific trades on the Project. Owner shall approve award to CMAR. The CMAR shall include the price for this work in their Guaranteed Maximum Price proposal.



# EXHIBIT 3 - Certificate of Insurance

ACORD <sup>TM</sup>

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

05/14/2013

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

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

PRODUCER <b>ABC Insurance Company</b> <b>P. O. Box 1234</b> <b>Anywhere, USA</b>	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
	PRODUCER CUSTOMER ID #:	
	INSURER(S) AFFORDING COVERAGE	NAIC #
INSURED  <b>Sample Certificate</b>	INSURER A : <b>Financial Rating of A</b>	
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

### COVERAGES

### CERTIFICATE NUMBER:

### REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	<b>GENERAL LIABILITY</b>	<b>Y</b>					EACH OCCURRENCE	<b>\$2,000,000</b>
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	<b>\$100,000</b>
	<input type="checkbox"/> CLAIMS-MADE   <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person)	<b>\$5,000</b>
							PERSONAL & ADV INJURY	<b>\$1,000,000</b>
							GENERAL AGGREGATE	<b>\$4,000,000</b>
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	<b>\$2,000,000</b>
	<input type="checkbox"/> POLICY   <input type="checkbox"/> PROJECT   <input type="checkbox"/> LOC							\$
	<b>AUTOMOBILE LIABILITY</b>	<b>Y</b>					COMBINED SINGLE LIMIT (Ea accident)	<b>\$1,000,000</b>
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS							\$
	<input checked="" type="checkbox"/> NON-OWNED AUTOS							\$
								\$
	<b>UMBRELLA LIAB</b>						EACH OCCURRENCE	\$
	<input type="checkbox"/> EXCESS LIAB						AGGREGATE	\$
	<input type="checkbox"/> DEDUCTIBLE							\$
	<input type="checkbox"/> RETENTION \$							\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>		<b>Y</b>				<input checked="" type="checkbox"/> WC STATUTORY LIMITS	OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<b>Y / N</b>	<b>N/A</b>				E.L. EACH ACCIDENT	<b>\$100,000</b>
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	<b>\$100,000</b>
							E.L. DISEASE - POLICY LIMIT	<b>\$500,000</b>
	<b>BUILDER'S RISK</b>						Limits to be assigned based on scope and value of project.	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

**City of Greeley is named as Additional Insured on General Liability and Automobile Liability. Waiver of subrogation is included on Workers Compensation. This insurance is primary and noncontributory to insurance policies held by the City.**

### CERTIFICATE HOLDER

### CANCELLATION

<b>City of Greeley</b> <b>1200 11<sup>th</sup> Ave</b> <b>Greeley, CO 80631-3808</b>	<b>No material change or cancellation of this policy shall be effective without thirty (30) days prior written notice to the City of Greeley or ten (10) days for non-payment.</b>
	AUTHORIZED REPRESENTATIVE

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**EXHIBIT 4**  
**DEBARMENT/SUSPENSION CERTIFICATION STATEMENT**

The proposer certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal, State, County, Municipal or any other department or agency thereof. The proposer certifies that it will provide immediate written notice to the City if at any time the proposer learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstance.

DUNS # (Optional): \_\_\_\_\_

Name of Organization: \_\_\_\_\_

Address: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## EXHIBIT 5

### Scope of Construction Manager-At-Risk Services

The CMAR Preconstruction Phase services will be provided in accordance with the pricing included in the price proposal provided.

The CMAR will provide the following Preconstruction Phase services:

#### **General**

- 1) This scope provides additional details on work that shall be completed by the CMAR prior to the acceptance of the Guaranteed Maximum Price (GMP) proposal(s) and the construction phase of the work.
- 2) Work that shall be completed by the CMAR prior to the acceptance of the GMP proposal shall herein be referred to as "Preconstruction" within the preconstruction phase of the project.

#### **Administration for Preconstruction Services**

##### **1) CMAR Contract Administration**

- a) Monthly Status reports and schedules shall be provided with payment applications. Status reports shall describe activities performed during reporting period, anticipated activities during the next period and any problems or anticipated issues that would impact project scope, schedule or budget. Include an updated project Risk Register in the Monthly Status Reports. Project Schedule shall be cost loaded and automatically generated by a software package such as Primavera. Provide tracking graphs showing planned vs. actual project expenditures.

#### **Preconstruction Services**

##### **1) Construction Management Plan**

- a) This plan shall be initiated during the preconstruction phase of the project, and shall be updated and maintained for the entirety of the project. As part of the Construction Management Plan the CMAR shall provide:
  - i) Personnel Plan: identify all Key Personnel including but not limited to preconstruction and construction project manager(s), lead estimator, lead scheduler, procurement Lead, QA/QC lead and all other associated personnel necessary to fully meet the CMAR's obligations for preconstruction phase services.
  - ii) Communication Plan: develop a Project Communication Plan from the Partnering Meeting in coordination with the Owner and Design Engineer that defines methods of communication between all parties and review project expectations.
  - iii) Project Schedule: Prepare a project schedule for the Project that shall include the estimated start and finish dates for each project activity, all activities through start-up and commissioning, and the estimated critical path. All preconstruction activities including, but not limited to design milestones provided by the Design Engineer shall be included in the schedule. The project schedule shall be submitted to the Owner and the Design Engineer upon Notice to Proceed, (NTP), of the preconstruction phase services of the project. The CMAR shall be responsible for maintaining an up-to-date schedule. The schedule will be used during the preconstruction phase services to evaluate progress on the evolving design.
  - iv) Cost Analysis: Develop and maintain a project cost estimate after receipt of the 30%, 60%, and 90% design submittals that will be used during the preconstruction phase services to



validate conformance with the project budget.

- (1) Develop a work breakdown structure for the project in the cost model which is to be shared with the Owner and Design Engineer;
- v) Permitting Plan: The plan should identify all construction-related permits to be obtained and any other permits Owner may desire the CMAR to be responsible for managing on their behalf and permits the team has already identified during the preconstruction phase services.
- vi) Risk Register: Develop and maintain a project risk register that identifies and quantifies potential project risks and the associated cost, schedule and scope impacts by the potential chance of occurrence.
- vii) Safety Plan: Develop and maintain a safety plan that identifies and quantifies potential project risks. Provide a means of tracking safety results for the duration of the project focusing on the construction phase.
- viii) Environmental Management Plan: Provide an environmental management plan detailing programs for a storm water pollution prevention plan and handling other environmental issues (dust, on site chemicals and fuel, etc.) required to comply with permits and regulations applicable to the Project.
- ix) Quality Plan: The quality plan should identify the checks and balance provisions that will be in place during construction to deliver a well-constructed project. Provide details on tracking mechanisms that will be in place to monitor project quality throughout construction. The QC program plan shall focus on the insurance of continuing attention to the production and installation of error-free work.
- b) The CMAR shall submit electronic copy (PDF format) of the construction management and control plan to Owner and to the Design Engineer.

## 2) Project Meetings

- a) Kickoff Meeting: The CMAR's team shall participate in a four (4) hour formal project kick-off meeting with Owner and Design Engineer (in-person, at Project site).
- b) Biweekly Design Progress Meetings: The CMAR's team shall attend and participate in biweekly design progress meetings. The meeting shall be held approximately every two weeks for one hour during the preconstruction phase of the project and the total number of meetings shall be estimated at eighteen (18).
- c) Design Review Workshops with Engineer: The CMAR team shall attend and participate in Design Review workshops with the Design Engineer and Owner. Assume up to 2 (two) hours per meeting, and up to three (3) workshops (30%, 60%, and 90% design milestones).
  - i) The CMAR shall prepare budgetary estimates of design alternatives presented in the various design meetings, to help advise design decisions. These will be tracked in the VE log.
- d) Constructability and VE Workshops: The CMAR team shall facilitate three (3) workshops, following delivery of the 30%, 60%, and 90% design deliverables, to review the CMAR's design review report and provide input on constructability, VE, and schedule. Workshops shall be assumed to be four (4) hours in duration and held in person.
- e) Upon completion of the 90% design deliverable and preparation of the GMP proposal, the CMAR team shall hold a four (4) hour GMP negotiation and finalization meeting to present and review the GMP proposal with the Owner. The CMAR team shall attend and participate in a second four (4) hour meeting with the Owner to review the revised GMP from the first session.



### **3) Project Scope, Schedule, and Budget Tracking:**

- a) The CMAR shall be responsible for tracking intermediate design changes that impact scope, schedule and/or budget between design milestones via a VE Log. VE items accepted shall then be incorporated into the project schedule and budget on a bimonthly basis.
  - i) Gaps, overruns and other changes that may potentially affect the overall project shall be brought to the attention of the Owner and Design Engineer during review of the VE Log.

### **4) Review of Design Documents:**

- a) The CMAR shall provide constructability review and consult on design document clarity and consistency issues in the development of the 30%, 60%, and 90% design milestone review packages, including recommendations on design packaging to advance construction, material availability and independent quantity calculations and to propose all items that may provide additional value to the project. Provide written report documenting review comments within fifteen (15) working days of receipt of design documents.
- b) At the aforementioned design milestones, review the design documents being prepared for the project. Within twenty (20) working days of receiving the documents, present in written form constructability reviews, and innovative alternative suggestions that bring value to the project (with order of magnitude cost and time impacts) to the Design Engineer and Owner for consideration.
  - i) As described in the "Project Meetings" section above, the CMAR's Project team, along with any other necessary personnel, shall attend design review workshops at the 30%, 60% and 90% engineering design review milestones, and facilitate constructability and VE workshops following the development of design to 60% and 90% milestones and the CMAR's preparation of the design review report.
  - ii) The CMAR shall perform and submit independent detailed construction cost estimates for the Project and Critical Path schedules at the 30%, 60%, and 90% design review milestones which shall include a construction market survey for recommendations of setting contingency; project assumptions; and reconciliation with previous estimates and schedules. Present the results of this reconciliation exercise at the constructability and VE workshops.
    - (1) If there is a budget gap between the cost estimates the CMAR shall identify the gap and provide potential adjustments to solve the gap and compile them into the written design review report;
    - (2) If there is a gap between milestone schedules, CMAR shall provide project planning and scheduling report in the written report (using critical path methods) to identify non-conformances with the baseline schedule for the design and construction phases to recommend elements of the Project that may need adjustment and/or require less than 100% design in order to alleviate the gap and bring the project back on schedule.
  - iii) The 30% design milestone workshop will serve to define the project to be continued forward for design and construction. The CMAR shall assist the team in developing the scope of work for the project through cost analysis, schedule review, and present options such as quality project alternatives to be held for future construction if the budget allows. At the 30% design milestone the CMAR shall propose the preferred packages of design elements for construction, including the proposal of early work packages.
- c) The CMAR shall submit an electronic copy (PDF format) of the design review report to Owner and Design Engineer.

### **5) Procurement Plan**

- a) Develop and implement a Project Procurement Plan which identifies the work packages to be used to facilitate bids, quotes and proposals for the major elements of the Work. The Procurement Plan shall meet Owner's Purchasing Policies and shall:



- i) Describe the procurement process for the selection of construction subcontracts, and quotations for equipment and materials;
- ii) Clearly identify and justify any need to implement a prequalification process for subcontractors, vendors and suppliers to meet the estimated project schedule; written approval from Owner must be obtained prior to the prequalification process.
- iii) Identify and recommend which work, if any, should be procured through value based competitive selections, in lieu of low bid;
- iv) Identify subcontract work packages, equipment and material requests for quotation.
- v) Identify long-lead equipment procurement needs and submit a validation report to Owner indicating how the equipment will be procured without impacts to the critical path schedule;
- vi) Clearly identify Work packages that the CMAR intends to bid with the intent to self-perform the work.
- vii) Develop a list of potential bidders, Subcontractors and equipment suppliers.
- b) The CMAR shall lead a workshop to review the Procurement Plan with the team and advise the Owner and the Design Engineer of ways to gain efficiency in project delivery and work packages.
- c) The CMAR shall submit an electronic copy (PDF format) of the final procurement plan to Owner and Design Engineer.

#### **6) Confirmation of existing infrastructure:**

- a) Complete up to thirty (30) potholes to supplement record data and survey information supplied by the Owner prior to construction. Potholing for verification of existing piping and utility identification and location will be jointly scoped by Owner, CMAR, and Designer. Intent is for CMAR to assist in defining appropriate locations and level of detail in preconstruction phase to provide information to further develop the design, addressing specific areas of risk, constructability, and sequence of work. CMAR to be responsible for collection and distribution of potholing information, and to track record information for use during construction and for record documentation. CMAR and Engineer will collaborate to ensure datum and coordinate system for survey and potholing information is documented appropriately and kept consistent.

#### **7) Prepare a Guaranteed Maximum Price (GMP) Proposal(s):**

- a) Finalize the Procurement Plan. Include the list of potential bidders, Subcontractors and equipment suppliers.
- b) Prepare a draft GMP Proposal(s) for the 90% submittal and provide the draft to Owner and Design Engineer at least one week ahead of scheduled GMP negotiation workshop;
- c) The CMAR shall prepare GMP(s) that include unit cost, quantities and estimation assumptions.
  - i) As described in the "Project Meetings" section above, the CMAR will attend a GMP negotiation and finalization meeting and an additional, (4) hour negotiation session to review the revised GMP from the original session.
- d) The CMAR shall submit electronic copy (PDF format) of the initial and final GMP to Owner and Design Engineer.

### **Construction Services**

The detailed scope of construction services shall be determined at a later date.



## **EXHIBIT 6 – Project Background Documents**



# EXHIBIT 7 - Fee & Rate Proposal Form

APPENDIX C TO THE RFP

Nitrification Phase 2

Price Proposal Spreadsheet

## Spreadsheet Instructions:

Enter values only into the cells highlighted yellow. To arrive at the Proposer's calculated estimate of cost, enter the following values into the table:

1. Proposed Preconstruction Services Fee will automatically populate from the "Fee and Rate Worksheet" cells D13-D20
2. Estimated 90% GMP Contingency as a percentage to be used for the project into cell D23
3. Estimated General Conditions Fee on a **\$10M** construction fee for both GMPS into cell D24
4. Proposed Overhead Cost percentage to be used for the project into cell D25
5. Estimated insurance and bond fees as a percentage of total construction cost into cell D26
6. Proposed Profit percentage to be used for the project into cell D27
7. Once cells D13 through 26 are populated, the spreadsheet will calculate the estimated total project cost and return the value to cell D27. This amount is a calculated estimate of total project cost and will be used for Price Proposal Evaluation

Note: Items C and F shall be in accordance with the definitions provided in the RFP.

Item	Description	Unit	Amount
A	Total Pre-Construction Services Fee		
A1	Administration of Pre-Construction Phase Services	Lump Sum	\$0
A2	Construction Management Plan	Lump Sum	\$0
A3	Project Meetings	Lump Sum	\$0
A4	Scope, Schedule, and Budget Tracking	Lump Sum	\$0
A5	Review of Design Documents	Lump Sum	\$0
A6	Procurement Plan	Lump Sum	\$0
A7	Confirmation of Existing Infrastructure	Lump Sum	\$0
A8	Preparation of GMP	Lump Sum	\$0
	Total Construction Services Fee		
B	Estimate CMAR Contingency	%-age	
C	General Conditions Cost	Lump Sum	
D	Overhead Cost	%-age	
E	Profit	%-age	
F	Insurance and Bond Cost	%-age	
G	Calculated Estimate of Total Project Cost (For Price Evaluation Purposes)		\$10,500,000

\*The lump sum unit cost does not constitute the agreement type for preconstruction services.

## ESTIMATED TOTAL PROJECT COST SUMMARY

COST CATEGORY	AMOUNT	
PRECONSTRUCTION SERVICES:		
SUBTOTAL PRECONSTRUCTION SERVICES COST (Labor, materials, subcontracts, etc.):		\$0
CONSTRUCTION SERVICES:		
DIRECT CONSTRUCTION COSTS: (Labor, materials, permanent equipment, subcontracts, etc.)		<b>\$10,000,000</b>
Estimated CMAR Contingency (assuming GMP development at 90% design milestone)	0.00%	\$0
SUBTOTAL DIRECT CONSTRUCTION COST:		\$10,000,000
INDIRECT CONSTRUCTION COSTS:		
General Conditions Cost (Job Indirect and Job Staff)		\$0
SUBTOTAL DIRECT CONSTRUCTION + INDIRECT CONSTRUCTION:		\$10,000,000
Overhead Cost (Project and Home Office)	0.00%	\$0
PROFIT (As a percentage of Subtotal Above)	0.00%	\$0
SUBTOTAL DIRECT CONSTRUCTION + INDIRECT CONSTRUCTION + OVERHEAD + PROFIT		\$10,000,000
Insurance and Bond Cost	0.00%	\$0
SUBTOTAL DIRECT CONSTRUCTION + INDIRECT CONSTRUCTION + OVERHEAD + PROFIT + INSURANCE + BONDS		\$10,000,000
Owner's Contingency/Allowances		<b>\$500,000</b>
<b>CALCULATED ESTIMATE OF TOTAL PROJECT COST</b>		<b>\$10,500,000</b>



## EXHIBIT 7 - Fee & Rate Proposal Form

### Spreadsheet Instructions:

To arrive at the Proposer's calculated estimate of cost for Preconstruction services to be included in the Price Proposal Summary, enter the following values into the table:

1. Proposed Preconstruction Labor Force in cells B10-B47
2. Associated burden rate for the labor classification in the previous column in cells C10-C47
3. Complete the estimated hours for each element of the preconstruction services in cells D10 through K47
4. Once complete the cells are populated the final estimated cost for each element of the preconstruction services will be returned in cells D48-K48

Cost Element:		Phase 1 Preconstruction Hours							
		A1	A2	A3	A4	A5	A6	A7	A8
Labor Classification	Burdened Rate (\$/hr)	Administration of Pre-Construction Phase Services	Construction Management Plan	Project Meetings: Design, Partnering, Progress and Kick-off	Scope, Schedule, and Budget Tracking	Review of Design Documents	Procurement Plan	Confirmation of Existing Infrastructure	Preparation of GMP
Project Executive	\$ -								
(Additional Team Member)	\$ -								
Project Manager	\$ -								
Project Manager	\$ -								
(Additional Team Member)	\$ -								
Construction Manager	\$ -								
Construction Manager	\$ -								
(Additional Team Member)	\$ -								
Project Superintendent	\$ -								
Project Superintendent	\$ -								
(Additional Team Member)	\$ -								
Project Administrator	\$ -								
(Additional Team Member)	\$ -								
Project Field Engineer	\$ -								
Project Field Engineer	\$ -								
(Additional Team Member)	\$ -								
Project Estimator Lead	\$ -								
(Additional Team Member)	\$ -								
(Additional Team Member)	\$ -								
(Additional Team Member)	\$ -								
(Additional Team Member)	\$ -								
Project Schedule Lead	\$ -								
(Additional Team Member)	\$ -								
(Additional Team Member)	\$ -								
(Additional Team Member)	\$ -								
(Additional Team Member)	\$ -								
Procurement Manager	\$ -								
Quality Manager	\$ -								
Project Accountant	\$ -								
Buyer/Procurement Lead	\$ -								
Safety Manager	\$ -								
Commissioning/Startup Manager	\$ -								
Start-up Engineer	\$ -								
Other (identify)	\$ -								
Other (identify)	\$ -								
Other (identify)	\$ -								
Other (identify)	\$ -								
Other (identify)	\$ -								
Phase I Preconstruction Fee Total		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0



**EXHIBIT 8**



East 8th St

West Gate  
(ENTER HERE)

NORTH

Meeting Location

Visitor Parking

Overflow  
Visitor Parking

Highway 85