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## **SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT**

**Prepared By**





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# SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

These Supplementary Conditions amend or supplement EJCDC® CMAR-700, Standard General Conditions of the Construction Manager at Risk Contract (2023). The General Conditions remain in full force and effect except as amended.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added: for example, "Paragraph SC-4.05" references modifications to General Conditions Paragraph 4.05.

## ARTICLE 1—DEFINITIONS AND TERMINOLOGY

No suggested Supplementary Conditions in this Article.

## ARTICLE 2—PRELIMINARY MATTERS

SC-2.02 Delete Paragraph 2.02.A in its entirety and insert the following new paragraph in its place:

- A. Owner shall furnish to CMAR **two** printed copies of conformed Contract Documents incorporating and integrating all Addenda and any amendments negotiated prior to the Effective Date of the Contract, including one fully signed counterpart of the Agreement, and one copy in electronic portable document format (PDF). Additional printed copies of the conformed Contract Documents will be furnished upon request at the cost of reproduction.

### 2.03 Electronic Transmittals

SC-2.03 Delete Paragraphs 2.03.B and 2.03.C in their entirety and insert the following in their place:

- B. Electronic Documents Protocol—The parties shall conform to the following provisions in Paragraphs 2.03.B and 2.03.C, together referred to as the Electronic Documents Protocol (EDP or Protocol) for exchange of electronic transmittals.
  1. Basic Requirements
    - a. To the fullest extent practical, the parties agree to and will transmit and accept Electronic Documents in an electronic or digital format using the procedures described in this Protocol. Use of the Electronic Documents and any information contained therein is subject to the requirements of this Protocol and other provisions of the Contract.
    - b. The contents of the information in any Electronic Document will be the responsibility of the transmitting party.
    - c. Electronic Documents as exchanged by this Protocol may be used in the same manner as the printed versions of the same documents that are exchanged using non-electronic format and methods, subject to the same governing requirements, limitations, and restrictions, set forth in the Contract Documents.

- d. Except as otherwise explicitly stated herein, the terms of this Protocol will be incorporated into any other agreement or subcontract between a party and any third party for any portion of the Work on the Project, or any Project-related services, where that third party is, either directly or indirectly, required to exchange Electronic Documents with a party or with OA. Nothing herein will modify the requirements of the Contract regarding communications between and among the parties and their subcontractors and consultants.
  - e. When transmitting Electronic Documents, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the receiving party's use of software application packages, operating systems, or computer hardware differing from those established in this Protocol.
  - f. Nothing herein negates any obligation (1) in the Contract to create, provide, or maintain an original printed record version of Drawings and Specifications, signed and sealed according to applicable Laws and Regulations; (2) to comply with any applicable Law or Regulation governing the signing and sealing of design documents or the signing and electronic transmission of any other documents; or (3) to comply with the notice requirements of Paragraph 18.01 of the General Conditions.
2. System Infrastructure for Electronic Document Exchange
- a. Each party will provide hardware, operating system(s) software, internet, e-mail, and large file transfer functions ("System Infrastructure") at its own cost and sufficient for complying with the EDP requirements. With the exception of minimum standards set forth in this EDP, and any explicit system requirements specified by attachment to this EDP, it is the obligation of each party to determine, for itself, its own System Infrastructure.
    - 1) The maximum size of an email attachment for exchange of Electronic Documents under this EDP is **20 MB**. Attachments larger than that may be exchanged using large file transfer functions or physical media.
    - 2) Each Party assumes full and complete responsibility for any and all of its own costs, delays, deficiencies, and errors associated with converting, translating, updating, verifying, licensing, or otherwise enabling its System Infrastructure, including operating systems and software, for use with respect to this EDP.
  - b. Each party is responsible for its own system operations, security, back-up, archiving, audits, printing resources, and other Information Technology ("IT") for maintaining operations of its System Infrastructure during the Project, including coordination with the party's individual(s) or entity responsible for managing its System Infrastructure and capable of addressing routine communications and other IT issues affecting the exchange of Electronic Documents.
  - c. Each party will operate and maintain industry-standard, industry-accepted, ISO standard, commercial-grade security software and systems that are intended to protect the other party from: software viruses and other malicious software like worms, trojans, ransomware, adware; data breaches; loss of confidentiality; and other threats in the transmission to or storage of information from the other parties, including transmission of Electronic Documents by physical media such as

CD/DVD/flash drive/hard drive. To the extent that a party maintains and operates such security software and systems, it shall not be liable to the other party for any breach of system security.

- d. In the case of disputes, conflicts, or modifications to the EDP required to address issues affecting System Infrastructure, the parties shall cooperatively resolve the issues; but, failing resolution, the Owner is authorized to make and require reasonable and necessary changes to the EDP to effectuate its original intent. If the changes cause additional cost or time to CMAR, not reasonably anticipated under the original EDP, CMAR may seek an adjustment in price or time under the appropriate process in the Contract.
- e. Each party is responsible for its own back-up and archive of documents sent and received during the term of the contract under this EDP, unless this EDP establishes a Project document archive, either as part of a mandatory Project website or other communications protocol, upon which the parties may rely for document archiving during the specified term of operation of such Project document archive. Further, each party remains solely responsible for its own post-project back-up and archive of Project documents after the term of the Contract, or after termination of the Project document archive, if one is established, for as long as required by the Contract and as each party deems necessary for its own purposes.
- f. If a receiving party receives an obviously corrupted, damaged, or unreadable Electronic Document, the receiving party will advise the sending party of the incomplete transmission.
- g. The parties will bring any non-conforming Electronic Documents into compliance with the EDP. The parties will attempt to complete a successful transmission of the Electronic Document or use an alternative delivery method to complete the communication.
- h. The Owner will operate a project information management system (also referred to in this EDP as "Project Website") for use of Owner, OA, Engineer, and CMAR during the Project for exchange and storage of Project-related communications and information. Except as otherwise provided in this EDP or the General Conditions, use of the Project Website by the parties as described in this Paragraph will be mandatory for exchange of Project documents, communications, submittals, and other Project-related information. The following conditions and standards will govern use of the Project Website:
  - 1) Describe the period of time during which the Project Website will be operated and be available for reliance by the parties;
  - 2) Provide any minimum system infrastructure, software licensing and security standards for access to and use of the Project Website;
  - 3) Describe the types and extent of services to be provided at the Project Website, such as large file transfer, email, communication, and document archives, etc.; and
  - 4) Include any other Project Website attributes that may be pertinent to CMAR's use of the facility and pricing of such use.

C. Software Requirements for Electronic Document Exchange; Limitations

1. Each party will acquire the software and software licenses necessary to create and transmit Electronic Documents and to read and to use any Electronic Documents received from the other party, and if relevant from third parties, using the software formats required in this section of the EDP.
  - a. Prior to using any updated version of the software required in this section for sending Electronic Documents to the other party, the originating party will first notify and receive concurrence from the other party for use of the updated version or adjust its transmission to comply with this EDP.
2. The parties agree not to intentionally edit, reverse engineer, decrypt, remove security or encryption features, or convert to another format for modification purposes any Electronic Document or information contained therein that was transmitted in a software data format, including Portable Document Format (PDF), intended by sender not to be modified, unless the receiving party obtains the permission of the sending party or is citing or quoting excerpts of the Electronic Document for Project purposes.
3. Software and data formats for exchange of Electronic Documents will conform to the requirements set forth in Exhibit A to this EDP, including software versions, if listed.

**ARTICLE 3—CONTRACT DOCUMENTS—INTENT, REQUIREMENTS, REUSE**

No suggested Supplementary Conditions in this Article.

**ARTICLE 4—NO SUGGESTED CHANGES COMMENCEMENT AND PROGRESS OF THE WORK**

SC-4.05 H. Add paragraph immediately following Paragraph 4.05.G.:

~~CMAR shall be entitled to equitable adjustment in both Contract Time and Contract Price for delays, disruptions, or suspensions caused by Owner, Engineer, or Owner's Advisor actions or inactions; regulatory or permitting delays not caused by CMAR; or force majeure events.~~

Because this Project is a linear pipeline project, nearly all activities are critical path activities or have the potential to become critical path activities. Accordingly:

1. Presumption of Critical Impact: Any delay, disruption, or suspension affecting CMAR's progress shall be presumed to impact the critical path of the Project unless demonstrated otherwise.
2. Entitlement to Adjustment: CMAR shall be entitled to an equitable adjustment of both Contract Time and Contract Price, including extended general conditions and related costs, for any such delay, disruption, or suspension caused by:
  - Owner, Engineer, or Owner's Advisor actions or inactions;
  - Regulatory or permitting delays not caused by CMAR;
  - ~~Unforeseen site conditions~~; or
  - Force majeure events beyond CMAR's control.

3. Concurrent Delays: In the event of concurrent delay, CMAR shall be entitled to a time extension equal to the longest impacting delay, and cost relief to the extent the Owner-caused delay or compensable delay contributes to the concurrency.

## ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

### 5.03 Subsurface and Physical Conditions

SC-5.03 Add the following new paragraphs immediately after Paragraph 5.03.D:

- E. The following table lists the reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which CMAR may rely:

Report Title	Date of Report	Technical Data
No such reports as of contract execution		

- F. The following table lists the drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site, except Underground Facilities, that contain Technical Data, and specifically identifies the Technical Data upon which CMAR may rely: **[If there are no such drawings, so indicate in the table].**

Drawings Title	Date of Drawings	Technical Data
No such drawings as of contract execution		

- G. CMAR may examine copies of reports and drawings identified in SC-5.03.E and SC-5.03.F that were not included with the Proposal Documents.
- H. All geotechnical reports, environmental assessments, and surveys provided by the Owner are deemed Technical Data. If differing conditions are encountered, CMAR is entitled to both time and cost relief, including extended general conditions.

### 5.06 Hazardous Environmental Conditions

SC-5.06 Add the following new paragraphs immediately after Paragraph 5.06.A.3:

4. The following table lists the reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data, if any, upon which CMAR may rely:



Report Title	Date of Report	Technical Data
No such reports as of contract execution.		[Identify Technical Data]

5. The following table lists the drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data, if any, contained in such Drawings upon which CMAR may rely:

Drawings Title	Date of Drawings	Technical Data
No such drawings as of contract execution.		[Identify Technical Data]

6. Owner retains risk for undisclosed hazardous materials or environmental contamination not reasonably inferable from documents. CMAR is entitled to an equitable adjustment for delays, remediation costs, and standby costs.

## ARTICLE 6—BONDS AND INSURANCE

### 6.01 Performance, Payment, and Other Bonds

SC-6.01 Add the following paragraphs immediately after Paragraph 6.01.C:

1. Required Performance Bond Form—The performance bond that CMAR furnishes will be in the form of EJCDC® C-610, Performance Bond (2018).
2. Required Payment Bond Form—The payment bond that CMAR furnishes will be in the form of EJCDC® C-615, Payment Bond (2018).

### 6.03 CMAR's Insurance

SC-6.03 Supplement Paragraph 6.03 with the following provisions after Paragraph 6.03.C:

- D. Other Additional Insureds—As a supplement to the provisions of Paragraph 6.03.C of the General Conditions, the commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies must include as additional insureds, in addition to Owner, Owner's Advisor, and Engineer, the following; TBD
- E. Workers' Compensation and Employer's Liability—CMAR shall purchase and maintain workers' compensation and employer's liability insurance, including, as applicable, United States Longshoreman and Harbor Workers' Compensation Act, Jones Act, stop-gap employer's liability coverage for monopolistic states, and foreign voluntary workers' compensation, from available sources, notwithstanding the jurisdictional requirement of Paragraph 6.02.B of the General Conditions.

Workers' Compensation and Related Policies	Policy limits of not less than:
Workers' Compensation	

<b>Workers' Compensation and Related Policies</b>	<b>Policy limits of not less than:</b>
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
Bodily injury by accident—each accident	\$
Bodily injury by disease—aggregate	\$
<b>Employer's Liability</b>	
Each accident	\$
Each employee	\$
Policy limit	\$
	\$

- F. 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 claims for:
1. damages because of bodily injury, sickness or disease, or death of any person other than CMAR's employees,
  2. damages insured by reasonably available personal injury liability coverage, and
  3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- G. Commercial General Liability—Form and Content. CMAR's commercial liability policy must be written in a 1996, or later, Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage.
    - a. Such insurance must be maintained for three years after final payment.
    - b. CMAR shall furnish Owner and each other additional insured, as identified in the Supplementary Conditions or elsewhere in the Contract, evidence of continuation of such insurance at final payment and three years thereafter.
  2. Blanket contractual liability coverage, including but not limited to coverage of CMAR's contractual indemnity obligations in Paragraph 7.21.
  3. Severability of interests and no insured-versus-insured or cross-liability exclusions.
  4. Underground, explosion, and collapse coverage.
  5. Personal injury coverage.
  6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through both ISO Endorsements CG 20 10 04 13 and CG 20 37 04 13. For design professional additional insureds, ISO Endorsement CG 20 32 04 13 "Additional Insured: Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.

- H. Commercial General Liability—Excluded Content. The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:
1. Any modification of the standard ISO definition of “insured contract,” except to delete the railroad protective liability exclusion if CMAR is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property.
  2. Any exclusion for water intrusion or water damage.
  3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.
  4. Any exclusion of coverage relating to earth subsidence or movement.
  5. Any exclusion for the CMAR’s vicarious liability, strict liability, or statutory liability, other than worker’s compensation.
  6. Any limitation or exclusion based on the nature of CMAR’s work.
  7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.
- I. Commercial General Liability—Minimum Policy Limits

<b>Commercial General Liability</b>	<b>Policy limits of not less than:</b>
General Aggregate	\$
Products—Completed Operations Aggregate	\$
Personal and Advertising Injury	\$
Bodily Injury and Property Damage—Each Occurrence	\$

- J. Automobile Liability—CMAR shall purchase and maintain automobile liability insurance 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 must be written on an occurrence basis.

<b>Automobile Liability</b>	<b>Policy limits of not less than:</b>
Each Accident	\$

- K. Umbrella or Excess Liability—CMAR shall purchase and maintain umbrella or excess liability insurance written over the underlying employer’s liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

<b>Excess or Umbrella Liability</b>	<b>Policy limits of not less than:</b>
Each Occurrence	\$
General Aggregate	\$

- L. Using Umbrella or Excess Liability Insurance to Meet Commercial General Liability and Other Policy Limit Requirements—CMAR may meet the policy limits specified for employer’s liability, commercial general liability, and automobile liability insurance through the primary policies alone, or through combinations of the primary policy’s policy limits and partial attribution of the policy limits of an umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy, as specified herein. If such umbrella or excess liability policy was required under this Contract, at a specified minimum policy limit, such umbrella or excess policy must retain a minimum limit of \$[specify amount] after accounting for partial attribution of its limits to underlying policies as allowed above.
- M. Railroad Protective Liability Insurance—Prior to commencing any Work within 50 feet of railroad-owned or controlled property, CMAR shall (1) endorse its commercial general liability policy with ISO CG 24 17 or equivalent, removing the contractual liability exclusion for work within 50 feet of a railroad, (2) furnish a copy of the endorsement to Owner, (3) purchase and maintain railroad protective liability insurance meeting the following requirements, and (4) submit a copy of the railroad protective policy and other railroad-required documentation to the railroad, and notify Owner of such submittal.

1. [Insert additional specific requirements, commonly set by the railroad, here.]

Railroad Protective Liability Insurance	Policy limits of not less than:
Each Occurrence	\$TBD by RR
Aggregate	\$TBD by RR

- N. Unmanned Aerial Vehicle Liability Insurance—If CMAR uses unmanned aerial vehicles (UAV—commonly referred to as drones) at the Site or in support of any aspect of the Work, CMAR shall purchase and maintain UAV liability insurance in the amounts stated; name Owner, Owner’s Advisor, Engineer, and all individuals and entities identified in the Supplementary Conditions as additional insureds; and provide a certificate to Owner confirming CMAR’s compliance with this requirement. Such insurance will provide coverage for property damage, bodily injury or death, and invasion of privacy.

Unmanned Aerial Vehicle Liability Insurance	Policy limits of not less than:
Each Occurrence	\$TBD if required
Privacy Injury Aggregate	\$TBD if required

- O. Other Required Insurance

6.04 [Builder’s Risk and Other Property Insurance]

SC-6.04 Delete Paragraph 6.04.A and insert the following in its place:

- A. Owner shall purchase and maintain builder’s risk insurance covering the Work on a completed value basis, in the amount of the Work’s full insurable replacement cost, subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations. The specific requirements applicable to the builder’s risk insurance are set forth in the Supplementary Conditions.

## **ARTICLE 7—SC-6.04 CMAR'S RESPONSIBILITIES**

### **7.06 Labor; Working Hours**

SC-7.06 Add the following new subparagraphs immediately after Paragraph 7.06.D:

1. Regular working hours will be 6:00 am to 6:00 pm during weekdays, and weekends as needed. Some Work may require 24-hour periods for proper installation or night work.
2. Owner's legal holidays are New Years Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving and Thanksgiving Eve, Christmas and Christmas Eve,

### **7.13 Taxes**

SC-7.13 Add a new paragraph immediately after Paragraph 7.13.A:

- B. Owner is exempt from payment of sales and compensating use taxes of the State of **Georgia** and of cities and counties thereof on all materials to be incorporated into the Work.
  1. Owner will furnish the required certificates of tax exemption to CMAR for use in the purchase of supplies and materials to be incorporated into the Work.
  2. Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by CMAR, or to supplies or materials not incorporated into the Work.

SC-7.21 C. Add a new paragraph immediately after Paragraph 7.21. B:

~~SC-7.21 C. CMAR indemnification is limited to losses caused by CMAR's negligence, willful misconduct, or breach of contract. CMAR shall not be required to indemnify Owner for Owner's or Engineer's negligence or for consequential damages waived under Article 18.04.~~

## **ARTICLE 8—OTHER WORK AT THE SITE**

No suggested Supplementary Conditions in this Article.

## **ARTICLE 9—OWNER'S RESPONSIBILITIES**

No suggested Supplementary Conditions in this Article.

## **ARTICLE 10—STATUS OF OWNER'S ADVISOR AND ENGINEER DURING CONSTRUCTION**

No suggested Supplementary Conditions in this Article.

## ARTICLE 11—CHANGES TO THE CONTRACT

Add a new paragraph SC 11.11 immediately following Paragraph 11.10:

### SC-11.11 Tariff Impacts on Materials and Equipment

A. Purpose. The parties acknowledge that tariffs, duties, or other government-imposed charges (“Tariff Impacts”) on materials, equipment, or products necessary for the Work may fluctuate after the date of the GMP or Work Authorization, and that such fluctuations are outside the reasonable control of the CMAR, the Owner, and Suppliers.

B. Baseline Assumption. The CMAR shall prepare the GMP and all Work Authorizations using tariff rates, duties, or other governmental charges in effect as of the date of submission of the GMP Proposal (or Work Authorization Proposal, if later).

C. Adjustments. If, after the baseline date defined in Paragraph B, any new Tariff Impact is enacted or any existing Tariff Impact is increased, decreased, suspended, or terminated, the Contract Price shall be equitably adjusted (upward or downward) to reflect the actual incremental cost or savings attributable solely to such Tariff Impact.

D. Any adjustment under this provision shall be made by Change Order, supported by appropriate documentation (including supplier quotes, invoices, or other evidence acceptable to the Owner’s Advisor).

E. Notice. The CMAR shall provide written notice within 14 days after becoming aware of any Tariff Impact that materially affects the cost of any portion of the Work. Such notice shall identify the affected materials, equipment, or products, and the anticipated cost adjustment.

F. Shared Responsibility. Tariff Impacts shall not be deemed a default, differing site condition, or force majeure, but shall be treated as an equitable adjustment to the Contract Price.

G. Adjustments will not include markups beyond those allowed under Article 6 (Cost of the Work). CMAR Fee will apply to increased costs consistent with the Contract.

H. Savings due to tariff reductions, suspensions, or terminations shall be credited to the Owner.

I. Mitigation. The CMAR shall exercise commercially reasonable efforts to mitigate Tariff Impacts, including seeking alternative domestic or non-impacted sources, value-engineering alternatives, or other strategies, provided such alternatives meet the requirements of the Contract Documents and are approved by Owner.

## ARTICLE 12—CLAIMS

SC – 12.01 Add the new paragraph immediately following paragraph 12.01 G.:

12.01 H. Time for providing notice of a claim is to be 30 days after first knowledge of the event. Preliminary notice is sufficient; detailed substantiation may follow within a reasonable time. ~~Failure to provide notice shall not bar the claim if Owner is not materially prejudiced.~~

## **ARTICLE 13—ALLOWANCES; UNIT PRICE WORK**

No suggested Supplementary Conditions in this Article.

## **ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

No suggested Supplementary Conditions in this Article.

## **ARTICLE 15—PAYMENTS TO CMAR; SET OFFS; COMPLETION; CORRECTION PERIOD**

### **15.01 Payment for CMAR Services**

SC – 15.01 B. Add the following paragraph below paragraph 15.01 A.

The Project will be managed on an open-book basis during GMP development and subcontractor procurement. Once the GMP is established, all billing shall be based on an agreed Schedule of Values (SOV). ~~Owner's audit rights are limited to establishment of GMP, final close out, and verification of contingency usage.~~ Owner shall not conduct monthly forensic audits of CMAR's internal job cost system.

SC – 15.01 C. Add the following paragraph below paragraph 15.01. B.

The Owner shall make payment to the CMAR for materials and equipment that are suitably stored off-site or on-site, prior to incorporation into the Work, provided that:

1. The materials or equipment are intended specifically for the Project and conform to the requirements of the Contract Documents.
2. The CMAR furnishes to the Owner evidence of purchase, title, and insurance coverage for such stored materials and equipment, including proof of protection against loss, theft, damage, and other hazards.
3. The materials or equipment are clearly identified, labeled, and segregated from other non-Project inventory, and are available for Owner's inspection at all reasonable times.
4. Any transportation, handling, storage, and security costs are included in the Cost of the Work and are not separately compensable.
5. Payments for stored materials or equipment shall be made at ninety-five percent (95%) of their invoiced value, provided the above conditions are met. Such payments will be deducted from future Applications for Payment when the materials or equipment are incorporated into the Work.

SC-15.04 Add the following to the end of Paragraph 15.04.B:

"If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by OA and Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, will be paid by CMAR to Owner. If CMAR does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under this Article 15."

## ARTICLE 16— SUSPENSION AND TERMINATION

~~SC 16.03B Delete paragraph 16.03 B in its entirety and replace with paragraph below:  
If Owner terminates for convenience, CMAR shall be compensated for: Work executed; reasonable demobilization costs; and CMAR Fee and overhead on performed Work.~~

## ARTICLE 17—FINAL RESOLUTION OF DISPUTES

### 17.02 Arbitration

SC-17.02 Add the following new paragraph immediately after Paragraph 17.01.

### 17.02 Arbitration

- A. All matters subject to final resolution under this Article will be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules, subject to the conditions and limitations of this Paragraph SC-17.02. Any controversy or claim in the amount of \$100,000 or less will be settled in accordance with the American Arbitration Association's supplemental rules for Fixed Time and Cost Construction Arbitration. This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction.
- B. The demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitration administrator, and a copy will be sent to Engineer and OA for information. The demand for arbitration will be made within the specific time required in Article 17, or if no specified time is applicable within a reasonable time after the matter in question has arisen, and in no event will any such demand be made after the date when institution of legal or equitable proceedings based on such matter in question would be barred by the applicable statute of limitations.
- C. The arbitrator(s) must be licensed engineers, contractors, attorneys, or construction managers. Hearings will take place pursuant to the standard procedures of the Construction Arbitration Rules that contemplate in-person hearings. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute or the Contract. Any award in an arbitration initiated under this clause will be limited to monetary damages and include no injunction or direction to any party other than the direction to pay a monetary amount.
- D. The Arbitrators will have the authority to allocate the costs of the arbitration process among the parties but will only have the authority to allocate attorneys' fees if a specific Law or Regulation or this Contract permits them to do so.
- E. The award of the arbitrators must be accompanied by a reasoned written opinion and a concise breakdown of the award. The written opinion will cite the Contract provisions deemed applicable and relied on in making the award.
- F. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges will constitute a waiver by that party to present evidence or cross-examine witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the



making of an award. Such waiver will not allow for a default judgment against the non-paying party in the absence of evidence presented as provided above.

- G. No arbitration arising out of or relating to the Contract will include by consolidation, joinder, or in any other manner any other individual or entity, including Owner's Advisor, Engineer, or their consultants, or the officers, directors, partners, agents, employees, or consultants of any entity that is not a party to this Contract unless:
  - 1. the inclusion of such other individual or entity will allow complete relief to be afforded among those who are already parties to the arbitration;
  - 2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration, and which will arise in such proceedings;
  - 3. such other individual or entity is subject to arbitration under a contract with either Owner or CMAR, or consents to being joined in the arbitration; and
  - 4. the consolidation or joinder complies with the arbitration administrator's procedural rules.
- H. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.
- I. Except as may be required by Laws or Regulations, neither party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties, with the exception of any disclosure required by Laws and Regulations or the Contract. To the extent any disclosure is allowed pursuant to the exception, the disclosure must be strictly and narrowly limited to maintain confidentiality to the extent possible.

#### 17.03 Attorneys' Fees

- A. For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorneys' fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, arbitrator, arbitration panel, or other arbiter of the matter subject to final resolution, considering the parties' initial demand or defense positions in comparison with the final result.

### ARTICLE 18—MISCELLANEOUS

SC – 18.01 Add the new paragraph immediately following paragraph 18.01 A.:

18.01 B. Time for providing notice of a claim is extended to 30 days after first knowledge of the event. Preliminary notice is sufficient; detailed substantiation may follow within a reasonable time. ~~Failure to provide notice shall not bar the claim if Owner is not materially prejudiced.~~

SC – 18.04 B     Add new Paragraph immediately following Paragraph 18.04. A.:

Owner and CMAR mutually waive claims against each other for consequential damages, including but not limited to lost profits on other jobs, loss of financing, loss of business reputation, or loss of use. This waiver does not limit recovery of direct damages, costs for delay, or liquidated damages where specifically stated.

**EXHIBIT A—SOFTWARE REQUIREMENTS FOR ELECTRONIC DOCUMENT EXCHANGE**

CMAR, Owner and OA will determine document control platform to be utilized for the Project.

Item	Electronic Documents	Transmittal Means	Data Format	Note (1)
1	General communications, transmittal covers, meeting notices and responses to general information requests for which there is no specific prescribed form.	Email	Email	
2	Meeting agendas, meeting minutes, RFI's and responses to RFI's, and Contract forms.	Email w/ Attachment	PDF	(2)
3	CMARs Submittals (Shop Drawings, "or equal" requests, substitution requests, documentation accompanying Sample submittals and other submittals) to OA and OA's responses to CMAR's Submittals, Shop Drawings, correspondence, and Applications for Payment.	Email w/ Attachment	PDF	
4	Correspondence; milestone and final version Submittals of reports, layouts, Drawings, maps, calculations and spreadsheets, Specifications, Drawings and other Submittals from CMAR to Owner or OA and for responses from OA to CMAR regarding Submittals.	Email w/ Attachment or LFE	PDF	
5	Layouts and drawings to be submitted to Owner for future use and modification.	Email w/ Attachment or LFE	DWG	
6	Correspondence, reports, and Specifications to be submitted to Owner for future word processing use and modification.	Email w/ Attachment or LFE	DOC	
7	Spreadsheets and data to be submitted to Owner for future data processing use and modification.	Email w/ Attachment or LFE	EXC	
8	Database files and data to be submitted to Owner for future data processing use and modification.	Email w/ Attachment or LFE	DB	
Notes				
(1)	All exchanges and uses of transmitted data are subject to the appropriate provisions of Contract Documents.			
(2)	Transmittal of written notices is governed by Paragraph 18.01 of the General Conditions.			
Key				
Email	Standard Email formats (.htm, .rtf, or .txt). Do not use stationery formatting or other features that impair legibility of content on screen or in printed copies			
LFE	Agreed upon Large File Exchange method (FTP, CD, DVD, hard drive)			
PDF	Portable Document Format readable by Adobe® Acrobat Reader Version [number] or later			
DWG	Autodesk® AutoCAD .dwg format Version [number]			
DOC	Microsoft® Word .docx format Version [number]			
EXC	Microsoft® Excel .xlsx or .xml format Version [number]			
DB	Microsoft® Access .accdb format Version [number]			

[illegible]

## EXHIBIT C—GEOTECHNICAL BASELINE REPORT SUPPLEMENT TO THE SUPPLEMENTARY CONDITIONS

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### : 1.01 Definitions

SC-1.01 Add to the list of definitions in Paragraph 1.01.A by inserting the following as numbered items in their proper alphabetical positions:

1. Geotechnical Baseline Report (GBR)—The interpretive report prepared by or for Owner regarding subsurface conditions at the Site and containing specific baseline geotechnical conditions that may be anticipated or relied upon for establishing a Guaranteed Maximum Price and contract administration purposes, subject to the controlling provisions of the Contract, including the GBR's own terms. The GBR is a Contract Document.
2. Geotechnical Data Report (GDR)—The factual report that collects and presents data regarding actual subsurface conditions at or adjacent to the Site, including Technical Data and other geotechnical data, prepared by or for Owner in support of the Geotechnical Baseline Report. The GDR's content may include logs of borings, trenches, and other site investigations, recorded measurements of subsurface water levels, the results of field and laboratory testing, and descriptions of the investigative and testing programs. The GDR does not include an interpretation of the data. If opinions, or interpretive or speculative non-factual comments or statements appear in a document that is labeled a GDR, such opinions, comments, or statements are not operative parts of the GDR and do not have contractual standing. Subject to that exception, the GDR is a Contract Document.

### 5.03 Subsurface and Physical Conditions

SC-5.03 Delete Paragraph 5.03 in its entirety and replace with the following:

### 5.03 Subsurface and Physical Conditions

A. Reports and Drawings—The Supplementary Conditions hereby identify:

1. those reports of explorations and tests of subsurface conditions at or adjacent to the Site, other than any Geotechnical Data Report or Geotechnical Baseline Report, that contain Technical Data. Such reports are as follows:
  - a. Report Title— **[Exact title of the document]**.
  - b. Date of Report— **[Date report was issued]**.
  - c. Technical Data in report upon which CMAR may rely: **[Identify Technical Data (for example, "Boring Log, Test Site 3") and specify page number or other reference where Technical Data is located within the report. List multiple Technical Data line items per entry when appropriate.]**
2. those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site, except Underground Facilities, that contain Technical Data. Such drawings are as follows:
  - a. Drawings Title— **[Exact title of the drawings]**.

- b. Date of Drawings— **[Date drawings were issued]** Technical Data in drawings upon which CMAR may rely: **[Identify Technical Data (for example, “Plan View of Rock Outcroppings”) in drawings, or state “All information in drawing” if entire content is Technical Data entitled to reliance; and specify drawing number, page number, or other reference where the Technical Data is located. List multiple Technical Data line items per entry when appropriate.]**

3. CMAR may examine copies of reports and drawings identified immediately above that were not included with the Proposal Documents **[at {location} during regular business hours or may request copies from OA, at the cost of reproduction] [from the designated website from which Proposal documents were obtained].**

B. **Underground Facilities**—Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph SC-5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

C. Reliance by CMAR on Technical Data Authorized—CMAR may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then CMAR may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.55.b.

D. Limitations of Other Data and Documents—Except for such reliance on Technical Data, CMAR may not rely upon or make any claim against Owner, OA, or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for CMAR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CMAR, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. the contents of other Site-related documents made available to CMAR, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
4. any CMAR interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

## E. Geotechnical Baseline Report

1. This Contract contains a Geotechnical Baseline Report (GBR), identified as follows: **[Example: Geotechnical Baseline Report for Northwest Interceptor, dated February 12, 2013, prepared by ABC Geotechnical Engineers, Inc., Sacramento, California]**. This Contract also contains a Geotechnical Data Report (GDR), identified as follows: **[Example: Geotechnical Data Report for Northwest Interceptor, dated June 15, 2012, prepared by ABC Geotechnical Engineers, Inc., Sacramento, California]**.

2. The GBR and GDR are incorporated as Contract Documents. The GBR and GDR are to be used in conjunction with other Contract Documents, including the Drawings and Specifications. If there is a conflict between the terms of the GBR and the GDR, the GBR's terms prevail.
3. The GBR describes certain select subsurface conditions that are anticipated to be encountered by CMAR during construction in specified locations, referred to here in the Supplementary Conditions as "Baseline Conditions". These may include ground, geological, groundwater, and other subsurface geotechnical conditions, and baselines of anticipated Underground Facilities or subsurface structures.
4. The Baseline Conditions will be used to assist in the administration of the Contract's differing site conditions clause at locations where subsurface conditions have been baselined. If a condition is baselined in the GBR, then only the pertinent Baseline Conditions will be used to determine whether there is a differing site condition; and no other indication of that condition in the Contract Documents or Technical Data, or of a condition that describes, quantifies, or measures a similar characteristic of the subsurface, will be used for the differing site condition determination.
5. The Baseline Conditions will not be used to make differing site conditions determinations at locations that have not been baselined in the GBR, or at any location with respect to subsurface conditions that the Baseline Conditions do not address. If Underground Facilities or Hazardous Environmental Conditions are expressly addressed in the Baseline Conditions, then comparison to such Baseline Conditions will be the primary means of determining (a) whether an Underground Facility was shown or indicated with reasonable accuracy, as provided in Paragraph 5.05.B of the General Conditions, or (b) whether a Hazardous Environmental Condition was shown or indicated in the Contract Documents as indicated in Paragraph 5.06.E of the General Conditions. As indicated in Paragraph SC-5.04 below, the GDR will be the primary resource for differing site conditions determinations in cases in which the GBR is inapplicable.
6. The descriptions of subsurface conditions provided in the GBR are based on geotechnical investigations, laboratory tests, interpretation, interpolation, extrapolation, and analyses. Neither Owner, OA, Engineer, nor any geotechnical or other consultant warrants or guarantees that actual subsurface conditions will be as described in the GBR, nor is the GBR intended to warrant or guarantee the use of specific means or methods of construction.
7. The behavior of the ground during construction depends substantially upon the CMAR's selected means, methods, techniques, sequences, and procedures of construction. If ground behavior conditions are baselined in the GBR, they are based on stated assumptions regarding construction means and methods.
8. The GBR will not reduce or relieve CMAR of its responsibility for the planning, selection, and implementation of safety precautions and programs incident to CMAR's means, methods, techniques, sequences, and procedures of construction, or to the Work.

#### 5.04 Differing Subsurface or Physical Conditions

SC-5.04 Delete Paragraph 5.04 in its entirety and replace with the following:

#### 5.04 Differing Subsurface or Physical Conditions

- B. Notice—If CMAR believes that any subsurface condition that is uncovered or revealed at the Site:
1. differs materially from conditions shown or indicated in the GBR; or
  2. differs materially from conditions shown or indicated in the GDR, to the extent the GBR is inapplicable; or
  3. differs materially from conditions shown or indicated in Contract Documents other than the GBR or GDR, to the extent the GBR and GDR are inapplicable; or
  4. to the extent the GBR and GDR are inapplicable, is of such a nature as to establish that any Technical Data on which CMAR is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
  5. to the extent the GBR and GDR are inapplicable, is of such a nature as to require a change in the Drawings or Specifications; or
  6. to the extent the GBR and GDR are inapplicable, is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then CMAR shall, promptly after becoming aware thereof and before further disturbing the subsurface conditions or performing any Work in connection therewith, except in an emergency as required by Paragraph 7.18, notify Owner and OA in writing about such condition. CMAR shall not further disturb such condition or perform any Work in connection therewith, except with respect to an emergency, until receipt of a written statement permitting CMAR to do so.

- C. OA's Review—After receipt of written notice as required by the preceding paragraph, OA, in consultation with the Engineer, will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph SC-5.04.A above; obtain any pertinent cost or schedule information from CMAR; prepare recommendations to Owner regarding the CMAR's resumption or continuation of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of OA's findings, conclusions, and recommendations.
- D. Owner's Statement to CMAR Regarding Site Conditions—After receipt of Owner's response and instructions regarding the OA's written findings, conclusions, and recommendations, OA will issue a written statement to CMAR regarding the subsurface or physical condition in question, addressing the resumption or continuation of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and informing CMAR of OA's written findings, conclusions, and recommendations, as revised based on Owner's response and instructions.



- E. Early Resumption of Work—If at any time OA, in consultation with the Engineer, determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of OA’s review or OA’s issuance of its statement to CMAR, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the OA may instruct CMAR to resume such Work.
- F. Possible Price and Times Adjustments
1. CMAR shall be entitled to an equitable adjustment in Guaranteed Maximum Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in CMAR’s cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. such condition must fall within any one or more of the categories described in Paragraph SC-5.04.A;
    - b. with respect to Work that is paid for on a unit price basis, any adjustment in Guaranteed Maximum Price will be subject to the provisions of Paragraph 13.02 of the General Conditions; and
    - c. CMAR’s entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
  2. CMAR shall not be entitled to any adjustment in the Guaranteed Maximum Price or Contract Times with respect to a subsurface or physical condition if:
    - a. CMAR knew of the existence of such condition at the time CMAR made a commitment to Owner with respect to Guaranteed Maximum Price and Contract Times by the submission of a Proposal or Guaranteed Maximum Price, or otherwise; or
    - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Request for Proposals or Contract Documents to be conducted by or for CMAR prior to CMAR’s making such commitment; or
    - c. CMAR failed to give the written notice as required by Paragraph SC-5.04.A.
  3. If Owner and CMAR agree regarding CMAR’s entitlement to and the amount or extent of any adjustment in the Guaranteed Maximum Price or Contract Times, then any such adjustment must be set forth in a Change Order.
  4. CMAR may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Guaranteed Maximum Price or Contract Times, no later than 30 days after Owner’s issuance of the Owner’s written statement to CMAR regarding the subsurface or physical condition in question.
- G. Underground Facilities; Hazardous Environmental Conditions—Paragraph 5.05 of the General Conditions governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 of the General Conditions governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs

SC-5.03 and SC-5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.